IN THE SUPREME COURT OF THE STATE OF DELAWARE

RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,

Defendants Below, Appellants,

v.

ATP III GP, LTD., in its capacity as general partner of ATP Life Science Ventures, L.P.,

Plaintiff Below, Appellee.

No. 20, 2026

Court Below: Court of Chancery of the State of Delaware
C.A. No. 2025-0607-KSJM

PUBLIC VERSION
Filed: May 22, 2026

APPELLANTS' REPLY BRIEF

OF COUNSEL:

Shannon Rose Selden
William H. Taft V
Zachary H. Saltzman
Natascha Born
Carl Micarelli
Sebastian Dutz
Andrew Van Duyn
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, New York 10001
(212) 909-6000

Blake Rohrbacher (#4750)
Daniel E. Kaprow (#6295)
Zachary R. Greer (#7057)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

Attorneys for Defendants Below–Appellants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP

Dated: May 7, 2026

TABLE OF CONTENTS

Page

TABLE OF CITATIONS

Page(s)

CASES

STATUTES & RULES

INTRODUCTION[1]

The LPs' opening brief established three independent grounds for reversing the trial court's decision. Nothing in the GP's answering brief undermines those arguments. Instead, the GP seeks to lower the standard of review at every turn, advances new arguments not raised below, and talks past the LPs' actual arguments, thereby doubling down on the errors committed by the trial court.

First, the GP does not dispute that the trial court correctly determined that the LPs committed $2.425 billion. That figure was vigorously disputed below, and the trial court correctly rejected the GP's contention that the LPs committed at least $400 million more than the amount set forth in the LP's subscription agreements. However, the trial court erred in holding that the LPs had not contributed the full amount of committed capital. That error, which the GP defends on appeal, requires divesting the phrase "deemed to have made capital contributions" in Amendment 20 of its plain meaning. Deemed means "treated as." When parties "deem" a limited partner to have contributed capital through a transaction, they mean that the transaction is to be treated as if the limited partner made a contribution, *i.e.*, that the partner provided capital that counts towards satisfying its committed capital. In

---

1 Capitalized terms used but not defined have the same meaning as in Appellant's Opening Brief.

financial transactions where funds would otherwise round-trip, it is not uncommon for investors to skip the round trip and "deem" the results to have occurred. That is all that happened here.

The GP's arguments to the contrary, which were not properly presented to the trial court below, rest on tortured readings of the word "deemed"—a simple, commonly used word that must, as a matter of law, be given its ordinary meaning. The GP relies on language in a schedule drafted years before Amendment 20 to claim that the deemed contributions in Amendment 20 are not contributions but transfers. That argument ignores that Amendment 20 uses the word "transfer" when it wants to deem a transaction to be a transfer and uses the distinct word "contribution" when it wants to deem the transaction a contribution. The GP otherwise improperly resorts to purpose and other modes of interpretation to attempt to override the plain meaning of the contractual text. If "deemed" is given its ordinary meaning, then there can be no dispute that the LPs fully satisfied their capital commitment obligations and the trial court's decision awarding specific performance of capital calls must be reversed.

Second, the GP errs in arguing that it could call capital even though the portfolio companies had not achieved the milestones in their investment memoranda. The trial court's holding that the milestones had no legal effect, which the GP defends, rested on the trial court's review of extrinsic evidence that is irrelevant to the issue that was before it, namely the interpretation of the word "budget" in the LPA. The question is not whether milestones were an extra-contractual condition precedent, but what the LPA means when it says that capital can only be called for a "project" in accordance with an approved "budget." Had the trial court reviewed the LPA against its factual matrix at the time of contracting, as required by Cayman law, it would have concluded that the terms "Project" and "budget" must be interpreted broadly enough to include the investment memorandum setting forth the scope of the project and the milestones allowing specific tranches of funding to be called. Any other reading would render the LPA's carefully drafted provisions nugatory, including those that require capital calls to be in accordance with the approved budget for each project and allow for the acceleration of capital calls only under carefully circumscribed circumstances.

Finally, the trial court, the GP, and the LPs all appear to agree that a capital call must be made only for a purpose permitted by the LPA. But the GP ignores that rule, arguing that the capital call was properly made because the capital calls provided the companies with needed cash. This argument ignores the applicable question: Did the GP prove that it acted *only* to achieve aims permitted by the LPA and not for any impermissible collateral purpose? The trial court did not answer that question even though it recognized that the capital calls were made at least in part to put pressure on the LPs and even though putting pressure on the LPs is not a proper purpose under the LPA. The failure to apply the right standard when evaluating whether the capital calls were made solely for a proper purpose is reversible error.

ARGUMENT

I. AMENDMENT 20, BY ITS PLAIN TERMS, PROVIDES THAT RIGMORA SHALL BE DEEMED TO HAVE MADE A $390 MILLION CONTRIBUTION.

The GP does not contest the trial court's finding that Amendment 20 did not increase the LPs' capital commitments above $2.425 billion. Instead, the GP argues that the trial court correctly refused to treat the deemed contributions under Amendment 20 towards satisfaction of that $2.425 billion in commitments. The GP is wrong.

A. The GP Waived Its Arguments About the LPs' Contributions.

As a threshold matter, the Court need not reach the GP's "deemed contribution" arguments because the GP waived those arguments below. Seeking to avoid waiver, the GP attacks an argument the LPs never made, namely that "post-trial opening briefs must address every argument raised in the opposing party's *pre*-trial brief." Answering Br. 27.

But what the LPs actually argued is that a party cannot hold back arguments for reply that should fairly have been raised in an opening brief. Opening Br. 24. The GP did just that. The GP does not dispute that it had the burden of proof that the LPs had not contributed the full amount of their committed capital, which required the GP to prove *both* the amount of the commitment *and* the amount contributed. Nor does it dispute that it was on notice of the LPs' position that deemed contributions counted toward their committed capital. A265–66. The GP also does not dispute that it failed to address this issue in its opening brief below, instead reserving that issue for its reply.

Those admissions require a finding that the GP waived its "deemed contribution" argument. *See, e.g.*, *Franklin Balance Sheet Inv. Fund v. Crowley*, 2006 WL 3095952, at *4 (Del. Ch. Oct. 19, 2006) ("Under the briefing rules, a party is obliged in its motion and opening brief to set forth all of the grounds, authorities and arguments supporting its motion. A movant should not hold matters in reserve for reply briefs." (footnote omitted)); *In re IBP, Inc. S'holders Litig.*, 789 A.2d 14, 62 (Del. Ch. 2001) (arguments waived where not raised in "opening post-trial brief"); *cf.* Supr. Ct. R. 14(c)(i) ("Appellant shall not reserve material for reply brief which should have been included in a full and fair opening brief."); *Acme Mkts., Inc. v. Oekos Kirkwood, LLC*, 2025 WL 2172302, at *4 (Del. Super. Ct. July 31, 2025) (cited by Appellees) ("[M]ovants are generally prohibited from raising an argument in a reply that they did not raise in their opening brief," but finding no waiver where reply responded to opponent's argument). Indeed, the trial court held that the GP waived a different argument by waiting until the reply to raise it, Op. 81, but failed to explain why this argument should be treated any differently.

B. The GP's "Double Counting" Argument Is Inconsistent with the Plain Terms of the Parties' Agreement.

In any event, the GP's argument that "deemed contributions" should not actually be deemed to be contributions fails on the plain terms of Amendment 20. As the GP admits, Amendment 20 "contains three elements": (1) deemed contributions, (2) deemed transfers, and (3) deemed distributions. Answering Br. 25. The LPs' reading vests each word with meaning: the deemed contributions are contributions that count towards satisfying the limited partners' capital commitments; the deemed distributions are distributions that count towards satisfying the high-water mark for the limited partners with carried interests, *see* Opening Br. 19; and the deemed transfers are transfers that moved securities from one pool to another without any other impact. The GP's proposed reading, by contrast, renders meaningless the distinction between these three elements, treating them all as transfers. *See* Answering Br. at 26 (defending the trial court's definition of "deemed" by arguing that it affected a "transfer"). Accordingly, the GP's proposed reading does not comply with Cayman law, which rejects interpretations that "contradict[] the objective natural meaning of the words in their context" by rendering certain words "superfluous." *Providence Building Services Ltd v Hexagon Housing Association Ltd* [2026] UKSC 1 at [33].

Moreover, the GP's "double counting" rhetoric, on which its argument rests, makes little sense. No one contends it would be "double counting" to count a cash contribution that the LPs made from money previously distributed by the GP towards satisfaction of the LPs' capital commitments. Amendment 20 achieved the same economic result by deeming distributions and contributions in equal amounts to have occurred without going through the mechanics of making cash distributions followed by cash contributions. Moreover, the GP does not dispute that deemed distributions are to be treated as true distributions, *see* Opening Br. 29, and provides no explanation why deemed contributions should not be treated as true contributions.

Simply put, Amendment 20 means what it says: the amounts allocated to Pool ATP V-3 and Pool Braeburn should be "deemed" to be both distributions to and contributions by the various limited partners.

C. The GP's Argument About Supposed "Admissions" in the LPs' Post-Trial Brief Rests on an Obvious Misinterpretation.

The GP's argument also fails because it rests on the trial court's misinterpretation of a supposed statement by the LPs that the purpose of Amendment 20 was to "reallocate an *existing* commitment" and not to create "a new commitment." Op. 55 (emphasis in original). Based on that statement about *commitments*, the trial court, without explanation, concluded that the LPs' view of the "purpose" of Amendment 20 required divesting the words "deemed . . .

contributions" of their plain meaning. *See* Opening Br. 19. The GP doubles down on the trial court's error, repeatedly insisting that the LPs made a "judicial admission" about the "purpose" of Amendment 20 with respect to deemed contributions. Answering Br. 30. That effort fails for at least three reasons.

First, the statement the trial court partially quoted from the LPs' post-trial brief did not actually address the purpose of Amendment 20 or the meaning or purpose of deemed contributions. The statement responded to the GPs' arguments about a reference to "commitments" in the first sentence of paragraph 22(b) by stating: "The $70,853,399 that had been 'previously approved' was a reallocation of an existing commitment from a different pool, not a new commitment." A623, *quoted in part in* Op. 55. And so it was. The trial court rightly rejected the GPs argument—to which the LPs were responding—that that $70.9 million, together with other amounts, increased the LPs' capital commitments above their $2.425 billion Contingent Subscriptions. A623–24; Op. 53–55; *see* Opening Br. 26–27.

The GP and the trial court err in assuming that, because the LPs argued that the reallocation of *capital commitments* (*i.e.*, the total amount of capital the LPs are obligated to provide) among pools did not increase the existing amount of committed capital, it somehow follows that deemed contributions (*i.e.*, payments toward those commitments) cannot count towards satisfying the LPs capital commitment. The allocation of *assets*—and how that allocation should be treated in terms of deemed distributions and deemed contributions—is a completely different issue than the allocation of *capital commitments*. *Compare* A1030 ¶ 22(b) sentence 5 (deemed contributions) *with id.* sentence 1 (capital commitments).

The GP's reliance on the trial court's statement that no one intended to "reduce the total amounts committed to the Fund through Amendment 20" is misplaced for the same reasons. Answering Br. 23. The trial court was correct that Amendment 20 did not reduce the $2.425 billion in committed capital to some lower number. But that has no bearing on whether the deemed contributions in Amendment 20 could count towards satisfying that $2.425 billion in committed capital.

Second, even assuming there was an admission about Amendment 20's purpose—and there was not—Cayman courts will not resort to general ideas about a contract's *purpose* to reach an interpretation that contradicts the meaning of a contract's plain *words*. Rather, under Cayman law, a court must "focus[] on the meaning of the relevant words." *Arnold v Britton* [2015] UKSC 36 at [15].

Third, under Cayman law, courts give no weight to the parties' words or conduct post-dating contract formation. Both parties' Cayman-law experts were firmly in agreement with the proposition that a contract must be interpreted in accordance with its plain terms as agreed *at the time of the contract*. A1393–95

(Bloch); A1676, ¶ 58(1) & n.59 (Phillips); *see also James Miller & Partners Ltd. v. Whitworth Street Estates (Manchester) Ltd* [1970] AC 583, 603 (HL) ("It is not legitimate to use as an aid in the construction of the contract anything which the parties said or did after it was made."). So even if the LPs had made an admission about the meaning or purpose of Amendment 20 (they did not), it would be irrelevant.

D. Schedule D of the Limited Partnership Agreement Does Not Support the GP's Interpretation of Amendment 20.

To divest the word "deemed" of its plain meaning, the GP turns to Schedule D of the original LPA, agreed to nine years before Amendment 20. The GP wrongly argues that because Schedule D says that certain earlier "deemed contributions shall reduce Dr. Harrison's unfunded Subscription," and because Amendment 20 does not contain similar language, Amendment 20 cannot be read to provide that deemed contributions count towards satisfying the LPs outstanding capital commitments. *See* Answering Br. 25–26.

The GP's supposition that a few words in an unrelated schedule to the 2012 LPA demonstrate the parties' intentions when they agreed to Amendment 20 nearly nine years later such that the plain meaning of the text should be displaced strains credulity. The LPA is a long and complicated instrument that was amended 22 times over the course of twelve years, often in ways that paid little attention to the need to integrate new amendments with older ones.

In any event, Schedule D and Amendment 20 did not treat "deemed contributions" the same way, so the fact that Amendment 20 does not contain the additional language present in Schedule D proves nothing. Schedule D provided: "All such deemed contributions shall reduce Dr. Harrison's unfunded Subscription . . . except that such amounts shall not increase Dr. Harrison's Capital Account balance." A798. In other words, the "deemed contributions" in Schedule D were deemed to be contributions *only* for the limited purpose of satisfying Dr. Harrison's subscription, but *not* for the related purpose of increasing his capital account. It was therefore necessary to spell out the precise effects of the contributions in Schedule D. But no similar limitation applies to Amendment 20's specification that the LPs, Dr. Harrison, and Les Pommes were "deemed to have made capital contributions." A1030, ¶ 22(b). It follows that they were deemed to have made capital contributions for *all* purposes, including satisfying capital commitments. No additional language was therefore necessary.

E. Amendment 20 Is Commercially Reasonable as Written, and in Any Event, Its Plain Text Governs.

The GP's argument that the LPs' interpretation is not "commercially reasonable" also fails. While commercial reasonableness may be relevant in choosing between two possible interpretations of unclear language, the phrase "shall be deemed to have made a capital contribution" is clear and unambiguous. As the U.K. Supreme Court held in *Arnold v Britton*, which the GP's own expert emphasized in his report:

> [C]ommercial common sense and surrounding circumstances . . . should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, *save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision.* Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract.

Arnold v Britton [2015] UKSC 36 at [17] (emphasis added), *quoted in* A1393, ¶ 24 (Bloch).

Regardless, the parties struck a commercially reasonable bargain. Complex agreements like Amendment 20 inherently reflect a compromise arising from the back-and-forth of negotiation. *See, e.g.*, *Prenn v Simmonds* [1971] 1 WLR 1381 (HL) at [1385C]. The role of the Court is to determine what the parties actually *did agree* in the words they used, not interpose its own view of what the best bargain would have been. By providing for deemed distributions and deemed contributions—rather than simply a transfer between pools as it did for certain securities and other property—Amendment 20 offered something for both parties. From Dr. Harrison's perspective, the deemed distributions meant that he would have a better chance of earning carry on the Fund's investments. *See* Opening Br. 19 (explaining how deemed distribution counted toward high-water mark). From the Rigmora LPs' perspective, the deemed contributions fulfilled part of their capital commitment.

F. ATP's New Pool-by-Pool Argument Fails.

1. The Pool-by-Pool Argument Is Not Properly Before This Court.

The GP now argues for the first time that even if the deemed contributions are counted toward capital contributions, $58,778,295.99 of the capital calls would remain valid because of pool-by-pool accounting. That argument is not properly before this Court, both because it was not raised below and because it amounts to an improper cross-appeal.

First, the GP acknowledges that the trial court did not address its pool-by-pool argument, Answering Br. 32, but ignores the reason why: The GP did not raise the argument before the trial court. To be sure, the GP's post-trial reply brief argued for pool-by-pool accounting, but it did so only on the assumption that Amendment 20 increased the LPs' Contingent Subscriptions above the $2.425 billion set forth in the Subscription Agreements. A658–59. The GP never argued that these pool-by-pool arguments would be relevant if—as the trial court correctly held, *see* Op. 53-55—Amendment 20 did not increase Contingent Subscriptions.

If the GP wanted to make an alternative argument for a lesser judgment amount, it should have presented that argument to the trial court. "It is a basic tenet of appellate practice that an appellate court reviews only matters considered in the first instance by a trial court." *Del. Elec. Co-op., Inc. v. Duphily*, 703 A.2d 1202, 1206 (Del. 1997). The GP cannot expect this Court to decide for the first time a claim that it waived below. *See Averill v. Chrysler Corp.*, 526 A.2d 930, 1987 WL 37483, at *1 (Del. May 18, 1987) (ORDER) ("[T]his Court sits not as a trier of fact but as a court of appeals."). "Only questions fairly presented to the trial court may be presented for review." *Duphily*, 703 A.2d at 1206 (quoting Del. Supr. Ct. R. 8) (citation and ellipsis omitted).

Second, the GP's pool-by-pool argument amounts to an improper cross-appeal because the outcome of this argument would be that the GP has the right to call more than the $125 million that the trial court found to be LPs' remaining commitment as of the date of trial. A party that seeks to "enlarg[e] its own rights or lessen[] the rights of an adversary" must cross-appeal. *Hercules Inc. v. AIU Ins. Co.*, 783 A.2d 1275, 1277 (Del. 2000). Here, the trial court held that "ATP has proven that Rigmora committed $2.425 billion and contributed $2.3 billion. The difference is $125 million." Op. 56. The GP's "pool by pool" argument—which assumes that the LPs have $450 million of unfunded commitment remaining for Pools ATP V-1 and ATP V-2 rather than the $125 million found by the trial court—does not merely defend the outcome in the trial court on different grounds. Instead, it challenges the outcome in a way that seeks to lessen the LPs' rights under the judgment. *Compare* Answering Br. 32 *with* Op. 56. To make such an argument, the GP was required to cross-appeal but failed to do so.

2. The GP's Pool-by-Pool Argument Fails on the Merits Because the Subscription Agreements Expressly Limited the LPs' Overall Commitment to $2.425 Billion.

In any event, the GP's attack on the trial court's decision fails. The trial court correctly recognized that the LPs' Contingent Subscriptions are governed by their Subscription Agreements. Op. 53–54. Those Subscription Agreements impose an overall Fund-level cap on total capital contributions, not a pool-by-pool cap. B0185–186; B0220; B0173; B0171. Pool-by-pool accounting of assets, liabilities, income, gains, losses and expenses cannot increase the LPs' funding obligation above the amounts in the Subscription Agreements. A808.

The original Subscription Agreements say nothing about pools but merely state a flat dollar amount for the Contingent Subscription of each of the two LPs, totaling $1.425 billion, with no mention of pools. B0201 (Blue Horizon, now

Rigmora One); B0236 (Ezbon, now Rigmora Two). The later amendments to the Subscription Agreements also provide a flat dollar amount, totaling $1 billion, by which the Contingent Subscription of each of the two LPs was increased. B0173, ¶ 1 (Ezbon); B0171, ¶ 1 (Blue Horizon). While those amendments also allocated this increase between Pools B and C, *see* B0173, ¶ 2; B0171, ¶ 2, nothing in that allocation changes the overall limit on the LPs' commitment.

Paragraph 5(a)(i) of the LPA, which governs the GP's power to make capital calls, confirms that the Contingent Subscription is a hard cap. That provision says that "each of the Partners shall contribute to the capital of the Partnership, in such installments as the General Partner may request, an amount equal to, *but not in excess of*," the Contingent Subscription. A723, ¶ 5(a)(i) (emphasis added). Thus, regardless of any allocation to pools, the LPA does not permit any call by the GP for capital "in excess of" the Contingent Subscription amount. *Id.* Once the total Fund-level commitment under the Subscription Agreements is exhausted, the GP has no contractual basis to require additional contributions to any pool.

II. THE GP'S EFFORT TO WRITE MILESTONES OUT OF THE PROJECT BUDGETS IS INCONSISTENT WITH THE PLAIN TERMS OF THE LIMITED PARTNERSHIP AGREEMENT.

The GP argues that the trial court properly relied on extrinsic evidence in concluding that capital calls did not need to comply with the milestones in the investment memoranda. Answering Br. 34. The GP's position demonstrates precisely why the trial court's decision must be reviewed *de novo* and reversed. Under Cayman law, a contract must be interpreted from its text, *not* from the parties' post-contractual actions. The trial court's interpretation of the word "budgets" in the LPA, which was based on its understanding of the parties' subsequent actions, ignored Cayman law and barely discussed the text of LPA.

Before the trial court, the LPs argued that the term "budget" as used in the LPA should be interpreted to mean more than just the one-page top sheet stating the total amount approved for a "Project," and that its meaning also encompasses the milestones in the investment memoranda accompanying those cover pages. A628–29. Instead of analyzing the terms "Project" and "budget" as used in the LPA, the trial court mistakenly framed the issue as whether milestones were an extracontractual funding "condition." Op. 62. Throughout its brief, the GP repeats this mistake.

A proper analysis of the scope of the term "budget" must start with the LPA.

As the trial court acknowledged, Paragraph 5(a)(iii) of the LPA provides that the GP can only call capital for a project "in accordance with a budget therefor approved" by the LPs. Op. 6–9, 62–63. The LPA defines "Project" to mean "pharmaceutical, medical device and other medically-related projects and related activities (each, a 'Project')." A715. The scope of each relevant "Project," for budgeting purposes, can only come from the relevant investment memorandum, because that is the only document in which the project is described, and the top sheet just includes the name of the portfolio company. *See, e.g.*, A1083. Although "budget" is not a defined term, there are multiple reasons to interpret the term as including the timetables and milestones set out in the investment memorandum, and not just the bare number listed on the top sheet.

First, LPA specifies that the "budget for each Project . . . may be for more than a single year and may include milestone-based payments." A715. This provision makes clear that "budget" does not mean just a bottom-line number but also a timeline and milestones. The timeline and the milestones, like the scope of the project, appear in each project's investment memorandum. Excluding the investment memorandum from consideration—and only looking to the dollar figure shown on the signed cover page—is inconsistent with the parties' intentions as reflected in the text of the LPA and renders meaningless the terms "Project" and "budget."

Second, the LPA allows for accelerated capital calls against a budget if the GP "represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor[.]" A724. That clause therefore envisions that at least some project budgets call for expenditures in accordance with a timeline, and that the purpose of this timeline is to prevent the entire amount from being expended if the project is not making progress to completion within the budgeted amount. According to the GP, the acceleration clause "applies when capital is called earlier than anticipated by the timelines in the investment memoranda, regardless of whether milestones have been achieved." Answering Br. 38. But the GP fails to explain how the term "budget" in the LPA could include the "timelines" in the investment memoranda but not the very milestones that define whether the project is proceeding according to those timelines. *See, e.g.*, A860–62; A1073. Moreover, the GP does not explain how it could accelerate a capital call for a project milestone (*i.e.*, the "portion thereof covered by such budget[,]" A724) without reference to the amount budgeted for that milestone.

The acceleration provisions and the requirement to call capital in accordance with an approved budget must be given a meaningful effect, and the GP's interpretation fails to do so. In effect, the GP's reading arrogates to the GP the ability to call capital for a portfolio company on whatever timeline it likes and for whatever project it likes—regardless of whether the portfolio company is making progress on its approved project budget—as long as the overall dollar amount for each portfolio company does not change. But nothing in the LPA permits the GP's bait-and-switch approach to soliciting budget approval.

Third, "[i]n construing a partnership agreement, regard must always be had to the factual matrix in which it was executed. . . ." A1675, ¶ 58(1) (Phillips) (citation omitted). At trial, witnesses from both sides agreed that the use of milestones was widespread in biotechnology investing as a means of avoiding commitments to invest in companies that are not performing on time and within budget. *See, e.g.*, A379 at 62:20–63:12; A413 at 199:14–200:14; A472 at 431:1–19. Both parties would have understood this commercial context when they negotiated the LPA in 2012. And they would have understood the LPA's requirement that capital could only be called in accordance with a "budget" approved by the LPA for a "project" to mean that the funding requirements were set out in the documents presented to the LPs, including the investment memoranda which defined both the relevant project and the conditions under which further money would be invested in that project.

The GP, like the trial court, disregards the text of the LPA in favor of extrinsic evidence of how certain budget discussions were conducted, to conclude that the parties did not "intend" for milestones to have any bearing on capital calls. Answering Br. 38–39 (describing the LPs' purported lack of prior information requests and other post-contractual conduct). But "intent" should be determined from a contractual provision's clear and unambiguous terms, not examples of subsequent conduct. Subsequent practice is irrelevant under Cayman law, which is concerned only with what the parties understood at the time of contracting as reflected in the words of their written agreement in its context. *See supra* at 10–11; A1676, ¶ 58(1) & n.59 (Phillips); *James Miller*, [1970] AC 583 at 603. The trial court's interpretive framework—which the GP now endorses—was wrong as a matter of Cayman law and should be reversed.

III. THE GP CANNOT EVADE THE REQUIREMENT THAT CAPITAL MAY ONLY BE CALLED FOR A PROPER PURPOSE.

Under the LPA and Cayman law, the intent behind a capital call matters. The parties agree that the GP may "call[] capital ***only*** for a purpose enumerated in paragraph 5(a)(ii)." Opening Br. 40–41; Answering Br. 42–43. And it is uncontested, *see* Op. at 59, that a general partner, when making capital calls, must "act at all times in good faith *and* . . . in the interests of the exempted limited partnership." ELP Act § 19(1) (emphasis added). As applied to a fiduciary like the GP, the proper purpose requirement under English and Cayman law "is concerned with abuse of power, by doing acts which are within [the] scope [of a power] but done for an improper reason." *Eclairs Group Ltd v. JKX Oil & Gas Plc* [2015] UKSC 71 at [15]; *see also Grand View Private Trust Co Ltd v Wen-Young Wong* [2022] UKPC 47 at [55].

Read against the background of Cayman fiduciary law and applying Cayman law's proper purpose doctrine, the LPA's requirement that a capital call be made ***only*** for a purpose set forth in the LPA prohibits the GP from exercising a contractual power if that power is exercised at least in part for a purpose other than one set forth in the LPA. *See, e.g.*, A1697 n.139 (Phillips). Put simply, if the GP called capital to provide needed funds to a portfolio company in part for the purpose of putting pressure on its LPs in connection with a dispute over governance, that capital call is not a proper capital call under the LPA.

The trial court erred because it acknowledged that a purpose of the capital calls may have been to put pressure on the LPs, but then asked whether the calls were issued in bad faith instead of whether calling capital at least in part for that purpose rendered the capital calls improper under the LPA. Op. 60 (finding the statement that purpose of the "point of making the calls is to put pressure on [Rigmora]" to be "not alarming" because "[c]ontractual rights can be a source of pressure"). The GP defends the trial court's opinion by arguing that the trial court "weighed" evidence of improper purpose "against the full factual record," Answering Br. 45, before concluding that the GP called capital for a proper purpose. That misstates the trial court's analysis. The trial court merely asked whether the GP's capital calls served the proper purpose of providing capital to the portfolio companies but failed to consider whether the GP also acted with another purpose not authorized by the LPA. This was an error of law requiring reversal of the judgment below.

CONCLUSION

As further set forth in Appellants' Opening Brief, the judgment below should be reversed and judgment entered for Appellants or, in the alternative, the judgment should be vacated and the case remanded for further proceedings.

/s/ Daniel E. Kaprow

Blake Rohrbacher (#4750)
Daniel E. Kaprow (#6295)
Zachary R. Greer (#7057)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

OF COUNSEL:

Shannon Rose Selden
William H. Taft V
Zachary H. Saltzman
Natascha Born
Carl Micarelli
Sebastian Dutz
Andrew Van Duyn
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, New York 10001
(212) 909-6000

Attorneys for Defendants Below–Appellants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP

Dated: May 7, 2026