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,	)	

REPLY BRIEF FOR APPELLANT DR. DAVID M. GOLDENBERG

Of Counsel:

HAYNES AND BOONE, LLP
Daniel L. Geyser (*pro hac vice*)
2801 N. Harwood Street
Suite 2300
Dallas, TX 75201
(303) 382-6219
daniel.geyser@haynesboone.com

ASHBY & GEDDES, P.A.
Catherine A. Gaul (#4310)
500 Delaware Avenue, 8th Floor
Wilmington, Delaware 19801
(302) 654-1888
cgaul@ashbygeddes.com

Attorneys for Appellant
Dr. David M. Goldenberg

Dated: June 18, 2026

TABLE OF CONTENTS

Page

ARGUMENT 1

Under settled principles of construction, the agreement establishes that Gilead and Immunomedics are "affiliates"—and Defendant's contrary position is meritless 1

CONCLUSION 20

TABLE OF CITATIONS

Page(s)

Cases

Conway v. 287 Corp. Ctr. Assocs.,
901 A.2d 341 (N.J. 2006)..4

Kieffer v. Best Buy,
14 A.3d 737 (N.J. 2011)..5

Newark Publ'rs Ass'n v. Newark Typographical Union, No. 103,
126 A.2d 348 (N.J. 1956)..4, 5

Schor v. FMS Fin. Corp.,
814 A.2d 1108 (N.J. Super. Ct. App. Div. 2002) 6

ARGUMENT

UNDER SETTLED PRINCIPLES OF CONSTRUCTION, THE AGREEMENT ESTABLISHES THAT GILEAD AND IMMUNOMEDICS ARE "AFFILIATES"—AND DEFENDANT'S CONTRARY POSITION IS MERITLESS

1. As previously established (Opening Br. 30-46), the contractual term "affiliate" includes Gilead as a parent corporation, and the trial court erred in rewriting the parties' agreement. Under settled principes of construction, a contract's plain and ordinary meaning controls. Although extrinsic evidence can indeed be considered, courts will only look to extrinsic evidence to interpret the actual text—giving meaning to the written language. Extrinsic evidence is not an excuse to rewrite the agreement or capture the parties' unexpressed intent; critically here, it cannot be used to modify, enlarge, or restrict a contract's actual terms.

These principles are essential to preserving a fair, predictable business environment, and they are dispositive here. The operative text covers "affiliates," which includes parent corporations under every relevant source. It matches the textbook legal definition (Opening Br. 32); it follows New Jersey and Delaware law (*id.*); it shares the SEC's definition (a relevant consideration for public corporations) (*id.* at 32-33)); it follows GAAP's definition (A3391)—which the parties themselves separately invoked for related components of the *same provision* (A2012, A2014);[1] it fits the parties' pattern and practice in dozens of other agreements (A2153; A2548; *see also* A617-19); and it matches the RSU's explicit definition (A2042)—in an accompanying document incorporated by reference to form the parties' entire agreement (A501-02).[2]

Put simply as possible: this was a legal contract between sophisticated parties, and the term "affiliate" has a standard, conventional meaning in this context. That same meaning is found consistently across legal doctrine and in the parties' own separate agreements. It is fanciful to suggest the parties, silently, intended to deviate from that customary definition in this single setting alone.[3]

2. a. Faced with these serious problems, Defendant's primary response is to attack a strawman. According to Defendant, Dr. Goldenberg argued that extrinsic

[1] Indeed, as previously explained (Opening Br. 33), 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. Defendant responds with—silence.

[2] Defendant repeatedly emphasizes that this dispute arises under New Jersey law, apparently hoping to marginalize the case's significance. But it is critical for parties with Delaware connections to know courts will enforce their agreements in a predictable, evenhanded fashion—whether those agreements are governed by Delaware law or not. Delaware courts faithfully enforce outside legal principles as a matter of course; Defendant is wrong to hope for a free pass, and it is likewise wrong to diminish the significance of a $365 million dispute involving the founder of a $21 billion biopharmaceutical enterprise.

[3] The relevant sources are so one-sided one might even call Defendant's idiosyncratic position a "made-for-litigation contention." Answering Br. 45.

evidence is off-limits and the trial court was "foreclosed" from considering it. Answering Br. 24-25 ("Goldenberg asks this Court to disregard the extrinsic evidence"). This is puzzling.

As Dr. Goldenberg explained (at length), extrinsic evidence is indeed permissible—as a tool of interpreting a contract's text. Opening Br. 31. It can help explain what the parties meant by invoking specific terms, and it can identify which of two competing constructions the parties intended when language is ambiguous. *Id.*

But there is a fundamental distinction between using extrinsic evidence to define a contract's language and using extrinsic evidence to abandon that language and rewrite the agreement. The trial court below (and Defendant here) adopts the latter approach. Neither can explain in what conceivable sense the term "affiliate" means "businesses based on [Dr. Goldenberg's] scientific and creative research." Op. 36. That is not how anyone (or any known source) defines "affiliate." It is instead an unwritten qualifier judicially inserted between the contract's lines—a new condition plucked out of thin air and grafted onto the agreement the parties actually wrote.

That is not how courts (in New Jersey or Delaware) properly interpret contracts. And the problem has nothing to do with considering extrinsic evidence (which, again, Dr. Goldenberg confirmed is perfectly fine). It has entirely to do with misusing extrinsic evidence to justify rewriting the agreement.

There accordingly is only one party to this appeal who is refusing to follow blackletter New Jersey contract law. Defendant is exactly wrong in insisting the ultimate judicial task is to "determine the parties' actual intent" (Answering Br. 24)—no matter how divorced from the written text. The established rule is clear: "It is not the [so-called] real intent but the intent *expressed or apparent in the writing* that controls." *Newark Publ'rs Ass'n v. Newark Typographical Union, No. 103*, 126 A.2d 348, 353 (N.J. 1956) (emphasis added). Courts are not tasked with redrafting contracts; extrinsic evidence is a tool "only for the purpose of *interpreting the writing*—not for the purposing of *modifying or enlarging or curtailing its terms*." *Conway v. 287 Corp. Ctr. Assocs.*, 901 A.2d 341, 347 (N.J. 2006) (emphases added).

Defendant has an obvious incentive to distort Dr. Goldenberg's position. But his position is not (and never was) that extrinsic evidence is irrelevant. *Contra* Answering Br. 25-26. On the contrary, as Dr. Goldenberg stated plainly before, "[c]ourts can consider extrinsic evidence, but only to resolve the meaning of the contract's actual text." Opening Br. 31. The problem here, again, is the trial court looked to extrinsic evidence to *discard* the text—and replace it with an unwritten condition found nowhere in the actual agreement. That was indeed error at "the legal threshold" (*contra* Answering Br. 26): "The actual intent of the parties is ineffective unless made known in some way in the writing." *Newark Publ'rs*, 126 A.2d at 353. Defendant cannot sidestep this dispositive mistake by pretending Dr. Goldenberg argued something else.

There accordingly is nothing "ironic[]" about Dr. Goldenberg's own use of extrinsic evidence. *Contra* Answering Br. 4, 25, 28. Unlike Defendant, Dr. Goldenberg is using that evidence to confirm what the language actually says. Defendant and the trial court are instead using that evidence to reformulate the entire agreement.

b. Defendant also misreads the law on a more granular level. Defendant faults Dr. Goldenberg for relying on *Kieffer v. Best Buy*, 14 A.3d 737 (N.J. 2011), insisting *Kieffer* was limited to "principles specific to indemnification agreements." Answering Br. 27. This is perplexing: as that court unmistakably explained, "[t]he objective in construing a contractual indemnity provision *is the same as in construing any other part of a contract*." 14 A.3d at 742-743 (emphasis added). And in articulating those *general* contract principles, *Kieffer* prohibited the very analytical move the trial court attempted below: "The judicial task is simply interpretative; it is not to rewrite a contract for the parties better than or different from the one they wrote for themselves." *Id.* at 743.

Indeed, Defendant inadvertently acknowledges the trial court's error: "courts may not "'impl[y]' additional terms in an agreement where the contract is otherwise unambiguous." Answering Br. 27. Yet "implying additional terms" is precisely what the trial court did here: it narrowed the textual category of "subsidiaries or affiliates" (A2015) to those businesses employing Dr. Goldenberg's "scientific and creative activities" (Op. 23). Those implied terms appear nowhere in the actual text.

And while Defendant trumpets the line that a "word used in a contract is not a verbal form of 'kryptonite'" (Answering Br. 3, 24-25), it otherwise ignores every fundamental principle articulated by the same New Jersey court: "[a] party that uses unambiguous terms in a contract cannot be relieved from the language simply because it had a secret, unexpressed intent that the language should have an interpretation contrary to the words' plain meaning"; "a party to a contract 'is bound by the apparent intention he or she outwardly manifests to the other party'"; "[i]t is immaterial that he or she had a different secret intention from that outwardly manifested"; "[t]he court has no right 'to rewrite the contract merely because one might conclude that it might well have been functionally desirable to draft it differently'"; "[n]or may the courts remake a better contract for the parties than they themselves have seen fit to enter into, or to alter it for the benefit of one party and to the detriment of the other." *Schor v. FMS Fin. Corp.*, 814 A.2d 1108, 1112-1113 (N.J. Super. Ct. App. Div. 2002). Defendant has every right to rely on *Schor*—but it should rely on its full discussion, not a snippet mischaracterizing the controlling standards.

3. Defendant's next dodge is to misstate the standard of review—looking to shield a question of contract construction under a "clear error" standard. Answering Br. 1, 4, 5, 8, 23, 35, 48. Yet the issue at its irreducible core is one of contract construction, and the key questions turn on what the contract means. Those matters are reviewed de novo. Opening Br. 30 (so explaining). Nor is there any "this-was-an-extensive-trial" exception to the settled rules forbidding courts from rewriting the parties' agreement. *Contra* Answering Br. 1.

4. Contrary to Defendant's contention, the trial court did indeed rewrite the parties' agreement—and that is clear under *any* standard of review.

Again, as noted above, Dr. Goldenberg already explained (at length) how "affiliate" has a common and understood meaning that includes parent corporations. That meaning is settled throughout legal parlance and judicial precedent. It is the legal dictionary definition of the term. It is the SEC's understanding of the term. It is the accounting profession's understanding of the term (and this provision requires accounting). It is (unsurprisingly) the parties' own definition of the term. Repeatedly. In their own agreements. Even in an *incorporated* document, constituting the "entire agreement" between the parties (A2032).

Yet according to Defendant, this is apparently the one single place where the parties intended to depart from that settled practice. In this isolated clause alone, "affiliate" apparently means something else entirely. It makes no difference that

Defendant's reading would assign "affiliate" different meanings in the same agreement. It makes no difference that this would assume the parties, silently, rejected the "common," "customary" definition in this single provision alone. Op. 32-33. And it makes no difference that neither side bothered pointing out the blaring inconsistency between the sui generis meaning here and the ordinary meaning everywhere else.

This is implausible. It is one thing to brush aside a single source that cuts the other way. And it is one thing to float a different reading of a term that lacks a "common" definition. But when every relevant source shares the identical understanding—and *when the parties themselves adopted that same understanding as a matter of course*—it is inconceivable that this single clause in this single contract charted a new path (without any express indication whatever).

And it only gets worse when Defendant tries to substantiate its position.

a. Defendant invokes other isolated dictionary definitions—conspicuously outside the legal or contractual context. Answering Br. 31. Initially, it is not entirely clear why a definition suited for casual conversation among the general public is relevant here. This is a legal term of art in a formal legal document between sophisticated parties allocating significant rights. It stands to reason the *legal* definition would control.

But even setting that aside, Defendant's position fails on its own terms. One of Defendant's leading examples (Webster's Third New International Dictionary) includes a definition that *describes parents*: "'affiliate'" is "'a company effectively controlled by another <u>or</u> *associated with others under common ownership or control*.'" Answering Br. 31 (emphases added). Gilead and Immunomedics are "associated" "under common ownership or control." So Defendant loses under its own dictionary. As for the rest: Defendant's secondary definitions (to be sure) at least suggest "affiliate" might "typically" mean a "subordinate" (*id.*)—but *typical* (to be sure) is not *exclusive*.

In any event, Defendant's non-legal definitions fail for a more fundamental reason: not a single one defines "affiliate" as limited to one's "creative or scientific contributions." *See* Answering Br. 34 (according to Defendant, the term "affiliate" means "'business based on [Dr. Goldenberg's] scientific and creative research'"). Affiliates are defined by ownership and control; they are not defined by the creative inputs of those who happen to work there. If Defendant believes "affiliates" take on this functional meaning here, Defendant must at least identify some concrete source that defines "affiliate" in such a strange manner.[4]

---

[4] Nor can Defendant reverse course and readopt its earlier (flawed) understanding of "affiliate" as excluding all *parents* or excluding all *future* entities. The trial court correctly repudiated both positions (*see, e.g.*, Op. 33-34), and

b. Nor could Defendant identify any express language supporting its odd view. It might be possible to write a contract cabined that way: Immunomedics means any "business based on [Dr. Goldenberg's] scientific and creative research." Answering Br. 34. But that obviously is not how these parties wrote this agreement. And, indeed, the actual agreement forecloses that reading. The parties knew how to reward Dr. Goldenberg for his "scientific and creative research"—which is why they had a separate royalties provision (Opening Br. 13). The net-revenue provision serves a different function.

And Gilead's own in-house counsel conceded below "there may be revenue that Immunomedics did not materially contribute to that, nevertheless," is included in the net-revenue provision. A446-47; A625 (explaining implication of the related "Acquired Asset" provision). So Defendant cannot even square the trial court's position (or its own reading) with the agreement's uncontested operation.

5. Because Defendant cannot defend its own view, it instead attacks Dr. Goldenberg's.

a. Defendant suggests Dr. Goldenberg's reading of "affiliates" would render "subsidiaries" redundant. Answering Br. 29. This is wrong. First, the two terms are not redundant; "affiliates" is the broader term, and contracts often cover the full

Defendant cannot defend the judgment below by gutting the court's operative rationale.

landscape ("affiliates or subsidiaries") for belts-and-suspenders clarity. Second, Defendant never explains how its own reading would not introduce its own redundancy. Finally, Dr. Goldenberg's reading makes perfect sense in context: "subsidiaries" are parties lower on the corporate chain; "affiliates" covers other parties equal or higher on the corporate chain. Each captures its own subset of activity.

b. Defendant apparently recognizes the SEC and GAAP definitions undercut its position. So Defendant says these definitions are irrelevant because they were not "incorporated" into the agreement. Answering Br. 33. Defendant is confused. The point is not that these uniform definitions were incorporated, but that *the definitions are uniform*. When every primary source in the relevant context adopts the same understanding of a common term, it stands to reason sophisticated parties adopted the same understanding in their own agreement—absent an express statement to the contrary. There was no need for the parties to reiterate that "affiliates" means here what it always does everywhere else.

Defendant further discounts the GAAP definition despite the parties' specific invocation of GAAP to cover related terms in the relevant provision. Answering Br. 33 & n.2. Contrary to Defendant's contention, this was not merely a matter of "agreeing to a set of accounting principles" (*contra id.* at 33 n.2); this shows the parties had specific concepts in mind as commonly used in this specific field—and virtually everywhere else. If the parties had an idiosyncratic definition in mind, one would expect to see that definition articulated expressly.

c. Defendant likewise tries to sidestep the RSU definition. It first maintains "the parties could not have intended back in 2007 to incorporate a definition from a 2015 document that did not yet exist." Answering Br. 34. This is specious: the RSU definition reflects the common and ordinary definition of the term. It presumably had the same common and ordinary definition in each earlier iteration of the agreement. And, of course, the fact remains the parties in 2015 *did* have access to the RSU agreement; it *was* expressly incorporated into the operative document; and it *did* form the "entire agreement" between the parties. Even if the parties believed a different definition (somehow) applied in 2007, their shared understanding in 2015 is unmistakable. Normal parties do not incorporate a new definition that *contradicts* a prior understanding and say nothing about it.

As it did below, Defendant also contends the term "affiliate" (net-revenue provision) differs from the term "Affiliate" (RSU) in the *same agreement* because one is capitalized and the other is not. This is absurd. Sophisticated parties do not adopt contrary definitions of the same term in a single agreement by altering the capitalization (and hoping someone notices)—especially when the defined term matches the common, settled meaning.

d. Defendant finally minimizes the dozens of agreements consistently using the term "affiliates" in its ordinary fashion. Answering Br. 32-33. But Defendant responds with—effectively nothing. It simply trots out the trial court's conclusion that the agreements supposedly varied—without any effort to show the agreements varied in the *relevant* sense. It would be one thing if affiliate excluded parents; but it is another entirely when the only variation was the *degree of control necessary* before a party was deemed a parent (A686-87). As previously explained (Opening Br. 44-45), the operative question here is *whether a parent is included at all*—not the percentage necessary for a party to cross that threshold. The material point is parents were routinely covered by the term "affiliate" in Defendant's own agreements—and there is every reason to believe the parties carried forward that consistent practice here.

6. Defendant insists the agreement's purpose was limited to "incentivizing" Dr. Goldenberg to perform—and thus it was sensibly limited to revenue linked to Dr. Goldenberg's contributions. Answering Br. 27-28, 41. This fails on every possible level.

First, the preamble does not limit the other express clauses of the contract; each provision has its own operative force. Second, Defendant ignores the separate and distinct provisions dealing with patent royalties—those are the ones tailored to Dr. Goldenberg's "creative and scientific" contributions; this provision served a different purpose and recognized his overall role in launching a $21 billion public company. Third, Gilead itself conceded below that the provision covers certain revenue irrespective of Dr. Goldenberg's role in producing it—which itself defeats Defendant's argument. Finally, Defendant has wrongly truncated the relevant provision: the "Additional Incentive Compensation" rewarded Dr. Goldenberg for his "*past* and future" contributions, and it was expressly granted in exchange for Dr. Goldenberg's "agreement to for[go]" other rights. A1635 (emphasis added).

In its complete form, the preamble thus confirms the agreement is what it otherwise appears to be: a grant of substantial compensation rights to the key principal extending far beyond his direct or ongoing contributions. This is precisely the kind of provision one would expect for the founder of a biopharmaceutical enterprise.

Defendant simply ignores this separate (and stated) purpose undergirding the agreement. This provision secured Immunomedics's founder and chief innovator fair compensation no matter how the company is structured. It avoids the costs and complications of accounting for disaggregated profits and costs after a third party assimilates one company into another. And it ensures a proper return for Dr. Goldenberg's efforts and ingenuity—rewarding a measured amount (1.5%) for a limited period (three years) in exchange for his work building a $21 billion public company. *See* Opening Br. 36-39 (explaining all of this).

Defendant has no meaningful response—which says it all about the strength of its position. The fact remains it is not common practice (much less consistent with "justice and common sense," Answering Br. 27) to presume founders and key principals will receive $0 for their central role in creating a multibillion-dollar asset.[5]

7. Defendant finally retreats to the parties' outside conduct to inform the meaning of the contract. These last-ditch efforts fail.

a. Defendant suggests setting aside the text in favor of distant memories of the contract negotiations. Answering Br. 36-39. Even crediting the self-interested take of Defendant's lawyer, the history confirms that (i) the parties had every intention of expanding the agreement beyond its prior footprint—thus newly capturing "affiliates"; and (ii) the expansion was designed to capture *potential changes to corporate structure*—including "potential future entities" and "'hypotheticals where there would be spinouts.'" *Id.* at 39. An acquisition is ultimately cut from the same

[5] Defendant says the net-revenue provision was designed solely to "reward[]" Dr. Goldenberg "for the success of *his* work." Answering Br. 42. Yet Defendant ignores this is *how* Dr. Goldenberg would be rewarded for that work. Again, the provision secures measured compensation (for a limited period of time) no matter how an affiliate runs the business. That might seem like an odd provision for a two-bit company; it makes perfect sense for a *$21 billion* enterprise.

cloth—and it shows the parties intended Dr. Goldenberg's rights to apply broadly no matter the corporate structure.[6]

b. Like the trial court, Defendant faults Dr. Goldenberg for not invoking the net-revenue provision to claim a percentage of venBio's revenues. Answering Br. 45-47. Yet as Dr. Goldenberg already explained (Opening Br. 44), venBio did *not* "acquire" Immunomedics, and it therefore never was an "affiliate." venBio engaged in hostile activity by seeking seats on the board. That might have let venBio influence Immunomedics's direction, but there is a clear distinction between formally acquiring a company (like Gilead) and leaving a company a distinct entity while seeking board-level control (like venBio).

At very best, Defendant has identified an aggressive theory that venBio would assuredly have disputed. Dr. Goldenberg's decision not to initiate low-probability litigation says nothing about his rights under the contract, and it is hard to fault Dr. Goldenberg for not initiating litigation on a theory he was likely to lose.

[6] Defendant spills much ink refuting that the contract revision was designed to prevent hostile takeovers. Answering Br. 1, 29, 37-38, 40, 43-45. While that was indeed one of Dr. Goldenberg's motivations for the provision, the trial court found otherwise—and Dr. Goldenberg has not advanced this point on appeal. (To be clear: not because the trial court was correct, but in deference to the appellate standard of review.)

c. Defendant likewise questions the legitimacy of Dr. Goldenberg's interpretation because it was asserted for the "first" time "years into the litigation." Answering Br. 1. This is disingenuous.

As Defendant well knows, Dr. Goldenberg did not assert his rights at the last minute. This particular right was activated upon Gilead's acquisition, and the parties spent considerable time attempting to settle the case and avoid further litigation. *See, e.g.*, B1091-96. Dr. Goldenberg knew formally asserting this claim would have frustrated those efforts—which is why he withheld this assertion until it was clear a global resolution was not feasible. And as Defendant also well knows, the negotiations targeted amounts commensurate to those now sought under this provision. Defendant has every incentive to paint this as a "made-for-litigation" lottery ticket. But the reality is simple: Defendant always had these rights; Defendant has always sought an equivalent range of compensation (as is his right under the contract); and the procedural timing reflected the (failed) hope of resolving this dispute.

In any event, valid rights can be timely asserted as a case progresses. If Defendant's position had any merit, Defendant would focus exclusively *on the merits*—not unfair atmospherics.

Defendant likewise is off-base in reading anything into Dr. Goldenberg's decision to "abstain" from voting on Gilead's acquisition. It is odd to suggest the only "rational" decision was a favorable vote to secure $300 million—when Defendant separately recognizes Dr. Goldenberg was in line for a $700 million shareholder return. Dr. Goldenberg's abstention, of course, applied equally to that greater equity return as a shareholder. In any event, Defendant overlooks that not every person is motivated solely by economic self-interest—as Dr. Goldenberg's commitment to donate the proceeds of this litigation confirms. His voting decision was based on his uncertainty that Gilead would properly marshal his groundbreaking discoveries to maximize the potential of saving the greatest number from a deadly disease.

8. Again like the trial court, Defendant insists Dr. Goldenberg already received adequate compensation ("$700 million") and now simply seeks a "windfall." Answering Br. 1-2. This is more noise.

As Dr. Goldenberg already explained (Opening Br. 43-44), the $700 million recovery reflects his equitable take *as a shareholder*. It was the same type of compensation received by anyone (including outsiders) holding Immunomedics stock. The net-revenue provision reflects Dr. Goldenberg's compensation *as the company's founder and chief innovator*. Dr. Goldenberg built a $21 billion asset from scratch. A $365 million payment for someone in his position is commonplace and exactly what one would expect in a transaction of this magnitude. It is a bit much to call his measured request a “windfall”—let alone to suggest his appropriate compensation as the company’s chief architect is $0.

CONCLUSION

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

Of Counsel:

HAYNES AND BOONE, LLP
Daniel L. Geyser (*pro hac vice*)
2801 N. Harwood Street
Suite 2300
Dallas, TX 75201
(303) 382-6219
daniel.geyser@haynesboone.com

ASHBY & GEDDES, P.A.

/s/ Catherine A. Gaul
Catherine A. Gaul (#4310)
500 Delaware Avenue, 8th Floor
Wilmington, Delaware 19801
(302) 654-1888
cgaul@ashbygeddes.com

Attorneys for Appellant
Dr. David M. Goldenberg

Dated: June 18, 2026