IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ELLER ASSOCIATES INC., ELLER INTERNATIONAL INC., and ELLIOTT INVESTMENT MANAGEMENT L.P.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 2025-0234-DG **UNDER SEAL**[1]
SRP OPPORTUNITIES II, LP, and SRPO-II PARTNERS I, LP,	)	
Defendants.	)	

FINAL POST-TRIAL REPORT

Date Submitted: May 13, 2025
Date Decided: November 5, 2025[2]

Raymond J. DiCamillo; Susan Hannigan Cogen; Cassandra L. Thompson; Danielle I. Bell; RICHARDS, LAYTON & Finger, P.A., Wilmington, Delaware; Andrew J. Rossman; David S. Mader; Charles H. Sangree; QUINN EMANUEL URUQHART & SULLIVAN, LLP, New York, New York; *Attorneys for Plaintiffs*.

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[1] This report is being issued under seal to protect confidential information that may not have been made public through the trial. Under Court of Chancery Rule 5.1, I will unseal this report unless, within five (5) days, either party files a notice stating grounds for any continued restriction and requesting a determination whether good cause exists therefor.

[2] Plaintiffs filed a plenary action against Defendants on September 24, 2025. Defendants argued that the filing obviated the need for the Court to issue this report. Because the Court's delay may have contributed to Plaintiffs' decision to file the plenary action, the Court has proceeded to perform the task to which it was assigned. Defendants may seek relief if they believe it is necessary.

Garrett B. Moritz; S. Reiko Rogozen; ROSS ARONSTAM & MORITZ LLP, Wilmington, Delaware; Edward C. Barnidge; Adrienne E. Van Winkle; Sean M. Douglass; Matthew D. Heins; WILLIAMS & CONNOLLY, Washington, D.C.; *Attorneys for Defendants*.

GIBBS, M.

This is an action to inspect the records of two limited partnerships. The plaintiff-limited partners allege that, in the second half of 2022 through 2024, there was a large and unexpected increase in the limited partnerships' expenses, at a time when expenses should have been decreasing. The plaintiffs instituted this action, asserting three separate counts, each based on an alleged source of authority permitting investigation of alleged breaches of contract and potential mismanagement: (1) Title 6, Section 17-305 of the Delaware Code ("Section 17-305"), (2) the limited partnership agreements and (3) a settlement agreement between one of the plaintiffs and the defendants' upstream controllers, along with some of their affiliates unrelated to this action.

The standards applicable to records inspection actions in this Court are well known, but the parties' injection of the settlement agreement, which they interpret differently, complicated matters here. The plaintiffs could not have proceeded directly to enforce inspection rights under the settlement agreement if they wanted to conduct a summary proceeding. Thus, they argued that the settlement agreement modified the limited partnership agreements. They then asserted unfettered rights to inspect records, citing language in the settlement agreement providing the parties to that agreement the right to "request" "any and all information." Thus, for example, the plaintiffs ignored the limits of their demand and pressed for more and different records until as late as four days before trial. When it came time to establish a proper purpose to inspect records under Section 17-305, the plaintiffs acted as if they were proceeding under the settlement agreement and asserted a right to investigate an alleged breach of the settlement agreement. The plaintiffs also alleged several other proper purposes for investigating mismanagement.

The defendants conceded the settlement agreement gave the plaintiffs a right to inspect records. Thus, with limited exceptions, the defendants produced records in response to the plaintiffs' expanding requests. The defendants did attempt to set some limits, and where that happened, the parties took the matter to trial.

Like the parties themselves, I take something of a hybrid approach in this Report. I assess the dispute according to the standards set forth in Section 17-305 and the limited partnership agreements, which I conclude have not been amended. I accept the apparent terms on the face of the settlement agreement for certain purposes, but I decline to engage in any interpretation of those terms in this summary proceeding. I conclude that the plaintiffs have received all records "necessary and essential" to the purposes they proved to be proper. I recommend that the Court order no further production.

This is my Final Report.

FACTUAL BACKGROUND

The facts are as I find them after a full-day trial on a paper record, considering the parties' briefs and exhibits, the pre-trial order, the affidavit and deposition of Brett John, the parties' arguments at trial, and the joint exhibits.[3]

I. The Parties

This action concerns two investment funds formed as Delaware limited partnerships. Those investment funds, which the parties refer to as SRP[4] and Sidecar,[5] are the defendants in this action (collectively, "Funds"). SRP and Sidecar have similar governance structures. Each is indirectly controlled by Stronghold Resource Partners, LLC ("Stronghold"), through Stronghold's interest in Defendants' respective general partners (collectively, "GPs").[6]

Plaintiffs are three Delaware entities that hold direct or indirect investments in SRP or Sidecar. Plaintiff Elliot Investment Management L.P.

[3] The parties submitted 108 exhibits before trial, but the numbering is not contiguous. The exhibits are numbered 1-98, 100-105 and 201-204. Amended Joint Exhibit List, Dkt. 53.

[4] SRP's legal name is SRP Opportunities II, LP. *See* [CONFIDENTIAL] Pre-Trial Stipulation and [Proposed] Order ("PTO"), Dkt. 35 ¶ 4.

[5] Sidecar's legal name is SRPO-II Partners I, LP. *See id.* ¶ 7.

[6] SRP's general partner is SRP Opportunities II GP, LP. *See id.* ¶ 4. Sidecar's general partner is SRPO-II Partners I GP, LP. *See id.* ¶ 7.

("EIM"),[7] is a Delaware limited partnership and the indirect controller of the other two Plaintiffs, EAI[8] and EII.[9]

II. The Business

The Funds "have directly or indirectly invested in entities that own investments in oil, gas, and mineral interests."[10] Additionally, they "have acquired various 'portfolio investment' companies—typically created and controlled by Stronghold—that, in turn, buy and sell specific oil and gas leasehold and mineral interests."[11] In colloquial terms, the Funds invest in holding companies, which, in turn, invest in operating companies that buy and sell oil and gas assets. I will use the parties' convention of referring to the operating companies as "portfolio companies" or "PortCos."

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[7] EIM owns 15.57% of investor-committed capital in SRP, investing alongside approximately 100 other limited partners. PTO ¶ 9.

[8] EAI's legal name is Eller Associates Inc. *See id.* ¶ 4. EAI is a Delaware corporation and is a limited partner in both Funds. *Id.*

[9] EII's legal name is Eller International Inc. *See* i*d.* ¶ 5. EII s a Delaware corporation and is a limited partner in both Funds. *Id.*

[10] *Id.* ¶ 8. The Funds will be referred to collectively throughout the report.

[11] Pls'. Corrected Op. Pretrial Brief ("OB"), Dkt. 51 at 1.

III. Agreements Relevant to the Action

Each Fund is governed by a nearly identical limited partnership agreement (collectively, "LPAs").[12] The provisions of the LPAs most relevant to this action are the expense allocation provisions. Stronghold also has a Fee and Expense Allocation Policy (the "Allocation Policy") that is relevant to this action.[13] The relevant LPA provisions and the Allocation Policy are summarized below.

a. The LPAs

In general terms, the LPAs state allocation rules and permit the respective GP or the Management Company ("MC") to make discretionary adjustments. The basic expense allocation rules are collected in Section 2.5.[14] Subsection (a) provides that the GP or MC will bear overhead expenses and lists expenses that do not constitute overhead.[15] Section 2.5(b) provides that the Partnership must bear certain legal and placement fees.[16] Section 2.5(c)

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[12] One governs SRP, see JX 6, and the other governs Sidecar, see JX 3. I cite only to JX 3 when referring to the LPAs because the two documents are substantially identical for the purposes of this action.

[13] JX 10.

[14] *See* JX 3 at 35.

[15] *Id*. "Overhead" is defined as "ordinary administrative and overhead expenses incurred in operating the Management Company, including all costs and expenses on account of rent, supplies, postage and delivery, equipment, furniture, salaries, wages, bonuses and other employee benefits." *Id.* at 14.

[16] *Id.* at 35.

provides that the Partnership must pay or reimburse the GP for, "all expenses attributable to the activities of the Partnership."[17] Section 2.5(c) also includes an extensive list of reimbursable expenses. Two categories of such expenses relevant to this action are (1) expenses related to obtaining professional advice on "Partnership matters,"[18] and (2) legal fees and expenses related to "litigation … specifically involving the Partnership."[19]

The GP or the MC may also make discretionary decisions or "Special Allocations" under Section 3.6 of the LPA, which states:

> Notwithstanding the other provisions of this Article 3, the General Partner shall be authorized to make, in its reasonable discretion and in good faith, appropriate amendments to the allocations of items pursuant to this Agreement (i) in order to comply with Section 704 of the Code or applicable Regulations or as the General Partner may deem appropriate in its discretion, (ii) to allocate properly items of income, gain, loss, deduction, and credit to those Partners who bear the economic burden or benefit associated therewith or (iii) to otherwise cause the Partners to achieve the objectives underlying this Agreement as reasonably determined by the General Partner.[20]

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[17] JX 3 at 35.

[18] *Id.* at 36 (category (v)).

[19] *Id.* at 37 (category (viii(y)).

[20] *Id.* at 62.

Under the LPAs, limited partners have the following information access rights:

> 6.1 Books of Account. Appropriate records and books of account of the Partnership shall be accessible at the principal place of business of the General Partner for the Partnership, and each Partner and its representatives shall have access to the records and books of account and the right to receive copies thereof under such reasonable conditions and restrictions as the General Partner may prescribe.[21]

b. The Allocation Policy

The Fund's expenses are allocated among limited partners pursuant to Stronghold's Allocation Policy, which distinguishes between direct and allocated expenses.[22] Direct Expenses are "costs incurred that are deemed to be directly attributable to any specific SRP Entity."[23] "Direct Expenses may be borne by SRP or another SRP Entity for administrative ease."[24]

Allocated Expenses are "costs and expenses incurred (or expected to be incurred) that benefit more than one SRP Entity."[25] "Allocated Expenses

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[21] JX 3 at 73. The Funds' independent auditor has access to extensive books and records, under Section 6.2, for purposes of preparing annual audited financial statements. *Id.* *See also* Trial Transcript ("Trial Tr."), Dkt. 61 at 99:23–101:11; 127:14–18.

[22] JX 10 at 2.

[23] *Id.*

[24] *Id.* In the Allocation Policy, "SRP" means what I refer to as "Stronghold."

[25] *Id.* at 2.

generally will be allocated among SRP Entities benefiting from such expense pursuant to a ratio determined by SRP in its reasonable judgment to be fair and equitable to such entities."[26] The Allocation Policy provides that SRP should allocate Allocated Expenses according to: (1) the "relative size of each entity's assets," also referred to the "assets under management" approach ("AUM"); (2) "the relative amount of time and expense incurred (or expected to be incurred) in performing the services for each entity," also referred to as the "full-time employee" approach ("FTE"); or (3) "any other equitable manner as determined by the CFO/CCO and Managing Partners in their reasonable judgment."[27] The Allocation Policy is "[s]ubject to the governing documents of each SRP Entity[.]"[28]

c. The Settlement Agreement

In or around May 2022, EIM raised concerns about Stronghold's allocation of expenses relating to certain projects unrelated to this action, which the parties refer to as Pontiac, Ford and Mercury.[29] In August of that year, EIM and a group of entities affiliated with the foregoing projects

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[26] JX 10 at 2.

[27] *Id.*

[28] *Id.*

[29] *See* JX 13. *See also* Trial Tr. at 66:13–23; 119:10–120:9; 122:14–17.

resolved their issues by entering into a settlement agreement with multiple Stronghold entities ("Settlement Agreement").[30]

The Settlement Agreement states that it is the agreement of the "Elliot Parties" and the "SRP Parties."[31] The "Elliot Parties" are EIM and eight other Elliott-affiliated entities relating to Pontiac, Ford and Mercury.[32] "The SRP Parties" are 15 Stronghold-affiliated entities related to Pontiac, Ford and Mercury, and Defendants' ultimate upstream controllers.[33] Of the 24 signatories to the Settlement Agreement, only one, EIM, is a party to the current action. With schedules and attachments, the Settlement Agreement is just under 300 pages long.

Plaintiffs' arguments in this action depend heavily upon two paragraphs of the Settlement Agreement. Paragraph 7 requires the SRP Parties to sell the assets of multiple funds, including the Funds: "[T]he SRP Parties shall sell the assets of SRP II, SRP II Sidecar, Ventures 2018, Ventures 2019, and

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[30] JX 13. The Court does not rely on any allegations of misconduct asserted by Plaintiffs based on the No-Liability Settlement Agreement. *See id.* at 13 ¶ 18 ("This Agreement . . . shall not be offered as or received into evidence in any pending or future civil . . . action against any Party hereto in any court, . . . for any purpose whatsoever, except as may be necessary to enforce or to effectuate the terms of this Agreement.").

[31] *Id.* at 1.

[32] *Id.* at 1.

[33] *Id.* at 1.

Ventures 2020 and wind down each of the entities . . . ."[34] More specifically, it states that the SRP Parties must:

> i. Promptly begin to seek to sell all remaining assets;
>
> ii. Sell all assets to third-parties by December 31, 2023, subject to an extension on a quarter by quarter basis, but not past December 31, 2024, if an AmLaw 100 firm not previously retained by any of the SRP Parties or any of their Affiliates provides a written opinion to the applicable Elliot Parties that the SRP Parties would be violating their fiduciary duties by effectuating such sales; and
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> iii. Promptly distribute proceeds from sales of any assets no later than 30 days following receipt of the applicable proceeds from such sale unless otherwise agreed to by EIM in writing, in each case, pursuant to and subject to the terms of the applicable governing agreements of the applicable entity (e.g., the right to pay expenses and set aside appropriate reserves for anticipated liabilities.[35]

Below subsection (iii) is an unnumbered paragraph that reads:

> Notwithstanding the foregoing, the SRP Parties' shall not be required to effect sales of assets in a manner that they reasonably determine in good faith (upon written advice of reasonably qualified investment funds counsel) would be reasonably likely to result in a violation of applicable fiduciary or investment adviser duties owed to a fund

[34] JX 13 at 7 ¶ 7.

[35] *Id.*

> effecting such sales or to such a fund's investors with respect to their investment in such fund. The SRP Parties shall use reasonable best efforts to effect the sales prior to the end of the required time periods in a manner compliant with such fiduciary or investment adviser duties and, in the event of delay, shall use reasonable best efforts to effect the applicable sales as soon as practicable in compliance with such fiduciary or investment adviser duties.[36]

To summarize, the literal obligation in Paragraph 7 appears to be for the SRP Parties to sell all assets out of multiple funds, including the Funds. The parties appear to disagree about the timing and the meaning of the unnumbered paragraph ("Notwithstanding Clause").[37]

Paragraph 5 of the Settlement Agreement purports to provide broad information access rights to EIM and "applicable" affiliates of EIM (who are not clearly identified in the contract).[38] Plaintiffs argue that Paragraph 5 allows them to obtain "any and all information" that they have requested from the Funds in this action.[39] It states:

> EIM and the applicable Affiliates of EIM . . . shall have the right to request, and the applicable SRP Entities (or their Affiliates or any applicable successors) shall provide (or the SRP Parties shall

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[36] JX 13 at 7 (cited as "Notwithstanding Clause").

[37] *See* Trial Tr. at 51:17–53:17; 137:22–140:17.

[38] *See* OB at 1–2; 9.

[39] *Id.* at 9.

> cause their applicable Affiliates or any applicable successors to provide), no later than 14 days following each request, any and all information requested regarding such entities and any of those entities' Affiliates in which any Affiliates of EIM has an indirect investment, on an ongoing basis, including but not limited to, operating company level financials for Yukon and Junction, provided, that the SRP Parties shall not be required to provide or otherwise disclose any such requested information to the extent such provision or disclosure would (i) be in violation of any disclosure agreements with third parties that are entered into without intent to circumvent the foregoing information rights, (ii) require the SRP parties to violate any bona fide confidentiality or non-disclosure agreements with third parties that are entered into without intent to circumvent the foregoing information rights, or (iii) result in the loss of attorney-client privilege.[40]

IV. The Elliott Parties Accuse the SRP Parties of Breaching the Settlement Agreement.

More than two years after execution of the Settlement Agreement, on November 22, 2024, counsel for the Elliott Parties wrote to counsel for the SRP Parties.[41] The Elliott Parties accused the SRP Parties of materially

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[40] Settlement Agreement, JX 13 at 5 ¶ 5. The Settlement Agreement's definitions of "Affiliate," "Person," "Control" and "controlled by" are defined in paragraphs 24(g)(ii), (g)(xi) and (g)(iii), respectively.

[41] JX 70 at 1 (defining those groups as the parties that executed the Settlement Agreement).

breaching Section 7 of the Settlement Agreement because they (1) did not timely "begin to seek to sell" assets, (2) did not "sell [the assets] by December 31, 2023" and (3) did not deliver the "written opinions from an AmLaw 100 law firm" described in the letter.[42] They also alleged that the SRP Parties "breached their contractual obligation to use their 'reasonable best efforts to effect the sales by the end of the required time periods[.]'"[43]

The Elliott Parties argued that there was no "principled reason" for the SRP Parties' "failure to meet their contractual obligations" and stated their "suspicion" that the reason was "to continue to improperly charg[e] general Stronghold expenses to these funds[.]"[44] The Elliott Parties argued that because the assets had not been sold, the funds have an "inflated value" and speculated that "Stronghold" may be using the allegedly inflated value "to collect excessive management fees from the other limited partners."[45]

The Elliott Parties requested the prompt delivery of "any written advice of counsel that the SRP Parties have relied upon to excuse its [sic] failure to meet its [sic] obligations[.]"[46] They also asked the SRP Parties to provide

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[42] JX 70 at 1. Item number (3) relates directly to subsection (ii) of Paragraph 7.

[43] *Id.* This allegation relates directly to the Notwithstanding Clause.

[44] *Id.* at 1–2.

[45] *Id.* at 2.

[46] *Id.* at 1.

"information sufficient to show all general Stronghold expenses, management fees, and any other fees, expenses, or compensation that the SRP Parties have received, or purported to incur" from the funds since the date of the Settlement Agreement.[47] For good measure, they demanded that "the SRP Parties sell all remaining assets from" the Funds in two months, by December 31, 2024.[48]

The SRP Parties responded on December 9, 2024, contesting the allegations of breach. The SRP Parties stated that they had complied with all of their obligations, which they described as "making reasonable best efforts to sell assets if and when appropriate to do so consistent with the SRP Parties' fiduciary obligations."[49] The SRP Parties argued that the Settlement Agreement does not require production of privileged written advice of counsel received in connection with the assessment of "applicable fiduciary or investment advisor duties" they owe to a selling fund or its investors.[50]

With respect to the request for information concerning expenses and fees, the SRP Parties argued that the Elliott Parties had long received detailed monthly financial reports corroborating the SRP Parties' fulfillment of contractual obligations, and said "it is unclear what non-privileged

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[47] JX 70 at 2.

[48] *Id.*

[49] *See* JX 71 at 1.

[50] *Id.* (citations omitted). *Cf.* JX 13 at 7 ¶ 7(ii); Notwithstanding Clause.

information the Elliot Parties want that they do not already have."[51] The SRP Parties asked opposing counsel to "explain specifically what additional information the Elliot Parties are requesting, and how that information is required to be provided under Section 5 of the Settlement Agreement," and they agreed to "consider the request further."[52] Finally, the SRP Parties suggested that the Elliott Parties had been impeding the SRP Parties' ability to manage the funds.[53]

On December 19, counsel responded on behalf of "Elliott."[54] Counsel explained Elliott's belief that all assets in SRP II and SRP II Sidecar should have been liquidated already, and warned that Elliott was "really frustrated" with the current state of the process.[55] Counsel for Elliott requested that opposing counsel's "clients" provide six categories of information in two weeks.[56] The requests included information about (1) the efforts of "the SRP Parties to sell assets held by" the Funds and (2) "the SRP Parties' plans to sell the assets in" the Funds.[57] Both requests were expressly made "pursuant to

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[51] JX 71 at 1.

[52] *Id.* at 2.

[53] *Id.* at 2.

[54] JX 72 at 1.

[55] *Id.*

[56] *Id.*

[57] *Id.* at 2.

Section 5 of the Settlement Agreement."[58] The letter also asserted that, in the prior two years, a $68 million "G&A burn" had yielded a mere $8.6 million increase in Gross Fund Value (net of cash).[59]

The SRP Parties responded on January 4, 2025. They noted a material mathematical error in the Elliott Parties' calculation of expenses.[60] They alleged that the Elliot Parties treated numerous third-party expenses as if they were expenses of the SRP Parties.[61] The SRP Parties explained that their objective is to "[m]anag[e] the assets of the funds in the best interests of all partners[.]"[62] They suggested that if the Elliott Parties are "still interested in immediately liquidating their exposure to SRP II and SRP II Sidecar," that would have to occur through a sale of Elliot's stake.[63] The SRP Parties expressed their general willingness to provide the requested materials but explained that they would need to retain one or more third parties to assist,

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[58] JX 72 at 2.

[59] *Id.* at 1.

[60] *See* JX 83 at 1.

[61] *Id.*

[62] *Id.*

[63] *Id.*

which would take "some time."[64] They stated that the associated expense would be charged to Sidecar.[65]

V. The Demand

On February 3, 2025, EAI and EII sent a demand letter ("Demand") to the Funds and their GPs "pursuant to Title 6, Delaware Code Section 17-305 ('Section 17-305'), the Limited Partnership Agreements, and the Settlement Agreement[.]"[66] They asserted that they, EAI and EII, were parties to the Settlement Agreement,[67] and that they had "a credible basis to infer that the General Partners have [(1)] repeatedly breached [the LPAs], [(2)] mismanaged the assets of the Limited Partnerships, and [(3)] breached the Settlement Agreement with the Limited Partners."[68] They asserted four purposes for making the Demand: To investigate

> (a) potential breaches of the Limited Partnership Agreements by the General Partners; (b) potential mismanagement of the Limited Partnerships by the General Partners, including the overcharging of expenses; (c) potential breaches of the Settlement Agreement by the General Partners; and (d) how the

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[64] JX 83 at 2.

[65] *Id.* at 1.

[66] JX 85 at 1–2 (internal footnotes omitted).

[67] *Id.* at 2 (defining EAI and EII as the "Limited Partners" and stating, later, that the GPs "breached the Settlement Agreement with the Limited Partners."). EAI and EII are not parties to the Settlement Agreement. *See* JX 13 at 1.

[68] JX 85 at 2.

> General Partners have valued the Limited Partners' interest in the Limited Partnerships.[69]

The Demand sought 16 categories of records, "pursuant to Section 17-305,"[70] covering the period from August 10, 2022, through the date of the Demand:

> 1. "All minutes and materials of the Limited Partner Advisory Board (Opportunities Limited Partnership Agreement);"
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> 2. "Any written advice of counsel the SRP Parties have relied upon to excuse their failure to meet their obligations to sell the remaining assets of the Limited Partnerships as required by the Settlement Agreement;"[71]
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> 3. "Documents sufficient to show the details and nature of all expenses ultimately or otherwise economically borne by the Limited Partnerships, whether charged by the General Partner, the Management Company, or any other party;"
>
> 4. "Documents sufficient to show the allocation methodology for any expenses ultimately or otherwise economically borne by the Limited Partnerships, whether charged by the General Partner, the Management Company, or any other party;"
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> 5. "All documents evidencing reimbursements of expenses by the Limited Partnerships to the General Partners, the Management Company, or any other party;"

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[69] JX 85 at 2. Plaintiffs interpreted "overcharging of expenses" to include "allocating" expenses, and addressed two requests to the subject of allocation, as that term might be generally understood. *See* JX 85 at 4–5.

[70] *Id.* at 3–5; *cf. id.* at 1-2 (purporting to request records pursuant to Section 17-305, the LPAs and the Settlement Agreement).

[71] I note Plaintiffs' unequivocal conclusion that the SRP Parties have breached the Settlement Agreement and their generalized reference to "written advice of counsel." *See, e.g.*, OB at 13.

6. “Documents, including bank records, showing all management fees, and any other fees, expenses, or compensation that the SRP Parties or their Affiliates have received, paid or purported to incur, with respect to the Limited Partnerships;”

7. Documents demonstrating any efforts by the SRP Parties or their Affiliates to sell assets held by the Limited Partnerships as required by the Settlement Agreement;”

8. Documents demonstrating any plans or intentions of the SRP Parties or their Affiliates to sell the assets held by the Limited Partnerships;”

9. “The fund marks spreadsheet (as last uploaded to the data room on June 25, 2024 and titled ‘SRPOII Mark – Q3 and Q4.zip’) for each quarter as of Q1, Q2, Q3, and Q4 2024;”

10. “All audit or other accounting reports prepared for either or both of the Limited Partnerships;”

11. “The Excel support for all outputs in the ‘SRPO-II Valuation Materials – 09.30.2024.pdf’ that was provided to the Limited Partners;”

12. All documents evidencing, and detailed descriptions of, each expense comprising ‘PI Expenses Overhead’;”

13. “All documents evidencing, and detailed descriptions of, each expense comprising ‘PI Expenses JV G&A’”;

14. “All documents evidencing, and detailed descriptions of, each expense comprising ‘TH Services G&A’;”

15. “All documents evidencing, and detailed descriptions of, each expense comprising ‘RRIG II G&A’; and”

16. “Limited Partnership valuation support items:

    - Master well list with the API #s, NRI, well status for PDP, DUC/WIPs, and permits;

- DSU shapefile with NRAs, NRIs, and operator;
- Tract shapefile with NRA and tract #s that tie to column D of the 'Tract Insputs' tab in the fund marks spreadsheet;
- PDP/3P database; and
- Last 18 months of LOS."[72]

VI. Correspondence Between Litigation Counsel

On February 10, the Funds and the GPs responded to the Demand, through new counsel.[73] They reminded EAI and EII how much information had already been provided to Elliott on a routine basis, but confirmed that they were "working on collecting and providing the appropriate information to Elliot[.]"[74] They warned that "the resources required to collect the requested information will be significant."[75] The Funds and GPs asked for confirmation that the costs of gathering the requested information were understood and authorized.[76] The Funds and GPs then began to produce records to Plaintiffs.

On February 13, new counsel for EAI and EII answered the questions the Funds and GPs asked about information gathering costs and requested

[72] JX 85 at 3–5.

[73] *See* JX 86.

[74] *Id.* at 1.

[75] *Id.* at 2.

[76] *See id.* at 2.

inspection of two new categories of records.[77] Counsel also demanded the immediate production of 13 items.[78]

Counsel for the Funds and GPs responded on February 18, again expressing their willingness comply with the original Demand.[79] Counsel objected to the demand to produce 13 selected items pulled from "Eller's" broader requests.[80] But, in response to the new requests, Counsel stated:

> The SRP II Parties, as they have made clear in past correspondence, will gladly work with Eller to furnish information requested—to the extent it actually exists, is practically attainable, and reasonably tailored to a proper purpose….[81]

The Funds and GPs agreed unconditionally to produce the following categories of material: (1) all board minutes and materials; (2) a fund marks spreadsheet specifically requested by Plaintiffs; and (3) "[a]ll audit or accounting reports prepared for either or both of the Limited Partnerships."[82]

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[77] JX 87 at 2.

[78] *Id.* at 2.

[79] *See* JX 88 at 1 ("The SRP II Parties are collecting appropriate information, as I already stated in my prior letter, but the expenses incurred to collect these materials will be charged to SRPO Sidecar II.").

[80] *See id.* at 2 ("Eller's assertion that numerous items, selected indiscriminately from approximately two dozen separate requests, must be produced is not reasonable."). In this letter, "Eller" means EAI and EII. *Id.* at 1.

[81] *Id.* at 2. I note the reference to the statutory requirement that the requested inspection be "reasonably tailored to a proper purpose[.]" *Id.*

[82] JX 88 at 2.

They also agreed to provide other requested digital accounting information, "'[t]he Management Company's expense allocation policy per paragraph 29 of the EMC "Fund of One" Letter Agreement'"[83] and Excel support for outputs in valuation materials previously provided.[84] In addition, the Funds and GPs agreed to produce more expense calculation materials, notwithstanding their contention that Plaintiffs already had sufficient materials to assess the propriety of the expense allocations.[85]

Counsel for "Elliott" sent its next letter on February 27.[86] This time, they requested the immediate production of seven categories of information.[87] Again, Elliott added new categories of records to their request. For example, the letter marks the first time Elliott sought "[d]ocuments sufficient to identify any third-party advisors SRP has engaged, including, but not limited to, financial advisors, regarding the sale of SRP II and SRP II Sidecar's assets."[88] Elliott also requested "[b]ank account statements from SRP II and SRP II

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[83] *Id.* at 3.

[84] *Id.* at 3. The Funds and GPs noted that they would be required to segregate information about assets held by different funds and that the costs of this effort would be charged to Sidecar. *Id.*

[85] *Id.* at 3.

[86] JX 89.

[87] *Id.* at 2.

[88] JX 89 at 2.

Sidecar sufficient to show all payments made by those entities or their portfolio companies[.]"[89] They gave "SRP" one day to produce.[90]

VII. Plaintiffs' Complaint and the Expedited Schedule

Four days later, on March 3, Plaintiffs filed this inspection action and requested summary proceedings.[91] The Complaint asserted three counts, each purporting to identify a source of authority for inspection: Section 17-305, the LPAs and the Settlement Agreement. Plaintiffs pleaded that they met the statutory form-and-manner, proper purpose and necessary and essential requirements, even in connection with the count seeking inspection "under Paragraph 5 of the Settlement Agreement."[92] The parties negotiated a schedule that permitted the Court to hold a trial in 70 days and conducted discovery and briefing.[93] Throughout the parties' pretrial preparations, Plaintiffs revised and expanded their requests, and Defendants accommodated the expansion.[94]

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[89] *Id.* at 2.

[90] *Id.* at 2. This letter apparently followed a "meet and confer" held before the litigation was filed. *Id.*

[91] Verified Compl. For Inspection of Books and Records ("Compl."), Dkt. 1.

[92] *See id.* ¶¶ 62–67.

[93] *See* Dkt. 9.

[94] The changing circumstances and the late deposition of Stronghold's CFO limited the utility of the parties' pretrial briefs. Plaintiffs noticed the CFO's deposition just three days before filing their Reply Brief and deposed him a week *after* filing. Accordingly, the Court forgoes a discussion of the parties' briefs, except to note

On May 6, I granted the parties' joint pretrial stipulations and proposed pretrial order with modifications.[95] Plaintiffs acknowledged the Funds' rolling production.[96] Plaintiffs continued to seek the following five categories of information:

(a) Documents sufficient to show both the details and nature of all expenses charged to the Limited Partnerships, including receipts and invoices for such expenses.

(b) Agreements with or relating to the Limited Partnerships' portfolio companies, including those portfolio companies' LLC Agreements, any expense allocation policies for those companies, and servicing or management agreements those companies may have with Stronghold or its affiliates.

(c) Documents showing the inputs and calculations that Stronghold has used to generate its valuations of the Limited Partnerships and their assets, including various lists and files identifying the specific tracts and energy assets owned by the Limited Partnerships through their portfolio investments, and various databases and files used by Stronghold to analyze those specific tracts and assets.

(d) All accounting records for the Limited Partnerships, including the quarterly and annual financial statements, trial balances, journals, balance sheets, general and auxiliary ledgers (or other

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Defendants' agreement that "Elliott has a right to information under the Settlement Agreement," that they argue is narrower than Plaintiffs contend. *See* Defs.' Ans. Br. ("AB"), Dkt. 22 at 49–50.

[95] Dkt. 46 (cited as "PTO").

[96] *See* PTO ¶¶ 17, 20.

comparable records) and any supporting documents for the Limited Partnerships and each of their portfolio companies.

(e) Any written advice of counsel the SRP Parties have relied upon to excuse their failure to meet their obligations to sell the remaining assets of the Limited Partnerships as required by the Settlement Agreement.[97]

Notably, after weeks of rolling production, several of Plaintiffs' requests were broader than the requests in the Demand. For example, the Demand had requested "accounting reports."[98] With eleven days to trial, Plaintiffs requested "all accounting records," and "supporting documents," not just for the Funds but for the PortCos as well.[99] In addition, despite having received a significant amount of material relating to expenses, Plaintiffs expanded their requests to include individual receipts and invoices.[100]

On May 9, Plaintiffs deposed Stronghold's CFO Brett John.[101] Plaintiffs asked detailed questions about, and Mr. John explained, the Funds' accounting methods, their valuation policy, their allocation policy, and certain of Plaintiffs' expense detail.[102] Using a separate entity's information as an

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[97] PTO ¶ 25.

[98] JX 85 at 4.

[99] PTO ¶ 25(d).

[100] *Id.* ¶ 25(a).

[101] Dep. Tr. of Brett John ("Dep. Tr."), Dkt. 48.

[102] *See generally id.*

example, Mr. John explained how to interpret one of the the Funds' general ledgers. Using the expense category "G&A allocation" to illustrate the process, Mr. John testified:

> The G&A allocation gets recorded as a *collection* of services and/or invoices provided that then runs through the allocation methodology for the beneficiaries of those services provided. We allocate based on either AUM or FTE. And what you're looking at is the *result* of the allocation methodology being applied and being recorded for [an unrelated entity] for February related to SRPM's G&A allocation.[103]

Mr. John explained the increased expenses charged to Plaintiffs.[104] He confirmed that roughly $9,500,000 in accounting expenses were charged to Plaintiffs between 2022 and 2024.[105] He confirmed that roughly $24,000,000 in litigation expenses were charged to Plaintiffs during the same period.[106] He

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[103] *Id.* at 78:16–24 (emphasis added).

[104] He had also done so in an affidavit supporting the Funds' answering pretrial brief. *See* Aff. of Brett John ("John Aff."), Dkt. 22 ¶ 11.

[105] Dep. Tr. at 161:3–10. Around the time of the Settlement Agreement, Stronghold lost its entire accounting team. *See* AB at 39; Dep. Tr at 156:20–59:5; Trial Tr. at 58:8–12. The impetus appears to have been the stress of working with Elliot and meeting its "excessive demands." *See id.* at 157:13–158:1. Stronghold retained Embark Consulting ("Embark") to perform contracted accounting work. John Aff. ¶ 10.

[106] Dep. Tr. at 161:16–25. These expenses resulted from contract litigation between Stronghold and a third-party data provider. AB at 38–39. "Stronghold incurred litigation expenses of approximately $12.7 million in 2023 and $11.3 million in 2024." John Aff. ¶ 11. *See also* AB at 38–39. The Funds assert that the litigation

provided the ratios by which Defendants allocated these expenses and Defendants' basis for doing so.[107]

Mr. John also explained at the deposition that the face of invoices and receipts reveal nothing about how those expenses are allocated,[108] and how burdensome it would to be for Defendants to find and copy all of the receipts and invoices Plaintiffs requested.[109]

After Mr. John's deposition, and four days before trial, Plaintiffs made a request for additional records.[110] Defendants had invited additional requests if they would be sufficient to resolve the action.[111] Plaintiffs' additional requests did not express any openness to resolving the action, and Defendants did not provide any additional records.

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stemmed from remarks made by Elliot. *See id.* at 38. They also assert that Stronghold prevailed in the litigation. *Id.* at 38–39.

[107] *See* Dep. Tr. at 166:4–7 ("An approximate percentage allocated to Fund II would have been about somewhere between 85 and 90 percent of those expenses in total would have gone to Fund II.").

[108] *See id.* at 168:18–169:13.

[109] *Id.* at 184:8–186:3.

[110] *See* Trial Tr. at 74:18–20 ("[A]fter Mr. John's deposition, they sent us a letter . . . and they asked for yet more documents.").

[111] *See* Trial Tr. at 164:23–165:2 ("[The Funds' Counsel] suggested that to the extent [Plaintiffs' Counsel] were able to identify documents, the production of which would resolve the need for a trial, that [Plaintiffs] should suggest that.").

Plaintiffs lodged Mr. John's deposition with the Court the afternoon before trial.

VIII. The Trial

On May 13, I conducted a full-day trial on a paper record.[112] Plaintiffs asked the Court to compel the production of three-to-four categories of records: (1) a valuation model, (2) general ledgers and workbooks for portfolio companies, (3) privileged legal memoranda between Defendants and the law firm of Snell & Wilmer and, in the alternative, (4) receipts and invoices.[113]

Plaintiffs contend that they are entitled to the foregoing records because, under the Settlement Agreement, they have the right to inspect "any and all information" they request.[114] Plaintiffs also argued that they satisfied the statutory requirements of stating proper purposes and that the records they seek are "necessary and essential" to their purposes.[115] Plaintiffs argued that

[112] *See* Dkt. 63

[113] *See* Trial Tr. at 164:2–166:21; 172:20–24. Invoices were requested in the alternative. *Id.* at 160:6–12.

[114] *Id.* at 14:1–13.

[115] Trial Tr. at 19:3–11.

they are entitled to the requested legal memoranda because Defendants had put their legal advice "at issue" in the litigation and waived privilege.[116]

Defendants conceded that Plaintiffs have information access rights under the Settlement Agreement but argued that the GPs retained the right to impose "reasonable conditions and restrictions" on Plaintiffs' inspection.[117] Defendants also argued that Plaintiffs have received all records "necessary and essential" to the purposes of investigating possible mismanagement of the Funds or breach of the LPAs based on allocating partnership expenses.[118] They argued that there is no valuation model for Plaintiffs to inspect and that the legal memoranda Plaintiffs seek are protected by the attorney-client privilege.[119] Finally, Defendants argued production of receipts and invoices would be unduly burdensome.[120]

LEGAL STANDARD

"The Court of Chancery may summarily order [a] general partner to permit the limited partner to obtain the information described in subsection

[116] *Id.* at 53:18–54:13.

[117] *Id.* at 64:7–23.

[118] *Id.* at 78:21–88:6.

[119] *Id.* at 122:18–128:10; 134:9–137:13.

[120] *Id.* at 115:12–24.

(a) of' Section 17-305.[121] When conducting a summary records inspection action under Section 17-305, issues extraneous to the scope of inspection may not be joined.[122]

Unless the limited partnership agreement sets forth different requirements, "to obtain books and records of a limited partnership under 6 *Del. C.* §17-305, a limited partner must establish '(1) that the limited partner has complied with the provisions of [that] section respecting the form and manner of making demand for obtaining such information, and (2) that the information the limited partner seeks is reasonably related to the limited partner's interest as a limited partner."[123] Case law from Section 17-305's sibling statutes, like Section 220 of the Delaware General Corporation Law, can assist the Court's interpretation of Section 17-305.[124] Under Section 17-

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[121] 6 *Del. C.* § 17-305(e).

[122] *Cf. Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 14 A.2d 96, 103 (Del. Ch. 1998) ("'The scope and purpose of a Section 220 proceeding is narrow.' Time and Time again, this Court has rejected claims that would expand a statutory hearing beyond its statutory purpose.") (citations omitted); *Coit v. Am. Cent. Corp.*, 1987 WL 8458, at *1 (Del. Ch. Mar. 20, 1987) ("The second feature of § 220 proceedings is that they are narrow in both scope and purpose. To permit a party unduly or improperly to expand a § 220 proceeding beyond its intended scope, either by pleading legally insufficient defenses or by other means, would also undercut and possibly defeat the statutory purpose.").

[123] *In re Plains All American Pipeline, L.P.*, 2017 WL 6016570, at *2 (Del. Ch. Aug. 8, 2017) (quoting 6 *Del. C.* § 17-305(e)).

[124] *See, e.g.*, *In re Plains*, 2017 WL 6016570, at *2; *cf. Sanders v. Ohmite Hldgs., LLC*, 17 A.3d 1186, 1193 (Del. Ch. 2011).

305, "[i]nspection rights are limited by the scope of the demand letter, and a . . . plaintiff will be foreclosed from recasting the scope of its demand at the eleventh hour."[125]

Investigating mismanagement can be a proper purpose for inspection, but a plaintiff cannot stop at alleging such a purpose. "Rather, 'a stockholder whose stated purpose is investigating mismanagement must provide 'some evidence' to suggest a 'credible basis' from which this Court may infer possible mismanagement, waste, or wrongdoing may have occurred."[126] "The credible basis standard requires far less than proving actual waste or mismanagement."[127] To meet the standard, a limited partner need only show, "by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer . . . possible mismanagement that would warrant further investigation . . . ."[128] He may meet the standard "by a credible showing,

[125] *Cf. Pettry v. Gilead Scis., Inc.*, 2020 WL 6870461, at *27 (Del. Ch. Nov. 24, 2020) (citations omitted). *See also id.* ("The conventional wisdom underlying this rule is that it is difficult and inefficient for companies to consider the merits of an evolving request.").

[126] *Beatrice Corwin Living Revocable Tr. v. Pfizer, Inc.*, 2016 WL 4548101, at *4 (Del. Ch. Aug. 31, 2016) (quoting *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 118 (Del. 2006)).

[127] *In re Plains*, 2017 WL 6016570, at *2 (citing *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 123 (Del. 2006)).

[128] *In re Plains*, 2017 WL 6016570, at *2 (quoting *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 123 (Del. 2006)).

through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing."[129]

Where a plaintiff has stated a credible basis to investigate potential mismanagement, the court must nevertheless determine the proper scope of inspection. "The scope of inspection is a fact-specific inquiry, and the court has broad discretion when conducting it."[130] The limited partner "'bears the burden of proving that each category of books and records is essential to accomplishment of the stockholder's articulated purpose for the inspection."[131] This standard is satisfied when the plaintiff shows that the books and records "address the crux of the [limited partner's] purpose and if that the information 'is unavailable from another source.'"[132]

A limited partnership agreement may expand the default inspection rights provided in Section 17-305, but the changes to inspection rights must be explicit and present "in an original partnership agreement or in any

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[129] *Id.* (quoting *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 123 (Del. 2006)).

[130] *Hightower v. SharpSpring, Inc.*, 2022 WL 3970155, at *8 (Del. Ch. Aug. 31, 2022) (citing *NVIDIA Corp. v. City of Westland Police and Fire Ret. Sys.*, 282 A.3d 1, 27–28 (Del. 2022)).

[131] *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 751 (Del. 2019) (quoting *Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1035 (Del. 1996)).

[132] *Pietrasik v. Kraus Hamdani Aerospace, Inc.*, 2024 WL 765505, at *2 (Del. Ch. Feb. 23, 2024) (quoting *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 751 (Del. 2019)).

subsequent amendment approved or adopted by all of the partners or in compliance with any applicable requirements of the partnership agreement."[133] In addition, "[i]f a partnership agreement provides for the manner in which it may be amended, . . . it may be amended only in that manner or as otherwise permitted by law[.]"[134]

ANALYSIS

The legal standards cited above relate to inspection actions brought under Section 17-305. That statute authorizes the Court to "summarily" order a limited partnership to provide records to a limited partner. The parties litigated this matter on a summary basis, but Plaintiffs alleged a much broader right of access by reference to Paragraph 5 of the Settlement Agreement. Notwithstanding the language in Count III of the complaint, Plaintiffs did not actually assert a claim "under" the Settlement Agreement; that would have required a more extensive record and would have been inappropriate in the context of a summary inspection action. Because of the Funds' concession to rights under the Settlement Agreement, however, Plaintiffs obtained a much

[133] 6 *Del. C.* § 17-305(f); *cf. Marilyn Abrams Living Tr. v. Pope Invs. LLC*, 2017 WL 1064647, at *6 (Del. Ch. Mar. 21, 2017) ("Section 18-305(c) specifically contemplates that a member can access the names and addresses of other members. If an operating agreement intended to limit this right, it would need to do so explicitly.").

[134] 6 *Del. C.* § 17-302(f).

broader scope of records than the Court could have ordered under Delaware law.

I proceed to decide the remaining issues in this case under the traditional, statutory standards for records inspection. In the first section, I discuss certain contract-based arguments the parties raised. In the second section, I address Plaintiffs' four alleged investigative purposes, and I find that two of those purposes are proper. In the third section, I address the parties' arguments respecting the three-to-four categories of records in dispute.

I. Governing Authority

Plaintiffs contend that the Settlement Agreement modified the LPAs and that they have nearly unfettered rights to inspect records under Paragraph 5 of the Settlement Agreement.[135] Plaintiffs contend that the Funds have no ability to impose restrictions.[136]

Defendants concede that Plaintiffs have inspection rights under the Settlement Agreement but argue that the LPAs have not been amended and that the GPs therefore retain the power to determine where to draw the inspection line.[137] Specifically, Defendants argue that they are permitted to impose restrictions under Section 6.1 of the LPAs.[138]

I disagree with portions of both parties' arguments for the reasons stated in the next two sections.

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[135] *See* Trial Tr. at 13:23–14:13. *See also id.* at 153:31–154:1 ("I think a lot of the more particular arguments around whether or not this or that is a book of account or part of the books and records falls away, because our right is much broader under the settlement agreement.").

[136] *See id.* at 13:23–14:13; RB at 12.

[137] Trial Tr. at 64:7–66:23.

[138] *Id.* at 64:12–17.

a. The Settlement Agreement Did Not Amend the LPAs.

Under Delaware law, changes to a limited partner's statutory inspection rights must be reflected explicitly "in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners or in compliance with any applicable requirements of the partnership agreement."[139] Section 9.1(a) of the LPAs states: "[A]ny provision of [the LPA] . . . may be amended or waived . . . by an instrument in writing executed by the General Partner and Elliott."[140] Plaintiffs argue that Paragraph 5 of the Settlement Agreement is such an "instrument."[141] If it is, it is not executed by "Elliott," as that term is defined in the LPA. "Elliott" is Elliott Management Corporation;[142] the Settlement Agreement was executed by EIM and other entities that are not Elliott Management Corporation.[143]

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[139] 6 *Del. C.* 17-305(f).

[140] JX 3 at 88. Section 9.1 "provides for the manner in which [the LPA] may be amended," so the LPA "may be amended only in that manner or as otherwise permitted by law." 6 *Del. C.* § 17-302(f). Plaintiffs made no argument that the LPAs were validly amended in a manner "otherwise permitted by law." *See* OB at 12 n.5.

[141] *See* RB at 12 n.5. *See also* OB at 18 ("Additionally, a limited partner can bargain for a broader right to books and records than provided in the statute. Elliot and the LPs did exactly that here: the Settlement Agreement provides that Elliot and the LPs 'shall have the right to request, and [Stronghold] shall provide . . . , ***any and all information regarding such entities***[.]") (citations omitted) (emphasis in original).

[142] JX 3 at 9.

[143] *See* JX 13 at 1.

b. Section 6.1 of the LPAs Does Not Support the Limits the GPs Attempted to Impose in this Action.

The Funds argue that because the Settlement Agreement did not amend the LPAs, the Funds retain the ability to impose limits on the scope of Plaintiffs' inspection under the Settlement Agreement.[144] The Funds rely on Section 6.1 of the LPAs, which states:

> Books of Account. Appropriate records and books of account of the Partnership shall be accessible … and each Partner and its representatives shall have access to the records and books of account and the right to receive copies thereof under such reasonable conditions and restrictions as the General Partner may prescribe.[145]

By its plain terms, this section authorizes the GPs to place "reasonable conditions and limitations" on the inspection of the records to which Plaintiffs are entitled under the LPAs.[146] In this action, the Funds attempted to use Section 6.1 to block Plaintiffs' inspection of certain records relating to expenses that the Funds had otherwise generally allowed Plaintiffs to inspect because of the Settlement Agreement.[147] The Funds argued, and I agree, that the Settlement Agreement did not amend the LPAs, so I do not believe the

[144] *See* Trial Tr. at 64:12–66:23; AB at 49–50.

[145] JX 3 at 73.

[146] *Id.* *See also* Trial Tr. at 99:15–22 (explaining the meaning of "books of account").

[147] *See* AB 49–50.

Funds' attempted use of Section 6.1 in this manner is supportable. But even if it were, it would not change the result in this action. Plaintiffs' request to inspect the remaining records relating to expenses fails for other reasons, as explained in later sections of this Report.

II. Plaintiffs have two proper investigative purposes.[148]

Plaintiffs contend that they stated four proper purposes to inspect records, namely, investigating (1) potential breaches of the LPAs by the GPs; (2) potential mismanagement of the Funds by the GPs, including the overcharging of expenses (3) potential breaches of the Settlement Agreement by the GPs and (4) how the GPs value Plaintiffs' interests in the Funds.[149] An alleged investigative purpose will be a proper purpose if it relates to Plaintiffs' interest in the Funds and if Plaintiffs have demonstrated a credible basis to suspect that mismanagement or wrongdoing may have occurred.[150] I find the first two stated purposes to be proper and the latter two to be improper.

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[148] The Funds did not dispute that Plaintiffs satisfied the statutory prerequisites in Section 17-305(b). *See* PTO ¶ 22–23. They admitted only that Plaintiffs "stated a proper purpose reasonably related to their interests as limited partners in the Limited Partnerships," but not whether they disagreed with any of the alleged purposes. *See* PTO ¶ 23.

[149] *Id.* ¶ 14.

[150] *See In re Plains*, 2017 WL 6016570, at *2.

a. Investigating Breaches of the Settlement Agreement is Not a Proper Purpose.

I conclude that investigating potential breaches of the Settlement Agreement is not a proper purpose, for two reasons. First, it is related to EIM's individual interest in the contract, not to the Plaintiffs' interests in the Funds.[151] Second, Plaintiffs never had a true interest in "investigating" a breach. Even before serving the Demand, Plaintiffs had concluded that the Funds breached the Settlement Agreement, at least by the acts of the upstream controllers.[152]

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[151] *See Holman v. N.W. Broadcasting, L.P.*, 2007 WL 1074770, at *3 n.22 (Del. Ch. Mar. 29, 2007) ("The question of whether Holman has the right to inspect the audited statements is not before the Court; that right is the result of the Settlement Agreement."); *Pogue v. Hybrid Energy, Inc.*, 2016 WL 4154253, at *3 (Del. Ch. Aug. 5, 2016) ("[T]he Plaintiff argued that his 'proper purpose' is to enable him to 'use the tools at hand to properly bring a 205 action' or to 'pursue a breach of contract issue.' Neither is a proper purpose related to Plaintiff's interest *as a stockholder*; both relate to an *individual* interest[.]") (emphasis in original); *Cf. KT4 Partners LLC v. Palantir Techs., Inc.*, 2018 WL 1023155, at *16 (Del. Ch. Feb. 22, 2018), *aff'd in part, rev'd on other grounds*, 203 A.3d 738 (Del. 2019) (finding a plaintiff's stated purpose of investigating a defendant's interference with the sale of his stock improper because it is "quintessentially a claim personal to [a plaintiff] that is not related to [the plaintiff's] interests as a stockholder").

[152] *See, e.g.*, JX 70 at 1 ("For at least these reasons, the SRP Parties have materially breached Section 7 of the Settlement Agreement.").

b. Investigating How the GPs Value Plaintiffs' Interests is Not a Proper Purpose.

I also find that Plaintiffs failed to state a credible basis for investigating how the GPs value their interests. That information has been available for years via required reporting under the LPAs and an individual agreement with Elliott.[153] Plaintiffs pleaded no facts from which I could infer that the GPs suddenly started valuing Plaintiffs' interests differently or inappropriately.

c. Investigating the GP's Charging and Allocation of Expenses is a Proper Purpose.

To establish a credible basis to investigate potential mismanagement of the Funds, including the overcharging of expenses, Plaintiffs argue that (1) some entity or person affiliated with Stronghold entered into the Settlement Agreement, (2) the Settlement Agreement requires some entity or person affiliated with Stronghold to wind down the Funds and caps the GPs' management fees and (3) nevertheless, in the months after executing the Settlement Agreement, the expenses charged to the Funds improperly grew to

[153] *See* Trial Tr. at 81:18–82:7 (The Funds' counsel explained "JX 77 is the most recent one from 12/31, and it is an incredible amount of information both on expenses and valuation. . . . It is Elliot's *specifically tailored information* that *Elliott and only Elliott from the limited partners gets*.") (citing JX 77) (emphasis added)).

levels exceeding any prior year.[154] Plaintiffs speculate that the GPs increased the expenses charged to the Funds to make up for the cap on management fees negotiated in the Settlement Agreement.[155]

Had they not injected the Settlement Agreement into the case, Plaintiffs would have only an allegation of increased expenses and mere speculation of mismanagement to support their claim. Even acknowledging the existence of the Settlement Agreement, Plaintiffs' theory has some weaknesses.[156] Nevertheless, Plaintiffs' interpretation of the Settlement Agreement is not impossible or frivolous. The allegation that sales have been intentionally slowed and expenses allocated differently to reduce the impact of lost management fees is sufficient to meet the very low bar set by the credible basis standard. In that context, I conclude that Plaintiffs established a credible basis to investigate the GPs' charging and allocation of expenses to Plaintiffs from August 2022 through the date of the Demand.

[154] *See* OB at 9–10.

[155] *See* JX 70 at 1–2.

[156] For one, it is not immediately apparent that expenses "should be decreasing" if Defendants are required to sell all assets of all funds listed in the Settlement Agreement by the end of 2024. But the credible basis test only requires that the Court be able to infer a *possibility* of mismanagement. *See In re Plains*, 2017 WL 6016570, at *2.

d. Investigating Potential Breaches of the LPAs is a Proper Purpose.

The conclusion in the preceding section determines the result here. Improperly charging or allocating expenses to Plaintiffs could constitute a breach of one or more sections of the LPAs. Accordingly, Plaintiffs have also established a credible basis warranting investigation into potential breaches of the LPAs relating to the GPs' allocation of expenses to Plaintiffs from August 2022 through the date of Demand.

III. Scope of Inspection

I turn now to the three-to-four categories of records that remain in dispute. For the reasons stated, I recommend that Plaintiffs receive no additional records.

a. Legal Memoranda

In this action, Plaintiffs assume the Funds breached, and must to "excuse a failure" to comply with, Paragraph 7 of the Settlement Agreement.[157] Plaintiffs insist that the Funds are "required" to obtain written legal advice and show that advice to Plaintiffs.[158]

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[157] OB at 29–30; RB at 18–20. *See also* Trial Tr. at 51:2–16.

[158] OB at 29–30.

The Funds argue that they have satisfied their obligations under the Settlement Agreement.[159] They argue that they have stated no merits defenses in this records inspection action and that Plaintiffs request is, at best, premature.[160] They said they did not have legal memoranda of the sort described in Paragraph 7(a)(ii) to produce.[161] After continued requests from Plaintiffs, the Funds confirmed that they did have legal memoranda relating to their investment adviser duties, and Plaintiffs accused them of putting legal advice "at issue" in the litigation.[162] By the end of the trial, Plaintiffs claimed to have grasped the Funds' argument.[163]

i. <u>Discussion</u>

I have concluded that Plaintiffs do not have a proper purpose for investigating a possible breach of the Settlement Agreement.[164] This is a

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[159] *See* Trial Tr. 139:18–22.

[160] *See id.* at 136:22–37:4 ("[T]he way it's structured, including in this Court, I understand, is that the decision whether to waive privilege or not comes after document discovery. It certainly comes after an answer. It certainly comes after a complaint is filed so you even know what the claim is.").

[161] *Id.* at 139:18–22; 140:2–6.

[162] *See* OB at 32–33.

[163] Trial Tr. at 163:6–10 ("[I]f the representation is that Stronghold did not comply with Section 7(a)(ii) with respect to the timing and has not obtained the advice of counsel that would have allowed an extension of the deadline, then we may be able to hold our powder.").

[164] *See, supra*, Section II.a.

sufficient basis upon which to reject Plaintiffs' request for legal memoranda. But, even assuming, *arguendo*, that Plaintiffs could properly investigate alleged breaches of the Settlement Agreement, I decline to order production of the three legal memoranda because they are protected by the attorney-client privilege.

Plaintiffs have not demonstrated that the Funds put any legal advice "at-issue" in this case. Plaintiffs accused the Funds of breach and acted as if the Funds had raised a defense.[165] But this is not an action for breach. The Funds had no reason to raise a merits-based defense to an unfiled action for breach, and they did not do so.

Plaintiffs conflated the provisions of Paragraph 7 and accused the Funds of hiding whether any legal memoranda existed.[166] The Funds then

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[165] *See* OB at 32–33 (arguing the Funds' waiver of attorney-client privilege).

[166] In a letter dated February 27, Plaintiffs stated:

> [D]espite the fact that since November, Elliott has been seeking information **regarding the opinions of counsel SRP was required to obtain and provide to Elliott** under the Settlement Agreement, you were unprepared . . . to even confirm whether such opinions exist, let alone when and by whom any such opinions were issued. **There can be no credible argument that confirmation or denial of the existence of such opinions implicates privilege in any way,** so the conclusion we must draw is that you are simply blocking Elliott from information to which it is entitled.

disclosed that they have legal memoranda of a certain type, and the author and recipient of the memoranda.[167] The suggestion that doing so waived privilege is unpersuasive and smacks of sandbagging.

b. Valuation Model

Plaintiffs did not request a valuation model in the Demand.[168] Plaintiffs argued that they only learned such a record exists at Mr. John's deposition.[169] The Funds argued that Plaintiffs misunderstood Mr. John's testimony.[170] They explained that the "valuation model" Plaintiffs seek has already been provided through the KPI tracker.[171]

JX 89 at 2 (emphasis added).

[167] JX 92 at 2 ("[T]here are two Office Memoranda . . . relating to . . . Stronghold's fiduciary and investment adviser duties with respect to the sale of assets of [the Funds]. Both memoranda are addressed to [Stronghold] by attorneys . . . of Snell & Wilmer."). When the Funds received a third memorandum they disclosed it to Plaintiffs. *See* Trial Tr. at 51:2–5.

[168] *See* JX 85 at 3–5.

[169] Trial Tr. at 166:19–21. *See also id.* at 50:8–13 ("I think that what is undisputed that they haven't produced is—Mr. John testified last week . . . that there is a valuation model, a spreadsheet model, that is the model that Stronghold uses for the purpose of valuation.").

[170] *Id.* at 167:3–17 (citing JX 81). Defendants argue that Mr. John "was referring to . . . an output[,] . . . that the valuation team, the investment specialist provided to accounting for accounting to make the valuation entries in the general ledger." *Id.*

[171] *See id.* at 167:11–17 ("[T]hat information is contained in that KPI tracker that's Exhibit 81 that they already have. That's what Mr. John was referring to on valuation. It wasn't some, like, single-valuation model, like this is one document and it has everything. That's just not what he was referring to."). *See also* JX 81 (PI Value by Res Cat); *id.* (MoM Value Change).

i. **Discussion**

I have concluded that Plaintiffs do not have a proper purpose for investigating how the Funds value Plaintiffs' interests.[172] This is a sufficient basis upon which to reject Plaintiffs' request for the alleged valuation model. But, even if the Court assumes, *arguendo*, that Plaintiffs stated a proper purpose, the Court declines to order production of a valuation model because Plaintiffs failed to prove such a model exists. At the end of the trial, Plaintiffs declared: "[O]n valuation, we read the transcript at pages 180 to 181 as suggesting that there is a model. If they are saying there is not a model, then obviously there's no model to produce. But if there is, we would like it produced."[173] I view this as a concession that Plaintiffs failed to meet their burden to establish the existence of the record it seeks.[174] In any event, Plaintiffs have all that is necessary and essential to understand how the GPs value Plaintiffs' interests in the KPI tracker and the unique report prepared for Elliott.[175]

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[172] *See, supra*, Section II.b.

[173] Trial Tr. at 172:20–24.

[174] *Cf. Durham v. Grapetree, LLC*, 2019 WL 413589, at *4 (Del. Ch. Jan. 31, 2019) ("I have ordered certain books and records produced, but have denied the greater part of Andrew's requests, as unnecessary to a proper purpose or overbroad, *or as not seeking existing documents*.") (emphasis added).

[175] *See* JX 81 (the KPI tracker). *See also* JX 77 (regular reports provided to Elliott).

c. General Ledgers and Workbooks

Plaintiffs argue that these records were requested in the Demand because they (1) show the "detail and nature" of expenses, (2) show Stronghold's "methodology" and (3) constitute accounting reports or accounting records.[176] In the alternative, Plaintiffs argue that they didn't know what to ask for, at the time of the Demand or afterward, until they learned at Mr. John's deposition that they can only understand the GPs' allocation of expenses by examining general ledgers and allocation workbooks.[177] Without these materials, Plaintiffs contend the GPs allocation of expenses is hidden in "black boxes."[178] They appear to understand that

[176] *See* OB at 20, 21–22, 28–29.

[177] *See* Trial Tr. at 47:13–19 ("As I mentioned earlier, the demand was trying to get at information. Right? Namely, what are these charges, why are they being charged to us, and how are they being allocated? And we didn't know the where the answer was within Stronghold's documents. So we asked for a variety of different things."). *But see id.* at 165:20–166:6 (stating that the general ledgers and accompanying workbooks *seem* to be "the information that [Plaintiffs are] after.") (emphasis added); *id.* at 165:10–15 ("[W]ith respect to the general ledgers of the service centers and the worksheets with regard to the expenses, it sounds from the description that Mr. John provided and that [the Funds' counsel] has given in court today, it *sounds like* that should be enough.") (emphasis added).

[178] *Id.* at 158:2–4. *See also id.* at 159:9–17 ("[O]ur concern is that deprived of the ability to charge a management fee under the settlement agreement, Stronghold has instead been funneling what otherwise it would have charged in the management fee through these black box allocated expense categories, which is why we think those categories have increased, general allocated expenses have increased even

these are not books and records of the Funds, but argue that: "Elliott needs to be able to see into those black box entities in order to understand what the expenses are, whether they are proper, and whether the amounts allocated to the Elliott funds are proper."[179]

The Funds argue that the records do not show the "detail and nature" of expenses, are not "the methodology" and are not "accounting reports or accounting records."[180] The Funds also argue that Plaintiffs are not entitled to inspect these records because they are not records "of the Funds." Rather, the general ledgers for SRP TH Services and SRP Management Services are books and records of the Portcos.[181] The allocation workbooks for SRP TH Services and SRP Management Services are books and records of the service centers.[182]

i. **<u>Discussion</u>**

These categories of records were not requested in the Demand.[183] Mr. John explained at his deposition that general ledgers and allocation

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beyond, apparently, correction for the litigation expenses and the consulting expenses and direct expenses.").

[179] Trial Tr. at 120:22–121:1.

[180] *See id.* at 104:5–105:22.

[181] *Id.* at 169:13–20.

[182] *Id.* at 169:21–179:4.

[183] *See* JX 85 at 3–5.

workbooks do not show individual expenses, they show only the general ledger account balance.[184] Thus, the argument that these records show "the nature and detail of an expense" fails. Mr. John also testified that general ledgers and allocation workbooks are the application of the methodology, not the methodology itself.[185] Thus, these records do not fall within the request for "methodology." Finally, Mr. John explained that the records are neither "accounting reports" nor "accounting records."[186]

In addition, I find that Plaintiffs already possess all the records that are "necessary and essential" to understand what the increased expenses are and how they were allocated. Mr. John testified that the bulk of those expenses came from Embark and Enverus.[187] He testified that 60 to 65 percent of the increased accounting expenses relating to Embark's work were allocated to Fund II entities.[188] He testified that 85 to 90 percent of the increased litigation expenses relating to the Enverus litigation were allocated to Fund II entitles.[189] He explained why those two percentages were different.[190] After adjusting

[184] *See* Dep. Tr. at 168:18–25. *See also id.* at 124:10–125:12.

[185] *Id.* at 78:16–82:19, 123:4–14, 188:4–23.

[186] *Id.* at 187:13–21.

[187] *See id.* at 165:24–166:7; 183:9–22.

[188] *Id.* at 183:9–22. *See also* John Aff. ¶ 11.

[189] Dep. Tr. at 165:24–166:7. *See also* John Aff. ¶ 11.

[190] Dep. Tr. at 183:18–184:7.

for the Embark and Enverus expenses, the post-Settlement Agreement increase in expenses was not extraordinary, but was within the range of fluctuations seen in prior years.[191] Plaintiffs have all they need to understand how any other expenses were allocated.[192]

d. Invoices and Receipts

At trial, Plaintiffs confirmed that invoices and receipts were requested in the alternative, in case the detailed information they seek is not found in the general ledgers and workbooks.[193]

Plaintiffs' request to inspect invoices and receipts is denied because, as explained in the previous section, Plaintiffs have already obtained all records necessary and essential to the purpose of investigating the GPs allocation of expenses to Plaintiffs. In addition, invoices and receipts are not necessary to Plaintiffs' purpose because the face of the record reveals nothing about its allocation.[194] Even if these records had some utility to Plaintiffs, their desires

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[191] Trial Tr. at 112:6–113:2.

[192] *See* John Aff. ¶¶ 6–9 (discussing the Allocation Policy).

[193] Trial Tr. at 160:6–11 ("To the extent the general ledgers of the service centers and the workbooks that Stronghold uses to get those charges onto the general ledgers of the fund and its portfolio companies—to the extent those documents provide the information we're after, then the invoices become redundant[.]"). Nevertheless, Plaintiffs claimed they could not abandon their request because the information might not be in the ledgers and workbooks. *Id.* at 160:15–18.

[194] Dep. Tr. at 168:18–25.

are outweighed by the burden that producing the records would place on Defendants.[195]

CONCLUSION

I conclude that Plaintiffs stated two proper purposes for inspection, related to the charging and allocation of expenses and potential breach of the LPAs. Plaintiffs have received all records necessary and essential to those purposes. I recommend that no further inspection be permitted.

This is a Final Report. Exceptions may be taken as set forth in Court of Chancery Rule 144.

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[195] John Aff. ¶¶ 13–14; Trial Tr. at 115:7–115:17. *Cf. Inter-Local Pension Fund GCC/IBT v. Calgon Carbon Corp.*, 2019 WL 479082, at *17 (Del. Ch. Jan. 25, 2019) ("When considering requests for information . . . in Section 220 proceedings, the court should apply its discretion on a case-by-case basis to balance the need for the information sought against the burdens of production and the availability of the information from other sources[.]") (citations and quotations omitted). *See also Thomas & Betts Corp. v. Leviton Mfg. Co., Inc.*, 681 A.2d 1026, 1035 (Del. 1996) ("The responsibility of the trial court to narrowly tailor the inspection right to a stockholder's stated purpose is well established. In discharging this responsibility, the trial court has wide latitude in determining the proper scope of inspection. Undergirding this discretion is a recognition that the interests of the corporation must be harmonized with those of the inspecting stockholder.").