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Case Number 64,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DR. DAVID M. GOLDENBERG,	)	
	)	
Plaintiff Below-Appellant,	)	No. 64, 2026
	)	
v.	)	Court Below: Court of Chancery
	)	of the State of Delaware,
IMMUNOMEDICS, INC.,	)	C.A. No. 2020-0523-JTL
	)	
Defendant Below-Appellee,	)	

OPENING BRIEF FOR APPELLANT DR. DAVID M. GOLDENBERG

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NATURE OF PROCEEDINGS

This case concerns a straightforward question of contract interpretation with profound consequences.

Dr. David M. Goldenberg is an experimental pathologist and cancer researcher whose groundbreaking contributions have shaped the field of oncology for more than four decades. He founded and later took public Immunomedics, Inc., a major biopharmaceutical firm. While at Immunomedics, he invented and developed Trodelvy®, a blockbuster oncology therapy that has been used to treat over 50,000 cancer patients. The market value today of Trodelvy® is staggering—which is presumably why Gilead Sciences, Inc., paid $21 billion to acquire Immunomedics in 2020.

This case turns on Dr. Goldenberg's Employment Agreement with Immunomedics and the effects of Gilead's acquisition on that agreement's revenue-sharing provision. Dr. Goldenberg was the leader and chief architect of Immunomedics' work, and he was compensated accordingly. In broad terms, the revenue-sharing provision gives him the right to 1.5% of Immunomedics' net revenue while employed and thereafter during a three-year noncompete period. The agreement was revised over Dr. Goldenberg's decades-long tenure to protect his rights, and it was ultimately expanded to cover both "Immunomedics and all of its direct and indirect subsidiaries *or affiliates*"—thus ensuring corporate structure did not impair his revenue-based compensation.

The question here is whether Gilead qualifies as an "affiliate" under the agreement. Gilead became Immunomedics' parent upon the 2020 acquisition. It subsequently integrated Immunomedics' full operation into its own, commingling every aspect of each business. And Gilead is now selling billions' worth of Trodelvy® (which Dr. Goldenberg created) on an annual basis.

Yet despite the acquisition occurring during Dr. Goldenberg's three-year noncompete—and despite the conventional and widespread understanding that "affiliate" includes parent corporations—the trial court departed from the agreement's plain text and invoked extrinsic evidence to rewrite the parties' agreement. The court reasoned that Dr. Goldenberg was adequately compensated as a shareholder (his equity was worth $700 million) and thus further payment under the Employment Agreement was unwarranted. And the court believed the parties would not intend to expose a parent's revenue to the agreement's requirements—despite the express inclusion of a term ("affiliate") that covers parents; despite the provision's limited duration; despite the relatively modest amount (1.5%); and despite the provision's necessity to ensure Immunomedics' founder and principal is compensated appropriately for developing a billion-dollar enterprise.

The court's decision violates settled contract-law principles and frustrates the clear terms of an unambiguous contract. The agreement's plain meaning should be restored, and the judgment should be reversed.

SUMMARY OF ARGUMENT

Under settled principles of construction, the contractual term "affiliate" includes Gilead as a parent corporation, and the trial court's contrary ruling warrants reversal.

1. a. The contract is governed by New Jersey law, which requires courts to enforce a contract's plain and ordinary meaning. Courts can consider extrinsic evidence, but only to interpret the writing itself. It cannot be used to modify, enlarge, or curtail an agreement's terms.

b. Those principles are dispositive here. The contract textually covers "affiliates," which includes parents under every relevant source. It matches the dictionary definition; it follows New Jersey and Delaware precedent; it fits the SEC's definition; it adheres to accounting principles—including in GAAP, which explicitly governs related components of the *same* revenue-sharing provision. And it fits the parties' own use in this contract and elsewhere. Indeed, the agreement itself incorporates by reference a separate document that explicitly defines "affiliate" in the standard, conventional way—and includes parents. It is implausible that "affiliate" has a contrary meaning in this provision alone.

c. The plain-text meaning is reinforced by the agreement's context and purpose. Dr. Goldenberg's tireless efforts and ingenuity produced a life-saving drug and multibillion-dollar biopharmaceutical enterprise. While the amounts at issue are substantial ($365 million), they are commensurate with the stakes. Gilead acquired a major asset that alters the trajectory of each company; this provision protects Dr. Goldenberg's rights as Immunomedics' founder and architect. The failure to include parents in his deal risks forfeiting his rights—as Gilead's post-acquisition conduct readily confirmed. This limited-time provision secures a modest return (representing a fraction of the acquisition's cost) for the primary individual responsible for generating $21 billion in value.

2. The trial court nevertheless rejected this plain-text interpretation and rewrote the parties' agreement.

a. The court never defined "affiliate"; it instead declared the term ambiguous, and redlined the agreement as limited to revenue linked to Dr. Goldenberg's "scientific and creative research." There is no known definition of "affiliate" that captures this judge-made idiosyncratic version.

b. The court wrongly justified this atextual approach by misunderstanding the equities. The court felt Dr. Goldenberg's *shareholder* compensation was sufficient; but the question here is his *employee* compensation—rewarding his work as Immunomedics' founder and core innovator. The court was not authorized to override that separate compensation agreement.

c. The court's remaining analysis falls short. It asked why Dr. Goldenberg did not invoke this clause against a hedge fund—who did *not* acquire anything (and thus was not a parent); it misread the parties' other contracts (which consistently define "affiliate" in standard fashion); and it faulted Dr. Goldenberg for not identifying an express definition in the contract—which is unnecessary (the term has an accepted meaning) and anyhow wrong (the term was defined in an *incorporated* document).

3. Because the court misconstrued the operative term of the key provision, this Court should reverse and remand for a proper calculation of Dr. Goldenberg's revenue-sharing rights.

STATEMENT OF FACTS

A. Dr. Goldenberg Founded Immunomedics In 1982 And Became A World-Renowned Cancer Researcher

1. Dr. Goldenberg is a prolific scientist and inventor of numerous cancer-fighting agents. *See generally* A3217-3390. He has authored more than 1,200 peer-reviewed scientific publications and served on the editorial boards of over twenty-five leading medical journals. His work has been cited more than 60,000 times in scientific literature, placing him among the most cited medical researchers in history. His scientific achievements have been recognized with numerous national and international honors, including the National Cancer Institute's Outstanding Investigator Award (1985, 1992); the 3M Mayneord Memorial Award and Lectureship from the British Institute of Radiology (1991); the Abbott Prize from the International Society of Oncodevelopmental Biology and Medicine (1994); the Ervis Bervin Medal from the Swedish Oncology Society (2002); and the Paul Aebersold Award from the Society of Nuclear Medicine and Molecular Imaging (2005). Most recently, in 2024, he was awarded the Benedict Cassen Prize, the Society's highest honor, given biennially to individuals whose work has led to major advances in nuclear medicine. *See* A298-99.

He has received many local awards as well, including Awards for Excellence in Cancer Research by the New Jersey Assembly in 1985 and by the New Jersey Senate in 1986, and the New Jersey Pride Award in Science and Technology in 1986.

He and his colleagues at Immunomedics received the Thomas Alva Edison patent awards in biotechnology or medical imaging from the Research & Development Council of New Jersey in 2011, 2012, 2014, and 2016.

In 2016, Dr. Goldenberg formed the Goldenberg Family Foundation to make charitable contributions to science, medicine, education for underprivileged children, and other philanthropic causes. Dr. Goldenberg has committed on the record to devote any proceeds from this litigation to his Foundation. A314.

2. Dr. Goldenberg was born in Brooklyn in 1938. He attended Stuyvesant High School in Manhattan before earning a scholarship at age sixteen to the University of Chicago as a Ford Foundation Early Entrance Scholar. He graduated with a degree in Biological Sciences in 1958 and spent a year as a research assistant at the Sloan- Kettering Institute for Cancer Research. At age twenty-one, he moved to Germany to study at Heidelberg University's Faculty of Medicine, where he earned his M.D. *magna cum laude* in 1966 with a dissertation in experimental cancer research. He also earned an Sc.D. degree from the natural sciences faculty of the University of Erlangen in 1965. *See* A298.

Upon returning to the United States, Dr. Goldenberg held professorships in pathology at the University of Pittsburgh School of Medicine, Temple University Health Sciences Center, and the University of Kentucky Medical Center, and then an adjunct professorship of medicine and surgery at the University of Medicine and

Dentistry of New Jersey. In 1975, he founded the Ephraim McDowell Community Cancer Network, which later became the Markey Cancer Center at the University of Kentucky. *See id.*

3. In 1982, Dr. Goldenberg founded Immunomedics with the goal of developing antibodies as imaging and therapeutic agents for cancer. The Company started as privately held and incorporated in Delaware, with Dr. Goldenberg as the sole owner. Two years later, the Company went public. Dr. Goldenberg served in various leadership roles during his more than three-decade tenure at Immunomedics, including CEO, Chief Scientific Officer, Chief Patent Officer, and Chairman. Under his leadership, Immunomedics achieved FDA approval of CEA-Scan® in 1996, a diagnostic imaging agent he invented, which detects cancer by targeting certain antigens. The following year, another of his inventions, LeukoScan®, was approved in Europe and elsewhere globally for detecting infections and inflammation, particularly osteomyelitis. *See* A299-300.

B. In The Early 2000s, Dr. Goldenberg Led Immunomedics In A Strategic Shift That Ultimately Produced A Groundbreaking Drug That Would Transform Oncology

Under Dr. Goldenberg's leadership, Immunomedics transitioned away from cancer diagnostics into the emerging field of antibody-drug conjugates (ADCs) beginning in the early 2000s. ADCs are a type of targeted cancer treatment that includes a protein designed to find and attach to cancer cells so that a linked cancer-killing drug can attack the cancer with minimal harm to healthy cells. Dr. Goldenberg's decision to make this transition would eventually lead to the invention and development of the blockbuster cancer drug Trodelvy®, which has transformed oncology. It has saved or significantly extended the lives of tens of thousands of patients worldwide and has become a leading therapeutic to treat a lethal form of breast cancer. A3537-38; A300-01.

At the time of this transition, Dr. Goldenberg and his staff at his nonprofit research facility the Center for Molecular Medicine and Immunology (CMMI) had already invented an antibody known as RS7 for use in animals. RS7 can act as a delivery agent for certain types of drugs. CMMI then licensed RS7 to Immunomedics so that Dr. Goldenberg and his Immunomedics team could attempt to adapt RS7 for human use. The goal was to create a treatment that could selectively deliver cancer-killing drugs directly to cancer cells, while minimizing damage to healthy tissues. A301.

Dr. Goldenberg and his team succeeded. On March 3, 2003, Dr. Goldenberg filed U.S. Patent Application No. 10/377,121, titled "RS7 Antibodies," which disclosed a humanized version of RS7 and its use in diagnosis and therapy. A1670. This application would later issue in July 2007 as U.S. Patent No. 7,238,785 ('785 Patent), with Dr. Goldenberg as a named inventor. The '785 Patent is one of the key patents that substantially contributed to the development of Trodelvy®. A301.

After filing for this patent, Dr. Goldenberg and his Immunomedics team began preparing a scientific paper titled *Antibody Conjugates of 7-Ethyl-10-Hydroxycamptothecin (SN-38) for Targeted Cancer Chemotherapy*. The paper was eventually published in November 2008 in the Journal for Medicinal Chemistry, with Dr. Goldenberg as the senior author. A1926. The paper resulted from Dr. Goldenberg's insight to explore the use of an active drug known as SN-38, whose parent compound, irinotecan, had shown potency treating certain solid cancers. SN-38 could not be administered directly to fight cancers because it had poor solubility, but that shortcoming made it an ideal partner to be conjugated to a delivery agent such as RS7. Dr. Goldenberg's idea to link RS7 to SN-38 created sacituzumab govitecan, which today is Trodelvy®. A301-02.

C. The Parties Revised Dr. Goldenberg's Employment Agreement In 2007 To Expand Its Scope

Dr. Goldenberg entered his first employment agreement with Immunomedics in May 1983. A754. His compensation under that agreement was limited to a salary, a discretionary bonus, and royalties of 0.25% to 0.5% of annual net sales of products covered by patents where Dr. Goldenberg was the inventor. *Id.* §§ 5(a)-(b), 9(a).

The parties entered into an amended employment agreement in November 1993. A776. In that agreement, Dr. Goldenberg's compensation was revised to include "Additional Incentive Compensation" in the form of 0.25% to 0.5% of "Immunomedics' Annual Net Revenue" during the term of his employment and two years thereafter. *Id.* § 4.2(a)(i). At that point, "Immunomedics" was defined to include only Immunomedics and its direct or indirect wholly owned subsidiaries:[1]

A795 (1993 Employment Agreement, § 4.2(d)(ix))
(ix) "Immunomedics" shall mean Immunomedics and all of its wholly owned subsidiaries which, for all purposes of this Agreement, shall be deemed to include subsidiaries which are wholly owned by Immunomedics, directly or indirectly.

The next iteration of the agreement occurred over a decade later in 2007. At the time, Dr. Goldenberg was among the most widely published scientists in medical history. He was the named inventor on hundreds of patents, including patents covering his antibody invention, RS7. Immunomedics' prospects were bright. Its stock price was hovering around $5/share (A1292), and its promising development pipeline was disclosed to the public, including in SEC filings, scientific journals, issued patents, and licensing agreements. That made it a prime target for a hostile takeover, a concern Dr. Goldenberg repeatedly expressed to the Immunomedics board and its external attorneys. With this concern in mind, Dr. Goldenberg sought to protect his compensation rights.

On April 2, 2007, Dr. Goldenberg's counsel sent a revised draft employment agreement to the Immunomedics Compensation Committee, along with a cover

[1] Yellow highlighting in all screenshot images has been added.

letter highlighting "the more significant revisions." A1231. Those revisions included substantial changes to the compensation provisions. A1233-35. As his counsel explained, Dr. Goldenberg was prepared to forgo his rights to approximately 200 patents in exchange for substantially increased "Additional Incentive Compensation," including (1) a higher percentage of "Annual Net Revenues" for each year he was employed and three years thereafter, and (2) "Lifetime Royalty Payments" based on a percentage of royalties the company received based on Dr. Goldenberg's patented inventions:

A1233 (April 2, 2007 Cover Letter to Dr. Goldenberg's Proposed Amended and Restated Employment Agreement)
4.2(a) Additional Incentive Compensation – Dr. Goldenberg presently retains rights to approximately 200 patents that he filed, only 3 or 4 of which the Company presently is using. Dr. Goldenberg is prepared to forego his rights and his interests under these patents to Immunomedics and, in exchange for his forbearance of these rights, he would receive Additional Incentive Compensation calculated based on a revised formula. The Agreement envisions two forms of Additional Incentive Compensation, one based on Annual Net Revenue and the other based Royalty payments. Dr. Goldenberg would be eligible to receive payment equal to one percent (1%) of Annual Net Revenues for the Company during each year he remains employed and for three years thereafter, unless he is terminated early due to death or for cause. Lifetime Royalty Payments are calculated as a percentage of the Royalty Payments the Company receives on any product covered under any patent on which Dr. Goldenberg is the inventor. The percentages range from 1% tc 2% depending on how much the Company must pay to third parties as royalties in connection with any of these products. The Company's obligation to make Lifetime Royalty Payments continues for all products covered by a patent for the Life of the Patent, and the Company's obligation to make Lifetime Royalty Payments continues regardless of the timing and circumstances of the ultimate termination of Dr. Goldenberg's employment. The Company remains obligated to pay the Lifetime Royalty Payments to Dr. Goldenberg's estate if he should pass away during the Life of a Patent.

Immunomedics responded on May 7, 2007, accepting most of Dr. Goldenberg's compensation revisions. It also proposed that net-revenue payments be conditioned on "the Company" generating positive net income in the relevant year.

From the outset, these calculations were to be determined in a manner consistent with GAAP and audited by an independent public accounting firm:

A1361 (May 7, 2007 Immunomedics Proposed Edits to 2007 Employment Agreement)
(i) Net Revenue Payments. **With respect to any fiscal year during the Term of the Agreement in which the Company generates positive net income (determined by the Company in a manner consistent with generally accepted accounting principles ("GAAP") for the entire fiscal year as audited by the Company's independent registered public accounting firm,** Immunomedics will pay to Dr. Goldenberg a sum equal to one percent (1%) of Immunomedics' Annual Net Revenue (as defined in Section 4.2(d)) during each **fiscal** year[~~ throughout the Term of this Agreement~~] (unless Dr. Goldenberg's employment terminates pursuant to Sections 10(a) or 10(e)), and thereafter throughout the Severance Period (as defined in Section 13(c)(iv)); and

Immunomedics also proposed changes to the definition of "Immunomedics" to include the company itself and all its direct and indirect subsidiaries, instead of just Immunomedics and its direct and indirect *wholly owned* subsidiaries:

A1367 (May 7, 2007 Immunomedics Proposed Edits to 2007 Employment Agreement)
(ix) "Immunomedics" means Immunomedics and all of its [~~wholly owned subsidiaries which, for all purposes of this Agreement, shall be deemed to include subsidiaries which are wholly owned by Immunomedics, directly or indirectly~~]**direct and indirect subsidiaries**.

The attorney who represented Immunomedics at the time explained that this change—deleting "wholly owned" and adding "direct and indirect"—was designed to cover an entity called IBC. Op. 10. IBC was an Immunomedics subsidiary established years earlier as a joint venture between Immunomedics and Beckman Coulter. In 2002, Beckman Coulter sold its stake to Immunomedics, leaving Immunomedics with a little over 70% ownership, Dr. Goldenberg with just under 20% ownership, and the remainder held by a few other investors. Op. 8. IBC's ownership remained the same throughout the relevant period.

At a meeting held a few weeks later in May 2007, the parties agreed to further expand the definition of "Immunomedics." A1436, A1453.[2] This expansion included two critical changes: (1) the definition of Immunomedics was explicitly enlarged to include "affiliates," and (2) IBC was mentioned as a named (but not exclusive) example of a covered entity—thus together sweeping in "all of [Immunomedics'] direct and indirect subsidiaries or affiliates, including but not limited to IBC." These changes were reflected in a May 31, 2007 draft sent by Dr. Goldenberg's counsel:

[2] Although disputed at trial, Dr. Goldenberg explained the parties agreed to this change to address his concerns about the potential for a hostile takeover. A306; A307. Dr. Goldenberg recognized that his rights to Additional Incentive Compensation, including net-revenue payments and patent lifetime royalties, could be jeopardized by a corporate acquisition, and he accordingly sought protection to avoid that risk. *Id.*

A1453 (May 31, 2007 Agreed Upon Edits to 2007 Employment Agreement)
(ix) "Immunomedics" means Immunomedics and all of its direct and indirect subsidiaries or affiliates, including but not limited to IBC.

The relevant backdrop confirmed that these two changes were each designed for different purposes—and "affiliates" went beyond the original goal of capturing IBC. For one, the parties made clear that IBC was merely one example of a covered entity ("including but not limited to"), not the lone target for the broad new provision. For another, Immunomedics has consistently referred to IBC as a "subsidiary," not an "affiliate." Indeed, it did so elsewhere in the 2007 Employment Agreement itself, revising the same agreement (in these same negotiations) to designate IBC as a "subsidiary":

A1358 (May 5, 2007 Proposed Changes to Section 3(c)(ii) of the 2007 Employment Agreement)
(ii) To serve as a member of the Board of Directors of and to be employed (including without limitation as an executive officer) by **the Company's majority-owned subsidiary,** IBC Pharmaceuticals, Inc. ("IBC").

That same characterization was repeated in Immunomedics' SEC filings, which likewise referred to IBC as a "subsidiary," but not an "affiliate." *See, e.g.*, A1147; A1736.[3]

Three weeks later, Immunomedics made further revisions reinforcing Dr. Goldenberg's rights in the event of a corporate change: the term "Company" was replaced with "Immunomedics" throughout the key net-revenue provision. This change was important because "the Company" only meant Immunomedics itself, whereas "Immunomedics" now had the broader definition that included "affiliates":

[3] Earlier in the case, Immunomedics argued "that 'affiliates' should be limited to affiliates at the time of contracting." MJP Order ¶ 13(e). The trial court rejected that contention as a matter of law. *Id.* Defendant has since abandoned that argument.

A1545-46 (June 22, 2007 Immunomedics’ proposed changes to Section 4.2(a)(i) of the 2007 Employment Agreement)

(i) **Transactional Payments;** Net Revenue Payments. With respect to any fiscal year during the Term of the Agreement in which [~~the Company does not generate positive net income~~]**Immunomedics records an annual net loss** (determined by [~~the Company~~]**Immunomedics** in a manner consistent with generally accepted accounting principles (“GAAP”) for the entire fiscal year as audited by [~~the Company’s~~]**Immunomedics’** independent registered public accounting firm), Immunomedics will pay to Dr. Goldenberg a sum equal to three quarters of one percent (.75%) of the total Consideration the Company receives from any third party transaction, excluding third party financing transactions[~~ that are not related to any specific product or technology rights~~]. With respect to any fiscal year during the Term of the Agreement in which [~~the Company generates~~]**Immunomedics records** positive net income (determined by [~~the Company~~]**Immunomedics** in a manner consistent with GAAP) for the entire fiscal year as audited by [~~the Company’s~~]**Immunomedics’** independent registered public accounting firm, Immunomedics will pay to Dr. Goldenberg a sum equal to one and one-half percent (1.5%) of Immunomedics’ Annual Net Revenue (as defined in Section 4.2(d)) [~~during~~]**for** each such fiscal year (unless Dr. Goldenberg[~~'~~]**’**s employment terminates pursuant to Sections 10(a) or 10(e)), and thereafter throughout the non-competition period (as defined in Section 9(b)); and

With these amendments, the parties expressly incorporated the expanded definition of “Immunomedics” into Section 4.2(a)(i)’s payment provisions—thus directing that Dr. Goldenberg’s net-revenue payments would be calculated based on the combined figures of “Immunomedics and all of its direct or indirect subsidiaries *or affiliates*” (A1436, A1453 (emphasis added)), not those of “the Company” alone.

On June 25, 2007, the Immunomedics board approved and ratified the agreement substantially in the form sent to Dr. Goldenberg a few days earlier.

A1628-29. After a few additional immaterial changes, the agreement was signed on June 28, 2007, effective July 1, 2007. A1630. It was amended and restated both in 2011 (A1956) and 2015 (A2007), but no further changes were made to either Dr. Goldenberg's net-revenue payments or the definition of Immunomedics.

D. A Breakthrough Occurs In 2013, And Trodelvy® Received The FDA's "Breakthrough Therapy" Designation in 2016

After the 2007 Employment Agreement was executed, Dr. Goldenberg continued to work on the development of sacituzumab govitecan, including the design and implementation of clinical studies. Dr. Goldenberg began a Phase 2 "basket" trial with sacituzumab govitecan, covering patients with different metastatic cancer types (such as breast, lung, urothelial, ovarian, cervical, endometrial, pancreatic, and gastric cancers). Casting this wide net increased the chances of finding potential cancer targets for future treatments.

On October 9, 2013, a breakthrough occurred. Dr. Goldenberg presented an update on sacituzumab govitecan to the oncology physicians at Weill Cornell Medicine in New York, since this group was one of the first to test patients with the new agent. As part of the discussion, the head of breast-cancer therapy, Dr. Linda T. Vahdat, reported her recent experience. It was there that Dr. Goldenberg saw for the first time before-and-after scans of breast-cancer patients who had been treated with sacituzumab govitecan. One patient with a particularly deadly form of cancer called triple-negative breast cancer (TNBC) showed dramatic improvement and significant healing just five months after her treatment. In many areas of her body, the cancer had completely vanished. A309-10.

This was extraordinary. As Dr. Vahdat noted, patients with TNBC seldom survived more than twelve months after diagnosis. But having seen a similar positive response with sacituzumab govitecan in a second TNBC patient, she urged Dr. Goldenberg to make metastatic TNBC a major focus of his invention. Dr. Goldenberg agreed, and he and his team added additional clinical sites expanding the population of patients with metastatic TNBC. *Id.*

Their efforts, again, were successful. On February 5, 2016, the FDA granted Immunomedics a rare "Breakthrough Therapy" designation for sacituzumab govitecan for the treatment of TNBC. In order to receive accelerated approval, Immunomedics was required to complete the ongoing Phase 2 clinical trial in over 100 TNBC patients, while also conducting a Phase 3 pivotal, randomized, controlled trial of advanced TNBC patients who had previously received immune-based therapy without responding to initial chemotherapy or two additional treatments. A310.

It would take a full year to get everything in place to begin this pivotal trial. It required large amounts of quality-controlled sacituzumab govitecan, a qualified organization to manage the trial, and investigators and study sites approved by an independent-review board. Dr. Goldenberg led these efforts to bring sacituzumab govitecan across the finish line. A310-11.

E. In 2017, Dr. Goldenberg's Concerns Of A Corporate Takeover Were Realized

In 2017, Immunomedics was preparing to file for FDA accelerated approval of Trodelvy® based on overwhelmingly positive clinical-trial results. Seizing the moment, a hedge fund, venBio Select Advisor, launched a proxy contest to elect its own nominees to Immunomedics' board. This prompted related litigation, *venBio Select Advisor LLC v. Goldenberg et al.*, No. 2017-0108-JTL (Del. Ch.), which ultimately settled in November 2017. Under the Settlement Stipulation, Dr. Goldenberg agreed to leave the company "Without Good Cause After a Change in Control." A2175; *see also* A49-50. The parties attached and expressly incorporated Dr. Goldenberg's 2015 Employment Agreement into the stipulation. A2197, A2327-58.

As relevant here, the parties directed that Immunomedics' "obligations for royalties and other payments" to Dr. Goldenberg "shall be in accordance with [the 2015 Employment Agreement], including, without limitation Sections 4.2(a)(i), 4.2(a)(ii), 4.2(b) and 13(c)(iv) thereof, as applicable." A2177-78. The Settlement Stipulation contained two other notable features. First, it had an express definition of "Affiliate" that covered parent entities: "as to any Person, *another Person that controls, <u>is controlled by</u>, or is under common control with, such Person*." A2153 (emphases added). Second, the Settlement Agreement's definition of Immunomedics included Gilead.

F. Without Dr. Goldenberg, Immunomedics Faltered, Delaying Trodelvy®'s Approval Until April 2020—And This Litigation Begins

Without Dr. Goldenberg's guidance, Immunomedics faced serious problems completing the development of Trodelvy®. The venBio hedge-fund managers who took seats on Immunomedics' board had never before run a biopharmaceutical company. In January 2019, Immunomedics received a Complete Response Letter from the FDA, citing various manufacturing deficiencies that arose under the new management's watch. This delayed the launch of Trodelvy® by at least a year. It also resulted in further leadership changes at the company, as both the new CEO and new Chief Medical Officer were ousted and replaced. In April 2020, the FDA finally approved Trodelvy® to treat certain patients with metastatic triple-negative breast cancer, and the sales of Trodelvy® began. Op. 17.

At that point, multiple disputes had already arisen under the 2015 Employment Agreement concerning unpaid incentive compensation and Immunomedics' failure to comply with its financial-reporting obligations. Dr. Goldenberg finally responded with this lawsuit in June 2020.

As its primary initial defense, Immunomedics asserted its contractual obligations under the 2015 Employment Agreement had expired. The trial court rejected that defense (A66-68), and it later reaffirmed that the noncompetition period—which set the relevant end-date for Dr. Goldenberg's rights to net-revenue payments—continued until July 1, 2023. MJP Order 9-11. The trial court again rejected Defendant's expiration defense (for a third time) when it denied Defendant's subsequent motion to vacate. A235-39.

G. In October 2020, Gilead Acquired Immunomedics, Which Ceased Operating As A Standalone Company

1. On September 13, 2020, while this lawsuit was pending, Gilead announced plans to acquire Immunomedics for $21 billion. (As context, in 2019, Gilead's revenue was around "$20 billion in revenues" (A672 (citing A335)), and its 2020 revenue "totaled roughly $24.7 billion" (MJP Order 5-6).) The transaction was completed on October 23, 2020. Op. 17. This purchase price reflected the significant value of the Immunomedics pipeline of products including Trodelvy®, which Gilead has described as "foundational to Gilead's oncology franchise" and a "cornerstone product" for the company. A2469.

Gilead immediately absorbed all of Immunomedics' operations into itself and consolidated all of Immunomedics' revenue and expenses into its own. *See, e.g.*, Op. 18-19. From that point forward, Immunomedics did not prepare any standalone audited financial statements, did not have its net income determined in accordance with GAAP, and did not engage any outside independent accounting firm to audit its financial performance. *Id.* at 2, 19. Within months, Gilead completed the full integration of Immunomedics' financial and accounting systems into Gilead's systems. All Trodelvy® revenue was taken by Gilead and booked as Gilead revenue—becoming a major revenue driver for Gilead's global oncology division and its entire business. *Id.* Sales for each of Gilead's drug products were reported separately, but Gilead commingled its company-wide expenses with Immunomedics'. *Id.*

The acquisition was immediately successful. In 2020, Gilead's sales of Trodelvy®, despite being on the market for less than nine months, generated $137 million. In 2021, Gilead's Trodelvy® sales were $380 million (A2876); in 2022, $680 million (A2983); in 2023, $1.063 billion (A3109); in 2024, $1.315 billion (A3449). This product alone is expected to generate billions more in revenue over the next ten to fifteen years. A413 (projecting over $12 billion in annual revenue by 2031); A3184.

2. As part of its takeover, Gilead also terminated certain Immunomedics' agreements, including a licensing transaction with a company called Everest Medicines. A2737. In 2019, Immunomedics had authorized Everest to commercialize Trodelvy® throughout Asia. A2673-76. Gilead's termination eliminated Dr. Goldenberg's rights to Section 4.2(a) payments and royalties on those sales (A1982; Op. 18, 56), which otherwise would have continued into the late 2030s. A632 (so explaining; citing A301, A313, A431).

H. This Litigation Continues With A Partial Settlement And A Three-Day Trial On The Remaining Claim

1. Gilead's acquisition ultimately injected a new issue into this litigation: whether Dr. Goldenberg's rights under the Employment Agreement—1.5% of annual net revenue during the limited three-year noncompete—extends to Gilead's revenue as Immunomedics' "affiliate." MJP Order 5.

As the trial court explained, the Employment Agreement "obligates the Company to pay an amount calculated based on [a] formula," and "[a]ffiliate revenues are included in the formula." MJP Order 7. Accordingly, the court found, "[i]f Gilead qualifies as an affiliate, its revenue affects what the Company owes." *Id.* But the court also determined the issue could not be decided on the pleadings. It acknowledged Dr. Goldenberg's argument that "affiliate" is customarily defined to include "parent corporation[s]," but it also noted Defendant's competing argument that "affiliate" might refer to "a subsidiary, not a parent entity." MJP Order 6. It thus declined to resolve the issue "[a]t this stage of the case." *Id.*

2. Six months later, in November 2023, the parties entered a partial settlement. Although that settlement narrowed the action, the agreement expressly preserved Dr. Goldenberg's net-revenue claim: "[f]or the avoidance of doubt, Dr. Goldenberg is not releasing any claim to 1.5% of the revenue of Gilead as an 'affiliate' of Immunomedics, for the period relevant to the Annual Net Revenue Claim." A3064; *see also* A3061 (preserving Dr. Goldenberg's claim "pursuant to the second sentence

of Section 4.2(a)(i) of the Employment Agreement, [that] he is entitled to receive one and one half percent (1.5%) of Immunomedics' Annual Net Revenue, as the terms 'Immunomedics' and 'Annual Net Revenue' are defined in Section 4.2(d) of the Employment Agreement").

3. The court subsequently conducted a three-day trial. Op. 4.

I. The Trial Court Ultimately Rejects Dr. Goldenberg's Claim On The Ground That Gilead Is Not An "Affiliate" Under The Agreement—Despite Its Role As Immunomedics' Parent

In a post-trial opinion, the trial court rejected Dr. Goldenberg's claim. Op. 62, 35-36. In the court's view, the net-revenue provision "uses the term 'affiliate' in a loose and ambiguous way," rendering "extrinsic evidence relevant" under New Jersey law, which the parties selected to govern the agreement. *Id.* at 1, 21. And looking to that extrinsic evidence, the court believed the parties "intended" to "compensate the scientist with 1.5% of the net revenue *generated from businesses related to the scientist's research*, whatever the company's legal structure might be." *Id.* at 1-2 (emphasis added); *see also id.* at 23 ("the parties intended for the Revenue-Sharing Provision to encompass the annual net revenue that the Company generated from businesses associated with Goldenberg's research"). It thus declared "[t]he parties did not intend to compensate Goldenberg for businesses that an acquiror might bring to a combined company, *unrelated to Goldenberg's scientific and creative activities*." *Id.* at 23 (emphasis added).

In so ruling, the court acknowledged the ordinary definition of "affiliate," which does capture parent entities: "Goldenberg correctly observes that the most common definitions of 'affiliate' include any entity that 'controls, is controlled by, or under common control with' the entity in question." Op. 32-33; *see also id.* at Op. 28 ("The objective theory of contracts makes it tempting to take a flier on that type of argument."). And it further acknowledged, "[c]andidly," that "there might be settings where it would make sense to read the Revenue-Sharing Provision to encompass a parent-level entity." *Id.* at 33-34 (citing examples "where Gilead could be treated as an affiliate of the Company").

But the court ultimately felt the extrinsic evidence justified departing from that "customary" definition. Op. 33, 35. It cited the agreement's negotiation history, and the court's belief that the parties "add[ed] 'affiliates'" to "ensure[] that the definition would pick up IBC." Op. 24 (further suggesting the term was kept "general" to "pick up any entities that the Company formed to hold other intellectual property or pursue other businesses, as long as the Company controlled them"). It rejected the notion that the term was added as protection against corporate "takeovers," relying primarily on the lack of "board minutes" memorializing that concern. *Id.* at 24-25. It brushed aside the parties' consistent use of "affiliate" to "include[] parent entities," broadly stating (without concrete explanation) that "the agreements vary, with some defining or using the term 'affiliate' more expansively than others." *Id.* at 26. And it faulted Dr. Goldenberg for not seeking venBio's separate revenue (once it placed members on Immunomedics' board) or immediately demanding Gilead's revenue "until a year after the Acquisition." *Id.* at 27.

In support of its conclusion, the trial court further stressed that Dr. Goldenberg "and his family members received approximately $700 million" from the acquisition—as equity shareholders. Op. 1, 18. Even though this shareholder return had nothing to do with Dr. Goldenberg's role as the founder and chief architect of Immunomedics, the court declared that "consideration" alone an adequate return. *Id.* at 4 (deeming Dr. Goldenberg's request "a form of double dipping").

In the end, while the court never explained how it was actually *defining* "affiliate," it read the contract, generally, as excluding "parent-level businesses": Dr. Goldenberg could only "receive[] a percentage of the net revenue resulting from the Company's businesses and his scientific and creative efforts." Op. 27; *id.* at 36 ("The Revenue-Sharing Provision only entitles Goldenberg to a share of the net revenue from businesses based on his scientific and creative research."). The court thus entered judgment for Defendant and awarded Dr. Goldenberg nothing under his Employment Agreement. *Id.* at 62.[4]

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[4] The court also rejected Dr. Goldenberg's challenge to Defendant's net-revenue calculation focused on Trodelvy® alone, which showed massive losses despite Gilead's billion-plus in revenue. Op. 36-62. These calculations were complicated by the post-acquisition integration of Immunomedics into Gilead and

the commingling of the businesses' functions and finances, which were never properly audited (as the agreement required). *Id.* at 2. Although Dr. Goldenberg disagrees with the trial court's fact-based conclusions, he is not advancing this argument on appeal.

ARGUMENT

UNDER THE CONTRACT'S PLAIN TEXT, MEANING, INTENT, AND PURPOSE, THE TERM "AFFILIATE" INCLUDES PARENT CORPORATIONS

A. Question Presented

Whether the trial court erred in ruling that the Employment Agreement excludes Gilead's net revenue despite Gilead's acquisition of Immunomedics and the agreement's express inclusion of all "affiliates" in the operative net-revenue provision. This question was raised (A166-86; A274-85; A601-34) and resolved below (MJP 5-6; Op. 20-35).

B. Scope Of Review

The Court reviews "questions of contract interpretation *de novo*." *GMG Capital Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 779 (Del. 2012). The Court will generally "accept" factual findings, but it may "review de novo mixed questions of law and fact." *Zirn v. VLI Corp.*, 681 A.2d 1050, 1055 (Del. 1996).

C. Merits Of Argument

1. Under Settled Principles Of Construction, The Agreement Establishes That Gilead And Immunomedics Are "Affiliates"

A. The relevant contract is governed by New Jersey law (A2031, § 17), which dictates a clear rule for contract construction: the "'plain and ordinary meaning'" controls (*Kieffer v. Best Buy*, 14 A.3d 737, 743 (N.J. 2011)), and "courts must enforce" "clear and unambiguous" "terms as written." *Karl's Sales & Serv., Inc. v. Gimbel Bros., Inc.*, 592 A.2d 647, 650 (N.J. Super. Ct. App. Div.), *cert. denied*, 606 A.2d 362 (N.J. 1991); *accord Thompson St. Cap. Partners IV, L.P. v. Sonova U.S. Hearing Instruments, LLC*, 340 A.3d 1151, 1165-66 (Del. 2025).

Courts can consider extrinsic evidence, but only to resolve the meaning of the contract's actual text. *Newark Publ'rs Ass'n v. Newark Typographical Union, No. 103*, 126 A.2d 348, 353 (N.J. 1956). Outside evidence cannot be used to "chang[e] the writing" or "modify[] its terms," but "simply" to "determin[e] the meaning of what has been said." *Id.* If an agreement is "unambiguous, then the words presumably will reflect the parties' expectations" (*Kieffer*, 14 A.3d at 743); extrinsic "'evidence is adducible only for the purpose of *interpreting the writing*—not for the purpose of *modifying or enlarging or curtailing its terms*'" (*Conway v. 287 Corp. Ctr. Assocs.*, 901 A.2d 341, 347 (N.J. 2006) (emphases added)).

There accordingly is no room for rewriting a contract or redlining its provisions, even if a court truly believes parties might have preferred a different deal. *Kieffer*, 14 A.3d at 743. "So far as the evidence tends to show, not the sense of the writing, but an intention wholly unexpressed, it is irrelevant." *Newark Publ'rs*, 126 A.2d at 353 ("The actual intent of the parties is ineffective unless made known in some way in the writing."). In short: "It is not the [so-called] real intent but the intent *expressed or apparent in the writing* that controls." *Id.* (emphasis added).

B. 1. These settled principles make this a straightforward case. On its face, the revenue-sharing provision covers "Immunomedics and all of its direct and indirect subsidiaries *or affiliates*, including but not limited to IBC." A2015, § 4.2(d)(viii) (emphasis added). In every relevant sense, a company's "affiliates" includes its parent(s)—which is why no one naturally says parents and subsidiaries are *not affiliated*.

This common-sense proposition is reflected in every relevant source in this area. It is the (literal) dictionary definition of "affiliate": "A corporation that is related to another corporation by shareholdings or other means of control; *a subsidiary, parent, or sibling corporation*." Black's Law Dictionary (12th ed. 2024) (emphasis added). It is the same conclusion reached by New Jersey courts: "an 'affiliate' is understood as a 'corporation that is related to another corporation by shareholdings or other means of control; *a subsidiary, parent, or sibling corporation*.'" *Gil v. Clara Maas Med. Ctr.*, 162 A.3d 1093, 1103 (N.J. Super. Ct. App. Div. 2017) (quoting Black's Law Dictionary) (emphasis added). It is the same conclusion reached by Delaware courts, including a sitting Third Circuit judge. *See, e.g.*, *Peters v. Kalyera, Inc.*, 2024 WL 4333143, at *4 (D. Del. Sept. 27, 2024) (same) (Bibas, J., sitting by designation).

The same customary understanding is uniformly shared in every relevant field. The SEC defines "affiliate" the same way: "a person that directly, or indirectly through one or more intermediaries, controls, *or is controlled by*, or is under common control with, the person specified." 17 C.F.R. 240.12b-2 (emphasis added); *see also* A508. The American Institute of Certified Public Accountants (AICPA) says "affiliates" includes "parent[s]." A3192. And the GAAP Master Glossary reaches the same conclusion: "A party that, directly or indirectly through one or more intermediaries, controls, *is controlled by*, or is under common control with an entity." A3391 (emphasis added). This GAAP definition is particularly instructive—since the contract itself requires "net income" to be determined "in a manner *consistent with GAAP*." A2012 (emphasis added); A2014. It would be particularly odd to determine "net income" under GAAP while ignoring GAAP's understanding of the contract's associated terms.

Defendant below had little to say in response. It quibbled that the GAAP Master Glossary was released after some of the relevant contracts. A690. This entirely misses the point: the fact that a definitive and reliable source—referenced by the parties themselves in their own contracts—adopted the same customary definition confirms the settled meaning of the same unadorned term in the parties' agreement. Indeed, even Gilead's own Vice President and assistant controller testified he would consult the GAAP Master Glossary to define "affiliate" if he were interpreting this provision as part of an assignment. A433-34.

Contrary to Defendant's contention (A690), nor is the point that external sources (like the SEC and AICPA definitions) were directly adopted by the parties. (Though GAAP, of course, *was* adopted by the parties.) The point, again, is those sources—like every other standard source—*defines this common term the same way*. When a word has an established meaning across so many contexts, there is every reason to think sophisticated parties also adopted that established meaning in *this* context. And that especially follows when the parties adopted that same meaning (expressly) in companion contracts and other documents incorporated by reference into the operative agreement. *See infra*, immediately below.

2. As promised: These established sources confirm affiliate's obvious meaning—but it indeed was separately confirmed by the parties themselves. Repeatedly. *In their own contracts*. In fact, the 2015 Employment Agreement effectively puts this issue to rest. That agreement "incorporated by reference" (A2032) a "restricted stock unit agreement" attached as an exhibit (A2011, A2028). That RSU agreement expressly confirmed the common definition of "affiliate": "'Affiliate' means any entity, whether now or hereafter existing, which controls, *is controlled by*, or is under common control with Immunomedics. . . ." A2042 (emphasis added); *see also* A501-02 (conceding this agreement and its definition were incorporated by reference and form part of the parties' entire agreement). It is a mystery how the term "affiliate" would vary between provisions of the same

contract—especially when the parties defined the term to match the settled and accepted definition uniformly found in every customary source. *See, e.g.*, Hon. Antonin Scalia & Bryan A. Garner, *Readling Law: The Interpretation of Legal Texts* 170 (2012) ("'where a word has a clear and definite meaning when used in one part of a . . . document, but not when used in another, the presumption is that the word is intended to have the same meaning in the latter as in the former part'").

In response, Defendant below distinguished the RSU definition by suggesting "affiliate" was capitalized in the RSU document but not in the main contract. *See, e.g.*, A490. It is hard to imagine the existence of a thinner reed. Suffice it to say: such a trifling would be a bizarre way for sophisticated parties to establish asymmetrical definitions for the same term in the same incorporated agreement—especially when the defined term matches its ordinary and common meaning. *See, e.g.*, *Sapp v. Indus. Action Servs., LLC*, 75 F.4th 205, 215 n.2 (3d Cir. 2023) (rejecting this kind of hyper-technical distinction as "[in]significant"); *Paragon Tax Grp., LLC v. Broadview Networks Holdings, Inc.*, 503 F. App'x 161, 162 (3d Cir. 2012) (same).

Additional confirmation is further found in every corner of the record. The Settlement Stipulation ending Dr. Goldenberg's tenure at Immunomedics included the same "affiliate" definition. A2153. The Gilead-Immunomedics merger agreement defined "affiliate" the same ordinary way. A2548. Both entities' pattern and practice across countless agreements over decades define "affiliate" the same way. *See, e.g.*, A347; A1092; A1837; A2044; A1027; A877; *see also* A617-19 (listing dozens of additional examples).

In the end, the operative meaning of "affiliate" is unequivocal and overwhelming. It has the same "common" and "customary" meaning in every relevant context. Op. 32-33 (so acknowledging). That same meaning was specifically used and defined by the parties themselves. That same meaning appears in the authoritative sources (like GAAP) that govern the specific provision at issue, and it appears again in incorporated documents (like the RSU agreement) that constitute (by admission) the parties' entire agreement (A501-02). It is implausible that the parties suddenly departed from this plain and ordinary meaning in this single provision alone.

C. The Employment Agreement's plain-text meaning is further confirmed by its context and purpose. This provision compensates the founder and chief innovator of a significant public company. Dr. Goldenberg's efforts and ingenuity produced groundbreaking medical advancements and created (many) billions in value. The revenue provision provides a modest return (1.5%) for the company's leader and pioneer during a limited period where Dr. Goldenberg was bound by a temporary non-compete.

And while the amount owed (approximately $365 million) is significant (Op. 35), so was the setting. Gilead acquired Immunomedics for $21 billion—roughly the same as *Gilead's entire annual revenue* in the relevant period. A672; MJP Order 5-6; A335. This was not some two-bit acquisition of a minor asset; this was a major corporate combination materially altering the trajectory of both enterprises. An incentive provision for the company's founder and principal architect—accounting for a tiny fraction of the total value over a three-year period—falls at the low end of what one might expect in a transaction of this magnitude.

And there is every reason the parties would have structured the revenue provision to cover any and all future corporate restructurings, including acquisitions by a parent. With Immunomedics' latest advancements, its future value would predictably be substantial. Yet any acquisition presented the very risks that materialized here: Dr. Goldenberg would lose control of the corporate structure; he would lose the ability to control the direction and use of corporate assets and resources; and he would forfeit the right to maintain Immunomedics separate from a parent's other divisions. *See, e.g.*, Op. 56. A combination could lead to the full absorption and assimilation of Immunomedics into the parent entity—which is precisely how this transaction unfolded. *Id.* at 2-3 ("After the acquisition, the buyer consolidated the company's business with its own.").

In that scenario, it becomes virtually impossible to disaggregate one company's assets from the other. Divisions are combined. Manufacturing and marketing lines are merged. Finances become difficult to bifurcate in any reliable fashion. A3213. And those changes threaten a proper return for the key figure who built the original company in the first place, as the trial court itself admitted: "After it bought the Company, Gilead could operate the business as it saw fit, irrespective of the impact on Goldenberg's compensation under the 2015 Agreement." Op. 56.

The easiest solution for a company's founder and chief architect is to claim a right to the net revenue of the new entity—whatever its formal corporate structure. *See, e.g.*, A306; A307. That presents a straightforward and administrable mechanism to provide fair compensation to the key individual pivotal in the original company's success. And it avoids a situation where the unilateral corporate decisions of a new company wipe out (inadvertently or otherwise) the proper revenue attributable to the pre-merger version of a company Dr. Goldenberg founded and built. *See* Op. 56.

Given its modest amount (1.5%) and limited duration (three years), a revenue provision's inclusion of parent companies as "affiliates" should be unsurprising in every respect. That structure provides certainty and predictability for all parties; it offers an administrable way to calculate value; it puts all sides on notice; it avoids predictable and costly disputes (which did indeed arise once Gilead artificially attributed revenue/costs to distinct entities after a seamless integration, *see* Op. 36-

62); and it offers fair compensation for the breathtaking value (many billions in annual revenue) produced by decades of Dr. Goldenberg's tireless efforts.[5]

And should an acquiring company believe the revenue provision was overblown (in light of the parent's separate revenue), it would have every opportunity to renegotiate a new deal during the takeover. But it is too late to complete a merger and then unilaterally rewrite the founder's contract to better suit the parent's own self-interest.

In sum: the agreement's plain text controls, and it alone confirms the agreement covers Gilead as an affiliate. But even looking beyond the text, the purpose and context point in the same direction. There is no basis for rewriting the parties' agreement to truncate the full rights Dr. Goldenberg secured in a free and fair negotiation—as the founder and chief innovator of a multibillion-dollar (and mission-critical) biopharmaceutical enterprise. The contract should be construed

[5] As noted above, the record further established another significant advantage to covering all affiliates (including parents): it would protect Dr. Goldenberg in the event of a hostile takeover. The trial court factually rejected this separate rationale primarily based on surface-level observations about witness memories and scant board-meeting notes. Op. 13-14, 25-26. Dr. Goldenberg submits those factual conclusions are mistaken (for reasons detailed below). But this factbound point is ultimately immaterial to the correct disposition of the contract-interpretation question.

according to its plain and ordinary terms, and that requires reading "affiliate" to cover parents—including Gilead.[6]

2. The Trial Court Impermissibly Rewrote The Parties' Contract

Notwithstanding the Employment Agreement's plain text, the trial court rewrote the agreement. It rejected the ordinary meaning of "affiliate" and drafted a judge-made addendum to the contract: "The Revenue-Sharing Provision only entitles Goldenberg to a share of the net revenue from businesses based on his scientific and creative research." Op. 36. This judicial rewriting fails on every conceivable level.

A. First and foremost, the trial court contravened settled contract principles and violated the proper use of extrinsic evidence. Under controlling New Jersey law, courts are permitted to consider extrinsic evidence to inform the meaning of the

[6] This incidentally underscores the problems with the trial court's separate accounting—suggesting Gilead failed to produce any net revenue from a billion-dollar asset (generating billions in sales) over a three-year period. Gilead had unilateral control; it made decisions at odds with what Immunomedics would have done independently; it commingled marketing and development resources across the merged company's integrated divisions; and it let Gilead parse out relevant costs and revenues in an artificial and hypothetical way—without conducting the appropriate audit mandated by the contract itself. Op. 36-62. In light of the standard of review, Dr. Goldenberg is not directly challenging those errors on appeal—despite their shortcomings. But the burdensome task alone demonstrates the virtue of reading the contract to mean what it says: a revenue provision sensibly targets the revenue of *all affiliates* to provide fair compensation—and to avoid wasted time and resources for courts and parties alike from disaggregating the financial affairs of a post-merger integrated company.

contract's actual words. But it expressly forbids courts from using that evidence to rewrite the contract itself. Even if the trial court believed "affiliate" was somehow ambiguous, it had no license to add new clauses or redline the existing terms. *See Kieffer*, 14 A.3d at 743; *Conway*, 901 A.2d at 347.

Here, the court engaged in precisely such an impermissible rewriting of the parties' contract. There is no meaning, anywhere, of "affiliate" that would somehow capture the new condition the trial court inserted into the contract: limiting compensation to revenue based on Dr. Goldenberg's "scientific and creative" contributions. Op. 23. The court plucked this new concept and language out of thin air. It did not even *define* "affiliate"—the court simply said what the term (supposedly) did *not* mean ("parent"). The court ultimately settled on an equitable judge-made revision of the document, adding an entire new clause and provision to replace the actual text. The clause the court added is found nowhere in the agreement itself. It is certainly not found in any conceivable definition of the word "affiliate." And it is contradicted by the agreement's separate provisions—which define "affiliate" to include parents ("controlled by"), and which expand compensation without any textual nexus to Dr. Goldenberg's "scientific and creative research."

In short, courts use extrinsic evidence to inform the actual text or choose between competing definitions of ambiguous contractual terms. *Kieffer*, 14 A.3d at 743; *Conway*, 901 A.2d at 347; *Newark Publ'rs*, 126 A.2d at 353. The proper use is not to say a term is "ambiguous" and therefore the court gets to rewrite the contract. *Contra* Op. 1. It is solely a means of selecting between plausible interpretations of the actual language. The analysis here had nothing to do with the contract's actual text; it was a judicial attempt to revise the agreement based on the court's assessment of the competing equities—and the deal the court believed the parties actually "intended" to strike. Op. 1-2, 23. That revisionist method of contract construction is directly at odds with controlling law: "It is not the real intent but the intent *expressed or apparent in the writing* that controls." *Newark Publ'rs*, 126 A.2d at 353 (emphasis added).

B. The trial court's error is further underscored by Defendant's own shifting positions below. A728-29 (so explaining). Defendant advanced three conflicting positions on the meaning of "affiliate." It defeated Dr. Goldenberg's initial motion for judgment on the pleadings based on a theory that "affiliate" was limited to "subsidiaries" and somehow excluded parents. MJP Order 6. Defendant then abandoned that reading in favor of a bespoke new definition at trial: "affiliate" is not "deemed a subsidiary, but there may still be some control, with ownership that is probably below 20 percent." A493-94. And it then abandoned its trial iteration yet again in its post-trial submission: "affiliate" merely "encompass[es] IBC and similar entities where Goldenberg made contributions," and "nothing more." A675-76. The trial court ultimately rejected Defendant's position (past, past, and present) and manufactured its own version—one that *still* fails to define "affiliate." None of these are permissible options for construing contracts under New Jersey law.

C. The trial court ultimately justified its view based on its own sense of fairness: it declared that Dr. Goldenberg had been adequately compensated via his equity stake in Immunomedics and additional compensation was unwarranted. Op. 1, 4, 18.

This profoundly misunderstands the situation. Dr. Goldenberg's equity return involved his compensation *as a shareholder*. The revenue provision involves his compensation as Immunomedics' *founder and core innovator*. The court's decision ultimately left Dr. Goldenberg with zero compensation for his central role inside the company—developing groundbreaking assets worth a $21 billion investment from a new parent—and left him with the same return that any third-party shareholder (who never spent a day inside the company) would make.

The trial court may believe that Dr. Goldenberg recovered enough from the equity transaction itself. But Dr. Goldenberg negotiated and obtained specific rights under the contract for compensation commensurate with his overwhelming contributions, skill, and ingenuity. He is entitled to that return as a product of his decades of high achievement—and he intends to use those funds for his charitable foundation. A314.[7] It is not up to the judiciary to decide that Immunomedics overcompensated its key principal or should have limited Dr. Goldenberg to an equity stake alone.

D. The trial court's analysis also fails on a granular level.

First, the court faulted Dr. Goldenberg for not invoking his rights when a hedge fund (venBio) obtained control over the board—suggesting his past failure to demand a share of venBio's revenue casts doubt on his present understanding of the contract. Op. 27. The simple answer: the fund installed members on the board, but did *not* formally acquire Immunomedics' assets (A333-34); it accordingly was not an "affiliate" under the term's settled definition. Dr. Goldenberg's failure to pursue a *baseless* claim against venBio says nothing about his *valid* claim involving Gilead.

Second, the trial court, crediting Defendant's argument, stated Defendant's past contracts adopted various definitions of "affiliate," without a "consistent pattern of including parent entities." Op. 26-27. Yet Defendant merely quibbled with *how much control was necessary* before a party was deemed a parent (A686-87); that was

[7] Dr. Goldenberg mentions this intention not because his philanthropic aims should influence the Court (they should not), but to counteract Defendant's unfair theme below—that Dr. Goldenberg is pursuing a "windfall" out of self-interest (or worse). A91. Dr. Goldenberg is simply pursuing the contractual rights he earned via tireless, dedicated effort to improve the lives of thousands afflicted with a deadly disease, building a billion-dollar enterprise in the process. It is not up to Defendant or the trial court to recalibrate the compensation set at arm's length in a fair negotiation.

how the contracts supposedly "var[ied]" (Op. 26). The operative question here is *whether a parent is included at all*—not the degree of control necessary for a party to cross that threshold. And the core documents reflect the same standard definition adopted and applied elsewhere: an affiliate does indeed include corporate entities both above and below the target company. A347; A617 (so explaining); A739-40 (same).

Third, the trial court emphasized that the revenue provision "added a single generic word" without further explanation (Op. 35), mirroring Defendant's argument that the parties would have "expressly define[d] 'affiliate' to include parent[s]" if that is what they intended (A686). This is meritless. Dr. Goldenberg is not advancing an unconventional definition of a non-standard term. He is featuring the customary definition broadly established as a matter of course. If Defendant believes the parties intended that term to depart from its default meaning, it was up to the parties to say so expressly. There is no reason to presume the parties rejected the standard definition (in favor of an idiosyncratic alternative) because they failed to reiterate the accepted understanding of a common term. A739-40 (so explaining).

And, besides, the parties *did* reiterate the accepted understanding—in the RSU agreement *incorporated by reference* as part of the "entire agreement." A2032. That document defines affiliate in its usual manner, and it is integrated into the agreement itself. Neither Defendant nor the trial court could explain why *that* definition does not supply whatever "express[]" language they believe is missing.

Nor, for that matter, did the trial court have any answer for why the parties would have drafted the key clause to capture "affiliate" revenue if they instead wished to limit the agreement to Dr. Goldenberg's direct contributions. It would not have been difficult to isolate revenue to drugs associated with Dr. Goldenberg's research or patents—or some other defined subset of company activity. The parties instead swept in Immunomedics' revenue and explicitly defined "Immunomedics" to include "subsidiaries or affiliates." A2015; A1436, A1453. These were sophisticated actors represented by able counsel; there is no basis for excusing either side from the natural application of its own contractual language.

E. Because the trial court construed the contract to exclude Gilead's revenue, it never calculated the amounts owed under a correct construction of the contract. *See, e.g.*, A624-28 (detailing necessary calculations). The court should reverse and remand with instructions for the trial court to perform that calculation after assigning "affiliate" its proper construction—without any cramped limitation artificially excusing the revenue of parent companies.

CONCLUSION

The trial court's judgment should be reversed and the case remanded for further proceedings.

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