EFiled: May 15 2026 10:37PM EDT
Filing ID 79476020
Case Number 142,2026

IN THE

Supreme Court of the State of Delaware

ELLER ASSOCIATES INC.; ELLER INTERNATIONAL INC.; ELLER 2 ASSOCIATES INC.; ELLER 2 INTERNATIONAL INC.; and ELLIOTT INVESTMENT MANAGEMENT L.P.,

Plaintiffs Below/Appellants/ Cross-Appellees,

v.

RYAN A. TURNER; SRP PONTIAC MANAGEMENT SERVICES, LLC; SRP MERCURY MANAGEMENT SERVICES, LLC; RAT MERCURY A HOLDINGS, LLC; RAT PONTIAC A HOLDINGS, LLC; RAT MERCURY B HOLDINGS, LLC; RAT PONTIAC B HOLDINGS, LLC; FORD MINERAL ACQUISITIONS, LLC; SRP PONTIAC EMPLOYEE HOLDINGS LLC; and SRP MERCURY EMPLOYEE HOLDINGS LLC,

Defendants Below/Appellees/ Cross-Appellants.

No. 142, 2026

CASE BELOW:

Court of Chancery of the State of Delaware
C.A. No. 2025-1095-BWD

APPELLEES' ANSWERING BRIEF ON APPEAL AND CROSS-APPELLANTS' OPENING BRIEF ON CROSS-APPEAL

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NATURE OF PROCEEDINGS

This appeal arises from a settlement agreement requiring sale of "the assets of" two specified investment funds. Plaintiffs-Appellants-Cross-Appellees Elliott Investment Management L.P. and its affiliates ("Elliott") seek to leverage the agreement to force a sale of the assets of portfolio companies in which the funds indirectly invested. The Court of Chancery correctly understood that ordering Elliott's desired sale would violate the agreement's plain text and fundamental principles of corporate separateness. The court thus ordered a sale of the funds' assets—*i.e.*, their equity interests—and not the assets of the distinct portfolio companies. That was the only sensible interpretation of the settlement agreement.

Elliott, an activist hedge fund with nearly $80 billion under management, is one of approximately 100 limited partners that invested in the two funds managed by Defendants-Appellees-Cross-Appellants Ryan Turner and affiliated entities ("Stronghold"). The funds acquired equity interests in investment entities that in turn acquired preferred membership interests in portfolio companies that pursued oil-and-gas opportunities. In many of the portfolio companies, third parties acquired common membership interests.

When Elliott's and Stronghold's relationship deteriorated in 2022, the parties entered into the Settlement Agreement. The Agreement sets forth dates by which Stronghold would sell the funds' "assets." But, in a "Notwithstanding" clause, the

Agreement qualifies that obligation, providing that Stronghold would not be required to effect sales in a manner that it reasonably determines in good faith "would be reasonably likely to result in a violation of applicable fiduciary or investment advisor duties." The Agreement further provides that, "in the event of delay," Stronghold would "use reasonable best efforts to effect the applicable sales as soon as practicable in compliance with such fiduciary or investment advisor duties."

In September 2025, Elliott filed this action claiming that Stronghold breached the Agreement's sale provision. Rather than take discovery on Stronghold's determination of its fiduciary obligations, Elliott moved immediately for summary judgment and demanded specific performance. Elliott offered no supporting evidence. Stronghold produced evidence that it had retained an independent advisor to value the portfolio and made a good-faith determination—on written advice of qualified counsel—that selling during the relevant period likely would violate its fiduciary duties to the funds' limited partners.

The Court of Chancery nonetheless granted Elliott's motion. That was error: the Settlement Agreement is at least ambiguous as to whether Stronghold was required to sell the funds' assets on an accelerated schedule when it determined that doing so would likely breach its fiduciary duties, and even under the court's interpretation, whether Stronghold breached the Agreement involved genuine

disputes of material fact. Stronghold's cross-appeal is conditional, but if the Court reaches it, the Court should reverse for those reasons.

When it came to fashioning Elliott's requested specific performance remedy, however, the Court of Chancery got it right. The court correctly limited its order to enforcing the Settlement Agreement's terms, holding that reference to "the assets of [the funds]" means the assets directly owned by those entities—not the oil-and-gas assets owned by the portfolio companies. And the court did not abuse its discretion in denying Elliott's procedurally flawed motion for reargument making new arguments and tendering untimely evidence.

Although Stronghold disagrees with the Court of Chancery's summary judgment ruling, in the interest of streamlining the parties' dispute and providing certainty for the business in a very challenging time, Stronghold asks the Court in the first instance to affirm the judgment. But, if the Court rules for Elliott on its appeal, the Court should further rule for Stronghold on its conditional cross-appeal and reverse the Court of Chancery's summary judgment ruling.

SUMMARY OF THE ARGUMENT

As to Elliott's Appeal:

1. Denied. The Court of Chancery correctly construed "assets of SRP II [and] Sidecar" in Section 7 of the Settlement Agreement to mean the assets those entities actually own—their equity interests—rather than the oil-and-gas interests owned by downstream portfolio companies. The court's construction accords with the plain meaning. The preposition "of" denotes ownership, and thus Section 7 requires sale of only the assets those entities themselves own. The Settlement Agreement's surrounding text and structure confirm this reading: the Agreement demonstrates that the parties knew how to refer to oil-and-gas interests and "indirect" ownership concepts but chose not to include such language in Section 7. The court's construction also respects the separate legal existence of the portfolio companies, a bedrock principle of Delaware corporate law. And this is also a commercially logical reading. Selling equity interests preserves each portfolio company as a going concern, rather than dismembering these enterprises in a piecemeal liquidation that destroys their value.

Elliott's contrary arguments lack merit. Section 7's use of the broader term "assets" rather than "equity interests" does not transform portfolio-company assets into SRP II's and Sidecar's property. The "Affiliate" language in Section 7(a) identifies who must *carry out the sales*, not whose assets *must be sold*. And the

Limited Partnership Agreements' ("LPAs") "look-through" provisions apply only to limitations in the LPAs themselves, not to obligations arising under the subsequent Settlement Agreement. Stronghold's conduct and statements are consistent with the Court of Chancery's construction, as Stronghold consistently distinguished between the funds' assets and those of the portfolio companies. Finally, Elliott waived its commercial-context argument, and the argument fails on its merits.

As to Stronghold's Conditional Cross-Appeal:

If the Court does not affirm the judgment, the Court should hold that the Court of Chancery erred in granting summary judgment to Elliott.

1. The Court of Chancery erred in holding that Section 7(a) of the Settlement Agreement is unambiguous. Section 7(a) outlines dates for winding down SRP II and Sidecar, but a reasonable party could read the Notwithstanding Clause to qualify those dates by preserving Stronghold's ability to avoid sales that it reasonably and in good faith determines would likely violate fiduciary duties. The broader Settlement Agreement further confirms the reasonableness of Stronghold's interpretation. The parties knew how to create hard deadlines when they intended to but omitted such language in Section 7(a). And, contrary to the court's conclusion, the Settlement Agreement's purpose of providing for an "orderly termination" of the parties' relationship favors Stronghold's interpretation and not Elliott's proposed fire sale.

2. Even under the Court of Chancery's interpretation, genuine factual disputes preclude a finding that Stronghold breached Section 7(a). The court recognized that the Notwithstanding Clause permits fiduciary-duty-driven delay in certain circumstances, yet it treated the failure to *complete* sales by the stated dates as dispositive without determining whether a fiduciary-compliant manner of sale existed, whether any such sale was practicable, or whether Stronghold used reasonable best efforts to pursue one. Elliott submitted *no* evidence on those issues, while Stronghold's affidavits created triable issues of fact.

STATEMENT OF FACTS

A. Factual Background

1. Elliott entrusts hundreds of millions to Stronghold and reaps enormous returns.

Stronghold is a technology-driven investment management firm founded by Ryan Turner. A627-28. Stronghold leverages proprietary software that structures vast quantities of data to identify, evaluate, invest in, and dispose of oil-and-gas mineral rights and leaseholds. *Id.* Stronghold's competitive advantage lies in its informational edge relative to other market participants. A628. Through its data-driven approach and skilled boots-on-the-ground strategy, Stronghold has helped create liquidity for underserved market segments in the oil-and-gas sector. A627.

In 2017, Elliott—a hedge fund with nearly $80 billion in assets under management—initially approached Stronghold about partnering in direct oil-and-gas investments. A628. Elliott and Stronghold launched joint ventures dubbed Ford, Pontiac, and Mercury to acquire mineral interests. A628-29. The results were enormously profitable for Elliott and its co-investors, generating more than $390 million in gains. A629-30.

Separately, Elliott agreed to invest in funds managed by Stronghold. Elliott committed about $100 million to what became "Fund II," consisting of two Delaware limited partnerships: SRP Opportunities II, LP ("SRP II") and SRPO-II Partners I, LP ("Sidecar"). A630-31; A483; B24-119. Each is a closed-end fund

governed by a Limited Partnership Agreement. A631. The general partner of SRP II is SRP Opportunities II GP, LP, and the general partner of Sidecar is SRPO-II Partners I GP, LP. A29-30. Stronghold, through its principal Ryan Turner, controls both general partners. A37.

SRP II has approximately 100 limited partners, while Sidecar is a parallel vehicle in which Elliott is the only limited partner. A630-31. Taken together, Elliott's investment represents roughly 47% of Fund II's investor-committed capital; the remaining approximately 53% is held by other SRP II limited partners—including individuals, family offices, charitable foundations, and retirement accounts—whose interests are directly at stake in this litigation. *Id.*

Fund II was designed from its inception to cultivate investments in portfolio companies for up to a decade or more, a timeline to which all investors, including Elliott, understood and agreed. A631; A503 § 1.5; A569 § 8.2(a); B44-45 § 1.5; B110 § 8.2(a). As Elliott acknowledges (at 22), Fund II owns equity interests in investment companies, which in turn own equity interests in downstream separate portfolio companies, each a distinct LLC with its own members, assets, and obligations. A631; B10. In many portfolio companies, local "landmen" hold common stock as a member of the portfolio company. A631. These common members are independent third parties with their own equity interests, contractual rights, and economic stakes in the portfolio companies.

The portfolio companies, in turn, buy and sell inventories of oil-and-gas assets. A628; A631. The portfolio companies' oil-and-gas assets include a mix of mineral and working interests, most of which are undeveloped or less developed. B22; A640. Stronghold has been undertaking efforts to spur development to improve the value of the undeveloped oil-and-gas interests owned by downstream portfolio companies. B22.

For example, one portfolio company, Tumbler Operating Partners, LLC, owns working interests in a developmental area in New Mexico in which other operators also own interests. B123-24; B149-51. The state is currently evaluating competing proposals to drill in this area. *Id.* Tumbler's proposal—which is spearheaded by a Stronghold-affiliated management team and already has caused a competitor to accelerate its proposed drilling schedule—would result in Tumbler drilling more wells and on a faster timeline than the competing proposals. *Id.* If Tumbler prevails on its bid, the value of the oil-and-gas interests it owns could increase significantly. A sale of the Tumbler interests at this time would be fatal to that pending bid.

2. The parties agree to an orderly separation, subject to Stronghold's fiduciary duties.

In 2022, the relationship between Elliott and Stronghold soured. After Stronghold declined Elliott's overtures for a "grand bargain" that would have given Elliott greater control over Stronghold's business, Elliott demanded an "amicable divorce" and manufactured accusations of malfeasance (regarding advances and

royalties that had long been disclosed) to extract negotiation leverage. A633-36. Rather than endure protracted litigation, Stronghold agreed to settle "solely for the purpose of avoiding the expense and inconvenience of litigation." A111; A636. Certain Elliott and Stronghold entities and individuals (the latter called the "SRP Parties," which include Ryan Turner) entered a Settlement Agreement to "provide for an orderly termination of the relationship" between Stronghold and Elliott. A100. Contrary to Elliott's insinuations, the Settlement Agreement labeled the disputed payments "Advances" and "Royalty Payments"—not theft or misappropriation—and provided that the Agreement's terms were not an admission of "wrongful conduct" or "liability whatsoever." A111 § 18; A122-25; A127.

Section 7 of the Settlement Agreement—entitled "Sale and Winddown of Certain Investments"—sets forth the parties' agreement regarding the sale of various funds' assets. A105-06 § 7. Section 7 requires the SRP Parties "to sell the assets of SRP II, SRP II Sidecar," and other identified funds and "wind down each of the entities as follows." A105 § 7. Section 7(b) governs the other funds. Pertinently, Section 7(a) governs the Fund II funds (SRP II and Sidecar).

Section 7(a) specifies that "the SRP Parties will (or will cause their applicable Affiliate to)" (i) "[p]romptly begin to seek to sell all remaining assets" of SRP II and Sidecar; (ii) "[s]ell all assets to third-parties by December 31, 2023," subject to extensions on a quarter-by-quarter basis through December 31, 2024, if an AmLaw

100 firm provided a written opinion that effecting such sales would violate Stronghold's fiduciary duties; and (iii) "[p]romptly distribute proceeds from sales of any assets" to investors. A105 § 7(a)(i)-(iii). Section 7(a) contains two independent mechanisms to preserve Stronghold's ability to comply with its fiduciary obligations to *all* investors. *First*, as noted above, Section 7(a)(ii) allows automatic extensions of the sale date to December 31, 2024, through an AmLaw 100 opinion. *Second*, Section 7(a) contains a "Notwithstanding Clause," which provides that the SRP Parties are not required to sell assets in a manner that they reasonably determine in good faith—on written advice of qualified investment funds counsel—would likely violate their fiduciary or investment-advisor duties to the funds or their investors. A105 § 7(a). In that event, the Agreement requires that the SRP Parties shall "use reasonable best efforts to effect the sales [of SRP II's and Sidecar's assets] prior to the end of the required time periods in a manner compliant with [its] fiduciary or investment advisor duties and, in the event of delay, shall use reasonable best efforts to effect the applicable sales as soon as practicable in compliance with such fiduciary or investment advisor duties." *Id.*

3. Stronghold performs its Settlement Agreement obligations while protecting all investors.

Following the Settlement Agreement's execution, Stronghold made the required royalty and advance payments and transferred to Elliott control of separate joint ventures (Ford, Pontiac, and Mercury), all as it had agreed to do. A636; A639.

SRP II and Sidecar made no new commitments after the Settlement Agreement. A639.

In addition, Stronghold conducted a careful, good-faith assessment of whether selling on an accelerated basis was consistent with its fiduciary duties. A636-41. After the Settlement Agreement was executed, market conditions deteriorated significantly. Oil prices plummeted, which lengthened the timeline for less-developed oil-and-gas interests held by the portfolio companies to mature. A639. Stronghold engaged an independent industry advisor, which concluded that many of the underlying oil-and-gas investments were undeveloped and immature. A640. Rising interest rates also increased buyers' expected rates of return, further depressing the market for the oil-and-gas sales. A639. These adverse conditions for the portfolio companies negatively impacted SRP II's and Sidecar's upstream equity interests.

Given this, Stronghold's management reasonably determined in good faith that selling SRP II's and Sidecar's assets then would have reasonably likely breached fiduciary or investment-advisor duties owed to the funds and their limited partners. A640-41. Before making that determination (and as the Notwithstanding Clause requires), Stronghold consulted qualified investment funds counsel and obtained written advice on the fiduciary and investment-advisor duties owed to Fund II implicated by any potential sale. *Id.*

As Stronghold has consistently maintained, an accelerated liquidation of SRP II's and Sidecar's assets under then-prevailing market conditions would have harmed the interests of all investors—not just Elliott, but the nearly one hundred other limited partners. A630; A640-41; A472-73. The November 3, 2025 investor letter Elliott filed in the Court of Chancery reinforces that point. B142-53. It explained that the "remaining underlying assets of the portfolio investments of Fund II" had not yet reached their estimated maximum value, that Stronghold was working to increase value and accelerate maturity, and that "premature liquidation of Fund II assets would be detrimental to the returns of investors." B148-49.

B. Procedural Background

1. Elliott initiates and loses a books-and-records action.

Before filing this plenary action, Elliott pursued a books-and-records action against SRP II and Sidecar. *Eller Assocs. Inc. v. SRP Opportunities II, LP*, C.A. No. 2025-0234-DG (Del. Ch. 2025). Stronghold cooperated fully with the inspection process, producing the requested financial records and documentation. B164-66; A756-68. After a one-day trial, Magistrate Gibbs issued a report in Stronghold's favor. The Magistrate concluded that Elliott "ha[d] received all records 'necessary and essential' to the purposes they proved to be proper" and recommended "that no further inspection be permitted." B191; B239. The Magistrate further found that Elliott had "ignored the limits of their demand" and asserted "unfettered rights to

inspect records" beyond what the law permitted, noting that Elliott's conduct "smack[ed] of sandbagging." B190-91; B233. The Magistrate's report is the final ruling.

2. Elliott seeks to force a fire sale without discovery or trial.

In September 2025, Elliott filed this action, asserting claims for breach of the Settlement Agreement, breach of fiduciary duties, and misappropriation of funds. A1; A15-95; B1-5. Elliott simultaneously moved for partial summary judgment on the breach-of-contract claim, seeking to enforce immediately the winddown provisions of the Settlement Agreement. A1; A389-421. Elliott did not submit any affidavits or evidence in support of its motion. Stronghold opposed the motion (A422-81), supported by affidavits from Stronghold's Co-Founder, Ryan Turner, (A624-42), Chief Financial Office (B8-17), and Vice President of Investments and Operations (B18-23).

At a hearing on December 19, 2025, the Court of Chancery orally granted the motion. Ex. A at 88. The court found that Stronghold breached Section 7(a) by "failing to pursue sales of 'all assets' in *any* manner." *Id.* at 82-84 (emphasis in original).[1] The court then ordered the extraordinary remedy of specific performance. *Id.* at 88-92.

[1] All emphasis is added unless otherwise noted.

3. The Court of Chancery concludes that the assets to be sold are those directly held by SRP II and Sidecar.

Elliott's summary judgment briefing did not focus on the *scope* of its requested specific performance, and its proposed "form of order" was skeletal at best. Ex. A at 36; B7. After the bench ruling, the parties submitted proposed orders and engaged in letter briefing about no fewer than eight disputed issues. A10-11; B120-41. Relevantly, the parties disagreed about which "assets" must be sold. Stronghold contended that the Settlement Agreement required sale of only the assets that SRP II and Sidecar themselves directly own—their equity interests—and that the Settlement Agreement "does not contemplate sales by or wind-downs of portfolio companies," whose members were not before the court. B123-24. Elliott, by contrast, sought to expand the scope of the sale to include the oil-and-gas interests held by the portfolio companies. B136-37.

The Court of Chancery issued an opinion and order resolving the disputed issues (the "Implementing Order" or "Order"). Exs. B, C. The court agreed with Stronghold's position, reasoning:

> The purpose of the Implementing Order is to specifically enforce the Settlement Agreement. Section 7 of the Settlement Agreement states that "*the SRP Parties* shall sell the assets of SRP II [and] [Sidecar] … and wind down each of the entities." … SRP II and Sidecar own equity interests or securities in portfolio companies; thus, those are the "Assets" that must be sold.

Ex. B at 6-7 (emphasis in original) (first omission in original). The court held that it "will not expand the terms of the Settlement Agreement to require the sale of assets owned by portfolio companies whose members are not parties to this litigation." *Id.* at 8. The Order appointed a Special Magistrate to oversee a competitive bidding process and instructed the Special Magistrate to design a process that allows limited partners to elect to "transfer … their pro rata interest into an alternative vehicle." *Id.* at 10; Ex. C at 7. The Court designated the Order as a partial final judgment under Chancery Court Rule 54(b) and, with the parties' consent, stayed the sale provisions pending appeal. Ex. C at 12-13.

Elliott moved for reargument, seeking to relitigate the court's construction of "assets." Elliott's motion advanced new arguments it had never advanced in the earlier letter briefing (A704-20) and included a brand-new expert affidavit from Rusty Shepherd (A721-29) (the "Shepherd Affidavit"). The court denied Elliott's motion, concluding that Elliott had not met its "heavy burden" of "identify[ing] a misapprehension of fact or misapplication of law." Ex. D at 3-4. The court noted that Elliott had "never raised" several of its arguments and declined to consider the untimely disclosed expert affidavit. *Id.*

Elliott appealed, challenging the underlying Order and the order denying reargument. Stronghold cross-appealed.

ARGUMENT

THE COURT OF CHANCERY CORRECTLY CONSTRUED "ASSETS OF SRP II AND SIDECAR" TO MEAN ONLY THE ASSETS THOSE ENTITIES DIRECTLY OWN.

A. Question Presented

Did the Court of Chancery correctly construe "assets of SRP II [and] Sidecar" in Section 7 of the Settlement Agreement to mean the assets those entities actually and directly own—their equity interests—rather than the oil-and-gas interests owned by the separate portfolio companies? B122-23.

B. Scope of Review

The Court of Chancery's construction of the Settlement Agreement is a question of law reviewed *de novo*. *Exelon Generation Acquisitions, LLC v. Deere & Co.*, 176 A.3d 1262, 1266-67 (Del. 2017) (en banc). The denial of a motion for reargument is reviewed for abuse of discretion, *Benge v. State*, 101 A.3d 973, 976-77 (Del. 2014), and the movant bears "a heavy burden" to show the court's decision "was predicated upon a misunderstanding of a material fact or a misapplication of the law," *Orlando v. Digit. World Acquisition Corp.*, 2025 WL 3049129, at *2 (Del. Ch. Oct. 30, 2025) (quotation omitted).

C. Merits of the Argument

1. The Settlement Agreement's text and structure compel the Court of Chancery's reading.

Elliott's appeal presents a straightforward question of contract interpretation, and the answer is clear from the face of the Agreement. Section 7 requires sale of "the assets *of* SRP II [and] SRP II Sidecar." A105 § 7. Properly construed, that phrase denotes those assets directly owned by the named entities—their equity interests—not the oil-and-gas interests owned by separate, non-party portfolio companies. No reasonable reading of the Settlement Agreement supports any other conclusion.

a. Delaware applies the objective theory of contracts. *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010). Absent ambiguity, this Court gives "effect to the plain-meaning of the contract's terms and provisions." *Id.* at 1159-60. "Asset" means "[a]n item that is owned and has value." *Asset*, *Black's Law Dictionary* (12th ed. 2024). "Of" indicates "possessi[on]," *Of*, *Webster's New World College Dictionary* 1014 (5th ed. 2020) or "a possessive relationship," *Of*, *Merriam-Webster's Collegiate Dictionary* 860 (11th ed. 2020). As the U.S. Supreme Court has put it, "the use of the word 'of' denotes ownership." *Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 563 U.S. 776, 787-88 (2011) (alteration and quotation omitted) (construing "invention of the contractor"

to mean inventions "owned by or belonging to the contractor" and not "all inventions made by the contractor's employees").[2]

Applying these plain meanings, an objective party reading "the assets of SRP II [and] Sidecar" would understand it to denote assets that SRP II and Sidecar themselves own. An objective party also would read the subsequent directives in Section 7(a) to sell "all remaining assets" or "all assets" in light of Section 7's introductory sentence and understand them to refer to "all remaining assets [of SRP II and Sidecar]." Of course, such assets can include equities. *See Gimbel v. Signal Cos., Inc.*, 316 A.2d 599, 605-07 (Del. Ch. 1974) (confirming that equity interests in subsidiaries are assets). The "assets of SRP II [and] Sidecar" thus are the assets those entities directly own—their equity interests—not the oil-and-gas interests owned by the portfolio companies.

b. The Settlement Agreement's surrounding text and structure independently and conclusively confirm this reading.

[2] *See, e.g.*, *Est. of Heiser v. Islamic Republic of Iran*, 885 F. Supp. 2d 429, 437-38 (D.D.C. 2012) (interpreting "blocked assets of that terrorist party" in Terrorism Risk Insurance Act ("TRIA") to require proof that assets were owned by or belonged to terrorist party based on "common definition of the word 'of' [as] denoting a possessive relationship"); *Landau v. RoundPoint Mortg. Serv. Corp.*, 925 F.3d 1365, 1370 (11th Cir. 2019) (relying on dictionary definitions of "of" as "belonging to" in interpreting statute).

To start, Section 7 pairs two commands: "sell the assets of SRP II [and] Sidecar" and "wind down each of the entities." A105 § 7. "Winding down"[3] means "liquidating assets in anticipation of a partnership's or corporation's dissolution." *Winding Up*, *Black's Law Dictionary* (12th ed. 2024). Winding down SRP II and Sidecar thus would not require liquidating the *portfolio companies'* assets; it would require selling the *funds'* equity interests. An objective reader would understand that "the assets of SRP II [and] Sidecar" are the same assets the liquidation of which is necessary to "wind down" those entities—*i.e.*, their equity interests.

Moreover, when the parties intended to refer to oil-and-gas interests elsewhere in the Settlement Agreement, they meticulously used precisely defined terms, including "Lease," "Fee Interest," and "Mineral Interest." *See* A113-14 § 24(g)(v), (vii), (ix). Section 7 uses none of them. That deliberate choice signals that the parties intended "assets of SRP II [and] Sidecar" to carry its "ordinary plain meaning." *Giesecke+Devrient Mobile Sec. Am., Inc. v. Nxt-ID, Inc.*, 2021 WL 982597, at *10 (Del. Ch. Mar. 16, 2021).

Further, the parties elsewhere demonstrated their ability to refer to the concept of indirect ownership interests. Section 24(g)(xiii), for example, refers to "the bona fide sale of … equity interests of a Person directly *or indirectly* holding oil and gas

[3] Delaware courts use "wind down" and "wind up" interchangeably. *See, e.g.*, *In re Coral Gables Luxury Holdings*, 2025 WL 1356027, at *4-5 (Del. Ch. May 9, 2025).

assets." A114 § 24(g)(xiii). The Settlement Agreement uses "indirect" or "indirectly" in at least fourteen different provisions—but not in Section 7(a). A102 § 2; A103 §§ 5, 6(a), 6(b); A105 § 7(b)(i); A107 § 10(a); A109 § 12(h)(v), (vii), (viii); A110 § 12(h)(ix); A113 § 24(g)((i), (ii), (iii); A114 § 24(g)(xiii). That language "demonstrates that the parties knew how to expressly provide for [that concept] when that was intended." *In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 578 & n.77 (Del. 2019). The absence of such language in Section 7 is powerful proof that the parties did not intend to require sale of the oil-and-gas interests held by the portfolio companies.

Section 5 is of a piece. There, the parties expressly and narrowly defined "SRP Opportunities II, LP" and "SRPO-II Partners I, LP" as "SRP II" and "SRP II Sidecar," respectively. A103 § 5. Then, the parties separately extended information rights to "such entities *and any of those entities' Affiliates* in which any Affiliates of [Elliott] has an indirect investment." A103 § 5. When the parties wanted a provision to reach *affiliates*, they said so expressly. Section 7 contains no comparable language. A105 § 7.

Relatedly, the parties knew how to refer to subsidiaries and their property and did so elsewhere, but not in Section 7. The contemporaneous LLC agreements attached to the Settlement Agreement refer to "substantially all of the assets of the Company (*together with all of its Subsidiaries*)," A201; A300, and actions by "the

Company *or any of its Subsidiaries*," A239 § 9.04(c); A339 § 9.04(c). And the Settlement Agreement itself uses the term "subsidiary" or "subsidiaries" three times. *See* A102 § 2; A106 § 10(a); A107 § 10(b). Yet Section 7 identifies only the "assets of SRP II" and "SRP II Sidecar," full stop. *See Roseton OL, LLC v. Dynegy Holdings Inc.*, 2011 WL 3275965, at *10 (Del. Ch. July 29, 2011), *appeal refused*, 26 A.3d 214 (Del. 2011) (holding that clause restricting transfer of entity's "properties and assets" did not reach subsidiaries' assets where the very next section "expressly mentions the [entity's] subsidiaries," demonstrating that "when the parties intended to make a particular restriction applicable to both [the entity] and its subsidiaries, they knew how to do so").

2. The corporate separateness doctrine confirms the Court of Chancery's reading.

This construction is independently compelled by well-established principles of Delaware corporate law, which is "built on the idea that the separate legal existence of corporate entities should be respected—even when those separate corporate entities are under common ownership and control." *Allied Cap. Corp. v. GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1038 (Del. Ch. 2006); *In re Aearo Techs. LLC*, 346 A.3d 584, 596 (Del. 2025) (en banc) ("[W]e respect the separateness of distinct legal entities."). A parent that owns equity in another entity does not thereby own that entity's assets. *Klauder v. Echo/RT Holdings, LLC*, 152 A.3d 581 (TABLE), 2016 WL 7189917, at *2-3 (Del. 2016) (parent company's bankruptcy

estate included only its equity interest in a subsidiary but not the subsidiary's underlying assets).

Courts therefore regularly refuse to collapse the distinction between equity ownership and asset ownership, even at the subsidiary level. *See, e.g.*, *Buechner v. Farbenfabriken Bayer Aktiengesellschaft*, 154 A.2d 684, 687 (Del. 1959) (courts may not "disregard the separate existence of a subsidiary corporation and look directly to specific assets of a subsidiary"); *Wenske v. Blue Bell Creameries, Inc.*, 2018 WL 3337531, at *15 (Del. Ch. July 6, 2018) (presumption of corporate separateness attaches even with identical ownership and overlapping officers).

The Court of Chancery correctly applied these principles, limiting the assets subject to sale to SRP II's and Sidecar's "equity interests or securities in portfolio companies." Ex. B at 7. Elliott's contrary reading would require this Court to treat portfolio-company assets as SRP II's and Sidecar's own property—a result irreconcilable with settled Delaware law. *See, e.g.*, *In re Aearo*, 346 A.3d at 596. That distinction is not mere formalism. Portfolio-company assets may be bound up with entity-specific rights and regulatory strategies that affect value. For example, separating Tumbler's oil-and-gas interests from its pending development proposal and strategy could impair the value-creating plan already underway. B150-52. Elliott's reading would disregard those entity-level rights without any textual basis for doing so.

Elliott, a sophisticated hedge fund manager, also cannot claim ignorance of the multi-tiered investment structure that makes this distinction dispositive. *See Roseton OL*, 2011 WL 3275965, at *11, n.80 (stating that sophisticated counsel representing plaintiff in negotiating guaranty "would have been aware" of "commercially available" language to extend asset-transfer restrictions to subsidiaries and drawing "reasonable inference" that omission of such language was intentional). Elliott's own brief (at 22) acknowledges that "[t]he parties obviously knew this basic fact about Fund II's operations" (*i.e.*, the separate corporate existences) "when they entered into the Settlement Agreement." The consequence of that structure is straightforward: the portfolio companies own the oil-and-gas interests, while SRP II and Sidecar own only upstream equity interests.

Respect for entity boundaries also constrains equity. Because Delaware law refuses to collapse the distinction between a parent's equity interest and a related entity's underlying assets, it likewise circumscribes equitable remedies that would reach through those boundaries to burden non-parties. *See, e.g.*, *Manichaean Cap., LLC v. Exela Techs., Inc.*, 251 A.3d 694, 715 n.124 (Del. Ch. 2021) ("harm to innocent third parties will substantially limit" availability of reverse veil piercing); *Mitsubishi Power Sys. Ams., Inc. v. Babcock & Brown Infra. Grp. US, LLC*, 2009 WL 1199588, at *5 n.21 (Del. Ch. Apr. 24, 2009) (denying equitable relief as to related entities that would cause substantial harm to third parties such as employees).

That is the case here: as the Court of Chancery held, "[t]he Implementing Order will not expand the terms of the Settlement Agreement to require the sale of assets owned by portfolio companies *whose members are not parties to this litigation*."[4] Ex. B at 7-8. This factor only reinforces the Court of Chancery's decision to enforce Section 7 as written—through a sale of SRP II's and Sidecar's own assets—rather than ordering a liquidation of property owned by non-party portfolio companies involving non-party common members. *See GRT, Inc. v. Marathon GTF Tech., Ltd.*, 2012 WL 2356489, at *7 (Del. Ch. June 21, 2012) ("[A] party may not come to court to enforce a contractual right that it did not obtain for itself at the negotiating table.").

3. Elliott's contrary arguments lack merit.

a. Elliott's textual arguments lack merit.

Unable to overcome the plain text, Elliott advances a hodgepodge of arguments—some advanced for the first time in its motion for reargument, some new on appeal—based on the text and structure of the Settlement Agreement and the LPAs. None persuades.

i. Elliott (at 19) first contends that "assets" in Section 7 must have a broader meaning than "equity interests" because elsewhere the Settlement Agreement and its attachments use the term "equity interests." Accordingly, Elliott

[4] Elliott (at 9) asserts that "most [of the portfolio companies] do not have a common member or no longer do." Elliott does not cite any supporting evidence and ignores the many portfolio companies that do have common members. A631; A642.

(at 19) claims, the Court of Chancery "erred in defining 'asset' to mean only the equity interests held by Fund II." The Court of Chancery correctly appreciated the strawman nature of this argument and rejected it.

The Court of Chancery did not interpret "assets" to mean only "equity interests." Rather, it held that the Special Magistrate must sell whatever "assets" SRP II and Sidecar directly hold. Ex. D at 3-4. As it currently stands, the funds hold only equity interests in the portfolio companies, so those are the "assets of SRP II [and] Sidecar" that must be sold.

Section 7(b), governing the SRP Parties' obligation to sell assets of other funds, confirms that "assets" can include "equity interests," because it excludes certain "equity interests" from the obligation to sell "all remaining assets" of those funds. A105 § 7(b)(i). If those funds' "assets" did not include "equity interests," that exclusionary language would be superfluous. *See Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 265 (Del. 2026) (en banc) ("We avoid interpretations that render contractual language superfluous or internally inconsistent.").

Elliott points to other contractual provisions, but none conflicts with the Court of Chancery's interpretation of Section 7(a). Elliott cites the definition of "Restricted Opportunity" in Section 24(g)(xiii), which excludes investments received in exchange for sales of "oil and gas assets or equity interests of a Person directly or indirectly holding oil and gas assets." A114 § 24(g)(xiii). That provision

simply makes clear that it covers both sales of oil-and-gas assets and sales of equity interests by entities holding such assets. It does not demonstrate that SRP II's and Sidecar's "assets" must exclude equity interests. To the contrary, as already discussed, Section 24(g)(xiii)'s express inclusion of indirect ownership of oil-and-gas interests makes the absence of such language in Section 7(a) all the more glaring. *Supra* pp. 19-21.

Elliott (at 19) cites other contractual provisions using "equity interest" in various inapposite contexts. *See* A103 § 6(a) (restricted opportunity prohibition); A105 § 7(b) (sale of assets of other funds); A112 § 23 (indemnification). For the reasons just discussed, none undermines the Court of Chancery's interpretation. To the contrary, they support it. Sections 6(a) and 7(b), like Section 24(g)(xiii), expressly cover the concept of "indirect" ownership that Elliott improperly seeks to inject into Section 7. A103 § 6(a) ("direct or indirect interest"); A105 § 7(b)(i) ("excluding direct or indirect equity interests").

Proffering the same strawman argument, Elliott (at 20-21) also argues that "assets" cannot be limited to "equity interests" because various definitional provisions in the Settlement Agreement recognize that "mineral interests" can be "assets." A113 § 24(g)(i); *see also* A114 § 24(g)(xiii). But, as already discussed, "assets" in the abstract can include mineral or oil/gas interests; SRP II and Sidecar simply do not own such interests. *See supra* pp. 19-20.

Shifting course, Elliott (at 19-20) invokes various references to "assets" and "equity interests" in provisions of the Pontiac Mineral Holdings LLC Agreement attached to the Settlement Agreement. None supports Elliott's interpretation of Section 7. The LLC Agreement indicates that a "liquidity event" can occur in the event of either the sale of "substantially all of the assets of the Company (together with all of its Subsidiaries)" or the transfer of "substantially all of the equity interests in the Company." A201. This provision does not mean the word "assets" excludes equity interests. A member's equity interest in the Company is still an asset—specifically, it is the member's asset. Nor does Section 9.04(d) of that agreement help Elliott. That provision requires board approval for the "Company or any of the Company's subsidiaries" to acquire "any assets or any equity interest in any Person" with certain exceptions. A239-40 § 9.04(d). Because the enumerated exceptions include identified equity interests, *see* A194 (definition of "Award Agreement"), the parties logically referred both to assets generally and to equity interests in particular. Section 7(b) makes clear "assets" in the Settlement Agreement include equity interests. *See supra* pp. 26-27.

Finally on this point, Elliott (at 22) responds that the parties "obviously" knew that SRP II and Sidecar held only equity interests when they entered the Settlement Agreement and thus must have meant for "'all assets' to cover more than Fund II's 'equity interests.'" But their shared knowledge compels the opposite conclusion.

The parties chose to require the sale of "the assets of SRP II [and] Sidecar" knowing, as Elliott admits, that SRP II's and Sidecar's then-existing assets were equity interests. If the parties intended to require sale of the oil-and-gas interests held by the portfolio companies, they would have said so. *See Roseton OL*, 2011 WL 3275965, at *10.

ii. Next, Elliott (at 22) claims that Section 7(a) contemplates sales of the portfolio companies' interests because it provides that the "SRP Parties … will cause their applicable Affiliate to … [p]romptly begin to sell all remaining assets." A105 § 7(a). According to Elliott (at 23), because "Fund II's portfolio companies are Affiliates," this language means that "the SRP Parties 'will cause' them to sell those Affiliates' assets."

That argument is wrong. The language that Elliott quotes specifies *who* must do the selling, not whose assets must be sold. The contractual obligation is to sell "the assets of SRP II and Sidecar" and other identified funds, A105 § 7—not to sell the assets of those funds' *affiliates*. The provision obligates the SRP Parties to "cause" their affiliates to execute the sales. A105 § 7(a). This makes sense, because each fund listed in Section 7(a) has its own general partner that controls the fund, but none of the general partners is party to the Settlement Agreement.[5] Accordingly,

[5] *Compare* A487 (identifying general partner of SRP II as "SRP Opportunities II GP, LP"), *with* A99 (listing parties to the Settlement Agreement).

the SRP Parties committed to instructing their affiliates that controlled the at-issue assets to sell them. There is nothing "nonsensical" about that plain-text reading of Section 7. *Contra* Br. 23.

By contrast, Elliott's reading leads to absurd results by flipping the sentence's *subject* (*i.e.*, "the SRP Parties will [sell] (or will cause their applicable Affiliate to)"), into the sentence's *object* (*i.e.*, the assets to be sold are those of "the SRP Parties" and "their applicable Affiliate"). For example, the SRP Parties include Ryan Turner. A99. The parties obviously did not intend for the assets of the SRP Parties—such as Mr. Turner's personal assets—to be sold. As reflected in the court's Order, the only sensible reading of this language is that it references who will cause the assets to be sold—not whose assets will be sold, which the prior sentence already defines ("the assets of SRP II [and] Sidecar"). Ex. B at 6-8; *see supra* pp. 18-22.

iii. More generally, Elliott (at 23-24) claims that the Court of Chancery improperly "insert[ed]" a "directly held" limitation into Section 7. Not so. As already discussed, the court correctly construed "assets of SRP II [and] Sidecar" to mean the assets owned by SRP II and Sidecar but not those assets owned by the portfolio companies. *See supra* pp. 18-22. It is Elliott that is attempting to add an "indirectly held" gloss to the plain language.

Nor does the Court of Chancery's interpretation of "assets of SRP II [and] Sidecar" in Section 7 contradict its earlier oral summary judgment ruling, as Elliott

claims (at 24). Elliott (at 24) points to a passage in which the court paraphrased a Stronghold witness's affidavit and described it as "asserting that Fund II has sold many assets since the settlement agreement, but has used proceeds to acquire additional assets instead of distributing them." Ex. A at 87. In fact, the affidavit stated that Fund II's "*portfolio companies* have sold over … 712 assets since the 2022 Settlement Agreement," A637, as the Court of Chancery correctly noted earlier in its oral ruling, Ex. A at 78 (recognizing that "Fund II's portfolio companies have sold 712 assets").

Elliott did not advocate at the summary judgment stage for its current corporate-form-collapsing interpretation of "assets of SRP II [and] Sidecar." The court concluded that Stronghold had breached the Settlement Agreement by failing to sell Fund II's "assets." *See* Ex. A at 82 ("[D]efendants have breached Section 7(a) of the settlement agreement by failing to sell Fund II's remaining assets"); *id.* at 84 ("By failing to pursue sales of 'all assets' in *any* manner, defendants breached Section 7." (emphasis in original)). Notably, although Elliott's desired definition of "assets" was not squarely before the court, the court correctly found that "Fund II owns securities in holding companies, which in turn invest in portfolio companies that engage in oil and gas leasehold and minerals acquisition," Ex. A at 75, and referred to the underlying oil-and-gas interests as "assets of the portfolio companies," Ex. A at 78.

iv. Elliott next argues that two provisions in the LPAs unlock the meaning of "the assets of SRP II [and] Sidecar" in the Settlement Agreement. Neither argument has merit.

First, Elliott (at 25) plucks a phrase out of context to argue the parties intended the underlying oil-and-gas interests to be "held on a 'look-through basis' by the Fund II partnerships." The referenced provision, which has nothing to do with an asset sale under the Settlement Agreement and was invoked by Elliott for the first time in its reargument motion, reads as follows (the part Elliott quotes is bolded):

> 2.3 Alternative Investment Vehicles; Parallel Partnerships…
>
> (c) *Special Purpose Entities*. The General Partner may, in its discretion, structure any Investment, in whole or in part, as an Investment made directly by the Partnership and/or through one or more special purpose entity or entities ("Special Purpose Entities") in order to address legal, tax, regulatory, currency or other similar considerations deemed appropriate by the General Partner; provided, that, notwithstanding the foregoing, if the Partnership purchases or holds any or a group of Investments through Special Purpose Entities, Subsidiary AIVs or other Subsidiaries, **any investment guideline, requirement to make distributions and other limitations or obligations set forth in this Agreement shall not be deemed to apply to such Special Purpose Entities, Subsidiary AIVs or other Subsidiaries and shall instead be applied on a look-through basis at the Investment level**; provided, further, that the document or documents governing any Special Purpose Entities shall not contain any terms or conditions that would conflict with or enable the circumvention of any limitation or restriction provided for in this Agreement. Notwithstanding anything to the contrary in this Agreement, such Special Purpose Entities, Subsidiary AIVs and other Subsidiaries shall be authorized to freely reinvest proceeds, substitute collateral and otherwise optimize their portfolio.

A517-18 § 2.3(c). By its terms, the provision concerns "limitations or obligations *set forth in this [LPA]*." *Id.* It does not apply to obligations *not* set forth there. The winddown Elliott seeks to enforce arises under the *subsequent* Settlement Agreement—indeed, the theory of Elliott's case is that the Settlement Agreement created a new obligation not contained in the LPAs. A669-70. Nowhere does the Settlement Agreement say that any obligations created thereunder must be discharged on a "look-through basis." The Court of Chancery rightly held that Section 2.3(c) of the LPAs simply "does not apply here." Ex. D at 4.

Moreover, even if the Settlement Agreement had incorporated Section 2.3(c) of the LPAs, Elliott's argument still would fail. This section specifies that the relevant obligations (under the LPAs) will not be deemed to apply at the level of the special-purpose entity created for regulatory or other specified considerations and will instead "look-through" to and apply at the "Investment Level." But Elliott never parses the meaning of "Investment." The LPAs contemplated "Investments" in *entities*. *See, e.g.*, A503 § 1.6 (noting the fund would make "Investments in corporations"); A510 § 2.2(e) (referring to a Portfolio Investment as a "company"); A549 § 3.7(b)(ii) (treating "Portfolio Investment" as a Person); A552 § 4.3(a) (recognizing existence of accountants or professional advisors "of a Portfolio Investment"); A560 § 6.3(c) (Portfolio Investment as an entity capable of filing suits). From the beginning, the parties intended equity investments.

Second, Elliott's syllogistic argument regarding the wind-up provision in Section 8.2(a) of the LPAs fares no better. Elliott (at 27-28) argues that (a) the Court of Chancery's Order authorized the Special Magistrate to act in the name of the General Partner, (b) under the LPAs' wind-up provision, the General Partner "should have sold the mineral rights and leasehold assets that Fund II beneficially owns through [the] controlled portfolio companies," and (c) therefore the Special Magistrate should do the same when winding down the Fund II partnerships under the Settlement Agreement. The syllogism fails. The Order simply empowered the Special Magistrate as a procedural matter to act in the General Partner's name when performing Section 7(a) of the Settlement Agreement. The Order, obviously, did not compel a wind up *under the LPAs*. Nor could it, as the wind-up provision there applies only in the event of a "Dissolution Event," but no such event has occurred. A569 § 8.2(a). Elliott's end-run to Section 8.2(a) is tantamount to asking for specific performance of a different provision under a different contract, which it has no right to specifically enforce.[6]

b. Elliott's extra-contractual arguments lack merit.

Elliott (at 31-37) also proffers course-of-performance and commercial-context arguments. The Court should decline to consider them. Elliott moved

[6] Even if Section 8.2(a) were relevant, it calls for the sale or other disposition of "all Portfolio Investments of the Partnership," A659, which as discussed refers to the investments in companies.

immediately for summary judgment, insisting the Settlement Agreement was "unambiguous" and "do[es] not require extrinsic evidence to construe." A397; Ex. A at 4, 9. Having chosen that plain-text posture—and having never argued in the alternative that Section 7 was ambiguous—Elliott cannot now use course of performance, "commercial context," industry custom, or post-ruling evidence to supply a sale obligation that the contract's text does not contain. *See Salamone v. Gorman*, 106 A.3d 354, 374-75 (Del. 2014) (considering this type of evidence only if text is ambiguous).

i. In any event, Elliott's course of performance arguments lack merit. The record flatly contradicts Elliott's assertion (at 31) that Stronghold "never even mentioned the possibility" that "assets" means SRP II's and Sidecar's equity interests. Stronghold maintained in its first substantive filing in the case that "the assets of SRP II [and] Sidecar" are equity interests, as its summary judgment opposition noted that Elliott was "demanding the immediate sale of *securities* in Fund II portfolio companies." A474. Elliott let this characterization stand. *See generally* A643-85; Ex. A at 4-39, 67-72. By contrast, at no point in the summary judgment briefing or at oral argument did Elliott clearly convey its current position that the Settlement Agreement required sale of the portfolio companies' oil-and-gas assets.

Stronghold's statements below consistently reflected its understanding that the "assets of SRP II [and] Sidecar" are equity interests. Ryan Turner attested that "Stronghold's private equity funds own securities indirectly in portfolio companies that buy and sell inventories of oil-and-gas assets," A628, and Stronghold's CFO explained that "Fund II owns securities in holding companies, which in turn invest in portfolio companies that engage in oil and gas leasehold and minerals acquisition and disposition," B10. The passages of Stronghold's filings that Elliott highlights similarly refer to "assets of the portfolio companies of Fund II" and to the fact that "the portfolio companies continue to buy and sell oil-and-gas assets." Br. 32 (quoting A639).

Stronghold's November 2025 investor letter that Elliott introduced below is consistent with these litigation statements. That letter describes the underlying oil-and-gas interests as "assets" but consistently locates them at the portfolio-investment level. It refers to "the *assets of the portfolio investments*" of the funds, explains that "Stronghold tracks the performance of our funds' portfolio investments and *their assets*," and discusses "the remaining underlying *assets of the portfolio investments* of Fund II." B147-48.

Elliott's arguments as to Stronghold's investor updates (at 33-34) are wrong because they too conflate the question of whether oil-and-gas interests are "assets" generally with the relevant question of *whose* assets they are. And, in any event,

reporting on portfolio-company performance is what fund managers do. It is not a contractual concession about what must be sold under Section 7.[7] Elliott's logic, taken to its conclusion, would mean that any time a fund manager reports on portfolio company operations, it redefines the fund's own "assets" to include those separate entities' property—a result that would radically collapse the corporate form. *See supra* pp. 22-25.

ii. Elliott's commercial-context argument (at 35-38) likewise fails for several independent reasons. *First*, Elliott did not preserve this argument below. Elliott never raised any argument about "commercial context," buyer preferences, or the impracticality of entity-level sales in its letter submissions on the form of the Implementing Order. A740; B132-41. Elliott raised the argument for the first time on reargument, accompanied by the previously undisclosed Shepherd Affidavit. Arguments "not raised before the [Order] issued" are "waived," *Rust v. Rust*, 2023 WL 3476501, at *1 (Del. Ch. May 16, 2023), and "[r]eargument is only available to re-examine the existing record, not to consider new evidence," *Standard Gen. Master Fund L.P. v. Majeske*, 2018 WL 6505987, at *1 (Del. Ch. Dec. 11, 2018)

[7] Elliott's reliance at (34) on Section 5 of the Settlement Agreement and Schedule 3 similarly confuses information rights with sale obligations. Those provisions explain what information Stronghold has to provide about Fund II and related entities; they do not define what assets must be sold under Section 7.

(quotation omitted).[8] It would be unfair to permit Elliott to introduce a never disclosed expert on a motion for reargument.

Second, Elliott specifically urged the Court of Chancery to apply a contractarian approach, arguing that Section 7 of the Settlement Agreement is "unambiguous" and "do[es] not require extrinsic evidence to construe." A397; Ex. A at 4, 9. Having won summary judgment on that basis, Elliott cannot now invoke extrinsic "commercial context" to rewrite the contract it insisted was clear on its face.

Third, Delaware courts do not rewrite contracts to achieve one party's preferred economic outcome. *See Manti Holdings, LLC v. Authentix Acquisition Co.*, 261 A.3d 1199, 1211-12 (Del. 2021). The Settlement Agreement requires the sale structure to which these sophisticated parties agreed, not the sale structure Elliott now considers most "value-maximizing." The Court should reject Elliott's after-the-fact preference for a different deal.

[8] Elliott (at 37) cites *Hoechst Celanese Corp. v. Certain Underwriters at Lloyd's*, 656 A.2d 1094 (Del. 1995), for the proposition that this Court "has considered evidence submitted on reconsideration despite the Court of Chancery's refusal to do so." But there, this Court reversed a grant of summary judgment based on a theory the moving party had first raised in its reply brief, because "it was not necessary for [the non-movant] to anticipate and rebut a proposition that [the movant] did not assert until the filing of its reply brief." *Id.* at 1099. Nothing similar happened here.

Fourth, even credited, the Shepherd Affidavit undermines Elliott's position.[9] Mr. Shepherd concedes a "market for entity-level acquisitions" exists and that he has personally been involved in such transactions. A727-28. In fact, Elliott itself frequently participates in entity-level energy transactions, something Mr. Shepherd does not mention. A741. The existence of an established market for the very sales the Settlement Agreement contemplates refutes Elliott's suggestion that the Court of Chancery's reading renders the contract commercially unreasonable.

To the contrary, the parties' decision to require a sale of equity interests is perfectly sensible. Selling equity interests would preserve each portfolio company as a going concern, bundling its oil-and-gas interests together with entity-specific regulatory rights, development strategies, and operational expertise. *Supra* pp. 9, 23 (discussing Tumbler). An equity buyer acquires the enterprise and its growth trajectory intact. If Section 7(a)'s intent was to take a wrecking ball to the portfolio companies, these sophisticated parties would have specified as much in the Settlement Agreement.

[9] Elliott's reliance on *In re Appraisal of AOL Inc.*, 2018 WL 3913775 (Del. Ch. Aug. 15, 2018), for the proposition that expert affidavits may be considered on reargument is misplaced. In *AOL*, reargument was granted to correct an admitted mathematical error already before the court—not to introduce a new theory of contract construction. *Id.* at *2. Indeed, the *AOL* court denied reargument on a separate issue precisely because the petitioners sought to raise "a valuation method they did not raise before," finding "real issues of fairness and waiver." *Id.* at *4.

ARGUMENT ON CONDITIONAL CROSS-APPEAL

I. CONDITIONAL CROSS-APPEAL, ASSIGNMENT OF ERROR 1: THE COURT OF CHANCERY ERRED BY HOLDING THAT THE SETTLEMENT AGREEMENT'S SALE PROVISION IS UNAMBIGUOUS.

A. Question Presented

In the interests of efficiency and certainty, Stronghold's cross-appeal is conditional: If the Court does not affirm the Implementing Order, did the Court of Chancery err in granting summary judgment to Elliott where Section 7(a) is reasonably susceptible to more than one interpretation? A464-65; A468-69.

B. Scope of Review

This Court reviews the grant of summary judgment *de novo*, applying the same standard as the trial court. *State Farm Mut. Auto. Ins. Co. v. Davis*, 80 A.3d 628, 632 (Del. 2013). "Questions concerning the interpretation of contracts" are also reviewed *de novo*. *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).

C. Merits of the Argument

The Court of Chancery erred by concluding that Elliott advanced the only reasonable interpretation of Section 7(a). Section 7(a) has two components. First, the parties agreed that Stronghold would:

(i) "[p]romptly begin to seek to sell all remaining assets" of SRP II and Sidecar;

(ii) "[s]ell all assets to third-parties by December 31, 2023," subject to quarterly extensions through December 31, 2024, if an

AmLaw 100 firm opined that selling would violate Stronghold's fiduciary duties; and

(iii) "[p]romptly distribute proceeds from sales of any assets" to investors.

A105 § 7(a)(i)-(iii).

Second, immediately following is a paragraph qualifying these three directives, the Notwithstanding Clause.

> ***Notwithstanding the foregoing***, the SRP Parties' [sic] ***shall not be required to effect sales of assets in a manner that they reasonably determine*** in good faith (upon written advice of reasonably qualified investment funds counsel) ***would be reasonably likely to result in a violation of applicable fiduciary or investment advisor duties*** owed to a fund effecting such sales or to such a fund's investors with respect to their investment in such fund. The SRP Parties shall use ***reasonable best efforts*** to effect the sales prior to the end of the required time periods in a manner compliant with such fiduciary or investment advisor duties and, ***in the event of delay***, shall use reasonable best efforts to effect the applicable sales as soon as practicable in compliance with such fiduciary and investment advisor duties.

A105 § 7(a). The parties' dispute on the merits turned on the interplay between the Notwithstanding Clause and the dates in subsection (ii).

On Elliott's reading, Section 7(a) imposes "ironclad" deadlines. A413. All sales had to be completed by December 31, 2023, unless Stronghold obtained the specified AmLaw 100 opinion extending the deadline to 2024. A407-09. Elliott asserted that the Notwithstanding Clause "only addresses the 'manner' in which a sale must occur" and thus does not excuse failure to sell "all assets" by the deadlines

in subsection (ii). A409-11. Because Stronghold did not complete all sales by those dates, Elliott argued breach was established as a matter of law. A414-15.

Stronghold, by contrast, argued that subsection (ii), read together with the Notwithstanding Clause, requires Stronghold to sell by the dates in subsection (ii) unless it determines that doing so would likely violate its fiduciary or investment-advisor duties owed to all the limited partners. A454-61. If fiduciary-compliant sales require more time, Stronghold needs to use reasonable best efforts to complete them as soon as practicable consistent with its duties. *Id.*

The Court of Chancery held that Elliott "offer[ed] the only reasonable interpretation" of Section 7(a). Ex. A at 82. The court treated subsection (ii) as imposing firm deadlines and held that the Notwithstanding Clause does not "obviate the requirement in Section 7(a) to sell all assets by" those deadlines. *Id.* at 83. Despite adopting Elliott's position that the Notwithstanding Clause addresses only the "manner" of sales, the court also recognized that the Clause "contemplates the possibility" that Stronghold may have to sell "*certain* assets … in a particular manner that could result in some delay." *Id.* at 84. In such a case, Stronghold still has to "use reasonable best efforts to effect the applicable sales as soon as practicable." *Id.* at 85. The court found breach because Stronghold "fail[ed] to pursue sales of 'all assets' in *any* manner." *Id.* at 84 (emphasis in original).

That was error. Stronghold's interpretation—that Section 7(a)'s Notwithstanding Clause permits Stronghold to delay sales on account of fiduciary considerations and contemplates sales continuing past the enumerated dates—is reasonable. The Agreement is therefore at least ambiguous, and summary judgment was improper.

1. Section 7(a) is reasonably susceptible to Stronghold's interpretation.

a. A contract is ambiguous when it is "reasonably susceptible to two or more interpretations." *Sunline Com. Carriers, Inc. v. CITGO Petro. Corp.*, 206 A.3d 836, 847 (Del. 2019) (cleaned up) (quotation omitted). That standard is met because "reasonable minds could differ" as to Section 7(a)'s meaning. *GMG Cap. Inv. LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 783 (Del. 2012) (en banc).

Courts interpret "[n]otwithstanding the foregoing" to mean "despite any earlier indication to the contrary." *Jana Master Fund, Ltd. v. CNET Networks, Inc.*, 954 A.2d 335, 344-45 (Del. Ch. 2008); *see also ev3, Inc. v. Lesh*, 114 A.3d 527, 537 (Del. 2014) (en banc) (similar). The Notwithstanding Clause therefore qualifies subsection (ii)'s schedule by preserving Stronghold's ability to avoid sales that it reasonably and in good faith determines likely would violate its fiduciary and investment-advisor duties. Read together, the provisions set forth a sale schedule with a built-in safety valve to accommodate Stronghold's fiduciary duties to all limited partners—not an "ironclad" deadline.

b. The text and broader structure of the Settlement Agreement support this reading.

First, the plain text of the Notwithstanding Clause gives Stronghold the ability to delay sales based on fiduciary considerations and contemplates sales continuing after the enumerated dates.

The first sentence provides that Stronghold need not sell assets "in a manner that [it] reasonably determine[s] in good faith … would be reasonably likely" to violate its fiduciary duties. The second sentence sets forth a two-part framework: Stronghold "shall use reasonable best efforts" to sell "prior to the end of the required time periods" and, "in the event of delay, shall use reasonable best efforts" to sell "as soon as practicable in compliance with such fiduciary or investment advisor duties." A105 § 7(a).

"Delay" in this second sentence most naturally refers to a delay *beyond* December 31, 2023, *and* December 31, 2024, and not merely to the four quarterly extensions permitted beyond December 31, 2023. The sentence refers to "the required time *periods*," plural. The periods identified in Section 7(a) include both the initial timeframe for selling the assets, ending on December 31, 2023, and the extended timeframe, ending on December 31, 2024.

Section 7(b) confirms that reading. It governs winddown of separate funds and contains an identical Notwithstanding Clause contemplating "delay" after the

"required time periods." A106 § 7(b). But Section 7(b) enumerates only a single date—December 31, 2022—without any possibility for quarterly extensions. Delay in Section 7(b) can therefore mean only one thing: a delay beyond December 31, 2022. Because courts "strive[] to interpret words similarly when the same [term is] used in different places in the same document," *Tex. Pac. Land Corp. v. Horizon Kinetics LLC*, 306 A.3d 530, 564 (Del. Ch. 2023), *aff'd*, 314 A.3d 685 (Del. 2024), "delay" must carry the same meaning in Section 7(a).

This reading also gives independent effect to both "shall use" clauses in the second sentence of the Notwithstanding Clause. If "delay" meant only the four quarterly extensions, the second clause would merely duplicate the obligation in the first clause to use best efforts to sell before December 31, 2024. Stronghold's reading avoids surplusage by treating the second clause as governing sales that must continue past the stated dates for fiduciary reasons. *See Thompson Street Cap. Partners IV, L.P. v. Sonova U.S. Hearing Instruments, LLC*, 340 A.3d 1151, 1171 (Del. 2025) ("[A] contract should be interpreted in such a way as to not render any of its provisions illusory or meaningless." (quotation omitted)).

Second, the Settlement Agreement elsewhere demonstrates that the parties knew how to create hard deadlines and chose not to do so in Section 7(a).

Section 1 requires Stronghold to make certain payments "within two business days," A100 § 1(a), and provides that "[t]ime is of the essence with regard to the

Payments." A101 § 1(f). Delaware courts "give substantial weight to these provisions" and construe them to establish firm deadlines, such that "failure to perform by the time stated is a material breach of the contract." *Twin Willows, LLC v. Pritzkur*, 2021 WL 3172828, at *4 (Del. Ch. July 27, 2021) (first quote); *id.* at *4 n.45 (second quote). That language is conspicuously absent from Section 7(a), which instead uses "reasonable best efforts" and in "the event of delay" language. That Sections 1 and 7(a) both contain enumerated timelines yet employ fundamentally "different language" to specify the relationship between timeline and performance shows that "the parties intended for the sections to have different meanings." *Benchmark Inv. LLC v. Pacer Advisors, Inc.*, --- A.3d ---, 2026 WL 1179508, at *5 (Del. Apr. 30, 2026) (quotation omitted).

Third, the Settlement Agreement's overall scheme reinforces Stronghold's reading. "To give sensible life to the contract," this Court looks "to the overall scheme or plan of the agreement and the basic business relationship between the parties." *OptiNose AS v. Currax Pharms., LLC*, 264 A.3d 629, 638 (Del. 2021) (cleaned up) (quotation omitted). The Settlement Agreement recites its purpose to "provide for an *orderly* termination" of the parties' relationship. A100. SRP II and Sidecar were designed as long-term investment vehicles "with a life of a decade or more" to cultivate interests in portfolio companies that themselves hold a range of oil-and-gas interests, including undeveloped and immature properties. A631; A640.

Unwinding the funds while respecting common members' rights and discharging fiduciary duties to the funds' limited partners is not an undertaking amenable to strict cutoffs—especially because "energy markets are notoriously volatile." *Idaho Power Co. v. FERC*, 312 F.3d 454, 461 (D.C. Cir. 2002).

The parties' agreement to an "orderly termination" and their reservation of Stronghold's ability to delay sales on account of fiduciary considerations in the Notwithstanding Clause reflect this reality. Viewed in light of the Settlement Agreement's overall scheme, Section 7(a) is fairly susceptible to interpretation as a target timeline, whereas the Court of Chancery's reading "conflicts with the agreement's overall scheme or plan." *GMG Cap. Inv.*, 36 A.3d at 779; *see La Grange Cmtys., LLC v. Cornell Glasgow, LLC*, 74 A.3d 653, at *3 (TABLE) (Del. 2013) (affirming denial of summary judgment because schedule of dates in contract was ambiguous as to whether it "established a firm deadline versus an aspirational guideline").

2. The Court of Chancery erred in concluding that Section 7(a) is unambiguous.

The Court of Chancery rejected Stronghold's interpretation on four grounds, but none establishes that Section 7(a) unambiguously favors Elliott.

a. *First*, the Court of Chancery (adopting Elliott's argument) drew a bright line between the "manner" and "timing" of sales, holding that the

Notwithstanding Clause addressed only the "manner" and not "timing." Ex A at 83-84. That conclusion was erroneous.

Whether "manner" includes timing "depend[s] on context." *Swallows Holding, Ltd. v. Comm'r*, 515 F.3d 162, 171 (3d Cir. 2008).[10] Here, the Notwithstanding Clause links the "manner" of sales directly to Stronghold's compliance with fiduciary duties. A105 § 7(a). Under Delaware law, timing of asset sales is central to discharging fiduciary duties. A fiduciary's duty of care "includes the selection of a time frame for achievement of corporate goals," *Paramount Commc'ns, Inc. v. Time Inc.*, 571 A.2d 1140, 1154 (Del. 1989), and directors can breach their duties by approving a sale without adequate time to assess its sufficiency, *Smith v. Van Gorkom*, 488 A.2d 858, 874 (Del. 1985) (en banc) *overruled in part on other grounds by Gantler v. Stephens*, 965 A.2d 695 (Del. 2009), or failing to disclose that "it was a bad *time* to sell," *Gilmartin v. Adobe Res. Corp.*, 1992 WL 71510, at *10-11 (Del. Ch. Apr. 6, 1992). A fiduciary can breach its duty of loyalty by "manipulat[ing] the timing of a transaction to benefit itself at

[10] *See, e.g.*, *Hurst v. Bisbee Unified Sch. Dist. No. Two*, 607 P.2d 391, 393 (Ariz. Ct. App. 1979) ("manner" in statute governing administrative appeals included element of timing); *People ex rel. Williams Eng'g & Contracting Co. v. Metz*, 85 N.E. 1070, 1073 (N.Y. 1908) ("'[M]anner of performance' [in state labor statute] manifestly refer[s], among other things, to the number of hours per diem that laborers are allowed to work."); *Harris v. Doherty*, 119 Mass. 142, 143 (1875) ("[T]he manner" for service under state statute "evidently includes the time, as well as the form, of service.").

the stockholder's expense." *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1172 (Del. 1995). Because the Notwithstanding Clause conditions the "manner" of sales on compliance with these very duties, "reasonable minds could differ" about whether "manner" includes timing in this context. *GMG Cap. Inv.*, 36 A.3d at 783.

The Court of Chancery dismissed this reasoning, invoking *Wagner v. BRP Group, Inc.*, 316 A.3d 826 (Del. Ch. 2024), for the proposition that "there is no inherent fiduciary right to escape or terminate an agreement." Ex. A at 86-87 (cleaned up). But *Wagner* is inapposite. That case addressed whether directors could invoke fiduciary duties to avoid contractual obligations *that said nothing about fiduciary duties*. *See* 316 A.3d at 862. Section 7(a) is the opposite: it *expressly* permits Stronghold to avoid certain "manner[s]" of sale to ensure compliance with fiduciary duties. This textual qualification distinguishes the Settlement Agreement from the contracts in *Wagner*, which contained at most "a cryptic acknowledgement of the … directors' 'competing fiduciary obligation to shareholders under certain circumstances.'" *Id.* at 863 (quotation omitted).

The parties' contemporaneous agreements confirm the point. For example, the Transition Services Agreements attached to the Settlement Agreement provide that services "shall be performed in a manner consistent with the standard of care applicable to Provider as set forth in Section 2.5." A132; A161. Section 2.5 defines that standard as "a degree of care, diligence, *timeliness*, judgment and skill of a

reasonably prudent manager." A137-38; A166-67. The parties thus expressly equated the "manner" of performance with timing.

b. *Second*, although the Court of Chancery acknowledged that the Notwithstanding Clause contemplates fiduciary-duty-driven delay, it limited that safety valve to unspecified "certain assets." Ex. A at 84-85. That limitation does not appear in the text.

The Notwithstanding Clause refers to "sales of assets" and "applicable sales" and does not limit Stronghold's fiduciary discretion to any subset of assets. A105 § 7(a). Those phrases can reasonably cover all asset sales, some asset sales, or none, depending on Stronghold's fiduciary assessment. The court therefore erred by adding a limitation the parties did not include. *See, e.g.*, *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 746 (Del. 1997) (en banc) ("Contract interpretation that adds a limitation not found in the plain language of the contract is untenable.").

c. *Third*, the Court of Chancery's observation that Stronghold's interpretation is "contrary to the parties' intent … to provide for an orderly termination to the parties' relationship" does not compel the court's interpretation. The Settlement Agreement recites the parties' desire for "an orderly termination," but it also confirms that "[t]he parties have reached the agreements set forth herein as part of a compromise." A100. A compromise is "[a] settlement of differences in

which each side makes concessions." *Compromise*, *American Heritage Dictionary* 379 (5th ed. 2018). Elliott made such a concession in agreeing to a fiduciary out ensuring that Stronghold need not sell by an artificial date if its fiduciary duties would likely require otherwise.

d. Nor is there any basis for the court's conclusion that Stronghold's interpretation would render Section 7(a) "entirely illusory." Ex. A at 86. Under Stronghold's reading, the provision imposes substantial obligations. Stronghold must "[p]romptly begin to seek to sell" the assets of SRP II and Sidecar and make "reasonable best efforts to effect the sales prior to the end of the required time periods." A105 § 7(a).

* * *

Because Stronghold advanced an (at least) "equally reasonable, but conflicting" interpretation of Section 7(a) and "reasonable minds could differ" as to the provision's meaning, *GMG Cap. Inv.*, 36 A.3d at 783-84, the Court of Chancery erred in granting summary judgment.

II. CONDITIONAL CROSS-APPEAL, ASSIGNMENT OF ERROR 2: THE COURT OF CHANCERY ERRED IN FINDING NO TRIABLE ISSUES OF FACT AS TO BREACH.

A. Question Presented

Even assuming Section 7(a) is unambiguous, did the Court of Chancery err in granting summary judgment where the record presented genuine disputes of material fact concerning Stronghold's compliance with the Notwithstanding Clause and its obligation to use reasonable best efforts? A465-69.

B. Scope of Review

This Court reviews the grant of summary judgment *de novo*, "view[ing] the evidence, and all reasonable inferences taken therefrom, in the light most favorable to the non-moving party [to] determine whether an issue of material fact exists such that summary judgment was improper." *State Farm Mut. Auto. Ins.*, 80 A.3d at 632.

C. Merits of the Argument

The summary judgment ruling should be reversed even under the Court of Chancery's interpretation of Section 7(a). The court held that Stronghold breached Section 7(a) "by failing to sell Fund II's remaining assets." Ex. A at 82. At the same time, however, the court acknowledged that the agreement "contemplates the possibility that the general partner's duties may require that certain assets be sold in a particular manner than could result in some delay," adding that "[i]n that case, defendants still must use reasonable best efforts to effect the applicable sales as soon

as practicable." Ex. A at 84-85. Determining whether Stronghold breached that obligation requires a factual inquiry.

The court did not conduct that inquiry. Instead, it concluded that Stronghold breached by failing to pursue sales of "all assets" in "any" manner. Ex. A at 84. But, under the court's interpretation, the court needed to inquire what manners of sale were actually available, whether any could be completed without violating fiduciary or investment-advisor duties, whether any delay was justified, and whether Stronghold used reasonable best efforts to complete fiduciary-compliant sales as soon as practicable. Each of those questions is fact intensive. *See In re WeWork Litig.*, 2020 WL 6375438, at *9 (Del. Ch. Oct. 30, 2020) (reasonable best-efforts inquiry is "inherently factual"); *see also Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1207 (Del. 1993) ("Since there has been no discovery in this case, there are no facts of record from which the Court of Chancery may discern the reasonableness of the General Partner's actions."). The record did not permit those issues to be resolved against Stronghold as a matter of law.

As an initial matter, Elliott failed to satisfy its burden as the movant to submit evidence that, if true, demonstrated breach. *See Deutsche Bank Nat'l Trust Co. v. Moss*, 99 A.3d 226, at *3-4 & n.9 (TABLE) (Del. 2014). It instead based its motion solely on its verified complaint; but that complaint was "verified" by an Elliott

executive who did not claim to have personal knowledge of the complaint's allegations (and, in fact, was so disconnected from Fund II's operations, he had never even met Stronghold's founder). B1-5; A633. The verified complaint therefore was not evidence capable of supporting summary judgment. *See* Ct. Ch. R. 56(e) (requiring affidavits to be "made on personal knowledge"); *Bank of Del. v. Claymont Fire Co. No. 1*, 528 A.2d 1196, 1197-99 (Del. 1987) (summary judgment improper where movant's submission "lacked proper factual support"); *Deutsche Bank Nat'l Trust*, 99 A.3d at 227, at *3-4 (reversing grant of summary judgment in foreclosure action where defendant as movant "never presented record evidence that, if true, indisputably showed that [plaintiff] is not the owner of the mortgage and the note"). Elliott offered no evidence showing that a fiduciary-compliant sales process was available, that Stronghold failed to pursue such a process, or that Stronghold's fiduciary determination was unreasonable or in bad faith.

Even if Elliott had presented some evidence of breach, Stronghold rebutted it. Stronghold submitted three affidavits showing that it continued to evaluate market value through an independent adviser and other market sources, avoided distressed sales that would depress value, and obtained written advice from qualified investment funds counsel regarding its fiduciary duties in connection with potential sales. A637-41; B21-22. This unrebutted evidence creates a genuine dispute of material fact. The Court of Chancery erred by concluding from the absence of sales

that Stronghold did not begin to seek to sell. The first step in the sale process is to determine whether the time is right to sell, and the undisputed evidence showed that Stronghold engaged in a robust and ongoing process to make that assessment.

The Court of Chancery also relied on Stronghold's statement below that "management [has] determined … that selling Fund II assets would be reasonably likely to result in a violation of fiduciary or investment advisor duties … and did not attempt to do so," characterizing it as "fundamentally at odds with defendants' contractual obligation to sell all assets." Ex. A at 88 (alterations in original); *id.* at 86. But that statement reflects precisely the kind of good-faith assessment the Notwithstanding Clause contemplates under the court's interpretation. Stronghold evaluated the available manners of sale and concluded that each would likely violate its fiduciary duties. A105-06 § 7(a); A639-41. Whether Stronghold's determination was too broad, whether another compliant sale process was available, and whether Stronghold used reasonable best efforts to pursue it were factual questions that precluded summary judgment. The grant of summary judgment was therefore error.

CONCLUSION

The Court should affirm the Court of Chancery's judgment. If it does not, the Court should reverse the court's grant of summary judgment and remand for discovery.

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Dated: May 15, 2026