IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUDSON'S BAY COMPANY LUXEMBOURG, S.A.R.L.,	)	
Plaintiff Below, Appellant,	)	No. 182, 2013
v.	)	On Appeal from Superior Court in and for New Castle County
JZ LLC and AGZ LLC,	)	C.A. No. N10C-12-107 JRJ CCLD
Defendants Below, Appellees.	)	

APPELLANT'S REPLY BRIEF

BOUCHARD MARGULES & FRIEDLANDER, P.A.
David J. Margules (#2254)
Jeffrey M. Gorris (#5012)
Jaclyn Levy (#5631)
222 Delaware Avenue, Suite 1400
Wilmington, Delaware 19801
(302) 573-3500
Attorney for Appellant Hudson's Bay Company Luxembourg, S.A.R.L.

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

PRELIMINARY STATEMENT

In the Corrected Opening Brief in support of HBCL's appeal ("HBCL Br."), HBCL demonstrates that the findings critical to the Trial Court's Opinion are reviewed *de novo* by this Court and are the product of error.[1] JZ's Answering Brief ("JZ Br.") simply ignores the bulk of HBCL's arguments, as well as the authorities and evidence HBCL cites. For its part, JZ offers little or no apt authority supporting its arguments. Its response is largely a summary of the Trial Court's Opinion and a contention that it is entitled to great deference.

The Trial Court's interpretation of "generally accepted accounting principles" is subject to *de novo* review, in part because the phrase is a contract term. Nevertheless, JZ does not address the GAAP pronouncements explicitly rejecting the Trial Court's finding of what GAAP requires, and largely ignores the linguistic arguments and contract law principles at the core of HBCL's argument, as well as the testimony of its own principal GAAP expert, Karen Parsons.

JZ admits the Trial Court did not decide whether the challenged accounting treatments complied with GAAP, and offers no argument for why they did, except for its discredited argument that immaterial GAAP breaches are not breaches at all. In particular, JZ does not address in any manner the opinion of HBCL's accounting expert, Paule Bouchard, that Hbc's inventory, loyalty and lease accounting violated

[1] Defined terms in the HBCL Br. are incorporated by reference.

GAAP. Nevertheless, JZ urges this Court to abstain on the issue based on inapposite authority that applies to issues that were not raised in the trial court.

Finally, JZ cites no authority to support the Trial Court's holding that proof of damages requires an actual accounting of the amount by which the price for Hbc would have been reduced had the errors been discovered, or the actual amount of additional cash HBCL was required to invest in the venture as a result of the errors. Nor does it respond to the authorities cited by HBCL holding that damages are not so limited. Further, JZ admits the Trial Court concluded that a $2 million "Covered Loss" was not an element of damage because the Court incorrectly believed the amount had already been deducted from Hbc's net assets.

In sum, the Trial Court's ruling that the SPA's indemnification remedy does not reach immaterial GAAP errors is reversible error. So is the Trial Court's holding that the "Covered Losses" at issue here do not constitute compensable damages.

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY FOUND THAT THE SPA INDEMNITY COVERS ONLY MATERIAL GAAP DEPARTURES

A. The Finding Is Reviewed De Novo

JZ admits this Court reviews the Trial Court's interpretation of the SPA *de novo*." (JZ Br. 15) Nevertheless, it argues the Trial Court's interpretation of the phrase "generally accepted accounting principles" in the Financial Representation receives deference because it is a fact question and was based on expert testimony. (*Id.* 15-16) The argument fails. Regardless of whether GAAP pronouncements are used to construe the phrase, it is a contract term.

JZ dismisses as *dictum* the holding in *Ehlinger v. Hauser*, 785 N.W.2d 328, 338 (Wisc. 2010), that the interpretation of "book value" is reviewed *de novo* because it is a contract term ***and*** because "[t]he necessary components of a GAAP computation is also a question of law." (JZ Br. 16 n.6) It identifies no contrary authority. Instead, JZ cites cases for the inapt principle that the finding of facts used to apply an undisputed GAAP standard is a fact determination. (*Id.* 15) Similarly, the cited authority giving deference to holdings founded on expert testimony (*id.* 16) involve fact findings that are based on detailed expert testimony about complex analyses, not interpretations of a contract's meaning. *Schock v. Nash*, 732 A.2d 217, 224 (Del. 1999) (citing *Cinerama, Inc. v. Technicolor*, *Inc.*, 663 A.2d 1156, 1178, 1180 (Del. 1995) ("entire fairness determination,

incorporating questions of credibility and based on … extensive expert witness presentations" over 26 days of testimony)); *SV Inv. Partners, LLC v. ThoughtWorks, Inc.*, 37 A.3d 205, 210 (Del. 2011) ("factual finding based on a weighing of expert opinion" using multiple valuation methods to quantify funds legally available).

The only expert testimony offered by JZ for its GAAP interpretation was from Daniel Thornton, whose 21-page report includes one-third of a sentence and a single footnote on the issue. (B93) Contrary to JZ's assertion that the Trial Court "credited Thornton's testimony" (JZ Br. 17), the only reference to Thornton in the seven Opinion pages dealing with the issue is a citation supporting the proposition that "[m]ateriality is deeply engrained in almost every aspect of GAAP." (Op. at 25 n.154) Moreover, unlike *Thoughtworks* where the "Vice Chancellor explained a logical rationale for rejecting the testimony of [the opposing] expert," 37 A.3d at 212, the Trial Court did not address the testimony of HBCL expert Bouchard explaining why Thornton was "simply wrong." (A2053-55)

The question of whether materiality is an inherent modification of GAAP requirements concerns an interpretation of the standard used to assess the SPA terms. It does not involve the finding of facts or the determination of whether in particular circumstances a party breached or complied with its obligations. It is, therefore, an issue of contract interpretation that is subject to *de novo* review.

B. Immaterial Departures from GAAP are Errors

JZ's substantive argument in support of its GAAP interpretation is little more than a rehash of the Trial Court's discussion. JZ largely concedes or ignores HBCL's bases for showing that the Trial Court was incorrect in holding that GAAP does not proscribe immaterial non-intentional errors. (*See* HBCL Br. 22-28)

HBCL cited GAAP pronouncements explicitly requiring that all errors be corrected, regardless of materiality (*id.* 24; A2054; A1197; B219), authorities it also discussed in its post-trial briefs in the Trial Court (A2710; AR64). HBCL cited JZ's principal accounting expert, Parsons, who testified that if GAAP is misapplied "the variance between the incorrect application and the correct application is an error," whether or not material. (A2413-14) Neither JZ nor the Trial Court addressed those pronouncements or Parsons' testimony. Neither found any GAAP promulgation, or any authority construing one, stating that GAAP <u>does not</u> reach immaterial, unintentional GAAP violations.

JZ claims to find support in a single out-of-context statement in CICA 1506 that financial statements do not comply with GAAP "if they contain either material errors or immaterial errors made intentionally …" (JZ Br. 17) The Trial Court noted that the quoted provision ***does not*** state what JZ argues, but requires "[a]n extension of this rule." (*Id.* (quoting Op. 23)) JZ ignores the admissions of its expert Thornton, the author of JZ's CICA 1506 argument, that such an extension

requires a "roundabout," "convoluted" reading of the standard, of which he conceived only when attempting to make a role for himself in this case. (A2286) JZ acknowledges the standard relates to the obligation to correct errors found after a financial statement is issued. (HBCL Br. 23-24; JZ Br. 16-17) It does not address the fact, noted by HBCL expert Bouchard, that the same paragraph of CICA 1506 is one of the GAAP pronouncements requiring the correction of all current period errors, whether or not material. (HBCL Br. 24; A2054)

Parsons' testimony is also a flat rejection of an argument JZ made for the first time in its appeal brief – that "materiality [is] the 'sole criterion'" for determining whether an estimating mistake "rises to the level of an error." (JZ Br. 20; Op. 28) JZ's new argument is based provisions of CICA 1508 discussing the need for additional financial statement disclosures, not the appropriateness of a methodology used to derive a financial statement estimate. (A123)

Ultimately, the Trial Court's reasoning, adopted by JZ, is premised on the notion that havoc will result unless financial statement preparers are allowed to depart from GAAP in immaterial ways. (JZ Br. 20-22; Op. 26) JZ ignores the universal imposition of a materiality qualifier on audit opinions, a qualification that eliminates any such risk but that would be unnecessary if GAAP is already so qualified. (HBCL Br. 25) Nor does JZ explain why auditors give clients a listing of immaterial errors if immaterial errors are not errors. (*Id.*)

JZ does not dispute the basic principle that, even if one accepts its "convoluted" GAAP interpretation, the SPA will not be held to incorporate that technical definition if the parties intended otherwise. (HBCL Br. 26) HBCL showed that the word "material" in the Financial Representation would offend the principle against surplusage if materiality is inherent in GAAP. (*Id.* 27) JZ's response is to adopt the Trial Court's bifurcation of the Financial Representation into a "GAAP" clause (not modified by "material") and a "fair presentation" clause (so modified). (JZ Br. 19-20; Op. 22) The *Background Information and Basis For Conclusion for CICA Handbook*, included in Thornton's report, expressly states that "'fair presentation' is not a separate consideration from whether financial statements are in accordance with generally accepted accounting principles." (B190) JZ admits that all of the concepts in the "fair presentation" clause are GAAP principles. (JZ Br. 19) JZ does not, and cannot, explain why, if materiality is inherent in GAAP, the word "material" is not surplusage even if it only limits the GAAP-based "fair presentation" clause.[2]

"When parties have ordered their affairs voluntarily through a binding contract, Delaware law is strongly inclined to respect their agreement, and will only interfere upon a strong showing that dishonoring the contract is required to vindicate a public policy interest even stronger than freedom of contract." *Libeau*

[2] For the same reason, the Trial Court's conclusion that HBCL did not present a claim under the "Fair Presentation Clause" is erroneous.

v. Fox, 880 A.2d 1049, 1056–57 (Del. Ch. 2005) *aff'd in relevant part*, 892 A.2d 1068 (Del. 2006). Materiality scrapes are common acquisition agreement provisions that the Delaware courts have recognized as "very textured" mechanisms allowing parties to allocate risk for immaterial breaches of representations. *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1044 (Del. Ch. 2006); *see, e.g.*, ABA, 2012 Canadian Private Target Mergers & Acquisitions Deal Points Study at 98 (finding similar provisions in 11% of agreements with indemnification baskets); ABA, 2011 Private Target Mergers & Acquisitions Deal Points Study at 99 (finding similar provisions in 49% of agreements with indemnification baskets). The Trial Court Opinion overrides that contractual risk allocation.

II. THE EVIDENCE ESTABLISHES THE FINANCIAL REPRESENTATION WAS UNTRUE

JZ acknowledges the Trial Court did not decide whether HBCL's Inventory, Loyalty and Lease Claims were GAAP departures, having concluded it did not matter because the errors were immaterial. (JZ Br. 23-24) JZ concedes that in the interests of judicial economy this Court may decide an issue not reached by the Trial Court, but argues it should not do so here. (JZ Br. 23) *See Standard Distrib. Co. v. Nally*, 630 A.2d 640, 647 (Del. 1993).

JZ's support for its plea for abstention, rather than a determination of the GAAP issues, is inapposite. In *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 2013 WL 1914714, at *8 (Del. May 9, 2013) (JZ Br. 23) this Court held that an argument that was "not fairly present[ed]" to the trial court – clearly not the case here (*see* Op. 10-20) – should be resolved in the first instance on appeal "only if the interests of justice require us to do so." In *Council of Dorset Condo. Apartments v. Gordon*, 801 A.2d 1, 9 (Del 2002) (JZ Br. 24), this Court remanded an issue on which the trial court ruled without explaining the basis of its decision. JZ cites *Gatz Props., LLC v. Auriga Capital Corp.*, 59 A.3d 1206, 1218 (Del. 2012), for the principle that the "trial court should not have reached or decided unnecessary issue" (JZ Br. 24), although *Gatz* involved a trial court "reach[ing] out and decid[ing], *sua sponte*," an issue "no longer contested by the parties." *Id.* JZ cites no authority where this Court declined to resolve an issue

that had been presented to, but not decided by, the trial court.

Other than its argument that material GAAP violations are not GAAP violations, JZ offers little to rebut HBCL's evidence that the Inventory, Loyalty and Lease Claims state GAAP breaches. (*Compare* HBCL Br. 29-30 *with* JZ Br. 23-24) Its primary response is that Hbc's pre-acquisition auditor (KPMG) and its post-acquisition auditor (Deloitte) approved the challenged treatments. (JZ Br. 8-10)

At the threshold, the argument fails because each auditor's opinion was qualified by materiality. (A463; A126) As the head of the KPMG team testified: "[A]n audit isn't designed to identify an immaterial error." (AR46) KPMG did not examine the Jane Finch sublease at all because the sublease was immaterial. (AR45)

JZ's expert, Parsons, rejected much of KPMG's advice – a point JZ ignored. Parsons admitted that data provided to KPMG indicated the inventory accounting did not comply with the GAAP requirement that items in categories have "similar margins," and that KPMG's analysis "tells you nothing about whether an individual category" met the GAAP standard. (HBCL Br. 8-9) Shown evidence KPMG incorrectly believed Hbc conducted an inventory "[s]ustainability" review in 2007, Parsons conceded she would "have to reassess [her] opinion" if KPMG erred. (A2484; A1666-69) Parsons "specifically disagreed" with multiple aspects

of KPMG's advice on Hbc's loyalty accounting. (HBCL Br.15).

JZ's reliance on Deloitte's audit also is off the mark. (JZ Br. 9-10) JZ does not deny that in the statements audited by Deloitte, the erroneous loyalty methodology was replaced by an actuarial study and that a full reserve was taken for the Jane Finch sublease. (A1555; A1611-12) JZ does claim Hbc's inventory accounting was unchanged from 2007 to 2008 (JZ Br. 9), citing isolated statements by executives who testified they were unfamiliar with the details of the company's methodology. (A1462, A1521; AR42-AR43; AR38-39) Douglas Tames, who directed the accounting, explained that a "sustainability" review was added in FY 2008 precisely to correct the error Bouchard described. (A1667-68; see also AR53-54) Tames' testimony was corroborated by contemporaneous documents (AR21; AR35; see also A1662-68), and is unchallenged by JZ. Francis Casale was aware the methodology evolved in FY 2008. (A1521-23) Critically, the Trial Court did not find that HBCL's inventory accounting was unchanged – only that the ***categories*** were unchanged. (Op. 13)

At most, Deloitte's audit of the erroneous accounting was limited to a review of KPMG's prior year work. (JZ Br. 9) Again, that review was limited by materiality. Moreover, as Hbc's current CFO explained: "any time you switch auditors, they're not necessarily going to spend a lot of time on the last year's [financials]. It's hard enough to get through the current year's audit …." (A2018)

Deloitte's failure to object to immaterial errors derived by its predecessor's use of superseded accounting treatments hardly evidences approval.

JZ's observation that HBCL did not contest inventory amount recorded on the FY2007 balance sheet (under the old, CICA 3030 standard) is beside the point. (JZ Br. 8) HBCL contests the accuracy of the footnote that incorrectly quantified the impact of a pending change to a new standard, CICA 3031. (HBCL Br. 5-6) The undisputed evidence is that in developing its expectations for Hbc's future cash flows and deciding how much to pay for Hbc, HBCL used the erroneous CICA 3031 accounting. (A1400) Similarly misplaced is JZ's contention that the claim "arose out of a change in accounting policy" that did not affect the physical inventory (JZ Br. 28) – the claim arose out of an overstatement of inventory value under the standard used to value the company.

JZ misleadingly claims Tames "admitted" Hbc's loyalty reserve was "appropriate" and "did not believe it violated GAAP." (JZ Br. 12) When the FY2007 Financials were being prepared, Tames believed the reserve "didn't reflect management's expectations" but was limited by KPMG's advice that "we couldn't use projections" – advice Parsons rejected. (A1611; A1720; A2428-31) He expressed "widely" his view that he was "incredibly uncomfortable" with Hbc's loyalty methodology and recommended retention of an actuarial expert to perform the estimate – advice Hbc followed in FY 2008. (A1574-75)

JZ notes the Jane Finch subtenant was current in paying monthly rent at the end of FY2007. (JZ Br. 12) It does not address the facts that the subtenant: (i) was substantially in arrears on tax and common area maintenance payments; (ii) had increasing difficulty staying current on rent; (iii) would be subject to a $15,000 monthly rent increase in a few months; and (iv) was believed by Hbc's real estate department to be incapable of covering the rent increase, or taxes, maintenance or repair costs going forward. (HBCL Br. 16-17) JZ does not respond to the fact that Parsons' opinion that Hbc could reasonably decline to book a provision was based on the erroneous assumption that the company's financial management specifically weighed all the facts and concluded no provision was necessary. (HBCL Br. 18; A2469-73) Nor does it disavow Parsons' conclusion that there was "sufficient factual support for management to have booked the $3.1 million reserve" calculated by Bouchard. (HBCL Br. 18; A2466-67)

III. THE TRIAL COURT ERRONEOUSLY NARROWED THE BROAD SPA DEFINITION OF "COVERED LOSSES"

HBCL proved it paid for value it did not receive because of an undisclosed liability (the Tax Claim), understated liabilities (the Loyalty and Lease Claims) and overstated assets (the Inventory Claim). (HBCL Br. 18-20, 33) The errors inflated expectations about Hbc's ability to generate cash. JZ admitted the undisclosed tax liability damaged HBCL, conceding it was a "Covered Loss." (*Id.* 5)

JZ concedes the Trial Court required proof that, but for the errors, HBCL "would have paid less for Hbc or invested less in the transaction." (JZ Br. 25) JZ does not defend that formulation as required by the SPA or Delaware law. Rather, it claims HBCL was estopped from arguing any other measure because "those are the only theories of loss that HBCL either pleaded or presented at trial." (*Id.*)

The Trial Court explicitly held the stated measure of damages was compelled by the SPA's "Covered Loss" provision and nowhere held or implied that HBCL was somehow limited in what it could argue. (Op. 28-32) The Trial Court's formulation is far more restrictive than Delaware law. For example, Delaware courts have rejected an argument that misrepresentations did not injure a buyer because the seller would not have accepted a lower price. *Cobalt Operating, LLC v. James Crystal Enters., LLC,* 2007 WL 2142926, at *29 (Del. Ch. July 20, 2007) ("argument misses the point of awarding a remedy in a breach of contract case like this, which is to compensate the non-breaching party for the injury caused

by the breach"). HBCL cited (without comment from JZ) authorities requiring sellers to pay the cost of fixing or replacing misrepresented assets. (HBCL Br. 32-33) Moreover, HBCL cited authority that a broadly-worded provision such as the SPA's "Covered Loss" definition expands the injuries for which compensation is required – a principle JZ does not dispute. (HBCL Br. 32)

JZ also argues (as did the Trial Court) that HBCL must show the exact amount of the shortfall that ultimately resulted from each error. (JZ Br. 27-29; Op. 27-32) JZ cites no authority requiring an accounting of actual, after-the-fact out-of-pocket costs. Nor does it address the authorities holding that damages are based ***on expectations as of the time of breach***. (HBCL Br. 33-34)

JZ misperceives the requirement of "reasonable certainty." (*See* JZ Br. 27) The concept "is not equivalent to absolute certainty; rather, the requirement that plaintiff show defendant's breach to be the cause of his injury with ***'reasonable certainty' merely means that the fact of damages must be taken out of the realm of speculation***." *Cura Fin. Servs. N.V. v. Elec. Payment Exch., Inc.*, 2001 WL 1334188, at *20 (Del. Ch. Oct. 22, 2001) (internal quotation omitted; emphasis added); *Beard Research, Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch. 2010) *aff'd sub nom. ASDI, Inc. v. Beard Research, Inc.*, 11 A.3d 749 (Del. 2010) ("quantum of proof required to establish the amount of damage is not as great as that required to

establish the fact of damage."). As the Second Circuit explained in *Boyce v. Soundview Tech. Grp., Inc.*, 464 F.3d 376, 392 (2d Cir. 2006):

> Simply put, it is always the breaching party (read: "wrongdoer") who must shoulder the burden of the uncertainty regarding the amount of damages. *See id.* All a plaintiff must establish is (1) that the defendant caused the breach and (2) that damages resulted from that breach. Our case law is clear that a plaintiff need only demonstrate a 'stable foundation for a reasonable estimate,' as to damages …

(quoting *Contemporary Mission, Inc. v. Famous Music Corp.,* 557 F.2d 918, 926 (2d Cir. 1977)) Thus, "reasonable certainty" refers to proof that the breach caused an injury. Once that is shown "almost any reasonable method of estimating damages is permissible …." 24 Williston on Contracts § 64:8 (4th ed.); *Beard Research, Inc. v. Kates*, 8 A.3d at 613 (breaching party bears "the risk of uncertainty of a damages calculation where the calculation cannot be mathematically proven"); *see Siga Techs., Inc. v. PharmAthene, Inc.*, 2013 WL 2303303, at *12 (Del. Supr. May 24, 2013) (where parties have "preliminary agreement to negotiate in good faith, and the trial judge makes a factual finding … that the parties would have reached an agreement but for the defendant's bad faith negotiations, ***the plaintiff is entitled to recover contract expectations damages***" (emphasis added)).

Even if the SPA contained such a limitation, the evidence is undisputed that in pricing the deal HBCL took into consideration the amount of cash it would have to invest in Hbc as well as the purchase price, and that it negotiated a 15.8% price

adjustment when it became apparent during due diligence that the business had greater cash needs than expected. (HBCL Br. 20) Further, JZ acknowledges that even under the Trial Court's narrow definition of "Covered Losses," the Trial Court erroneously failed to include $2 million of the Lease Claim that it incorrectly believed had been reserved against the sublease. (JZ Br. 28) JZ's argument that the error was harmless because "the court did not offset that reserve against HBCL's damage claim …" (*id.*) misses the point; the Trial Court recognized the $2 million as an element of damages but erroneously did not count it.

JZ suggests HBCL was obligated to present a "damages or valuation" expert. (JZ Br. 27) The Trial Court made no such holding, and JZ cites no authority for such a requirement. In any event, it is undisputed that HBCL presented Bouchard – a qualified expert who presented a detailed and largely unrebutted analysis that identified the GAAP errors and quantified their impact. (HBCL Br. 10, 15, 18; see also A808; A826; A834) HBCL also presented an unrebutted fact witness (Casale) who testified that Hbc's cash needs were a critical component of the buyer's pricing of the company and two unrebutted fact witnesses (Casale and Michael Culhane) who testified that the accounting misrepresentations affected expectations of Hbc's cash needs. (HBCL Br. 18-20, 34)

JZ and the Trial Court relied on JZ expert Howard Johnson, who testified that HBCL would not have changed its expectations of continuing EBITDA had it been aware of the errors. (HBCL Br. 20; Op. 30; JZ Br. 26) JZ did not, however, dispute or respond to numerous flaws in Johnson's analysis. (HBCL Br. 20-21) First, Johnson only considered continuing EBITDA, although he admitted (and the law recognizes) there are other value measures. Second, the sole basis for Johnson's conclusion was an early report by a Deloitte consulting team, and Johnson admitted those conclusions may have changed as due diligence progressed. Third, Johnson admitted that, despite his testimony to the contrary, the Deloitte report concluded that the kind of error underlying the Loyalty Claim ***would*** affect continuing EBITDA. Fourth, Johnson admitted HBCL may have reached different conclusions than Deloitte about continuing EBITDA, and that he had no information regarding HBCL's views on the subject. Fifth, Johnson admitted he did not know enough about Hbc or the errors to opine independently on how they might affect continuing EBITDA. Sixth, Johnson did not consider or opine on the impact on continuing EBITDA of the Tax or Lease Claims.

Johnson's testimony that HBCL suffered "no economic loss" and the errors did not have "an impact on the cash flow generating ability of the business" conflicts not only with the testimony of Casale and Culhane (who unlike Johnson understood HBCL's expectations and Hbc's business) but also with Johnson's own

writings. In an article titled *Financial Statement Analysis in Mergers and Acquisitions*, Johnson wrote that "inflated trade assets" and "hidden trade liabilities" "reduce the underlying net operating assets" of a company "and accordingly reduce[] the value and price that would be paid for its shares." (AR96-97; see also AR67). His article specifically warned about the kind of errors at issue here: overstated "inventory . . . that includes obsolete items," underfunded accruals for future "warranty obligations" (analogous to loyalty), and underfunded accruals for "costs associated with discontinued operations" (*i.e.*, Jane Finch lease). (AR95-96) Johnson also wrote, consistent with the testimony of Casale and Culhane (HBCL Br. 18-19), that unexpected "trade liabilities must be satisfied through future cash flows, thereby reducing prospective discretionary cash flows." (AR94)

JZ's contention that HBCL is not entitled to attorneys' fees because the Trial Court nominally entered judgment for JZ is spurious. The Pre-Trial Stipulation's use of the word "judgment" is ambiguous and, in any event, the Trial Court found in favor of HBCL on its tax claim. *See* Black's Law Dictionary (9th ed. 2009) (defining "judgment" as a "court's final determination of the rights and obligations of the parties in a case").

CONCLUSION

For the foregoing reasons and those stated in its Opening Brief, Appellant respectfully requests that this Court reverse the Superior Court's judgment and enter a judgment in favor of Appellant.

/s/ David J. Margules
David J. Margules (#2254)
Jeffrey M. Gorris (#5012)
Jaclyn Levy (#5631)
BOUCHARD MARGULES
& FRIEDLANDER, P.A.
222 Delaware Avenue, Suite 1400
Wilmington, Delaware 19801
(302) 573-3500
Attorneys for Appellant

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