



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

CROSS-APPELLANTS' REPLY BRIEF ON CROSS-APPEAL

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SUMMARY OF ARGUMENT ON CONDITIONAL CROSS-APPEAL

1. Stronghold's opening brief on cross-appeal presented several textual and structural grounds for concluding that Section 7(a) of the Settlement Agreement is reasonably interpreted to preserve Stronghold's flexibility over the mode and timing of sales to ensure compliance with its fiduciary duties. Elliott's answering brief in large part argues against a position Stronghold has not even advanced—that Stronghold has unfettered discretion not to sell. And Elliott's responses to Stronghold's actual arguments fail to give effect to all language in Section 7(a), read in limitations found nowhere in the text, and ignore critical differences and similarities between Section 7(a) and surrounding provisions. Finally, Elliott's arguments improperly elevate Elliott's interests above other competing interests—including the interests of the approximately 100 other limited partners to whom Stronghold owes fiduciary duties—that the parties sought to accommodate in the Agreement. Elliott's response confirms that Stronghold's reading is at least reasonable, which is all that is required to establish ambiguity and preclude summary judgment.

2. Even under the Court of Chancery's interpretation, triable issues of fact as to breach precluded summary judgment. The court recognized that the Notwithstanding Clause contemplates circumstances in which fiduciary considerations necessitate delay and that in such circumstances Stronghold must use

“reasonable best efforts” to sell “as soon as practicable.” Whether Stronghold’s determination that its fiduciary duties likely required delay was reasonable, whether Stronghold reached that determination in good faith, and whether Stronghold used reasonable best efforts are all fact-intensive inquiries. Elliott bore the burden of demonstrating the absence of fact disputes as to these questions but did not offer evidence on any of them. Stronghold’s un rebutted affidavits—which demonstrated that Stronghold engaged an independent industry adviser to evaluate selling conditions, avoided distressed sales that would depress value, and obtained written fiduciary advice from qualified investment funds counsel—created triable issues on each point.

3. Elliott’s assertion that Stronghold’s failure to distribute sale proceeds was an independent basis for the Court of Chancery’s holding that Stronghold breached the Agreement is meritless. Neither Elliott’s summary judgment motion nor the court’s oral ruling addressed distribution of proceeds as a separate basis for liability, and Elliott introduced no evidence that Stronghold withheld distributions in breach of the Agreement’s plain text. The passing remark to which Elliott clings was not a distinct holding, and the court’s subsequent Implementing Order confirmed that its finding of breach was based solely on the failure to sell assets. The scope of the Implementing Order reaches far beyond what a breach based on a failure to distribute proceeds would warrant. To affirm on this basis would be

manifestly unfair where Stronghold never had notice that Elliott was putting proceed distribution at issue in its summary judgment motion and thus had no opportunity to present evidence and argument.

ARGUMENT ON CONDITIONAL CROSS-APPEAL

I. THE COURT OF CHANCERY ERRED BY HOLDING THAT THE SETTLEMENT AGREEMENT'S SALE PROVISION IS UNAMBIGUOUS.

Stronghold's opening brief on cross-appeal explained (at 43-47) that the Notwithstanding Clause is reasonably interpreted to qualify subsection (ii)'s schedule by preserving Stronghold's ability to delay sales beyond the enumerated dates when fiduciary considerations so require. The Settlement Agreement is therefore at least ambiguous, and summary judgment was improper. Rather than engage with Stronghold's textual and structural arguments, Elliott misframes Stronghold's positions on appeal, does not adequately address the textual bases for reading "manner" to include "timing," wrongly contends that Stronghold's reading renders the AmLaw 100 provision superfluous, and misapprehends the Settlement Agreement's overarching purpose. Each argument should be rejected.

A. Elliott Misframes Stronghold's Interpretation As Claiming Unfettered Discretion Not to Sell.

Stronghold's opening brief presented several independent textual and structural grounds for concluding that Section 7(a) is at least ambiguous. Instead of engaging with those arguments on their merits, Elliott's reply brief fundamentally misframes the dispute. Elliott repeatedly insists (at 26, 30) that Stronghold claims unfettered discretion not to sell. Not so. As set forth in its opening brief (at 43-44), Stronghold contends that it may invoke the Notwithstanding Clause to delay sales

past subsection (ii)'s deadlines only if it “reasonably and in good faith determines,” upon “written advice of reasonably qualified investment funds counsel,” that selling assets “likely would violate its fiduciary and investment-adviser duties.” And even then, Stronghold must use “‘reasonable best efforts’ to sell ‘as soon as practicable in compliance with such fiduciary or investment adviser duties.’” Cross-Appeal Br. 44. That is not a blank check. Whether Stronghold’s determination was reasonable and made in good faith and whether Stronghold used reasonable best efforts are all objective facts that Elliott can test through discovery and trial. Elliott’s refusal to engage with this reading of Section 7(a)—preferring instead to argue against a position Stronghold does not take—confirms that Elliott has no basis for contending that the Settlement Agreement unambiguously forecloses Stronghold’s reading.

B. “Manner” in the Notwithstanding Clause Is Reasonably Interpreted to Include “Timing.”

Those framing points aside, Elliott contends (at 27-29) that Stronghold’s interpretation should be rejected because “manner” and “timing” are different and the Notwithstanding Clause “concerns” only “the ‘manner’ in which Stronghold is required to effect sales.” But whether “manner” includes timing “depend[s] on the context.” *Swallows Hldg., Ltd. v. Comm’r*, 515 F.3d 162, 171 (3d Cir. 2008). As Stronghold explained (at 43-50), the text and structure of the Settlement Agreement, the fiduciary context in which “manner” operates, and the parties’ contemporaneous

agreements confirm that “manner” reasonably encompasses timing. Elliott’s responses fall short at every turn—and on several points, Elliott offers no response at all:

First, Elliott contends (at 27) that Stronghold over-reads “in a manner” by interpreting the Notwithstanding Clause to qualify the timing of sales. It argues that, had the parties intended Stronghold’s interpretation, the text would read “the SRP Parties shall not be required to effect sales.” But “in a manner” does critical work under Stronghold’s reading. Without that phrase the Notwithstanding Clause excuses the obligation to sell altogether. By specifying “in a manner,” the Clause confirms both that the sale mandate remains intact but that Stronghold need not sell in a manner—including at a time—that would violate its fiduciary duties. The phrase thus cabins the scope of the Notwithstanding Clause by making clear that it qualifies only *how and when* sales are conducted, not *whether* they must occur at all. Under Stronghold’s reading, the phrase is the textual mechanism that reconciles the sale obligation with the fiduciary obligations—preserving both rather than allowing one to swallow the other.

Second, Elliott argues (at 28-29) that the Notwithstanding Clause’s reference to “delay” does not support reading “manner” to include timing because (a) “delay” merely refers to the quarterly extensions; (b) the second sentence in which “delay” appears “does not contain a ‘notwithstanding’ proviso” and so cannot override

subsection (ii)'s deadlines; and (c) the Clause is, as the Court of Chancery concluded, limited to "certain assets." None of these arguments suffices to render Elliott's interpretation unambiguous.

a. "Delay" does not unambiguously refer to the quarterly extensions in subsection (ii). As Stronghold explained (at 44-45), the Notwithstanding Clause contemplates a "delay" after "the required time periods," which most naturally refer to the December 31, 2023 and 2024 dates.

Elliott fails to address Section 7(b), which contains an identical Notwithstanding Clause but provides only one winddown date (December 31, 2022) and no quarterly extensions. A105-06 § 7(b). Because "delay" in Section 7(b) can only mean a delay beyond the single enumerated date—there being no quarterly extensions to which it could refer—"delay" must carry the same meaning in Section 7(a) and thus refer to a delay beyond the enumerated dates. *See Tex. Pac. Land Corp. v. Horizon Kinetics LLC*, 306 A.3d 530, 564 (Del. Ch. 2023) ("A court strives to interpret words similarly when the same [term is] used in different places in the same document."), *aff'd*, 314 A.3d 685 (Del. 2024) (TABLE).

Further, under Elliott's view that "delay" refers to the quarterly extensions, the second "shall use" clause duplicates the first "shall use" clause's requirement to use reasonable best efforts to effect sales "prior to the end of the required time

periods.” *See* Cross-Appeal Br. 45. Elliott has no answer to this surplusage problem; Stronghold’s interpretation avoids it.

b. It also is reasonable to read the Notwithstanding proviso to apply to both sentences in the Notwithstanding Clause. The formatting of Section 7(a) substantiates this conclusion:

7. **Sale and Winddown of Certain Investments; Termination of FOLA.** The Parties agree that the SRP Parties shall sell the assets of SRP II, SRP II Sidecar, Ventures 2018, Ventures 2019, and Ventures 2020 and wind down each of the entities as follows:

a. As to SRP II and SRP II Sidecar, the Parties agree that the SRP Parties will (or will cause their applicable Affiliate to):

- i. Promptly begin to seek to sell all remaining assets;
- ii. Sell all assets to third-parties by December 31, 2023, subject to an extension on a quarter by quarter basis, but not past December 31, 2024, if an AmLaw 100 firm not previously retained by any of the SRP Parties or any of their Affiliates provides a written opinion to the applicable Elliott Parties that the SRP Parties would be violating their fiduciary duties by effectuating such sales; and
- iii. Promptly distribute proceeds from sales of any assets no later than 30 days following receipt of the applicable proceeds from such sale unless otherwise agreed to by EIM in writing, in each case, pursuant to and subject to the terms of the applicable governing agreements of the applicable entity (e.g., the right to pay expenses and set aside appropriate reserves for anticipated liabilities).

Notwithstanding the foregoing, the SRP Parties’ 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 adviser 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 adviser 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 adviser duties.

A105 § 7(a). Unlike the preceding paragraphs, the Notwithstanding Clause is neither numbered nor indented. The two sentences are a single block with different indentation, placed at the end of Section 7(a)—suggesting a blanket qualifier of all the preceding parts of Section 7(a). *See* Antonin Scalia & Bryan A. Garner, *Reading*

Law: Interpretation of Legal Texts 156 (2012) (“Material within an indented subpart relates only to that subpart; material contained in unindented text relates to all the following or preceding indented subparts.”); *see also Cornette v. State*, --- A.3d ---, 2026 WL 309253, at *5 n.28 (Del. Feb. 5, 2026). Elliott does not account for this structural feature. Moreover, the second sentence twice refers to “*such* fiduciary or investment adviser duties.” “Such” harkens back to the “applicable fiduciary or investment adviser duties” in the first sentence, confirming the parties intended the two sentences to work in tandem.¹

c. Pivoting, Elliott argues (at 28-29) that the Notwithstanding Clause’s second sentence at most “contemplates the possibility that the general partner’s duties may require that certain assets be sold in a particular manner that could result in some delay” (quoting Ex. A at 84-85). But Elliott does not meaningfully respond to Stronghold’s observation (at 50) that the Clause’s text does not limit the permissible “delay” to “certain” assets. Instead, Elliott (at 26) claims that Stronghold contends

¹ Elliott invokes (at 28) Section 6(d) for the proposition that “[w]here the parties intended for a ‘notwithstanding’ clause to modify multiple, different provisions they broke such a sentence into labeled subparts, not multiple sentences.” But the significant differences in the substance, formatting, and placement of the Notwithstanding provisos in Sections 6(d) and 7(a) preclude drawing reasonable inferences from Elliott’s proposed comparison. The Notwithstanding provisions in Section 6(d) are shorter, making it easy to combine two objects in one sentence. A104 § 6(d), (d)(i). The parties accomplished the same result in Section 7(a)’s longer Notwithstanding Clause by positioning them together in a text block with the second sentence referring to the first. A105 § 7(a).

it has no obligation to sell any assets. Not so. Flexibility to delay some, none, or all sales upon Stronghold’s good-faith and reasonable determination of a reasonably likely violation of its fiduciary duties does not negate the obligation to “use reasonable best efforts” to sell “as soon as practicable.”

Third, Elliott asserts (at 28 n.5), without explanation, that other provisions of the Settlement Agreement specifying the relationship between performance and enumerated dates do not inform the interpretation of Section 7(a). But as Stronghold explained (at 45-46), Section 7(a)’s omission of a “time is of the essence” provision—replaced instead by “reasonable best efforts” to sell “prior to the end of the required time periods” and “in the event of delay” language—provides further support that the parties did not intend inexorable deadlines.

Fourth, Elliott does not address Stronghold’s argument that “manner” reasonably includes “timing” where, as here, the Notwithstanding Clause textually links the “manner” of sales to Stronghold’s compliance with its fiduciary duties. Under unrebutted Delaware law, those duties necessarily encompass the timing of asset dispositions. *See* Cross-Appeal Br. 48-49 (collecting cases). Elliott cites no contrary authority and thus concedes the point. *See, e.g., Schroeder v. Buhannic*, 2018 WL 11264517, at *5 (Del. Ch. Jan. 10, 2018).

Finally, Elliott contends (at 27) that Stronghold “cites nothing in the Settlement Agreement for [its] implausible understanding” that “manner” here

includes “timing.” But 150 years’ worth of caselaw construing “manner” to include “timing” in various contexts confirms that Stronghold’s understanding is plausible. Cross-Appeal Br. 48 n.10 (collecting cases). Elliott’s charge of implausibility also ignores the Transition Services Agreements (“TSAs”), which are “a material component” of the Settlement Agreement, A102-03 § 4, and physically appended as attachments, A128-29; A157-58. Each TSA provides that services “shall be performed in a *manner* consistent with the standard of care applicable to Provider as set forth in Section 2.5”; Section 2.5 defines that standard as “a degree of care, diligence, *timeliness*, judgment and skill of a reasonably prudent manager.” A136-38 §§ 2.2(a), 2.5(a); A165-67 §§ 2.2(a), 2.5(a). That the parties defined “manner” of performance to include “timing” in agreements that are part of the same integrated transaction is strong evidence that Stronghold’s interpretation is reasonable. *See Comerica Bank v. Glob. Payments Direct, Inc.*, 2014 WL 3567610, at *7 & n.52 (Del. Ch. July 21, 2014).

C. Stronghold’s Interpretation Does Not “Read Out” the AmLaw 100 Provision.

Elliott separately argues (at 29-30) that Stronghold effectively reads Section 7(a)(ii)’s AmLaw 100 opinion mechanism out of the Agreement. Not so. Section 7(a) is reasonably interpreted to permit flexibility through two distinct mechanisms with distinct consequences.

Under the AmLaw mechanism, Stronghold must deliver to Elliott an opinion from a not-previously retained AmLaw 100 firm stating that Stronghold would violate its fiduciary duties by selling before December 31, 2023. A105 § 7(a)(ii). Should Stronghold do so, the date for completion is extended, and Stronghold is no longer held to the December 31, 2023 date. Because the extension is automatic upon “provid[ing]” the opinion to Elliott, *id.*, and the opinion must come from an independent, nationally recognized firm, the AmLaw mechanism provides certainty without dispute, but it is procedurally rigid and limited to one year.

The Notwithstanding Clause provides a different kind of protection. Stronghold retains flexibility as to the manner of sales and may delay sales should it make a determination that is “reasonabl[e]” and in “good faith” that a violation of its duties is “reasonably likely.” A105 § 7(a). Those are objective, judicially administrable standards. *See, e.g., DV Realty Advisors LLC v. Policemen’s Annuity & Benefit Fund of Chi.*, 75 A.3d 101, 109-10 (Del. 2013) (en banc) (good faith requirement); *In re WeWork Litig.*, 2020 WL 6375438, at *9 (Del. Ch. Oct. 30, 2020) (reasonable best-efforts requirement). Unlike the AmLaw 100 mechanism, Elliott could dispute a delay under the Notwithstanding Clause and bring litigation to challenge whether it meets these standards.

Nor is it correct, as Elliott contends (at 30), that Stronghold would “never be required to avail itself of Section 7(a)(ii)” under this reading. Elliott ignores that the

two mechanisms have different consequences. The AmLaw 100 mechanism *moves the deadline itself*, and thus there is no “delay” triggering the best-efforts obligation. *See* A105 § 7(a)(ii). By contrast, the Notwithstanding Clause does not move the deadline. Stronghold may invoke the Clause only upon a good-faith fiduciary determination, and once the relevant date passes, Stronghold is in the territory of “delay” and must use “reasonable best efforts to effect the applicable sales as soon as practicable.” A105 § 7(a). That Stronghold did not avail itself of one mechanism does not negate that a rational party would value having both options and, in many instances, prefer a clean deadline extension over the Notwithstanding Clause’s framework of delay and continuous best-efforts obligations. The two provisions thus do fundamentally different work, and neither renders the other superfluous.

D. Stronghold’s Reading Advances the Settlement Agreement’s Purpose and Fiduciary Framework.

Elliott next argues (at 30-33) that Stronghold’s interpretation “defeat[s] the entire purpose of the winddown” and invokes *Wagner v. BRP Group, Inc.* for the proposition that fiduciary duties cannot override contractual obligations. Both points fail because they ignore the fiduciary framework built into the Settlement Agreement.

i. As to purpose, Elliott reads Section 7(a) as though Elliott’s interest in an accelerated liquidation is the only interest advanced in the Agreement. Elliott’s reading is too simplistic. The Settlement Agreement’s purpose was not merely to

liquidate Fund II on Elliott’s preferred timeline. It was to provide for an “orderly termination,” A100, that accommodated multiple competing interests, including the fiduciary duties Stronghold owed to the approximately 100 limited partners other than Elliott who committed approximately 53% of Fund II’s capital.² A630-31.

Respecting fiduciary duties was a structural feature embedded at every level of the parties’ contractual relationship. Section 7(a) of the Settlement Agreement references fiduciary duties four times. A105 § 7(a). Section 7(b) contains an identical Notwithstanding Clause for other funds, which similarly references fiduciary duties. A106 § 7(b). The side letters confirm that the General Partners “ha[ve] fiduciary duties to the [respective Limited] Partnership under Section 206 of the Investment Advisers Act.” A44. And the Sidecar LPA contains a materially similar caveat to Elliott’s early-liquidation rights should Stronghold “reasonably determine[] in good faith” that liquidation at such time would violate “applicable fiduciary or investment adviser duties,” with Elliott expressly “acknowledg[ing] that the Partnership’s investment objectives may include certain long-term or less liquid investments.” B83-84 § 3.4(h).³

² The winddown was also but one component of a comprehensive “compromise.” A100. The Agreement also resolved claims regarding advances and royalties, required immediate payments, and transferred control of joint ventures, all of which Stronghold performed. A100-02 § 1; A102 § 2; A111 § 18; A636.

³ Elliott (at 33-34) misses the point in claiming that Stronghold “should not have contractually bound” itself to liquidating Fund II by “firm winddown deadlines” if

It is telling that Elliott fails meaningfully to address the other approximately 100 limited partners whose interests the Notwithstanding Clause was designed to protect. The Clause takes into account the fiduciary duties owed to “such a fund’s investors”—a category that includes every limited partner. A105 § 7(a). Elliott’s interpretation requires this Court to read the Agreement as though Elliott were Fund II’s only investor. It is not. The Settlement Agreement, through the Notwithstanding Clause, expressly accounts for that reality.

Elliott is among the most sophisticated investors in the world—advised by experienced counsel and well-versed in the structure of limited partnership agreements with fiduciary protections. If Elliott did not want the Settlement Agreement to contain protections for the other limited partners, it should not have agreed to them.⁴ And if Elliott wanted inviolable deadlines unqualified by fiduciary

Stronghold thought that was inconsistent with managing its long-term investments. As Stronghold’s opening brief explained (at 46-47), the parties’ mutual recognition that the funds’ objectives would involve long-term investments is part of their “basic business relationship”—as evidenced in their written agreements—and thus shows that Section 7(a) is reasonably interpreted to provide Stronghold flexibility as to those deadlines. *OptiNose AS v. Curras Pharms., LLC*, 264 A.3d 629, 638 (Del. 2021).

⁴ Elliott also invokes (at 34) Fund II’s default winddown date of October 2025 under the LPAs, arguing that the Settlement Agreement’s accelerated timeline was “consistent with the parties’ originally intended investment duration.” But the LPA’s default winddown date was itself subject to extension, *see* A492-493; A503 § 1.5, and represented the *beginning* of a two-year winddown period, *see* A568-69 §§ 8.1-8.2. Thus, under the LPAs, the earliest the Fund would have completely wound down (without extensions) was October 2027. In any event, the

considerations, it had every ability to negotiate for that result. It did not. *See Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010) (en banc) (“Parties have a right to enter into good and bad contracts, the law enforces both.”).

ii. *Wagner v. BRP Group, Inc.*, 316 A.3d 826 (Del. Ch. 2024), which this Court recently reversed, 2026 WL 1256588 (TABLE) (Del. May 7, 2026), is inapposite. Elliott (at 32-33) invokes *Wagner* for the proposition that “if a [fiduciary] did not breach its fiduciary duties when entering into a contract, that contract b[inds] the [company]” (alterations in original). But *Wagner* and the cases on which it relied rejected arguments based on directors’ fiduciary duties where the pertinent contracts at best contained “a cryptic acknowledgment” of “competing fiduciary obligation[s].” 316 A.3d at 863 (quotation omitted).

That is not this case. Stronghold is not invoking background fiduciary duties to escape a clear and unqualified obligation. It is invoking an express contractual provision—the Notwithstanding Clause—that the parties specifically drafted to protect against fiduciary violations. *See Cirrus Hldg. Co. v. Cirrus Indus., Inc.*, 794 A.2d 1191, 1206-09 (Del. Ch. 2001) (applying express fiduciary-out provision in merger agreement to conclude that plaintiff was unlikely to prove breach).

LPAs’ default winddown date says nothing about whether the parties intended the Settlement Agreement to override the fiduciary protections that the same LPAs and the Notwithstanding Clause expressly preserved.

Wagner says nothing about how to interpret a contract that *does* include an express fiduciary provision.

II. THE COURT OF CHANCERY ERRED IN FINDING NO TRIABLE ISSUES OF FACT AS TO BREACH.

Even assuming *arguendo* that Elliott’s interpretation of Section 7(a) is correct, the Court of Chancery erred in granting summary judgment because the record presents genuine disputes of material fact as to whether Stronghold breached the Agreement.⁵ Cross-Appeal Br. 52-55.

To start, the Court of Chancery itself acknowledged that the Notwithstanding Clause “contemplates the possibility that the general partner’s duties may require that certain assets be sold in a particular manner that could result in some delay” and 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 that the court never conducted. Cross-Appeal Br. 52-55.

Elliott’s answering brief does not fill these gaps. Elliott does not dispute that it presented no evidence⁶—and failed to rebut Stronghold’s evidence—on the

⁵ Elliott (at 26-27, 29, 32, 34) attempts to use evidence of Stronghold’s supposed breach as evidence of what the Settlement Agreement means. But, under Delaware law, contract interpretation turns on what the parties *intended* at the time of formation—not on what one side did after the fact. *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1233 n.11 (Del. 1997) (en banc). Elliott’s attempt to use its spin on Stronghold’s subsequent conduct to drive the interpretive inquiry has it backwards.

⁶ Elliott misconstrues Stronghold’s argument regarding the deficiency of Elliott’s proof, asserting (at 36) that “Stronghold argues the allegations in the Complaint cannot be credited ... because Ryan Turner claims not to know the individual who

relevant questions, including: (1) whether a fiduciary-compliant sales process was available; (2) whether Stronghold failed to pursue such a process; (3) whether Stronghold’s fiduciary determination was unreasonable; and (4) whether Stronghold’s determination was made in bad faith.

Instead, Elliott primarily argues (at 35-37) that Stronghold’s admissions—that it did not complete the winddown by the enumerated dates and did not obtain an AmLaw 100 opinion—establish breach as a matter of law. But those admissions show only that Stronghold did not use the AmLaw mechanism to extend the deadline; they do not resolve all material fact disputes about Stronghold’s compliance with the Notwithstanding Clause’s *separate* requirements as construed by the Court of Chancery. Each of the four questions identified above is fact-intensive, *see* Cross-Appeal Br. 53 (collecting cases), and summary judgment was improper where Elliott offered no evidence as to any of those questions.

Elliott also contends (at 37) that Stronghold “admitted it was not attempting to winddown Fund II” and therefore was not making “asset-specific determinations.” Nothing in the Notwithstanding Clause requires asset-by-asset determinations in the narrow sense Elliott suggests. The Clause provides that Stronghold need not effect

verified the [C]omplaint.” That is obviously not Stronghold’s contention, which is that the complaint was “verified” by someone who did not claim to have personal knowledge of the complaint’s allegations. Cross-Appeal Br. 53-54.

“sales of assets” “in a manner” it reasonably determines would likely violate fiduciary duties. A105 § 7(a). An assessment of market conditions and fiduciary obligations as to the oil-and-gas interests of all portfolio companies is a fiduciary determination contemplated by the plain text, which neither limits itself to “certain assets,” Cross-Appeal Br. 50, nor requires an itemized asset-by-asset assessment.

In any event, Elliott misunderstands the record. Elliott emphasizes (at 32, 35-36) that portfolio companies acquired oil-and-gas interests after the Settlement Agreement, claiming that this fact establishes that Stronghold was continuing with an “ordinary course” of operations inconsistent with a winddown. Not so. Stronghold did not simply sit on its hands. Stronghold submitted affidavits demonstrating that it actively and continuously evaluated the market value of the portfolio companies’ oil-and-gas interests through an independent industry adviser and other market analysts—monitoring conditions to identify the appropriate time for an orderly liquidation. A639-41. Stronghold’s evidence also showed that oil prices declined steeply after the Settlement Agreement, which lengthened the time for the portfolio companies’ oil-and-gas interests to mature. A639. And the acquisitions Elliott references were made by portfolio companies—not SRP II or Sidecar—and were undertaken to protect and fund the development of their existing investments in a deteriorating market. A639-40. Stronghold further 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. A640-41. In short, Stronghold conducted the kind of ongoing, informed evaluation that any prudent fiduciary would undertake before liquidating long-term, illiquid investments in an unfavorable market. Elliott provides no actual evidence to the contrary. Viewed in the light most favorable to Stronghold, this is far from “ordinary course” behavior.

Elliott (at 36) also suggests that Stronghold should have filed a Rule 56(d)⁷ affidavit if it wanted additional discovery. But Rule 56(d) is a mechanism for a non-movant to *defer* summary judgment to obtain further discovery; it is not a prerequisite to defeating a motion that fails on its own terms. Stronghold’s un rebutted evidence more than sufficed to demonstrate triable issues of fact. No further discovery was required to oppose a flawed motion supported by no evidence.

⁷ Court of Chancery Rule 56 was amended on May 18, 2026. Former Rule 56(f) is now Rule 56(d).

III. THE COURT OF CHANCERY DID NOT INDEPENDENTLY FIND A BREACH BASED ON FAILURE TO DISTRIBUTE PROCEEDS.

Elliott now asserts (at 23-24) the Court of Chancery independently held at summary judgment that Stronghold breached the Settlement Agreement by failing to distribute proceeds from asset sales. This argument is meritless—which is why Elliott never even mentioned this supposed holding in its discussion of the Court of Chancery proceedings in its opening brief on appeal. *See* Opening Br. 2, 14-17.

Elliott’s summary judgment motion did not put distribution of proceeds at issue, instead focusing exclusively on the alleged failure to sell. A397-421. Nor did its proposed order indicate that distribution of proceeds was at issue. B7. The remedy Elliott sought was specific performance of the sale obligation. Ex. A at 88-92. The Court of Chancery’s oral ruling likewise focused on the failure to sell, repeatedly stating that Stronghold “breached Section 7(a) of the settlement agreement by failing to sell Fund II’s remaining assets.” Ex. A at 82; *see also id.* at 84, 87. The stray remark on which Elliott now relies appeared at the end of the ruling, after the court had exclusively analyzed the failure-to-sell issue, as a passing observation, not a distinct holding. *See id.* at 87.

Nor could that passing observation be sustained on this record. The Settlement Agreement provides that proceeds are to be distributed “pursuant to and subject to” the terms of the applicable LPAs. A105 § 7(a)(iii). Under those LPAs, the General Partner has discretion to reserve money for anticipated expenses and

contingent liabilities before any distributions are due to limited partners. *See, e.g.*, A540 § 3.3(c); A542 § 3.4(c); A550 § 3.8. Whether Stronghold’s exercise of that discretion was proper is itself a fact-intensive question that was never briefed, argued, or adjudicated below. Stronghold had no notice that the distribution of proceeds was at issue in Elliott’s summary-judgment motion and thus no occasion to present evidence on its compliance with Section 7(a)(iii) and the LPA’s reservation provisions.

Even if the Court of Chancery’s stray remark could be interpreted as a holding, the oral ruling was non-final and could “be revised at any time” before entry of judgment. Ct. Ch. R. 54(b); *see SARN SD3, LLC v. Czechoslovak Grp. A.S.*, 326 A.3d 1170, 1194 (Del. 2024) (en banc). The Court of Chancery’s subsequent Implementing Order confirmed that Stronghold’s breach was based on “failing to sell Fund II’s remaining assets.” Ex. B at 4-5. The Implementing Order is about the sale. Ex. C. If the breach were a failure to distribute proceeds, the remedy—if any—would look entirely different.⁸

⁸ The analysis of whether specific performance would be appropriate would be very different for an alleged failure to distribute money. And the court would also need to assess whether that alleged breach even caused any harm—the undisputed record evidence is that the purchase of oil-and-gas interests by the portfolio companies since the Settlement Agreement has generated sizable gains. A639-40.

Elliott's waiver argument (at 23-24) also fails. Appealing parties need not preserve challenges to nonexistent rulings, and Stronghold cross-appealed the oral ruling in its entirety and addressed (at 30-31) this very remark. And at bottom, it would be manifestly unfair to affirm on this basis for the reasons set forth above.

CONCLUSION

If the Court reaches Stronghold's conditional cross-appeal, the Court should reverse the Court of Chancery's grant of summary judgment and remand for discovery.

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