IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLEE'S ANSWERING BRIEF

OF COUNSEL:

KIRKLAND & ELLIS LLP
Daniel T. Donovan, P.C. (pro hac vice)
John C. O'Quinn, P.C. (pro hac vice)
Judson Brown, P.C. (pro hac vice)
Leah A. Hamlin
Neil A. Joseph
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 389-5000
daniel.donovan@kirkland.com
john.oquinn@kirkland.com
judson.brown@kirkland.com
leah.hamlin@kirkland.com
neil.joseph@kirkland.com

MORRIS, NICHOLS, ARSHT & TUNNEL LLP
David J. Teklits (#3221)
Alexandra M. Cumings (#6146)
Elaine M. McCabe (#7626)
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200
dteklits@morrisnichols.com
acumings@morrisnichols.com
emccabe@morrisnichols.com

Attorneys for Immunomedics, Inc.

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NATURE OF PROCEEDINGS

Plaintiff-Appellant Dr. David Goldenberg raises a single question on appeal: whether, under New Jersey law, the trial court properly considered extrinsic evidence to determine the intended scope of an incentive compensation section in Goldenberg's employment agreement. The answer is plainly yes: New Jersey law ***requires*** trial courts to consider extrinsic evidence to determine the parties' true intent, regardless of whether the contract is ambiguous. After resolving that straightforward legal question, there is nothing left of Goldenberg's appeal. Goldenberg does not argue, much less show, that there was clear error in the trial court's factual findings following an extensive trial with more than 70 admitted exhibits and 12 witnesses testifying live. The trial court's careful, fact-driven decision should be affirmed.

At issue in this case are incentive compensation provisions in an employment agreement between Goldenberg and a company he founded, Immunomedics, Inc. That agreement entitled Goldenberg to a percentage of Immunomedics' revenues in certain circumstances. To hear Goldenberg now tell it, this incentive provision—facially written to reward him for his contributions to the company—was actually a "poison pill" for hostile takeovers. But Goldenberg first asserted this theory years into this litigation and long after Gilead Sciences, Inc. ("Gilead") acquired Immunomedics for $21 billion, from which Goldenberg received $700 million.

Goldenberg seeks a massive windfall of $365 million from Gilead, based on unrelated global revenue having nothing to do with Goldenberg's developments or contributions, merely because Gilead acquired Immunomedics in 2020. His narrative is belied by both the extrinsic evidence the Court was required to consider—the negotiating history, the context for the agreement, Goldenberg's own course of conduct—and the text of the provision itself viewed in light of the Agreement as a whole.

Goldenberg's theory turns entirely on isolating the use of the word "affiliates" in the incentive provision's definition of Immunomedics, which is "Immunomedics and all of its direct and indirect subsidiaries or affiliates, including but not limited to IBC [Pharmaceuticals LLC]." A657. Although specifically distinguishing between ***subsidiaries*** and ***affiliates***, the provision makes no mention of ***parent*** companies, much less ***unrelated entities*** that might subsequently acquire Immunomedics. And with good reason: other agreements addressed acquisitions of Immunomedics.

Consistent with New Jersey law, the trial court considered and analyzed the negotiating history—including contemporaneous correspondence and drafts, the testimony of Goldenberg and Andrew Gilbert (Immunomedics' outside counsel and chief negotiator), the overall purpose of the incentive compensation section, and the surrounding business context during the negotiations. New Jersey courts hold that such extrinsic evidence is particularly important in a case like this, where a party attempts to treat a single, malleable word as a form of "kryptonite" to achieve an outcome that the parties never considered, let alone agreed to, and which is antithetical to the business deal the parties actually negotiated. *Schor v. FMS Fin. Corp.*, 814 A.2d 1108, 1113 (N.J. Super. Ct. App. Div. 2002). This is especially true because Goldenberg's rationale for his otherwise counterintuitive interpretation—that the word "affiliates" created an obscure poison pill—is unsupported by any credible or contemporaneous evidence, is inconsistent with Goldenberg's conduct, and would create perverse incentives for Goldenberg.

The trial court found Immunomedics' negotiator, Gilbert, offered clear, credible testimony that "affiliates" was added to capture a joint venture (IBC Pharmaceuticals) and similar entities where Immunomedics' interest could become diluted over time. Likewise, in a contemporaneous email, Goldenberg's counsel expressly ***disclaimed*** any intent to change the economics of the deal when he added "affiliates." By contrast, the Court found Goldenberg's testimony disjointed, conclusory, and unpersuasive. Indeed, if Goldenberg really believed "affiliates" swept in all revenues of any unrelated entity under common control with Immunomedics, he would have acted on that belief years earlier when a fund named venBio Select Advisors LLC ("venBio") acquired control of Immunomedics. But Goldenberg ***never*** claimed he was entitled to a share of ***venBio's*** unrelated revenues.

Worse, he waited over a year after Gilead's acquisition to opportunistically demand a portion of Gilead's unrelated global revenue.

Based on the context, history, credibility assessments, and weighing of the evidence, the trial court rightly concluded that the addition of "affiliates" in the Additional Incentive Compensation section's definition of "Immunomedics" did not entitle Goldenberg to a share of Gilead's global revenues entirely unrelated to Immunomedics and Goldenberg's developments.

Goldenberg now asks this Court to ignore what New Jersey law requires—consideration of extrinsic evidence, as the trial court did in weighing the evidence and making credibility assessments—in favor of reliance on certain dictionary definitions in isolation (or, ironically, his own preferred extrinsic evidence). But as the trial court explained, under New Jersey law, the "goal … is to enforce the parties' shared intent, not to risk changing the agreement by picking from competing dictionary definitions." Ex. B to Appellant's Opening Brief ("AOB"), Post-Trial Opinion ("Op.") 29. There is no basis for a court of review to reweigh the extrinsic evidence, particularly where Appellant does not even argue clear error in factfinding.

The trial court should be affirmed.

SUMMARY OF ARGUMENT

The trial court correctly considered extrinsic evidence in determining the intended meaning of "affiliates" as used in the Additional Incentive Compensation section of Goldenberg's employment agreement, and Goldenberg has not identified any clear error in the trial court's weighing of that evidence.

1.a. <u>Admitted in part</u>. Immunomedics agrees that Goldenberg's employment agreement is governed by New Jersey law. Immunomedics denies Goldenberg's characterization of the trial court's opinion, which properly considered extrinsic evidence to determine the intended meaning of the incentive compensation provisions, including the term "affiliates" as used in the definition of "Immunomedics," in Goldenberg's employment agreement.

b. In New Jersey, extrinsic evidence is always relevant to understand the meaning of a contract. *New Publishers' Ass'n v. Newark Typographical Union, No. 103*, 126 A.2d 348, 353 (N.J. 1956). Here, the trial court properly considered the express terms of the contract, the parties' intent as demonstrated through the negotiating history, the credibility of percipient witnesses to the negotiations, the broader purpose of the provision, the context and circumstances surrounding the agreement, and Goldenberg's own actions. Weighing that evidence, it concluded that the revenue-sharing provision of the incentive compensation section, including the use of the word "affiliates," was intended to capture only the revenue of entities to which Goldenberg had made contributions—even if not wholly owned or controlled by Immunomedics—and not the far-flung global revenues of an unrelated entity that later-acquired or took over Immunomedics. Such revenues are unrelated to "***employee*** compensation—rewarding his work as Immunomedics' founder and core innovator." AOB.5 ¶2.b.

c. The agreement's "context and purpose" supports the trial court's ruling, contrary to Goldenberg's claim. AOB.4 ¶1.c. The express purpose of Goldenberg's additional incentive compensation, including its revenue sharing component, was to compensate Goldenberg for his "involvement in and contribution to all aspects of Immunomedics' scientific and creative activities." A2012. It was not to award Goldenberg a windfall based on revenues from businesses to which he made no contribution at all, much less as a poison pill to deter acquisition—Goldenberg's late-breaking, not-credible theory for its inclusion.

2.a. <u>Denied</u>. The trial court correctly determined the parties' intent in adding the term "affiliates" to the definition of "Immunomedics," or at a minimum, did not clearly err. Specifically, it found that "affiliates" was intended to capture IBC, even if IBC were diluted below the threshold to count as a subsidiary, and potential future spinoffs of Immunomedics' intellectual property. The trial court credited the testimony of Immunomedics' chief negotiator of the agreement; the parties' negotiating correspondence; the purpose and context of the broader agreement; other contemporaneous business records; and Goldenberg's own actions. The court did not "redline[] the agreement" merely by interpreting it in light of the full record. AOB.5 ¶2.a.

2.b. Nor did the trial court "misunderstand[] the equities." AOB.5 ¶2.b. Goldenberg received approximately $700 million for his equity in Immunomedics upon Gilead's acquisition. In rejecting a separate argument (that Goldenberg does not appeal), the court observed that Goldenberg would be double-dipping by both keeping his hundreds of millions in equity compensation ***and*** being paid under the employment agreement as if Gilead had not invested in Immunomedics. By contrast, nothing in the record supported the idea that Goldenberg negotiated to receive a windfall based on unrelated revenues, much less to bury a poison pill in his employment agreement; rather, as he concedes, the agreement was to "reward[] ***his work*** as Immunomedics's founder and core innovator." AOB.5 ¶2.b.[1]

2.c. Goldenberg asks this Court to ignore the remaining extrinsic evidence that supported the trial court's ruling. AOB.5 ¶2.c. He deems irrelevant his failure to seek a percentage of venBio's revenues—even though Goldenberg admits that his "concerns of a corporate takeover were realized" when venBio took control over Immunomedics in 2017. AOB.21. He also complains the trial court gave too little

[1] Emphases added unless noted otherwise.

weight to Immunomedics' unrelated contracts that had their own idiosyncratic definitions of "affiliate," not applicable to his employment agreement. But the trial court's analysis was correct on its own terms, and Goldenberg does not argue or show clear error.

3. Denied. For the reasons stated herein, the trial court should be affirmed.

COUNTERSTATEMENT OF FACTS

I. FACTUAL BACKGROUND

A. Goldenberg Signed an Employment Agreement Designed to Incentivize and Compensate Him for His Scientific Work

Goldenberg founded Immunomedics in 1982 and held various positions before he was forced out in 2017 as part of a settlement with a new controlling shareholder, venBio. A299-300, A333. Goldenberg's wife, Cynthia Sullivan, became Immunomedics' president in 2000 and CEO in 2001, positions she held until she was also forced out in 2017. A349-350. Goldenberg and his family, however, remained substantial stockholders in Immunomedics. A315.

Beginning in 1983, Goldenberg entered a series of employment agreements with Immunomedics, including in 1993, 2007, and 2015. The 1993 Agreement was the first to introduce an "Additional Incentive Compensation" section, which provided Goldenberg certain compensation (on top of his annual base salary, bonus, and equity awards). A784-797; A303. That section's express purpose—which carried through to the 2007 and 2015 Agreements—was to compensate Goldenberg "[i]n recognition of [his] integral ***involvement in and contribution to*** all aspects of Immunomedics' scientific and creative activities." A784-785; *see* A1635-1642; A2012-2016. As the name suggests, this section was to encourage Goldenberg to continue innovating in conjunction with Immunomedics and reward him for those developments. A486.

One aspect (of many) embedded within the Additional Incentive Compensation package was the "Revenue-Sharing Provision," which entitled Goldenberg to specific portions of "Immunomedics'" revenues, and defined "Immunomedics" as "Immunomedics and all of its wholly owned subsidiaries." A785; A795.

The 2007 Agreement amended and superseded the 1993 Agreement. A1630-1669. During the 2007 negotiations, "Immunomedics" was revised to include the "affiliates" language implicated here. Andrew Gilbert, Immunomedics' outside counsel, and Douglas Zucker, Goldenberg's counsel, were the chief negotiators of that Agreement. A483, A485. Only Gilbert and Goldenberg testified at trial regarding the 2007 negotiations, though Goldenberg was not "personally involved" as he left those discussions to Zucker. *See* A319, A483.

Those negotiations began on April 2, 2007, when Zucker sent Gilbert a draft that updated the 1993 Agreement. A485; A1231-1291. Zucker provided a seven-page cover letter discussing the draft and his reasons for the requested changes, including an increased base salary, a richer incentive compensation structure, and the freedom to take on greater responsibilities at IBC. A1233-1234. IBC was then a joint venture in which Goldenberg and Immunomedics were performing certain research and commercialization activities. A354. Immunomedics owned a majority interest, and Goldenberg owned most of the remaining equity. A305. Notably, Zucker's cover letter did not raise any concerns about a potential takeover or acquisition of Immunomedics, the possibility of an acquisition of Immunomedics, or compensation in such an event.

Zucker's draft modified the formula to calculate Goldenberg's share of Immunomedics' revenue and added a provision entitling Goldenberg to payments based on royalties related to products Goldenberg invented for the life of the products' patents. A1233, A1251. But Zucker's draft did not propose any changes to the definition of "Immunomedics," A1259, and did nothing to protect any of these payment streams in the event of a takeover, acquisition, or change of control (despite Goldenberg's purported concerns), A319-320, A322.

On May 7, 2007, Gilbert provided a responsive markup. A487; A1352-1435. Gilbert limited the revenue-sharing component to years Immunomedics generated positive net income. A1361.

Gilbert also broadened the definition of "Immunomedics," replacing "all of its wholly owned subsidiaries" with "all of its direct and indirect subsidiaries." A1367. That change was made to cover IBC, at Goldenberg's request. A488 ("Q. What was this change trying to accomplish, Mr. Gilbert? A. Essentially, we were trying to pick up IBC by deleting the reference to wholly owned."); *accord* A323-24 (Goldenberg). Because IBC was not a wholly owned subsidiary of

Immunomedics, it would not have been included under the prior definition of "Immunomedics." A488; A322.

As Gilbert testified, at this point in the negotiations, he knew Goldenberg wanted to be paid in conjunction with revenue that IBC generated. A488. That is because, as reflected in Immunomedics' Board Minutes, IBC was developing a new technology called "Dock and Lock." A354; B235-237; B268-269. Gilbert recalled that Goldenberg wanted those revenues to be included as a part of his incentive compensation. A484, 489; A1728.

After exchanging drafts, Goldenberg, Brian Markison (Immunomedics' Compensation Committee chairman), Zucker, and Gilbert met in person. A487, A489. Goldenberg did not recall participating in the meeting. A306 ("I don't remember the exact meeting itself … I can't remember); A326. Gilbert, however, did recall the meeting, describing it as "largely a page flip of the document" that "may have" included "fine-tuning of the economics, but nothing significant." A489-490. Gilbert testified that no one raised, at any point during the meeting, any concern about a hostile takeover or acquisition of Immunomedics or compensation Goldenberg would receive in the event of some change of control. A490.

Weeks later, on May 31, 2007, Zucker circulated a revised draft that he represented contained "all of the changes discussed in [the] meeting" as well as "a few additional changes, which relate primarily to language, ***not economics***." A1436, A324. In this version, Zucker revised the definition of Immunomedics within the Additional Incentive Compensation section to include "affiliates, including but not limited to IBC." A1453.

At trial, Gilbert testified that he understood Zucker's addition of "affiliates" was intended to ensure that Goldenberg would be compensated for IBC revenue "no matter what the ownership structure or allocation of shares was." A490. Gilbert understood that IBC might raise additional capital and dilute Immunomedics' ownership below a majority stake, such that it might not be considered a subsidiary. A490. And he understood that Immunomedics might create more entities to hold intellectual property, or for other reasons, that the parties intended to capture. A490 ("[I]t was intended to cover future IBCs."). Gilbert therefore agreed with Zucker on using general language that differentiated between subsidiaries and affiliates (but did not refer to parents, acquirors, or successors) and specifically referred to IBC. A490, A497.

Goldenberg offered an alternative explanation for the "affiliates" addition. He claimed it was not about compensating him for his contributions, but rather to pick up parent-level entities in case a hostile bidder sought to acquire control of Immunomedics. A306-307; A318. He claimed that by encompassing an acquiror or controlling entity, the 2007 Agreement would force a bidder to think twice before controlling Immunomedics and losing a portion of its own preexisting revenue—an addition with significant economic consequences, that could cause Goldenberg to favor acquisitions not in the best interest of Immunomedics or other shareholders. A318.

However, Goldenberg could not recall any specific conversations he had with anyone regarding his supposed concern about a supposed hostile takeover (or the potential conflict-of-interest concerns it would have raised). A306-307 ("I think it was so repetitive and so often that I can't think of a specific date."). Goldenberg also did not recall any discussions with Gilbert about: the terms of the 2007 Agreement; the compensation he would be entitled to in the event of a hostile takeover; the inclusion or origin of "affiliates" in the definition of Immunomedics; and implications for the Revenue-Sharing Provision. A326-327. Goldenberg admitted none of the correspondence between Zucker and Gilbert reflected this supposed concern. A320.

For his part, Gilbert testified that Goldenberg never expressed concern about his compensation in the event of a hostile takeover or an acquisition by a larger entity. A490. Gilbert, who also served as Immunomedics' Corporate Secretary at this time, did not recall any discussion at the Immunomedics Board-level regarding concerns about a potential hostile takeover or an acquisition by a larger entity, nor was any such discussion reflected in Board meeting minutes. A489.

Goldenberg signed a final version of his employment agreement in 2007 and again in 2015. A1630-1669; A2007-2145. The definition of "Immunomedics" did not change between the two. A331; A1640; A2015. And the express purpose of the Additional Incentive Compensation section remained to compensate Goldenberg for his "integral involvement in and contribution to all aspects Immunomedics' scientific and creative activities." A1635; A2012.

B. venBio's Hostile Takeover of Immunomedics

In 2017, after Immunomedics suffered years of sustained losses, an investment fund called venBio took control of Immunomedics. A333, A356-57; B605. venBio waged a proxy contest, blaming Immunomedics' financial problems and business failures on Goldenberg and Sullivan. B1087; A331-333. During that proxy contest, venBio and the incumbent Immunomedics Board, including Goldenberg and Sullivan, filed numerous lawsuits against one another. A332; A356-57. venBio ultimately prevailed in the proxy contest, took over the Immunomedics Board, and forced Goldenberg's and Sullivan's resignations. A332-333; A356-57. The related lawsuits were settled, with Goldenberg's 2015 Agreement remaining in effect. A2177-2188.

venBio remained in control of Immunomedics until the Gilead acquisition in 2020. A356-358. During that entire time, Goldenberg never made any demand to venBio for a portion of its revenue based on the Revenue-Sharing Provision in his

2015 Agreement. He never even asked about venBio's revenues unrelated to Immunomedics. A334. Goldenberg sued Immunomedics in June 2020 but never asserted a claim for compensation based on venBio's independent revenues.

C. Gilead Acquires Immunomedics

Gilead is a pharmaceutical and biotechnology company that focuses on researching, developing, and bringing innovative medicines to patients in areas of high unmet medical need. A358. In 2019, the year before it acquired Immunomedics, Gilead had over $20 billion in revenues. A335.

Gilead acquired the outstanding shares of Immunomedics in October 2020 for about $21 billion. A421. At the time, Goldenberg and his family held about "3 to 4 percent" of the outstanding Immunomedics stock, but Goldenberg abstained from voting on Gilead's acquisition and he never even discussed the issue with his family. A315, A335. They received approximately $700 million from Gilead's acquisition. A316.

Gilead invested heavily in Immunomedics' sole asset, Trodelvy®, pouring resources into manufacturing, sales and marketing, and research and development. *E.g.*, A368-371, A373. Before Gilead acquired Immunomedics, Trodelvy had only received accelerated FDA approval for one cancer indication and was relatively new on the market. A438. Because Trodelvy was newly approved, Gilead had to develop the sales and marketing for the approved indication, while also continuing to invest in developing Trodelvy for other cancer indications and earlier lines of therapy. A438-439. Thus, from 2020 through 2023, Trodelvy (the legacy Immunomedics business) generated negative net income due to the significant costs associated with these efforts—a finding Goldenberg does not contest. Op.44.

II. PROCEDURAL HISTORY

A. Pre-Trial Litigation

In June 2020, Goldenberg filed the present action, suing Immunomedics (then under venBio's control) for breach of the 2015 Agreement and the parties' settlement. Goldenberg's lawsuit did not seek any portion of venBio's revenue as an "affiliate" of Immunomedics. B663-667 (adding allegations relating to the Revenue-Sharing Provision). Nor did he claim a right to Gilead's revenue (as an "affiliate") upon its acquisition or in the remaining months of 2020. A336.

In March 2021, Gilead's counsel sent Goldenberg's counsel, Paul Hastings, certain financial information required under the 2015 Agreement. B1083-1084. Paul Hastings responded on behalf of Goldenberg raising various issues, but never requested Gilead's finances nor otherwise suggested Gilead's revenues should be included as an "affiliate." A337.

It was not until four years after venBio took control of Immunomedics, and thirteen months after Gilead's acquisition, that Goldenberg's daughter (a lawyer) sent a letter first raising Goldenberg's current claim that Gilead is an "affiliate" of

Immunomedics. A339-340; B1091-1096. A year and a half after Gilead acquired Immunomedics, Goldenberg amended his complaint to add a new claim for breach based on Immunomedics' failure to pay him 1.5% of Gilead's global revenue. A340-341.

Litigation continued over Goldenberg's various contract claims, and the parties filed cross motions concerning the meaning of "affiliate." *See* Ex. C to AOB, Order Addressing Issues Presented by Defendant's Partial Motion to Dismiss and by Plaintiff's Cross-Motion for Partial Judgment on the Pleadings ("MJP Order"). The trial court found that both parties proffered "reasonable" interpretations of the meaning of "affiliates" as used in the Additional Incentive Compensation section of the 2015 Agreement and that the term was ambiguous. MJP Order 6.

The parties subsequently settled and released all claims against each other except for Goldenberg's claim under the Revenue-Sharing provision. The parties proceeded to trial where the trial court could see and review all the extrinsic evidence.

Trial occurred over three days. Ten fact witnesses and two experts testified, and the parties introduced thousands of pages of exhibits. Trial focused on two primary issues. The first (the only subject of this appeal) was Goldenberg's claim that the word "affiliates" in the definition of "Immunomedics" within the Additional Incentive Compensation section entitled him to a portion of ***Gilead's*** unrelated overall global revenues—sweeping in revenues entirely unrelated to Goldenberg, Immunomedics, or Trodelvy. The second issue (which Goldenberg does not appeal) was Goldenberg's claim that Immunomedics' legacy business was itself profitable during the term of the 2015 Agreement and therefore he was entitled to a percentage of Trodelvy-related net revenue.

B. Court of Chancery's Opinion

The trial court found in Immunomedics' favor on both issues. In interpreting the use of the word "affiliates" in the context of the Additional Incentive Compensation section, the trial court conducted a detailed analysis of the parties' negotiations in entering the 2007 Agreement. Op.4-16, 23-27. The Court found that Gilbert offered the more persuasive account about the purpose of Zucker's addition of "affiliates": "[Gilbert] understood that Zucker's edit was primarily intended to ensure that Goldenberg 'would be compensated for IBC revenue.'" Op.12. The trial court observed that Gilbert was more directly involved in the exchanges related to the 2007 Agreement and his testimony was "consistent with the contemporaneous documents." Op.8.

By contrast, the trial court found Goldenberg's testimony that "affiliates" was added to protect him in the event of a hostile takeover to be "disjointed, conclusory, and unpersuasive." Op.14. Goldenberg was not as directly involved in the 2007 Agreement negotiations as Gilbert; he provided no substantive input into the negotiations; and he did not recall anything about the parties' May 2007 meeting. Op.8. Moreover, neither Goldenberg nor Sullivan could identify any specific conversation or meeting where the concern about a hostile takeover was raised. Op.25. Gilbert "testified credibly that no one referenced takeover concerns during the discussions over the 2007 Agreement." Op.14. And neither Immunomedics' Board minutes from that period nor its public filings reference any takeover concerns. Op.14.

The trial court also noted that the express purpose of the Additional Incentive Compensation section was to compensate Goldenberg for his "past and future integral involvement in and contribution to all aspects of Immunomedics' scientific and creative activities." A1635. Thus, the contract itself indicated that "[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," an approach that would have created obvious conflicts of interest and would have misaligned Goldenberg's incentives from the company's—exactly the opposite of what incentive compensation was intended to do. Op.23, 25. And this approach to incentive compensation "would function poorly as a defensive measure" because the "Company already had a stockholder rights plan," so "the 2007 Agreement would not have added meaningful protection against a hostile bid." Op.14, 25.

Finally, the trial court found that "Goldenberg's actions" in connection with venBio's takeover were another "persuasive source of evidence." Op.27. Goldenberg neither used his alleged right to venBio's global revenues as a shield against the takeover (and his ouster), nor "sought a share of the Fund's revenue after it gained control." Op.27. Goldenberg "did not introduce his current theory [on the meaning of 'affiliates'] until a year after the [Gilead] Acquisition," despite receiving financial reports regarding Immunomedics for years. Op.27.

Based on the totality of evidence, the trial court concluded "the extrinsic evidence shows that the parties intended for the Revenue-Sharing Provision to encompass the annual net revenue that the Company generated from business associated with Goldenberg's research, regardless of the Company's corporate structure. … The 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." Op.23.

The trial court rejected Goldenberg's so-called "plain meaning" argument, which itself depended on alternative extrinsic evidence, such as other Immunomedics' agreements:

> The extrinsic evidence demonstrates why stretching the term to encompass Gilead's revenues is contrary to the parties' agreement[.] … Goldenberg wants $365 million based solely on the customary definition of a term that his lawyer added in a belt-and-suspenders effort to pick up controlled but less-than-majority-owned subsidiaries. That

> reading contradicts the contract when read as a whole and the weight of the extrinsic evidence.

Op.35.

ARGUMENT

THE TRIAL COURT CORRECTLY CONSIDERED EXTRINSIC EVIDENCE TO DETERMINE THE INTENDED SCOPE OF THE REVENUE-SHARING PROVISION.

I. QUESTIONS PRESENTED

Whether (a) it was legally permissible for the trial court to consider extrinsic evidence to determine the intended scope of the Revenue-Sharing Provision of the Additional Incentive Compensation section of an employment agreement; and (b) the trial court committed clear error in finding that the parties did not intend for the Revenue-Sharing Provision to entitle Goldenberg to a percentage of Gilead's global revenues, unrelated to Immunomedics. These questions were raised and properly resolved below. MJP Order 5-6; Op.20-35.

II. SCOPE OF REVIEW

The Court reviews *de novo* questions of law, such as when as a matter of New Jersey law a trial court may consider extrinsic evidence in interpreting a contract. *Motorola Inc. v. Amkor Tech., Inc.*, 958 A.2d 852, 859 (Del. 2008); *see also Williamson v. Walker*, 2026 WL 890379, at *5 (N.J. Super. Ct. App. Div. Apr. 1, 2026). The Court reviews findings of fact following a trial under "the deferential 'clearly erroneous' standard of review." *CDX Holdings, Inc. v. Fox*, 141 A.3d 1037, 1041 (Del. 2016). "When factual findings are based on determinations regarding the credibility of witnesses, the deference already required by the clearly erroneous standard of appellate review is enhanced." *Id*.

III. MERITS OF THE ARGUMENT

A. The Trial Court Properly Considered Extrinsic Evidence to Determine the Intended Scope of the Revenue-Sharing Provision.

The thrust of Goldenberg's argument on appeal is that "affiliates" has a "plain and ordinary meaning" that necessarily includes a later-acquiring parent company, and that this is so clear and simple that it should have foreclosed the trial court from even considering the (substantial and powerful) extrinsic evidence to the contrary. AOB.36. That argument fails at multiple levels.

1. Under New Jersey law, extrinsic evidence is always relevant to determining the parties' intent.

The trial court correctly applied New Jersey law to interpret the 2015 Agreement. Op.21; AOB.4 ¶1.a. Under New Jersey law, courts ***always*** consider extrinsic evidence to interpret an agreement: "Evidence of the circumstances ***is always admissible in aid of the interpretation of an integrated agreement, even where the contract is free from ambiguity***…." *Newark Publ'rs*, 126 A.2d at 353; *see also Conway v. 287 Corp. Ctr. Assocs.*, 901 A.2d 341, 346 (N.J. 2006) ("[New Jersey courts] consider all of the relevant evidence that will assist in determining the intent and meaning of the contract."); *Accounteks.Net, Inc. v. CKR Law, LLP*, 294 A.3d 1187, 1193 (N.J. App. Div. 2023). As New Jersey courts have observed, extrinsic evidence is critical because "[a] word used in a contract is not a verbal form of kryptonite, rendering powerless one who would question whether it truly expresses the intent of a transaction." *Schor*, 814 A.2d at 1113.

In its well-reasoned analysis, the trial court followed this mandate. It considered the express language and context of the Revenue-Sharing Provision; the testimony about, and correspondence relating to, the 2007 Agreement negotiations; the purpose of the Additional Incentive Compensation section; the surrounding circumstances of Immunomedics' business at the time of the 2007 Agreement; and Goldenberg's actions from the time of venBio's takeover to more than a year after Gilead's acquisition. Based on this evidence, the trial court had little trouble concluding that the "Revenue-Sharing Provision only entitles Goldenberg to a share of the net revenue from business based on his scientific and creative research. Here, that means the Trodelvy business." Op. 36. Nothing about the consideration of this evidence was legally improper.

Goldenberg's appeal thus fails at the legal threshold. Goldenberg asks this Court to disregard the extrinsic evidence (other than, ironically, the extrinsic evidence he prefers) and focus myopically on what he dubs the '"customary' definition" of "affiliates." AOB.27. This argument fails as a matter of law. Even if "affiliates" otherwise had a "customary" meaning in this context (it does not, as explained below), New Jersey law ***required*** the trial court to consider and weigh the extrinsic evidence to determine the parties' actual intent.

Goldenberg does not credibly claim that New Jersey law prohibits the examination of extrinsic evidence in this case. He cites *Conway* for the proposition that extrinsic evidence should be considered "for the purpose of interpreting the writing—not for the purpose of modifying or enlarging or curtailing its terms," AOB.31, but *Conway* only ***supports*** the trial court's analysis here. 187 N.J. at 269. There, the New Jersey Supreme Court confirmed that New Jersey "permit[s] a broad use of extrinsic evidence to achieve the ultimate goal of discovering the intent of the parties," meaning that such evidence "may be used to uncover the true meaning of contractual terms." *Id.* at 270. Applying that principle, *Conway* affirmed the Appellate Division's examination of trial evidence to determine the "intent" of the parties in interpreting the relevant agreement. *Id.* at 270-71. Goldenberg's disagreement with the trial court's ultimate factual conclusions does not render the court's review of extrinsic evidence legally improper. *Id.*

Goldenberg's other cases do not undermine well-established principles of New Jersey law requiring consideration of extrinsic evidence in interpreting an agreement. He cites two New Jersey cases (AOB.30-31) but neither involve extrinsic evidence at all. *Kieffer v. Best Buy*, 14 A.3d 737, 742-43 (N.J. 2011); *Karl's Sales & Serv., Inc. v. Gimbel Brothers*, 592 A.2d 647, 649-50 (N.J. Super. Ct.

App. Div. 1991). *Karl's Sales* stands for the simple proposition that courts may not "impl[y]" additional terms in an agreement where the contract is otherwise unambiguous. 592 A.2d at 649. *Kieffer* addressed distinct legal principles specific to indemnification agreements. 14 A.3d at 742-43. And *Thompson St. Cap. Partners IV, L.P. v. Sonova U.S. Hearing Instruments, LLC*, 340 A.3d 1151, 1156 (Del. 2025) applied Delaware, not New Jersey law.

In any event, Goldenberg's cases confirm that New Jersey law requires consideration of extrinsic evidence in all cases, not just cases of ambiguity. *Karl's Sales* makes clear that in "the quest for the common intention of the parties to a contract, the court must consider the relations of the parties, the attendant circumstances, and the objects they were trying to attain … and it must be accorded a rational meaning in keeping with the express general purpose." 592 A.2d at 649-50. In other words, "the language used must be interpreted 'in accord with justice and common sense.'" *Id*. at 650. Goldenberg's stilted approach seeks to do exactly the opposite: neither the general purpose of the Additional Incentive Compensation section, much less justice and common sense, explain tying incentive compensation to the unrelated global revenues of an acquiror. Given that the express purpose of the Additional Incentive Compensation section was to ***incentivize*** Goldenberg to make ***Immunomedics*** profitable, it makes no sense that unrelated revenues from an acquiring company would factor into determining compensation.

2. Regardless, the trial court correctly found that "affiliates" is ambiguous.

Goldenberg further suggests, wrongly, that the trial court erred in considering extrinsic evidence because, in his view, "affiliates" is a "clear and unambiguous" term. AOB.31. Ambiguity, however, is expressly not required under New Jersey law before considering extrinsic evidence in understanding the meaning of an agreement. But even if it were, the trial court still properly considered extrinsic evidence because it correctly determined that "affiliates" as used within the Additional Incentive Compensation section is "ambiguous." Op.32. Ironically, Goldenberg's own so-called "plain meaning" arguments themselves depend on extrinsic evidence. The trial court, thus, did not err as a matter of law in considering the extrinsic evidence to interpret the relevant contractual provisions.

A term is "ambiguous" when its "plain meaning, in the context of the overall structure of the contract, is susceptible to more than one reasonable interpretation." *Salamone v. Gorman*, 106 A.3d 354, 374 (Del. 2014); *see also Morgan v. Pfau*, 2014 WL 6861277, at *5 (N.J. Super. Ct. App. Div. Dec. 8, 2014). Here, "affiliates"—as used in the definition of "Immunomedics" within the Additional Incentive Compensation section—is neither defined nor self-evident in the four corners of the contract. Certainly, there is nothing in the contract supporting Goldenberg's contention that "affiliates" includes a later-acquiring parent like Gilead.

To begin, the 2007 Agreement does not define the term "affiliates." A328. Moreover, that word is used alongside the word "subsidiaries"—a redundancy if "affiliates" is given the overbroad meaning Goldenberg ascribes to it. And although other contractual provisions referred to "subsidiary," "affiliate," and "successor" distinctly, *e.g.*, A1632-1633, the operative provision defines "Immunomedics" solely with respect to its "direct and indirect subsidiaries or affiliates," not "successors" or "acquirers," much less "parents"—easy words to add had that been the parties' understanding, A1640. Nor does the Additional Incentive Compensation section contain a single clause protecting that compensation against an acquisition or hostile takeover—concepts having nothing to do with "Dr. Goldenberg's past and future integral involvement in and contribution to all aspects of Immunomedics' scientific and creative activities," the purpose of the Additional Incentive Compensation. A1635.

Goldenberg's reliance on a single dictionary is not dispositive. He cites Black's Law Dictionary (and two cases citing it) for the proposition that "affiliate" means "a subsidiary, parent, or sibling corporation." AOB.32. While that may be true in some circumstances, here that would make the separate use of "affiliates" and "subsidiaries" redundant, contrary to ordinary principles of contract construction.

See O'Brien v. Progressive N. Ins. Co., 785 A.2d 281, 287 (Del. 2001); *Gulutz v. Gulutz*, 2018 WL 769305, at *3 (N.J. Super. Ct. App. Div. Feb. 8, 2018). That is reason enough to find ambiguity. Nor can that dictionary supply the uniform meaning of "affiliate" within the context of this agreement. For example, Section 11 of the 2007 Agreement, which discusses who can participate in certain decisions by Immunomedics' Board, refers to "affiliates" of Goldenberg. A331, A1656. This use of "affiliates" thus cannot exclusively relate to "corporations" as contemplated by Goldenberg's dictionary.

Nor do cases citing that definition support its application here. In *Gil*, for example, the party opposing the use of the dictionary definition of "affiliate" did not "provide what [it] believe[d] [was] another plausible interpretation but, instead, suggest[ed] only the presence of a genuine factual dispute" because "affiliate" (and some other terms) was undefined. *Gil v. Clara Maass Med. Ctr.*, 162 A.3d 1093, 1102 (N.J. Super. Ct. App. Div. 2017). That is not the case here, where Immunomedics has consistently proposed other plausible interpretations of "affiliates," including that the term was intended to capture IBC and IBC-like entities (regardless of their status as "subsidiaries"). A490.

As for *Peters*, it applies Delaware law, which does not consider extrinsic evidence absent ambiguity, unlike New Jersey law. *Peters v. Kaleyra*, 2024 WL 4333143, at *4 (D. Del. Sept. 27, 2024). Nor is it true, as Goldenberg suggests, that

New Jersey and Delaware courts have uniformly found "affiliate" to be unambiguous and thus applied his preferred dictionary definition whenever interpreting the term. *E.g., Renco Grp. Inc. v. MacAndrews AMG Holdings LLC*, 2015 WL 394011, at *5 (Del. Ch. Jan. 29, 2015) (at the motion to dismiss stage, finding the term "affiliate" ambiguous).

In any event, other dictionary definitions vary in scope, with some limited to subordinate relationships, even if not subsidiaries—exactly what Gilbert understood Goldenberg to be accomplishing by inserting "affiliates" to capture IBC-like entities. *E.g.*, B30-32 (citing *Affiliate*, Webster's Third New International Dictionary (3d ed. 1961) (defining "affiliate" as "a branch or unit of a larger organization" or "a company effectively controlled by another or associated with others under common ownership or control"); *Affiliate*, The American Heritage Dictionary, http://www.ahdictionary.com/word/search.html?q=affiliate (last visited May 13, 2026) (defining "affiliate" as "[a] person, organization, or establishment associated with another as a subordinate, subsidiary, or member")); *see also Affiliated*, Merriam-Webster, https://www.merriam-webster.com/dictionary/affiliated (defining "affiliated" as "closely associated with another ***typically in a dependent or subordinate position***").

At a minimum, these varying definitions show the meaning of "affiliate" depends on the factual context, and Goldenberg's preferred reading is not the singular "plain meaning."

Goldenberg's claim that Immunomedics has "shift[ed] positions" on the meaning of "affiliates" is wrong. AOB.42. Throughout the litigation, Immunomedics consistently took the position that "affiliates"—as used in the Additional Incentive Compensation section—was intended to capture entities over which Immunomedics had control, such as IBC, even if those entities were not formally subsidiaries. *E.g.*, MJP Order 6; A675-676. Notably, and as discussed below, Immunomedics' interpretation is exactly consistent with the negotiating history in which the definition of "Immunomedics" was repeatedly broadened to capture a wider swatch of controlled entities—that is, from "wholly owned subsidiaries" to "direct and indirect subsidiaries" to "subsidiaries or affiliates." A1367, A1453.

Goldenberg's other arguments against ambiguity, in support of his so-called "plain meaning," depend on ***extrinsic evidence***. Goldenberg points to other Immunomedics' agreements with the word "affiliate" because they sweep in parent entities. AOB.44-45. The trial court, however, reviewed those agreements' definitions of "affiliate" and concluded, correctly, that "the agreements vary, with some defining or using the term 'affiliate' more expansively than others." Op.26.

They "do not establish a consistent pattern of including parent entities such that the Revenue-Sharing Provision could encompass the net revenue of an acquiror." Op.27. The trial court's point was that Immunomedics' other agreements did not use a single, unambiguous definition of "affiliate" that would warrant blindly porting it into the 2015 Agreement, particularly without any indication the parties intended to do so.

Goldenberg points to other extrinsic evidence even further afield. AOB.32-33. Neither the 2007 Agreement nor the 2015 Agreement incorporated the GAAP Master Glossary definition or the SEC's definition.[2] The GAAP Master Glossary did not even exist when Zucker added "affiliates" to the draft, as Goldenberg is forced to acknowledge. AOB.33; *see* A690. And those sources define "affiliates" for particular purposes (accounting and public filings, respectively) that are irrelevant here. They have nothing to do with the meaning of "affiliates" in the context of the Additional Incentive Compensation section.

Goldenberg points out that the 2015 Agreement "incorporated by reference" a separate RSU Agreement, signed on the same day. AOB.34. Goldenberg claims that means the undefined term "affiliates"—added eight years earlier in the 2007

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[2] Goldenberg argues the GAAP Master Glossary is instructive because Immunomedics' "net income" was to be determined "consistent with GAAP." AOB.33. But agreeing to a set of accounting principles does not suggest the parties intended to incorporate a definition from a separate glossary.

Agreement—should be given the same meaning as the defined, capitalized term "Affiliate" in the later 2015 RSU Agreement. AOB.34. Like the GAAP Master Glossary definition, the parties could not have intended back in 2007 to incorporate a definition from a 2015 document that did not yet exist, nor did Goldenberg present any evidence at trial to support this asynchronous theory. Regardless, the distinction between an undefined term and a capitalized defined term matters. As one of the Third Circuit cases that Goldenberg cites explains, "capitalization typically alters the meaning of words." *Sapp v. Indus. Action Servs., LLC*, 75 F.4th 205, 215 (3d Cir. 2023). There is no basis for importing this cherry-picked definition after the fact.

Even were ambiguity a prerequisite to considering extrinsic evidence under New Jersey law—it is not—that is readily satisfied, and the trial court permissibly considered ***all*** the extrinsic evidence, not just Goldenberg's preferred definitions, to determine the meaning of "affiliates" in the context of the Additional Incentive Compensation section.

B. The Trial Court Did Not Clearly Err In Weighing the Extrinsic Evidence to Determine the Intended Scope of the Revenue-Sharing Provision.

After properly considering the extrinsic evidence, the trial court concluded that the "Revenue-Sharing Provision only entitles Goldenberg to a share of the net revenue from business based on his scientific and creative research." Op.36.

Goldenberg calls this an "impermissible rewriting," AOB.40-41, but "[t]he critical flaw in [Goldenberg's] argument is that the trial court properly considered extrinsic evidence as stated and rested its decision on the intent of the parties, the express terms of the contract, surrounding circumstances, and the underlying purpose of the contract." *Williamson*, 2026 WL 890379, at *10.

Once Goldenberg's challenge to the consideration of extrinsic evidence fails—as it must under New Jersey law—he is left with nothing but to complain about the trial court's factual findings and conclusions. The extrinsic evidence confirms that, read in context, "affiliates" was included to protect Goldenberg's rewards for his own investments and contributions from dilution, not to encompass unrelated profits of subsequently acquiring entities, much less to serve as a "poison pill." Goldenberg has not shown clear error in the trial court's weighing of the evidence and how it informs the parties' substantive agreement.

1. The trial court properly considered the negotiating history.

The parties' "negotiation history" is, of course, a key source of extrinsic evidence in determining their intent. *Maoz v. Maoz*, 2012 WL 400685, at *6 (N.J. Super. Ct. App. Div. Feb. 9, 2012). Negotiating history includes "correspondence between the parties [and] drafts of the [a]greement," *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1233 (Del. 1997), as well as the testimony of percipient witnesses to the negotiations, *Park Rd. Dev. LLC v. AKGG, LLC*, 2024 WL 4272886, at *7 (N.J. Super. Ct. App. Div. Sep. 24, 2024).

The trial court detailed and analyzed the contemporaneous correspondence of the 2007 Agreement negotiations between Gilbert and Zucker, the draft markups traded between the parties, and the testimony of Gilbert and Goldenberg, the two fact witnesses who testified on this issue. Op.9-13. In terms of context, the parties were making adjustments to one of many provisions for "Additional Incentive Compensation" within an ***employment agreement***, all to incentivize Goldenberg to continue contributing to the company; this was not a corporate rights agreement for shareholders (there was a separate shareholder rights plan). *See infra*, Section III.A.3. The express purpose was to ***align*** incentives, not give Goldenberg incentives in conflict with the best interests of the company—yet that is exactly what Goldenberg's after-the-fact interpretation would do. Op.14 ("It also would have given him a perverse incentive to … steer[] the company towards bids from bigger companies with more revenue, irrespective of what was best for the company.").

In terms of substance, the negotiating history overwhelmingly supported the trial court's conclusion that "affiliates" was intended to "pick up IBC" and "any entities that the Company formed to hold other intellectual property or pursue other businesses, as long as the Company controlled them." Op.24. In other words, the amended language was to address a particular concern—namely that Goldenberg's contributions might not all be housed within Immunomedics or entities that were technically "subsidiaries" (whether wholly- or majority-owned). It was not intended to pick up unrelated revenues from a future acquiring parent (which would have made no sense in the context of ***incentive*** payments), much less to mitigate against a hostile takeover. Op.27.

First, Zucker's initial volley on the 2007 Agreement, sent April 2, 2007, did not even include the "affiliates" addition. He left the definition of "Immunomedics" unchanged from the 1993 Agreement and did not add the term "affiliates" anywhere in the document. A322; A1259. Zucker did note Goldenberg's interest in expanding his "time and responsibilities" at IBC, A1233, but he did not (1) mention hostile takeovers, (2) express any concern over what happened if Immunomedics were acquired, or (3) explain that Goldenberg sought to protect his compensation in the event of acquisition or takeover. A1231-1238; A320.

Second, there were other contractual levers that Goldenberg and Zucker could have pulled to address Goldenberg's purported concern, but they did not. Separate from the Revenue-Sharing Provision, Zucker's draft proposed adding incentive compensation based on royalty payments on any Goldenberg-developed product that Immunomedics licensed to a third party for the life of its patents. A1233; A1251. Those payments would likely be eliminated following an acquisition or takeover (as Goldenberg conceded). A325. If Goldenberg's purported concern with an acquisition or hostile takeover were true, he and Zucker would have structured the royalty payment provision to protect against that. But they did not. A325 ("Q. Mr. Zucker doesn't propose any change to this provision to protect your payment stream in the event of a hostile takeover. Correct? A. Correct.").

Third, the evidence showed that the May 2007 meeting between Zucker, Gilbert, Goldenberg, and Markison did not support Goldenberg's claim that "affiliates" was protection against a hostile takeover. Gilbert testified there was no discussion of "affiliates," potential acquisition or takeover risks, or Goldenberg's compensation in such event. A490. For his part, Goldenberg did not even recall attending the meeting. A306.

Fourth, when Zucker added "affiliates" to the definition of "Immunomedics" after two months of negotiations, A1453, he expressly disclaimed any intent to change the economics of the deal. His cover note did not say anything about an acquisition or takeover, or define "affiliates" at all. A1436. Instead, Zucker stated that his edits related "primarily to language, ***not economics***." A1436. As the trial court observed, Zucker's silence on the "affiliates" definition was deafening: "Just as Congress does not 'hide elephants in mouseholes,' negotiators do not document major economic points by adding a single generic word to a definition with no other manifestations of intent." Op.35.

Fifth, the trial court found Gilbert's testimony on what Zucker conveyed to him about the "affiliates" addition was credible, whereas Goldenberg's testimony on the issue was not. Op.24. Gilbert testified the addition of "affiliates" was intended to cover IBC even if Immunomedics' ownership stake was diluted. A490. And the parties added the more general "including but not limited to" language to cover potential future entities, like IBC, that conducted research or commercialization activities to which Goldenberg contributed but were not yet in existence. A490, A497 ("[T]he understanding was to cover IBC in the event it was diluted down.… We also talked about hypotheticals where there would be spinouts. So it was understood that affiliates would cover those scenarios too.").

Goldenberg discards the trial court's credibility determinations as "surface-level observations about witness memories." AOB.39 n.5. But the trial court's credibility determinations are accorded great weight, *Williams v. Hall*, 2026 WL 35922, at *2 (Del. Jan. 6, 2026), and are well-reasoned regardless. The court found Gilbert's testimony credible and "consistent with the contemporaneous documents." Op.8. Moreover, Gilbert has no interest in the litigation—not being a party or having worked for Immunomedics for years. By contrast, the trial court found Goldenberg's testimony unpersuasive, noting that Goldenberg was not involved "to the same degree as Gilbert, … could not recall any of the substance, … [and] the [contemporaneous communications] do not reference his substantive input." Op.8.

Goldenberg also points to a June 22, 2007, markup, where Gilbert changed "the Company" to "Immunomedics" in the Revenue-Sharing Provision. AOB.17-18 (citing A1545). Goldenberg suggests this change was intended to capture Immunomedics' broader "affiliates" language. AOB.17-18. But nothing in the record supports this convoluted theory. For one, the 2007 Agreement itself defines "Immunomedics" and "Company" interchangeably in the preamble. A1630. For another, Gilbert testified the change was "nonsubstantive," the terms were intended to be interchangeable, and the purpose of the change was just to "be consistent internally within the paragraph." A488, 490-91. And for yet another, Goldenberg himself admitted the terms "Immunomedics" and "Company" were used interchangeably in other parts of the 2007 Agreement. A321, A327.

Finally, even if Goldenberg's purported understanding of "affiliates" were credible, there was no evidence Goldenberg ever expressed his supposed belief to Gilbert, Markison, or anyone else. Op.25. Goldenberg admitted he never discussed the meaning of "affiliates" with Gilbert, nor could he date any discussions where he supposedly raised concerns about a hostile takeover. A326. As Goldenberg acknowledges, "an intention wholly unexpressed … is irrelevant." AOB.31 (quoting *Newark Publ'rs*, 126 A.2d at 353).

The negotiating history thus confirms that adding the word "affiliates" did not change the fundamental economics of the employment agreement in the manner

Goldenberg now asserts, but simply was done to ensure Goldenberg was rewarded for his contributions regardless of whether they were held by Immunomedics itself or an entity that was merely partially owned by Immunomedics (even if not technically a "subsidiary").

2. The trial court properly considered the purpose of the Additional Incentive Compensation section.

Courts also consider the "underlying purpose of the contract" to determine the intended meaning of a term. *Extech Bldg. Materials, Inc. v. E&N Constr. Inc.*, 346 A.3d 708, 713 (N.J. 2025). Relying on the preamble to the Additional Incentive Compensation section, the trial court found: "The 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." Op.23.

Goldenberg asserts the trial court "plucked this new concept and language out of thin air." AOB.41. Not so. That concept and language come directly from the Agreement itself. The express purpose of the Additional Incentive Compensation section was to compensate Goldenberg for his "integral ***involvement in and contribution to*** all aspects of Immunomedics' ***scientific and creative activities***." A120. The trial court's identification and analysis of this language was spot on. The "intent expressed … in the writing" of the Additional Incentive Compensation section shows what the parties were trying to achieve: compensating Goldenberg for his contributions to and investments in Immunomedics, nothing less but nothing more. *Newark Publ'rs*, 126 A.2d at 353.

Doubling down, Goldenberg claims that limiting him to compensation for his own contributions was an "equitable judge-made revision" of the contract based on the court's "own sense of fairness" that Goldenberg "had been adequately compensated via his [$700 million] equity stake in Immunomedics." AOB.41, 43. The trial court's decision was not animated by some abstract "sense of fairness." The court recognized the express purpose of the Additional Incentive Compensation section, namely to align Goldenberg's incentives to ensure he would be rewarded for the success of ***his*** work. A future acquirer's revenue has nothing to do with this purpose. The trial court faithfully followed New Jersey law by looking to the broader purpose of the agreement.

Finally, Goldenberg argues that "context and purpose" favor including an acquiring parent's revenues because it simplifies calculating his compensation. AOB.36-38. But that is just a backhanded way to relitigate Goldenberg's failed claim over Trodelvy's profitability during the applicable term. The trial court found that Immunomedics ***did*** disaggregate Immunomedics' legacy business from Gilead's in accordance with GAAP and proved that Trodelvy "did not generate positive net income in any fiscal year." Op.44. Goldenberg has not appealed and cannot challenge those factual determinations now.

3. *The trial court properly considered the surrounding circumstances in which the Revenue-Sharing Provision was negotiated.*

Another key source of extrinsic evidence is the "business context" in which the contract term arises. *Salamone*, 106 A.3d at 374; *Kahanovitz v. Electro-Biology, Inc.*, 2011 WL 242031, at *8 (N.J. Super. Ct. App. Div. Jan. 27, 2011). Again, the trial court properly considered the context of Immunomedics' business during the 2007 Agreement negotiations, including contemporaneous Board meeting minutes, SEC filings, and other factors that made Goldenberg's proffered interpretation of the term "affiliates" dubious. Op.24-26.

Goldenberg attempts to dismiss the substantial evidence of business context as "scant board-meeting notes." AOB.39 n.5. It is unclear what Goldenberg means by "scant." Immunomedics' Board minutes from 2005 to 2008 were included in the trial record, and most are multiple pages long. B77-B602. The trial court specifically pointed to the minutes of meetings at the time of the negotiations, noting they "do not reference any takeover concerns." Op.14; *see* B288-289; B267-270; B264-266; B235-239. Moreover, Gilbert—who attended those meetings and signed the minutes as Immunomedics' Corporate Secretary—testified that a discussion about a hostile takeover would have been included in Board minutes, "[b]ut that [discussion] didn't happen." A482-483.

The trial court also pointed to Immunomedics' 2006 and 2007 Form 10-K filings, which did not reference any takeover concerns, and "identified as defensive measures only the 2002 rights plan and provisions in its charter and by-laws and in the Delaware General Corporation Law." Op.14 n.43. Because Immunomedics had adopted that 2002 rights plan, the 2007 Agreement "would not have added meaningful protection against a hostile bid." Op.14. Goldenberg himself characterized this 2002 rights plan as "protect[ion] … against unfair or coercive takeover tactics." A603.

The trial court also noted that Goldenberg's claim to a future acquirer's revenues would have "created a conflict of interest for Goldenberg by giving him an additional incentive to take a bid." Op.14. This is true, and it underscores the contradiction between Goldenberg's isolationist interpretation of the word "affiliates" and the express purpose of the Additional Incentive Compensation section. Incentive compensation was to align Goldenberg's interests with Immunomedics' and incentivize him to do more for the Company. A486. But Goldenberg's alleged entitlement to a portion of an acquirer's revenues would make his and the Company's interests diverge: He would want to be acquired by the largest bidder with the most revenue, whether or not that would be good for Immunomedics.

Goldenberg nevertheless tries to bolster his approach to "affiliates" by claiming that Immunomedics was a "prime target for a hostile takeover" in 2007.

AOB.12. That claim, for which he cites nothing, was flatly contradicted by the trial evidence, including testimony from Gilbert and Sullivan. During the 2007 Agreement negotiations, Immunomedics was a "development stage biotech" company that was "constantly burning cash" and actually "needed to raise capital to continue." A484 (Gilbert); *see* A350 (Sullivan) ("Immunomedics burned a lot of money."). Accordingly, Immunomedics was "challenged to find investors in the first place" and was not "discussing M&A activity at the time." A484-485.

The surrounding business context showed that Immunomedics was far from an attractive target for a hostile takeover.

4. *The trial court properly considered Goldenberg's conduct before filing his "affiliates" claim.*

Courts also consider "the conduct of the parties that reflects their understanding of the contract's meaning." *Maoz*, 2012 WL 400685, at *5. Here, the trial court properly considered Goldenberg's actions following both a hostile takeover and then an acquisition of Immunomedics, finding his actions to be a "persuasive source of evidence." Op.27. Goldenberg's actions belied his made-for-litigation contention that "affiliates" was intended to capture the non-Immunomedics-related revenues of a controlling entity.

First, as the trial court correctly found, "[i]f including 'affiliates' was meant to give Goldenberg a share of the revenue of an entity who controlled the Company, then Goldenberg should have sought a share of the [venBio] Fund's revenue after it gained control. He didn't." Op.27.

Goldenberg responds that his inaction with respect to venBio is irrelevant because venBio "did ***not*** formally acquire Immunomedics' assets." AOB.44. But this argument undercuts Goldenberg's credibility and his proffered meaning of "affiliates." Goldenberg's operative, verified complaint alleged: "In 2017, Immunomedics was ***acquired via hostile takeover*** by venBio Select Advisor LLC, a hedge fund, resulting in the Related Action and, ultimately, Dr. Goldenberg's termination from the Company." B605; A333. And on appeal, Goldenberg states, referring to venBio's takeover: "In 2017, Goldenberg's Concerns Of A Corporate Takeover Were Realized." AOB.21. Thus, as Goldenberg himself has repeatedly admitted in this litigation, venBio's intervention was the very issue that, by his telling, the addition "affiliates" was supposedly added to address. A325. Yet, Goldenberg never asserted any alleged right to a share of venBio's revenues, either to ***deter*** it from taking over in the first place, or after venBio completed its takeover. A334.

Moreover, under Goldenberg's interpretation, the test for whether an entity is an "affiliate" turns not on the takeover method, but merely whether the subject entity "controls, is controlled by, or is under common control" with Immunomedics. AOB.27; *see also* A328. Sullivan admitted that "venBio controlled Immunomedics

… up until the Gilead acquisition." A358; *see* A357. And venBio and Immunomedics were under "common control" once venBio took over Immunomedics' Board. *See* A332-333. Thus, the trial court was again correct in considering Goldenberg's failure to raise his "affiliates" theory with venBio.

Goldenberg does not even attempt to address the trial court's additional finding that Goldenberg "did not introduce his current theory [on the meaning of 'affiliates'] until a year after the Acquisition," Op.27, apparently hoping that devastating fact was forgotten. Tellingly, Goldenberg abstained from voting on Gilead's acquisition. A335. If an acquisition by Gilead entitled him to 1.5% of Gilead revenues (potentially $300 million annually)—on top of his substantial equity compensation—his only rational decision would have been to support acquisition and vote in favor of the deal. Goldenberg did not. Nor did he assert a right to some of Gilead's revenues when its counsel sent his counsel quarterly revenue reports in 2021. Over a year after Gilead's acquisition, his attorney-daughter—not Goldenberg nor his trial counsel—unveiled this "affiliates" argument. As the trial court put it, Goldenberg's "affiliates" claim "has the feel of an argument that someone dreamed up after reading the Revenue-Sharing Provision cold, seeing the term 'affiliate,' and thinking, 'Hey, what if we argued that the language picked up all of Gilead's businesses? That would be a big number!" Op.28. The evidence suggests that is exactly what happened.

5. *The trial court properly gave little weight to Goldenberg's preferred extrinsic evidence.*

Finally, in assessing the extrinsic evidence that informs the parties' intent, the trial court considered Goldenberg's preferred evidence, and Goldenberg has not shown any clear error in the court's weighing of all the evidence. *Salamone*, 106 A.3d at 367. As discussed above, Section II.A, *supra*, the court reviewed the various other Immunomedics agreements, which themselves used the term "affiliates" differently, correctly concluding there was no one, singular meaning that trumped all other considerations. The court weighed these agreements and Goldenberg's other definitions of "affiliates," concluding that the parties' actual negotiations, the express purpose in the Additional Incentive Compensation section, and Goldenberg's own course of conduct were more relevant than abstract references to the word "affiliate" in documents that did not even exist when the parties adopted the disputed language.

* * *

In sum, Goldenberg's made-for-litigation interpretation of "affiliates" should be rejected in favor of the substantial, contemporaneous, objective evidence. That evidence is "free from the realities of litigation and closer in time to the events that transpired." *Triple H Fam Ltd. P'ship v. Neal*, 2018 WL 3650242, at *2 (Del. Ch. July 31, 2018); *accord Schor*, 814 A.2d at 1113. That evidence showed there was one reason "affiliates" was added: to address Goldenberg's concerns about IBC and future entities like IBC. It was not intended to sweep in the distinct income of an acquiring, preexisting entity like Gilead. As the trial court found, Goldenberg's trial story was not corroborated by other witnesses, contemporaneous documents, or even his own actions when negotiating and signing the Employment Agreement or thereafter.

IV. CONCLUSION

The judgment should be affirmed.

Dated: May 19, 2026

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Alexandra M. Cumings

David J. Teklits (#3221)
Alexandra M. Cumings (#6146)
Elaine M. McCabe (#7626)
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200
dteklits@morrisnichols.com
acumings@morrisnichols.com
emccabe@morrisnichols.com

Attorneys for Immunomedics, Inc.

KIRKLAND & ELLIS LLP
Daniel T. Donovan, P.C. (pro hac vice)
Judson Brown, P.C. (pro hac vice)
John C. O'Quinn, P.C. (pro hac vice)
Leah A. Hamlin
Neil A. Joseph
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 389-5000
daniel.donovan@kirkland.com
judson.brown@kirkland.com
john.oquinn@kirkland.com
leah.hamlin@kirkland.com
neil.joseph@kirkland.com