SUPERIOR COURT
OF THE
STATE OF DELAWARE

ERIC M. DAVIS
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0960

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Thomas E. Hanson, Jr., Esquire
Barnes & Thornburg LLP
1000 N. West Street, Suite 1500
Wilmington, Delaware 19801-1058

Marc S. Casarino, Esquire
White & Williams LLP
600 N. King Street, Suite 800
Wilmington, Delaware 19801-3711

Stephen F. Dryden, Esquire
Fires & Newby LLP
92 Reads Way, Suite 104
New Castle, Delaware 19720

Bruce W. McCullough, Esquire
Bodell Bove, LLC
1225 N. King Street, Suite 1000
P.O. Box 397
Wilmington, Delaware 19899-0397

David J. Soldo, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801

RE: *Steadfast Insurance Co. v. Community Health Systems Inc. et al.*
C.A. No. N18C-11-127 EMD CCLD

Dear Counsel:

This Letter Opinion addresses two motions: (i) Defendants[2] Community Health Systems, Inc., CHS/Community Health Systems, Inc., CHSPSC, LLC, and Pecos Valley of New Mexico LLC's Sealed Emergency Motion to Enforce Settlement with Steadfast Insurance Company and for Attorneys' Fees (the "Settlement Motion");[3] and (ii) Plaintiff Steadfast Insurance Co.'s

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[1] The Court originally issued this letter under seal on February 2, 2022. D.I. No. 783. The Court asked the parties to designate any portions to remain under seal. The Court has reviewed the request of Steadfast and will keep certain portions under seal for confidential business reasons. The redactions do not relate to any substantive ruling by the Court. The Court highlights the redactions with a [**REDACTED].**
[2] The Defendants will be collectively referred to as "CHS."
[3] D.I. No. 766.

Motion to Supplement the Record (the "Motion to Supplement").[4] For the reasons set out below, the Court **GRANTS** the Motion to Supplement to allow the Court to considered supplemental information presented by the parties. In addition, the Court **GRANTS** the Settlement Motion, except as to attorneys' fees.

I. BACKGROUND

A. The Litigation

This is an insurance coverage dispute. CHS had a tower of insurance for the 2012–2013 policy period in which Steadfast Insurance Co. ("Steadfast") was the first excess insurer.[5] CHS requested indemnification, in part, for a $73.21 million verdict entered against it in the underlying Botello Lawsuit.[6] Steadfast filed this action on November 14, 2018, seeking declaratory relief that Steadfast had no obligation to indemnify the claim related to the Botello Lawsuit.[7]

Steadfast first asserted, in the complaint, that the Steadfast Policy had "limits of liability of $15,000,000 for each 'Occurrence' or 'Medical Incident,' with a $20,000,000 'Annual Aggregate.'"[8] Steadfast's motion for summary judgment later identified the aggregate limit as $15 million, not $20 million.[9] At the time, the inconsistency did not appear consequential. Everyone agreed the Steadfast Policy had a per incident limit of $15 million, and that was the

[4] D.I. No. 771.
[5] Compl. at ¶¶ 11–29 (D.I. No. 1).
[6] *Id.* at ¶ 53.
[7] *Id.*
[8] *Id.* at ¶ 24
[9] Steadfast's Mot. for S.J. at 25 (D.I. No. 629).

most CHS could have obtained from Steadfast for the indemnification claim related to the Botello Lawsuit.

Steadfast and CHS reached a settlement agreement (the "Settlement") on November 23, 2021.[10] CHS emailed Steadfast a draft Term Sheet later that day, which purported to memorialize the "terms and conditions" of the Settlement.[11] Paragraph 4 of the draft Term Sheet provided:

> The New Mexico and Delaware Actions regard an insurance coverage dispute among the Parties and arising from Steadfast "Health Care Excess Liability Policy Number: HPC 5346837 07," with a "Policy Period" starting June 1, 2012 and ending June 1, 2013 with "Limits of Liability" of Fifteen Million Dollars ($15,000,000) for each "Occurrence" or "Medical Incident" and *an "Annual Aggregate" of Twenty Million Dollars ($20,000,000)*.[12]

The Term Sheet went through several iterations as the parties negotiated its wording, each of which included Paragraph 4.[13] The parties executed the finalized Term Sheet on November 23, 2021.[14] Among other things, the Term Sheet said Steadfast would pay CHS [**REDACTED**] under its 2012–13 policy. The parties also agreed to enter into a "more detailed Settlement Agreement and Release" not later than December 3, 2021.[15]

CHS sent Steadfast a draft Settlement Agreement on November 24, 2021, which included a "Recital" identifying the aggregate limit as $20 million.[16] On December 3, 2021, Steadfast

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[10] CHS's Mot. to Enforce Settlement Agreement at 1 (D.I. 766).
[11] *Id.*, Decl. of Joshua B. Rosenberg at ¶ 8; *see also id.*, Ex. C at 1.
[12] *Id.*, Ex. C at ¶ 4 (emphasis added).
[13] *See id.*, Exs. D, E, F.
[14] *See id.*, Ex. G.
[15] *See id.*, Ex. G. at ¶¶ 10, 13.
[16] The "Recital," in full, reads as follows:

> WHEREAS, Steadfast issued to CHSI "Health Care Excess Liability Policy Number: HPC 5346837 07," with a "Policy Period" starting June 1, 2012 and ending June 1, 2013 with "Limits of Liability"

informed CHS that the Steadfast Policy's reference to a $20 million aggregate limit was a "mistake," and that the correct aggregate limit was $15 million.[17] Steadfast claimed it had not noticed that the Steadfast Policy contained this mistake until after signing the Term Sheet.[18] Steadfast refused to sign a Settlement Agreement memorializing the aggregate limit as $20 million.

CHS filed the Settlement Motion on December 16, 2021. CHS asked the Court to enforce the Term Sheet and award attorneys' fees. CHS explained that Paragraph 4 was a material term because memorializing the aggregate limit as $20 million would allow it to seek coverage for other claims from the 2012–2013 policy period.[19] Steadfast's opposition brief asked the Court to enforce the "Settlement Agreement"[20] while either deleting the recital entirely or adding language stating the aggregate limit was in dispute.[21] The Court held a hearing on the Settlement Motion on December 22, 2021. The Court made some preliminary decisions at the

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of Fifteen Million Dollars ($15,000,000) for each "Occurrence" or "Medical Incident" and an "Annual Aggregate" of Twenty Million Dollars ($20,000,000) ("Steadfast Policy").

See Steadfast's Opp. to CHS's Mot. to Enforce Settlement Agreement, Ex. 11 at 1 (D.I. 768).

[17] *See id.*, Ex. 10 at 1.

[18] *See* CHS's Mot. to Enforce Settlement Agreement, Decl. of Joshua B. Rosenberg at ¶ 16; *see id.*, Ex. K.

[19] CHS's Mot. to Enforce Settlement Agreement at 2.

[20] The Court notes that the Settlement Motion asked the Court to enforce Term Sheet, not the full-length Settlement Agreement. *Id.* at 3. But Steadfast's opposition brief asked the Court to enforce a modified version of the Settlement Agreement, not the Term Sheet. *See* Steadfast's Opp. to CHS's Mot. to Enforce Settlement at 1–2, 6; *see id.*, Ex. 1. There are two problems with Steadfast's request. First, the parties have not agreed to or signed the Settlement Agreement, which means it is not yet an enforceable contract. Second, the Term Sheet said the parties would enter into a "more detailed Settlement Agreement and Release setting forth in detail the terms and conditions of the settlement." *See* Steadfast's Mot. to Enforce Settlement Agreement, Ex. G at ¶ 10. In other words, the terms of the Settlement Agreement were to be more detailed than those of the Term Sheet, but not inconsistent or contradictory. As explained below, the Court interprets the language in Paragraph 4 of the Term Sheet as one of the "terms and conditions of the settlement." Therefore, even if the Settlement Agreement were currently an enforceable contract, the Court could not enforce it with Steadfast's proposed modifications without contradicting the terms of the Term Sheet. In the Court's view, the proper way for Steadfast to obtain its desired outcome is to ask for the Term Sheet to be enforced with modifications to Paragraph 4. So that is how the Court will treat Steadfast's opposition brief.

[21] *See* Steadfast's Opp. to CHS's Mot. to Enforce Settlement at 6.

end of the hearing. The Court found that the parties had reached an enforceable settlement through the Term Sheet. The Court took the matter of whether Paragraph 4 needed reformation under advisement.[22]

On January 3, 2022, Steadfast filed the Motion to Supplement. The Motion to Supplement seeks to supplement the record in further response to the Settlement Motion and issues raised by the Court during the December 22, 2021 hearing.[23] Steadfast asked the Court to consider documents relating to the negotiation and execution of the Steadfast Policy. Steadfast contends that these documents prove that the Term Sheet's reference to a $20 million aggregate limit was incorrect. In response, CHS argued the Motion to Supplement should be denied because the evidence it offered was irrelevant.

B. The Steadfast Policy and Related Documents

The Court will attempt to assemble a timeline from the documents provided by the parties. In April 2012, Steadfast was in the process of deciding what to quote CHS for the 2012–2013 policy period. Internally, Steadfast employees suggested various options, none of which contained a $20 million aggregate limit.[24] Steadfast then began negotiating with CHS's insurance broker, Aon Risk Services. Steadfast sent four emails Aon during the negotiations, each of which provided two options for the 2012–2013 policy period.[25] However, none of the options Steadfast suggested ever included an aggregate limit of $20 million. Steadfast's final quote to Aon offered an aggregate limit of either $15 million or $25 million.[26]

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[22] D.I. 770.
[23] Steadfast's Mot. to Supplement Record (D.I. No. 771).
[24] *Id.*, Ex. A.
[25] *Id.*, Exs. B, C, D, E.
[26] *Id.*, Ex. E.

Steadfast's binder for the policy, dated May 31, 2012, said: "In accordance with your instructions and in reliance upon the statements made in your application, we have effected insurance as follows."[27] The binder proceeded to identify the aggregate limit as $15 million.[28] Additionally, a "Summary of Insurance Program for CHS-Affiliated Entities 2012/2013" stated the aggregate limit was $15 million.[29] However, it is unclear who created this latter document, when it was created, or who received the document. The Court also understands that the excess layer insurers all identified the aggregate limit of the Steadfast Policy to be $15 million.

The Steadfast Policy was effective from June 1, 2012 through June 1, 2013. Section I of the Steadfast Policy, titled "Declarations," identified the "Annual Aggregate" as $15 million.[30] Endorsement #13 of the Steadfast Policy provides that the endorsement "modifies" the Annual Aggregate listed in the Declarations to $20 million.[31]

In June 2013, an internal Steadfast email stated: "Expiring policy Endorsement #13 has incorrect limits – should read $15,000,000. I will send a request under separate cover to correct the 2012 term with additional processing instructions."[32] A few days later, another internal Steadfast email stated: "End #9 Amended Aggregate Limit: limits should read $15,000,000 in

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[27] *Id.*, Ex. F.
[28] *Id.*
[29] *Id.*, Ex. G. In the Motion to Supplement Record, Steadfast provides that Exhibit G is "CHS's insurance program summary for 2012-13," but does not provide any other authentication. Steadfast's Mot. to Supplement Record at 2. In the Reply in Support of the Motion to Supplement Record, Steadfast characterizes Exhibit G as "a document from [CHS's] own file…." Steadfast's Reply in Support at ¶ 5. The Court will assume that this document was produced by CHS during discovery and that no representative of CHS was ever deposed as to its significance or authenticity.
[30] CHS's Mot. to Enforce Settlement, Ex. A-1 at 6.
[31] *Id.* at 27.
[32] Steadfast's Mot. to Supplement Record, Ex. H.

lieu of $20,000,000 (note this was incorrect on expiring and I have requested a correcting endorsement – reference my 6/7/2013 e-mail."[33]

These emails show Steadfast internally regarded Endorsement #13 as a mistake of some kind by June 2013. However, Steadfast provided no documents detailing how the mistake occurred or explaining how Endorsement #13 came to be included in the finalized Steadfast Policy. Steadfast also provided no documents showing its employees attempted to notify CHS of the apparent mistake. In addition, Steadfast has not produced a "correcting endorsement" as referenced in the internal Steadfast email. The parties did not make anything available to the Court that showed CHS believed the Aggregate Limit should be $15 million. Instead, as presented to the Court, Steadfast first identified the Aggregate Limit as $15 million and not $20 million in its motion for summary judgment—although Steadfast did not amend that fact alleged in its operative complaint. Steadfast appears to have separately told CHS that the Aggregate Limit was $15 million on December 3, 2021.[34]

II. APPLICABLE LAW

"A party seeking to enforce [a] settlement agreement has the burden of proving the existence of [a] contract by a preponderance of the evidence."[35] "Delaware law favors the voluntary settlement of contested suits,"[36] and such arrangements will bind the parties where they agree to all material terms and intend to be bound by that contract, "whether or not [the

[33] *Id.*, Ex. I.
[34] *See* Steadfast's Opp. to CHS's Mot. to Enforce Settlement, Ex. 10.
[35] *Heiman Aber & Goldlust v. Ingram*, 1998 WL 442691, at *2 (Del. May 14, 1998) (internal citations omitted).
[36] *Clark v. Ryan*, 1992 WL 163443, at *5 (Del. Ch. June 17, 1992) (citing *Neponsit Inv. Co. v. Abramson*, 405 A.2d 97 (Del. 1979)).

contract is] made in the presence of the court, and even in the absence of a writing."[37] When dealing with a motion to enforce a settlement agreement, the Court generally determines whether a binding settlement agreement arose by asking:

> whether a reasonable negotiator in the position of one asserting the existence of a contract would have concluded, in that setting, that the agreement reached constituted agreement on all of the terms that the parties themselves regarded as essential and thus that that agreement concluded the negotiations and formed a contract.[38]

Settlement agreements are contracts and Delaware courts examine them under well-established law surrounding contract interpretation.[39] "The primary goal in contract interpretation is to fulfill, as nearly as possible, the reasonable shared expectations of the parties at the time they contracted."[40] Nevertheless, Delaware adheres to the objective theory of contracts and, "[a]lthough the law . . . generally strives to enforce agreements in accord with their makers' intent, [this theory] considers 'objective acts (words, acts and context)' the best evidence of that intent."[41] Under this theory, determining whether the parties reached a binding contract to settle requires an examination of the "objective, overt manifestations of the parties, rather than their subjective intent."[42] "Generally, recitals are not a necessary part of a contract

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[37] *Rohm & Haas Elec. Materials, LLC v. Honeywell Int'l, Inc.*, 2009 WL 1033651, at *4 (D. Del. Apr. 16, 2009) (quoting *Read v. Baker*, 438 F. Supp. 732, 735 (D. Del.1977)); *Transamerican S.S. Corp. v. Murphy*, 1989 WL 12181 (Del. Ch. Feb.14, 1989).
[38] *Leeds v. First Allied Conn. Corp.*, 521 A.2d 1095, 1097 (Del. Ch. 1986).
[39] *See Clark*, 1992 WL 163443, at *5 (internal citations omitted).
[40] *Fox v. Paine*, 2009 WL 147813, at *5 (Del. Ch. Jan. 22, 2009) (citing *Bell Atl. Meridian Sys. v. Octel Commc'ns Corp.*, 1995 WL 707916, at *5 (Del. Ch. Nov.28, 1995)).
[41] *MBIA Ins. Corp. v. Royal Indem. Co.*, 426 F.3d 204, 210 (3d Cir. 2005) (quoting *Haft v. Haft*, 671 A.2d 413, 417 (Del. Ch. 1997)); *see also NBC Universal, Inc. v. Paxson Commc'ns Corp.*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005).
[42] *Del. Dept. of Educ. v. Doe*, 2008 WL 5101623, at *1 (Del. Ch. Nov. 21, 2008) ("The overt manifestations of agreement must be viewed from the perspective of a 'reasonable negotiator' who must conclude that the agreement contained all terms essential to the parties and that the agreement concluded the negotiations.") (citing *Loppert v. WindsorTech, Inc.*, 865 A.2d 1282, 1287 (Del. Ch. 2004)); *see also Indus. Am., Inc. v. Fulton Indus., Inc.*, 285 A.2d 412, 415 (Del. 1971).

and can only be used to explain some apparent doubt with respect to the intended meaning of the operative or granting part of the instrument. If the recitals are inconsistent with the operative or granting part, the latter controls."[43]

III. ANALYSIS

Steadfast and CHS agree that the Term Sheet is an enforceable contract that contains all the essential terms of their Settlement. Steadfast and CHS disagree, however, on whether Paragraph 4 is one of those essential terms or a mere recital. CHS says Paragraph 4's reference to a $20 million aggregate limit is a material term because it "establishes that [**REDACTED**] of the policy's aggregate limits, not [**REDACTED**], is available for other claims," which is why it accepted a "deep discount" on the Botello claim.[44] Steadfast says the parties always treated Paragraph 4 as a recital because the aggregate limit was never at issue in this litigation and because it simply reflects a mutual mistake in the Steadfast Policy from almost a decade ago.[45]

The Court held that the Term Sheet was an enforceable agreement at the December 22, 2021 hearing. The Court found that the objective, overt manifestations of CHS and Steadfast demonstrated that a settlement had been reached when the parties signed the Term Sheet. Indeed, the parties had contacted the Court on November 23, 2021 and informed the Court that the Settlement had been reached.[46] Acting on this, the Court entered an order postponing the summary judgment hearing and the trial.[47]

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[43] *Urdan v. WR Cap. P'rs*, LLC, 2019 WL 3891720, at *13 (Del. Ch. Aug. 19, 2019), *aff'd*, 244 A.3d 668 (Del. 2020).
[44] CHS's Mot. to Enforce Settlement Agreement at 4.
[45] Steadfast's Opp. to CHS's Mot. to Enforce Settlement at 3–6.
[46] D.I. No. 741.
[47] D.I. No. 742.

The Court ordered the parties to comply with all terms of the Term Sheet except Paragraph 4. The Court wondered if there was evidence that would answer whether the aggregate limit of the Steadfast Policy was $15 million or $20 million. The Court took the issue of Paragraph 4 under advisement.

Steadfast filed the Motion to Supplement in response to the Court's inquires at the December 22, 2021 hearing. For this reason, the Court **GRANTS** the Motion to Supplement, will allow the record to be supplemented, and took the evidence provided by Steadfast and CHS into consideration. After consideration, the Court concludes that the Term Sheet should be enforced as written. Accordingly, CHS's motion is **GRANTED**.

A. The Court cannot conclusively determine whether the Steadfast Policy contains a mistake

The Court initially hoped to resolve this dispute by determining the "correct" aggregate limit under the Steadfast Policy. As explained at the December 22 hearing, the Court approached this question from an economic perspective. The core bargain in an insurance contract is that the insured will pay a premium to the insurer in exchange for protection against a pre-defined level of risk. As applied here, that meant examining the parties' course of dealing to determine which aggregate limit CHS had paid for. If CHS paid for a $15 million aggregate limit, then enforcing the Term Sheet would mean providing CHS with a benefit that neither party intended and that CHS had not earned. And if CHS paid for a $20 million aggregate limit, then failing to enforce the Term Sheet would deprive CHS of the benefit of its bargain under the Steadfast Policy.

Steadfast attempted to assist the Court through its motion to supplement the record. The Court carefully reviewed the documents Steadfast submitted. However, the Court is not convinced that these documents conclusively demonstrate that the Steadfast Policy was supposed to have any aggregate limit other than the $20 million listed in Endorsement #13.

The Court notes that neither party seemingly suggested an aggregate limit of $20 million when they were negotiating the Steadfast Policy; instead, the options were $15 million and $25 million. The Court saw that Steadfast regarded that figure as a mistake about a year later. But the record is silent as to what happened when the parties executed the Steadfast Policy. How did Endorsement #13 come to be included? Did one of the parties suggest it? And if Endorsement #13 "should read $15,000,000,"[48] as Steadfast's internal emails suggested, then why would Endorsement #13 need to exist at all? The base terms of the Steadfast Policy already said the aggregate limit was $15 million, making an endorsement to that effect unnecessary. Moreover, the record does not conclusively demonstrate that CHS believed the aggregate limit set out in Endorsement #13 was a mistake.

In short, the record is insufficient for the Court to accept Steadfast's argument that Paragraph 4 simply reflected a *mutual* mistake in the Steadfast Policy. The Court acknowledges that Steadfast "is *not* asking this Court to decide whether the Steadfast Policy should be reformed;"[49] nevertheless, Steadfast *is* asking for the *Term Sheet* to be reformed based on a potential need to reform the Steadfast Policy. The Court would not reform the Steadfast Policy

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[48] Steadfast's Mot. to Supplement Record, Ex. H.
[49] Steadfast's Reply in Supp. of Mot. to Supplement Record at 1 (D.I. 774) (emphasis in original).

on this record. In addition, the Court cannot conclude that modifying the Term Sheet would be appropriate from the evidence before it.

B. The Term Sheet will be enforced as written

Steadfast argues the Court can and should modify the Term Sheet because Paragraph 4 "was intended by both parties to be a recital, not a material term of the settlement."[50] As established, the Court finds that Steadfast has not provided sufficient evidence to convince the Court that the Term Sheet should be modified. Similarly, the Court is not convinced that Paragraph 4 was only a recital and not a material term.

Steadfast is correct that the draft Settlement Agreement classified language like Paragraph 4 as a recital; however, that is not how the Term Sheet characterized it. The Term Sheet stated that it was intended to memorialize the "terms and conditions" of the agreement and did not purport to identify any of its provisions as a non-binding recital.[51] In addition, Steadfast "agree[d] to the foregoing" by writing its signature at the end of the Term Sheet.[52] The Term Sheet did not suggest that Steadfast was "agree[ing] to the foregoing, except for the terms Steadfast will subsequently argue are just a recital." Moreover, the Term Sheet does not identify any numbered paragraph as a recital.

Steadfast argues the aggregate limit was never at issue in this litigation and that it only noticed the "mutual mistake" in the Steadfast Policy after signing the Term Sheet.[53] The Court struggles to accept either claim. As noted, Steadfast identified the aggregate limit as $20 million

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[50] Steadfast's Opp. to CHS's Mot. to Enforce Settlement at 4.
[51] *See* CHS's Mot. to Enforce Settlement, Ex. G at 1.
[52] *Id.* at 2.
[53] Steadfast's Opp. to CHS's Mot. to Enforce Settlement at 1–2.

in its complaint but later identified it as $15 million in its summary judgment briefing. The only natural explanation for this inconsistency is that Steadfast realized the aggregate limit might be an issue somewhere between the two filings. Furthermore, CHS has provided Steadfast notice of the other claims for which it will seek coverage under the 2012–2013 policy period.[54] This should have caused Steadfast to review the aggregate limit for the Steadfast Policy, even if CHS did not inform Steadfast that this was why it wrote Paragraph 4 to state the aggregate limit was $20 million. The Court notes that the Term Sheet is only three pages long and Paragraph 4 appears conspicuously on page one.

Most importantly, the record shows that certain Steadfast employees realized the aggregate limit might be wrong in 2013. However, Steadfast took the factual position that the aggregate limit was $20 million in its complaint and in the Term Sheet. The Court must conclude that Steadfast had enough information on hand that it should have been more cognizant of the aggregate limit before signing the Term Sheet. At bottom, Steadfast's failure to realize that Paragraph 4 called for it to make a costly concession is not a reason to modify the Term Sheet due to a mutual mistake.

The Court is guided, in part, by then-Vice Chancellor Strine's decision in *Cambridge North Point LLC v. Boston and Maine Corp*.[55] In that case, the plaintiff claimed the defendant failed to meet its obligations under their settlement agreement and sought enforcement in the Court of Chancery. The defendant did not deny breaching the agreement; however, argued that the agreement was unenforceable and should be reformed because it had agreed to those

[54] *See* CHS's Opp. to Steadfast's Mot. to Supplement Record at 2 (D.I. 773); *see also id.*, Decl. of David E. Wood at 1–2.
[55] 2010 WL 2476424 (Del. Ch. June 17, 2010).

obligations unwittingly. Specifically, the defendant claimed the plaintiff had "quietly" inserted language into the draft settlement agreement requiring it to make a $3.5 million settlement during the negotiations in a way that led the defendant to overlook it.[56] Because the defendant had signed the agreement without noticing this language, it asked the court to re-write the contract to remove the $3.5 million payment.

The Court of Chancery found that the settlement agreement was enforceable and ordered the defendant to make the $3.5 million payment. The Court of Chancery noted that the defendant was a sophisticated party represented by counsel and that those counsel should have easily noticed the new $3.5 million provision when reviewing the plaintiff's revisions.[57] The Court of Chancery emphasized that the agreement was only six pages long, which made the provision even easier to detect.[58] In short, the defendant's oversight was "unfortunate," but not grounds to rewrite the agreement or find it unenforceable.[59] The defendant had not been tricked; it had just made a bad deal.

The Court of Chancery was applying Massachusetts law but the facts here are like those in *Cambridge North Point LLC*. Steadfast is a sophisticated party represented by experienced counsel. CHS sent them a draft Term Sheet that was only three pages in length. The parties ultimately reached an agreement after several rounds of careful negotiation. Steadfast and CHS signed the Term Sheet. Steadfast realized the full implications of what it had agreed to only after signing the Term Sheet. Steadfast's mistake was unfortunate, but this Court's job "is not to

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[56] *Id.* at *1.
[57] *Id.* at *1–2.
[58] *Id.*
[59] *Id.*

refashion contracts into the form that parties with the benefit of hindsight wished they had scrivened, or to reward counsel for their own lack of diligence."[60] Steadfast may have made a mistake, but Steadfast still executed the Term Sheet and is bound by its terms and conditions.[61]

IV. CONCLUSION

For the foregoing reasons, the Settlement Motion and the Motion to Supplement are **GRANTED**. However, CHS's request for attorneys' fees is **DENIED** because the Court cannot agree that Steadfast acted in bad faith under the unusual facts of this dispute.[62]

IT IS SO ORDERED.

Very truly yours,

/s/ Eric M. Davis

cc: File&ServeXpress

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[60] *Id.* at 2.

[61] There are two Delaware doctrines that could allow the Court to re-write the Term Sheet because of a mistake. The first is the doctrine of mutual mistake. In such a case, one party must show that both parties were mistaken as to a material portion of the written agreement. *See Collins v. Burke,* 418 A.2d 999, 1002 (Del. 1980) ("The Courts of this State have always insisted in reformation cases on a showing of mutual mistake or, in appropriate cases, unilateral mistake on plaintiff's part coupled with knowing silence on defendant's part."). The second is the doctrine of unilateral mistake. The party asserting this doctrine must show that it was mistaken and that the other party knew of the mistake but remained silent. *Id*. Regardless of which doctrine is used, the party must show by clear and convincing evidence that the parties came to a specific prior understanding that differed materially from the written agreement. *See Cerberus Int'l, Ltd. V. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1151-52 (Del. 2002). The record, as supplemented, does not support either theory. The record just does not show that CHS was mistaken when it memorialized the Settlement into the Term Sheet or that CHS knew that Steadfast was mistaken and remained silent when the Term Sheet was created and signed. Any "mistake" as to the aggregate amount of coverage would have happened in 2012-13.

[62] *See* CHS's Mot. to Enforce Settlement at 6; *see also Wallace v. Schrock*, 2018 WL 2671746, at *3 (Del. Ch. May 30, 2018) ("[T]he prevailing American Rule provides that parties bear their own costs of litigation. An exception to that rule is that, where a party conducts the litigation process in bad faith and thereby unjustifiably increases the costs of litigation, equity supports a shifting of fees from the innocent to the vexatious party. The bad faith exception only applies when the party in question displays 'unusually deplorable behavior.'") (internal citations omitted).