

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

VIASAT, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2024-0713-LWW
	)	
L3HARRIS TECHNOLOGIES,	)	
INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Date Submitted: June 23, 2026
Date Decided: September 29, 2026

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WILL, Vice Chancellor

In 2023, a defense contractor bought a tactical data links business from a competitor for \$2 billion. The purchase price was subject to a post-closing adjustment process. The parties agreed that any working capital adjustment dispute would be resolved by an independent accounting expert.

After closing, the parties disagreed on the final price and submitted several issues to the accounting expert, three of which are raised here. The accounting expert resolved the issues, in whole or in part, in the buyer's favor. Now, the seller sues the buyer challenging the accounting expert's interpretation of the governing asset purchase agreement. For each of the three issues, the seller asserts that the accounting expert exceeded its contractual mandate.

The parties have cross-moved for summary judgment, with mixed results. The seller prevails on the first issue because the expert overrode an express contractual prohibition. The buyer prevails on the second and third issues because the expert acted in accordance with the agreement.

I. FACTUAL BACKGROUND

The following background is drawn from the undisputed facts in the pleadings and documentary exhibits the parties submitted.¹

¹ Citations to "Pl.'s Ex." refer to exhibits to the Transmittal Affidavit of Jonathan H. Lloyd in Support of Plaintiff's Opening Brief in Support of Plaintiff's Motion for Summary Judgment (Dkt. 61). Citations to "Def.'s Ex." refer to exhibits to the Transmittal Affidavit of Danielle I. Bell in Support of L3Harris Technologies, Inc.'s Motion for Summary Judgment (Dkt. 64). Pincites refer to the exhibits' internal pagination.

A. L3Harris’s Purchase of Link-16

Plaintiff Viasat, Inc. is a publicly traded Delaware corporation that provides high-speed satellite broadband services and secure networking systems for civilian and government customers worldwide.² Defendant L3Harris Technologies, Inc. is also a publicly traded Delaware corporation and a defense contractor.³

Viasat manufactures battlefield radio systems through its Link-16 Tactical Data Links business (the “Business”).⁴ In October 2022, the parties entered into an Asset Purchase Agreement (“APA”) for L3Harris to acquire the Business from Viasat for \$1.958 billion.⁵ The transaction closed on January 3, 2023.⁶

B. The Post-Closing Adjustment Process

Under the APA, the final purchase price L3Harris paid for the Business depended, in part, on a post-closing working capital adjustment.⁷ The parties set “Target Working Capital” for the Business at \$145 million.⁸ The APA defines “Working Capital” as the difference between current assets and current liabilities as

² Verified Compl. (Dkt. 1) (“Compl.”) ¶ 15; *see* Answer to Verified Compl. (Dkt. 29) (“Answer”) ¶ 15.

³ Compl. ¶ 16; Answer ¶ 16.

⁴ Compl. ¶ 1; Answer ¶ 1.

⁵ Compl. ¶¶ 21-22; Answer ¶¶ 21-22; Pl.’s Ex. 1 (“APA”) pmb., § 2.01(b).

⁶ Compl. ¶ 22; Answer ¶ 22; *see* Pl.’s Ex. 11 (“Final Report”) 1 (“Purchaser and Seller entered into the Contract with a closing date of January 3, 2023.”).

⁷ APA §§ 2.01(b), 2.08(d).

⁸ Compl. ¶ 22; Answer ¶ 22; APA § 1.01(a) (defining “Target Working Capital”).

listed “on the Reference Statement of Working Capital, subject to the definitional adjustments set forth therein.”⁹ The “Reference Statement of Working Capital” (or “Reference Statement”) is the “statement setting forth Working Capital as of the Measurement Date”—December 31, 2021.¹⁰ It is a two-page list of accounting issues that the parties agreed to handle a specific way.¹¹

The APA required Viasat to deliver an “Estimated Closing Statement” before closing and to estimate “Closing Working Capital” in good faith.¹² L3Harris based its initial payment at closing on this estimate.¹³ The APA also required L3Harris to prepare a “Closing Statement” after closing.¹⁴ Viasat could then object to the Closing Statement, and the parties would negotiate over disputed items.¹⁵ If the

⁹ APA § 1.01(a) (defining “Working Capital”).

¹⁰ *Id.* § 3.04 (defining “Reference Statement of Working Capital” and “Measurement Date”).

¹¹ APA sched. 1.01(h).

¹² Compl. ¶ 22; Answer ¶ 22; APA § 2.02(b); *see also id.* § 1.01(a) (defining “Closing Working Capital” as “Working Capital as of 12:01 a.m. Pacific Time on the Closing Date”); *id.* (defining “Estimated Closing Statement” as “a written statement” including “Seller’s good faith estimates of Closing Working Capital . . . and Closing Indebtedness” and “Seller’s calculation of the Closing Date Payment” and “calculation of the Closing Date Reimbursement Amount”).

¹³ Compl. ¶ 22; Answer ¶ 22; APA § 2.03(a).

¹⁴ Compl. ¶ 25; Answer ¶ 25; APA § 2.08(a); *see id.* § 1.01(a) (defining “Closing Statement” as “the statement setting forth Closing Working Capital and the Closing Indebtedness, to be delivered pursuant to Section 2.08(a)”).

¹⁵ Compl. ¶¶ 26-27; Answer ¶¶ 26-27; APA § 2.08(b)-(c).

parties could not resolve an item, Section 2.08(c) required them to submit the dispute to “Grant Thornton LLP,” defined as the “Arbiter.”¹⁶

Section 2.08(a) of the APA directs the parties to calculate Working Capital “using and applying the Accounting Principles” and “taking into account the definitional adjustments” set out in the Reference Statement.¹⁷ Section 1.01(a) defines “Accounting Principles” in three clauses, which the parties refer to as tiers.¹⁸ The first tier is generally the policies, practices, and procedures specified in the Reference Statement (“Tier 1”).¹⁹ The second tier is Generally Accepted Accounting Principles, or GAAP (“Tier 2”).²⁰ And the third tier requires the use of Viasat’s historical accounting methods, policies, principles, practices, classifications, judgments, and estimation methodology, “to the extent not inconsistent with the Reference Statement of Working Capital or GAAP” (“Tier 3”).²¹ Crucially, the APA sets a hierarchy among these tiers, confirming which tiers “take precedence” over others.²²

¹⁶ Compl. ¶ 28; Answer ¶ 28; APA § 2.08(c); *id.* §§ 1.01(a), 2.02(b), 2.03(a), 2.08(a)-(c).

¹⁷ Compl. ¶ 29; Answer ¶ 29; APA § 2.08(a).

¹⁸ Compl. ¶ 30; Answer ¶ 30; APA § 1.01(a) (defining “Accounting Principles”).

¹⁹ APA § 1.01(a) (defining “Accounting Principles”).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*; Compl. ¶ 31; Answer ¶ 31.

The Reference Statement contains specific accounting practices and procedures for several categories of Working Capital, including Estimates at Completion (EACs), Excess and Obsolescence (E&O) reserves, and Work in Progress (WIP) reserves.²³ For example, regarding EACs, the Reference Statement directs that estimates to complete “shall not be adjusted unless otherwise done in the Ordinary Course by the business’ program control analysts, project managers and financial analysts, and consistent with [Viasat]’s past practice.”²⁴ The APA defines “Ordinary Course” as “the conduct of the Business, consistent in all material respects with the normal day-to-day customs, practices, and procedures of the Business.”²⁵

C. The Purchase Price Dispute

On December 28, 2022, Viasat delivered an estimate of Closing Working Capital of \$154,354,000.²⁶ That amount exceeded Target Working Capital by

²³ APA sched. 1.01(h); Compl. ¶ 33; Answer ¶ 33.

²⁴ APA sched. 1.01(h); Compl. ¶ 24; Answer ¶ 24.

²⁵ APA § 1.01(a) (defining “Ordinary Course”).

²⁶ Compl. ¶ 22; Answer ¶ 22.

\$9,354,000.²⁷ L3Harris paid \$1,972,592,177 when the transaction closed on January 3, 2023.²⁸

On May 2, 2023, L3Harris delivered its Closing Statement, which calculated a Final Purchase Price of \$1,914,808,682.²⁹ L3Harris sought a repayment of \$57,783,495 and proposed adjustments to 32 working capital items.³⁰

Viasat responded with an objection notice on June 12, 2023.³¹ Viasat accepted \$494,040 of L3Harris's proposed adjustments and disputed the rest.³² The parties negotiated and narrowed their disagreements to ten items totaling \$30,989,803.³³ The ten disputed items were submitted to Grant Thornton for resolution in accordance with Section 2.08(c) of the APA.³⁴

On December 12, 2023, the parties engaged Grant Thornton LLP.³⁵ Charles Blank, who led Grant Thornton's mergers and acquisitions dispute practice, oversaw

²⁷ Compl. ¶ 22; Answer ¶ 22.

²⁸ See Def.'s Ex. D at 6; Pl.'s Ex. 3 at 6.

²⁹ Compl. ¶ 25; Answer ¶ 25; *see also* Def.'s Ex. D at 2, 7.

³⁰ Compl. ¶ 3; Def.'s Ex. D at 2, 7.

³¹ Compl. ¶ 26; Answer ¶ 26; *see also* Def.'s Ex. D at 2, 7.

³² See Def.'s Ex. D at 7.

³³ Compl. ¶ 27; Answer ¶ 27; *see* Def.'s Ex. D at 8; *see also* Pl.'s Ex. 3 at 2, 7-8; Final Report 2-3.

³⁴ Compl. ¶ 34; Answer ¶ 34; APA § 2.08(c).

³⁵ Def.'s Ex. B at 1.

the engagement.³⁶ The engagement letter directed him to “interpret[] and appl[y] the terms of the [APA]” using his “judgment” and “expertise as an accountant and business advisor.”³⁷

Grant Thornton issued its written determination (the “Final Report”) on May 1, 2024.³⁸ It resolved eight of the ten disputed items in L3Harris’s favor and the remaining two items largely in Viasat’s favor.³⁹

D. This Litigation

Viasat filed this action on July 2, 2024, challenging Grant Thornton’s treatment of five disputed items.⁴⁰ In Count I, Viasat sought a declaration that Grant Thornton’s approach to the disputed items violated the tiered structure of the Accounting Principles in the APA, exceeded its authority, and amounted to manifest error.⁴¹ Counts II and III asserted alternative claims to modify or vacate an arbitration award under the Federal Arbitration Act and the Delaware Uniform Arbitration Act.⁴²

³⁶ See Pl.’s Ex. 12 at 10, 21-25.

³⁷ Def.’s Ex. B at 1-2.

³⁸ Compl. ¶ 44; Answer ¶ 44; Def.’s Ex. F at 1.

³⁹ See Final Report 77.

⁴⁰ Compl. ¶¶ 68-84.

⁴¹ *Id.*

⁴² *Id.* ¶¶ 85-98; see 9 U.S.C. §§ 10-11; 10 *Del. C.* §§ 5714-15.

On January 28, 2025, I granted in part and denied in part L3Harris’s motion to dismiss the Complaint.⁴³ I concluded that the APA authorized Grant Thornton to act as an expert rather than an arbitrator because its mandate was limited to applying specialized accounting knowledge to resolve factual issues.⁴⁴ Because Counts II and III assumed Grant Thornton was acting as an arbitrator, they were dismissed.⁴⁵

I denied the motion to dismiss as to Count I. Although Grant Thornton had the authority to resolve accounting disputes subject to a manifest error standard of review, interpreting the APA is a purely legal issue. Because contract interpretation falls outside an accounting expert’s purview and Viasat adequately pleaded that Grant Thornton misapplied the Accounting Principles, Count I stated a reasonably conceivable claim.⁴⁶

⁴³ See Tr. of Jan. 28, 2025 Rulings on Def.’s Mot. to Dismiss (Dkt. 28) (“Mot. to Dismiss Tr.”).

⁴⁴ *Id.* at 18.

⁴⁵ *Id.* Because Counts II and III sought to modify or vacate an arbitration award, Viasat properly invoked this court’s statutory jurisdiction at the outset of this litigation. See 10 *Del. C.* § 5702. Although those statutory claims were dismissed, the court retains subject matter jurisdiction over the remaining declaratory judgment claim under the clean-up doctrine. See, e.g., *Kraft v. WisdomTree Invs., Inc.*, 145 A.3d 969, 974 (Del. Ch. 2016); *NEC Fund VI HE Lender, LLC v. Hecate Hldgs. LLC*, 2026 WL 527007, at *9 (Del. Ch. Feb. 25, 2026).

⁴⁶ Mot. to Dismiss Tr. 20-21.

Limited fact and expert discovery ensued. Viasat later withdrew its challenges to two disputed items.⁴⁷ The parties then cross-moved for summary judgment on the three remaining items, which I refer to as “Disputed Items 1, 2, and 3.”⁴⁸

II. ANALYSIS

The parties have cross-moved for summary judgment on the three remaining disputed items. Disputed Item 1 concerns adjustments to Estimates at Completion. Disputed Items 2 and 3 concern inventory reserves.⁴⁹

Under Court of Chancery Rule 56, summary judgment is granted only if “there is no genuine dispute as to any material fact” and “the movant is entitled to a judgment as a matter of law.”⁵⁰ When parties cross-move for summary judgment, “the court must examine each motion separately.”⁵¹ “The facts must be viewed in

⁴⁷ Answering Br. in Opp’n to Def.’s Mot. for Summ. J. (Dkt. 72) (“Pl.’s Answering Br.”) 36-37.

⁴⁸ *See id.*; *see also* Opening Br. in Supp. of Pl.’s Mot. for Summ. J. (Dkt. 61) (“Pl.’s Opening Br.”); Answering Br. of L3Harris Technologies, Inc. in Opp’n to Viasat’s Mot. for Summ. J. (Dkt. 73) (“Def.’s Answering Br.”); Reply Br. of L3Harris Technologies, Inc. in Further Supp. of Mot. for Summ. J. (Dkt. 80) (“Def.’s Reply Br.”); Opening Br. of L3Harris Technologies, Inc. in Supp. of Its Mot. for Summ. J. (Dkt. 63) (“Def.’s Opening Br.”); Reply Br. in Supp. of Pl.’s Mot. for Summ. J. (Dkt. 79) (“Pl.’s Reply Br.”); *see also* Tr. of June 23, 2026 Oral Arg. on Cross-Mots. for Summ. J. (Dkt. 88).

⁴⁹ Pl.’s Answering Br. 36-37; Pl.’s Opening Br. 35, 42, 44; Def.’s Opening Br. 33, 38-39; *see also* Final Report 10, 18, 25.

⁵⁰ Ct. Ch. R. 56(a).

⁵¹ *Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 167 (Del. Ch. 2003).

the light most favorable to the nonmoving party and the moving party has the burden of demonstrating that there is no material question of fact.”⁵²

Both motions turn on the interpretation of the APA, which is governed by Delaware law.⁵³ Matters of contract interpretation are “readily amenable to summary judgment” because “proper interpretation of language in a contract . . . is treated as a question of law.”⁵⁴ The court may grant summary judgment in a contract dispute in two scenarios: “(1) when the contract is unambiguous, or (2) when the extrinsic evidence fails to create a triable issue of material fact.”⁵⁵ Where a contract is unambiguous, the court gives effect to the “plain meaning of the contract’s terms and provisions.”⁵⁶ It must assess the contract “as a whole and . . . give each provision and term effect, so as not to render any part of the contract mere surplusage.”⁵⁷

⁵² *Senior Tour Players 207 Mgmt. Co. v. Golftown 207 Hldgs. Co.*, 853 A.2d 124, 126 (Del. Ch. 2004).

⁵³ See APA § 10.06.

⁵⁴ *Tetragon Fin. Gp. Ltd. v. Ripple Labs Inc.*, 2021 WL 1053835, at *3 (Del. Ch. Mar. 19, 2021) (first quoting *Barton v. Club Ventures Invs. LLC*, 2013 WL 6072249, at *5 (Del. Ch. Nov. 19, 2013); and then quoting *Pellaton v. Bank of N.Y.*, 592 A.2d 473, 478 (Del. 1991)).

⁵⁵ *Julius v. Accurus Aerospace Corp.*, 2019 WL 5681610, at *7 (Del. Ch. Oct. 31, 2019), *aff’d*, 241 A.3d 220 (Del. 2020).

⁵⁶ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159-60 (Del. 2010); see also *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins.*, 616 A.2d 1192, 1195 (Del. 1992) (“Clear and unambiguous language . . . should be given its ordinary and usual meaning.”).

⁵⁷ *Osborn*, 991 A.2d at 1159 (quoting *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396-97 (Del. 2010)).

As explained below, each motion is granted in part and denied in part. Viasat is entitled to summary judgment on Disputed Item 1. L3Harris is entitled to summary judgment on Disputed Items 2 and 3.⁵⁸

A. Standard of Review and Framing Principles

The parties agreed that Grant Thornton would serve as an expert rather than as an arbitrator.⁵⁹ In *Terrell v. Kiromic Biopharma, Inc.*, the Delaware Supreme Court addressed the distinction between judicial review of an expert determination and an arbitration award.⁶⁰ Interpreting language like that of APA Section 2.08(c), *Terrell* explained that an expert’s “authority is limited to its mandate to use its specialized knowledge to resolve a specified issue of fact.”⁶¹ On such matters, the “expert’s determination of the disputed factual issue will be final and binding.”⁶² But when an expert’s assessment hinges on resolving legal issues, that assessment is not entitled to deference.⁶³

⁵⁸ See *infra* Sections II.B-C.

⁵⁹ See APA § 2.08(c); see also Mot. to Dismiss Tr. 18 (explaining that the APA contemplated an expert determination, not arbitration).

⁶⁰ *Terrell v. Kiromic Biopharma, Inc.*, 297 A.3d 610, 617-18 (Del. 2023).

⁶¹ *Id.* at 618.

⁶² *Id.*

⁶³ See *id.* at 623.

The APA establishes an unambiguous, three-tier hierarchy of Accounting Principles for the calculations necessary to determine any adjustments to Working Capital. The three tiers are:

(i) the policies, practices and procedures specified in the Reference Statement of Working Capital [Tier 1]; (ii) GAAP [Tier 2]; and (iii) to the extent not inconsistent with the Reference Statement of Working Capital or GAAP, the same accounting methods, policies, principles, practices and procedures, with consistent classifications, judgments and estimation methodology . . . as were applied [by Viasat] in preparation of the Financial Statements [Tier 3].⁶⁴

The APA clarifies that “clause (i) shall take precedence over clauses (ii) and (iii), and clause (ii) shall take preceden[ce] over clause (iii).”⁶⁵ Thus, Tier 1—the “policies, practices, and procedures” in the Reference Statement—takes precedence over Tiers 2 and 3.⁶⁶

Viasat contends that Grant Thornton impermissibly interpreted the legal scope of the “shall take precedence” clause by proceeding to consider GAAP (Tier 2) after concluding that Viasat complied with the Reference Statement (Tier 1) as to the three disputed items.⁶⁷ After doing so, Grant Thornton rejected Viasat’s

⁶⁴ APA § 1.01(a).

⁶⁵ *Id.*

⁶⁶ *Id.*; *see also* APA sched. 1.01(h) (Reference Statement).

⁶⁷ Pl.’s Opening Br. 26-29, 35-39.

calculations for non-compliance with GAAP, flipping the outcome to L3Harris.⁶⁸ L3Harris counters that because the Reference Statement and GAAP are in different tiers, Grant Thornton properly sought to satisfy both requirements when possible.⁶⁹ L3Harris also contends that Grant Thornton’s interpretation of certain APA terms is subject to manifest error deference.⁷⁰

To start, L3Harris’s argument that the court should defer to Grant Thornton’s interpretation of the “shall take precedence” clause lacks merit. To be clear, the court defers to the expert’s accounting determinations—such as whether an item constitutes a “loss” or an “account receivable.”⁷¹ But Grant Thornton approached the Accounting Principles as a checklist and evaluated whether Viasat’s calculations complied with the Reference Statement and also with GAAP.⁷² Whether that approach is consistent with the text of the APA presents a pure “question of contract interpretation, and therefore, of law” that requires no specialized expertise.⁷³ Grant

⁶⁸ *Id.*

⁶⁹ Def.’s Answering Br. 22-24; Def.’s Reply Br. 3-4.

⁷⁰ Def.’s Answering Br. 44-47.

⁷¹ *See ArchKey Intermediate Hldgs. Inc. v. Mona*, 302 A.3d 975, 998 (Del. Ch. 2023) (“The more closely related the term or provision is to the expert’s area of expertise, the more likely it is that an expert can interpret the term without judicial assistance.”).

⁷² Pl.’s Ex. 12 (“Blank Dep.”) 132-34; *see also* Final Report 16, 22, 33.

⁷³ *Thompson St. Cap. P’rs IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1165 (Del. 2025); *see also Terrell*, 297 A.3d at 617-18.

Thornton’s interpretation of the “shall take precedence” clause is afforded no deference.⁷⁴

L3Harris’s reading of the “shall take precedence” clause—like Grant Thornton’s interpretation—conflicts with the plain terms of the APA. Black’s Law Dictionary defines “precedence” as “[g]enerally, the quality, state, or condition of going before something else according to some system of priorities.”⁷⁵ Applied here, it means that if the Reference Statement resolves an issue, the inquiry ends. If the Reference Statement and GAAP produce conflicting outcomes, the Reference Statement is prioritized and controls.⁷⁶

L3Harris argues otherwise by relying on *ArchKey Intermediate Holdings Inc. v. Mona*.⁷⁷ That reliance is misplaced. In *ArchKey*, the operative agreement required that a closing statement be “both GAAP-compliant *and* as consistent as possible with the Company’s past practices.”⁷⁸ Unlike the APA here, the agreement addressed in

⁷⁴ See *Thompson St.*, 340 A.3d at 1165 (explaining that a “question of contract interpretation” is a question “of law”).

⁷⁵ *Precedence*, Black’s Law Dictionary (12th ed. 2024); see also Def.’s Opening Br. 23 (citing a similar definition).

⁷⁶ L3Harris acknowledges that if the Reference Statement dictates “[n]o Cash shall be included in Working Capital,” the directive governs even if GAAP would classify cash differently. Def.’s Answering Br. 23 n.3 (citing APA sched. 1.01(h)).

⁷⁷ 302 A.3d 975, 1000 (Del. Ch. 2023); see also Def.’s Answering Br. 23-24.

⁷⁸ *ArchKey*, 302 A.3d at 1000 (emphasis added).

ArchKey did not subordinate GAAP to past practices and lacked a tie-breaking hierarchy.

This dispute instead resembles *Golden Rule Financial Corp. v. Shareholder Representative Services*, where the court held that a precedence clause subordinated lower tiers in the event of a conflict.⁷⁹ *Golden Rule* involved an agreement that an accounting determination would be conducted according to a three-tier hierarchy.⁸⁰ The court explained that, in such cases, compliance with the second tier could not “justify” an “incorrect application” of the first, priority tier.⁸¹

As in *Golden Rule*, each tier of the Accounting Principles follows a bargained-for hierarchy. If a policy in the Reference Statement (Tier 1) departs from GAAP, then it supersedes the general GAAP default (Tier 2).⁸² But if the Reference Statement does not resolve the disputed item, then the Accounting Principles dictate that GAAP controls.⁸³

Finally, L3Harris insists that this reading of the “shall take precedence” clause is absurd because no reasonable buyer would agree to an approach contrary to

⁷⁹ 2021 WL 305741, at *6-7 (Del. Ch. Jan. 29, 2021), *aff’d*, 267 A.3d 382 (Del. 2021).

⁸⁰ *Id.* at *3 (Del. Ch. Jan. 29, 2021).

⁸¹ *Id.* at *12.

⁸² See APA § 1.01(a); *supra* note 64 and accompanying text.

⁸³ See *Roma Landmark Theaters, LLC v. Cohen Exhibition Co. LLC*, 2020 WL 5816759, at *15 n.72 (Del. Ch. Sept. 30, 2020) (enforcing an accounting hierarchy where specific policies in a higher tier superseded policies in lower tiers).

GAAP.⁸⁴ “An unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract.”⁸⁵ It is not absurd, however, for sophisticated parties to negotiate bespoke accounting metrics that depart from GAAP to allocate risk in a post-closing true-up. That L3Harris now wishes it had negotiated differently is of no consequence. “Parties have a right to enter into good and bad contracts, the law enforces both.”⁸⁶

B. Disputed Item 1

Disputed Item 1 concerns Estimates at Completion (EACs) for two projects in the Business’s joint tactical radio system portfolio.⁸⁷ L3Harris proposed adjustments to these EACs that would reduce Closing Working Capital by approximately \$10.6 million.⁸⁸

The Reference Statement directs that “[e]stimates to complete shall not be adjusted unless otherwise done in the Ordinary Course by the business’ program control analysts, project managers and financial analysts, and consistent with Seller’s

⁸⁴ Def.’s Opening Br. 3, 30-32.

⁸⁵ *Osborn*, 991 A.2d at 1160.

⁸⁶ *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010).

⁸⁷ See Compl. ¶ 45; Answer ¶ 45.

⁸⁸ Final Report 10, 15-17.

past practice.”⁸⁹ This is a definitive, substantive restriction.⁹⁰ Grant Thornton found that Viasat performed the requisite review and made no non-ordinary course adjustments to the EACs in compliance with Tier 1.⁹¹ But Grant Thornton reached down to Tier 2 of the Accounting Principles and applied a GAAP adjustment to the underlying labor hours in the EACs that flipped the contract into a loss position.⁹²

Grant Thornton then applied the Reference Statement’s “loss contracts” provision to justify its adjustment.⁹³ This provision states that “[l]oss contracts, if any, are recorded in accordance with GAAP in the period where an expected loss becomes evident.”⁹⁴ L3Harris argues that GAAP must be applied to determine whether a loss contract exists.⁹⁵ But whether a loss is evident is a function of the EACs.⁹⁶ The “loss contracts” provision dictates how the contract is recorded once

⁸⁹ APA sched. 1.01(h).

⁹⁰ *See id.* (using mandatory language: “shall not be adjusted”); *see* Pl.’s Opening Br. 38-40.

⁹¹ Final Report 15-16.

⁹² *Id.* at 16-17.

⁹³ *See* Blank Dep. 97-98.

⁹⁴ APA sched. 1.01(h).

⁹⁵ Def.’s Opening Br. 37-38.

⁹⁶ *See* Pl.’s Ex. 6 (FitzGerald Dep.) 76 (testifying that the EAC and ETC indicate whether there is a loss contract).

an expected loss “becomes evident.”⁹⁷ It did not grant Grant Thornton the authority to ignore the EAC calculation methodology to look for losses under GAAP.⁹⁸

Grant Thornton contravened the APA by applying a GAAP adjustment to the labor hours first. Doing so was inconsistent with the Reference Statement.⁹⁹ Grant Thornton essentially found a “loss contract” by ignoring the Tier 1 statement that EACs “shall not be adjusted,” and then used the resulting loss to justify disregarding Tier 1.¹⁰⁰ Given the hierarchy in the Accounting Principles, Grant Thornton could not use a GAAP adjustment to create a loss that triggered the recording mechanism in the “loss contract” provision.¹⁰¹

Accordingly, Viasat’s motion for summary judgment on Disputed Item 1 is granted; L3Harris’s cross-motion on Disputed Item 1 is denied. The first tier of the Accounting Principles hierarchy—the Reference Statement—controlled the generation of the EACs.¹⁰² Grant Thornton confirmed that Viasat complied with Tier 1.¹⁰³ Because the Reference Statement supplied a definitive substantive constraint

⁹⁷ APA sched. 1.01(h).

⁹⁸ *See* Pl.’s Opening Br. 41-42.

⁹⁹ *See* APA sched. 1.01(h) (stating unequivocally that “[e]stimates to complete shall not be adjusted”).

¹⁰⁰ *See* Final Report 14, 16-17; Blank Dep. 97-98 (“It tells me that if you have a loss contract, you apply GAAP to recognize—to recognize and measure the expected loss.”).

¹⁰¹ *See* Final Report 14.

¹⁰² APA sched. 1.01(h).

¹⁰³ Final Report 16.

that Viasat met, Grant Thornton lacked the contractual authority to then proceed to Tier 2 of the Accounting Principles.¹⁰⁴

C. Disputed Items 2 and 3

Disputed Items 2 and 3 present a different situation. For each, the Reference Statement supplies a procedural mechanism for evaluating an adjustment but, unlike Disputed Item 1, lacks a definitive substantive constraint. For both Disputed Items 2 and 3, the Reference Statement does not fully resolve the disputed issue.¹⁰⁵ Tier 1 is therefore not determinative, meaning that Tier 2—GAAP—applies under the Accounting Principles’ hierarchy.¹⁰⁶

Disputed Item 2 concerns Excess and Obsolescence (E&O) reserves—that is, reserves on Viasat’s balance sheet for unused or outdated inventory.¹⁰⁷ A higher reserve reduces current assets (lowering Working Capital); a lower reserve keeps inventory asset values higher (increasing Working Capital).¹⁰⁸ By reducing the

¹⁰⁴ See *Terrell*, 297 A.3d at 618.

¹⁰⁵ See Final Report 22, 32-33.

¹⁰⁶ See APA § 1.01(a); *supra* note 64 and accompanying text; see also *Golden Rule*, 2021 WL 305741, at *12.

¹⁰⁷ See Compl. ¶ 50; Answer ¶ 50.

¹⁰⁸ See APA § 1.01 & sched. 1.01(h) (defining Working Capital as “Current Assets” minus “Current Liabilities” and classifying “Inventories” within “Current Assets”); Final Report 20 (confirming that inventory reserves reduce the “Inventories” line item under “Current Assets”).

reserve, Viasat increased its Closing Working Capital, effectively increasing the post-closing purchase price L3Harris was required to pay.

Viasat managed its inventory using Oracle software, which automatically calculated a baseline “system-recommended reserve” for each item.¹⁰⁹ The Reference Statement permitted Viasat’s corporate accounting team to adjust that reserve “where the corporate accounting team has determined that the system does not capture all relevant inventory demand.”¹¹⁰ The Reference Statement outlined evidence that could show demand.¹¹¹ It then directed Viasat to evaluate and determine what reserve amount, “if any, is appropriate based on actual demand.”¹¹²

Viasat reduced the Oracle-generated reserve by \$10,148,762.¹¹³ Applying Tier 1, Grant Thornton found that Viasat had sufficient support to manually override Oracle’s recommended reserve if documented demand existed.¹¹⁴ Tier 1 does not, however, address the calculation of the E&O reserve.¹¹⁵ The Reference Statement outlines who makes the adjustment and when an adjustment is authorized, without

¹⁰⁹ See Final Report 18-19.

¹¹⁰ *Id.* at 22 (summarizing APA sched. 1.01(h)).

¹¹¹ APA sched. 1.01(h).

¹¹² *Id.*

¹¹³ Final Report 19.

¹¹⁴ *Id.* at 18, 22-23.

¹¹⁵ See *id.* at 22.

addressing the method for measuring the adjustment.¹¹⁶ As Grant Thornton’s Blank testified, the Reference Statement “did not answer th[is] question,” and “[a]pplying GAAP would answer” it.¹¹⁷

As such, Grant Thornton properly proceeded to Tier 2 and applied GAAP, which requires inventory to be measured at the lower of its cost or net realizable value.¹¹⁸ For \$9,354,210 of the reduction Viasat made to the system-generated reserve, Grant Thornton determined that Viasat had met these standards.¹¹⁹ For the remaining \$794,552, Grant Thornton concluded that Viasat “did not provide commentary or provided minimal detail.”¹²⁰ Grant Thornton could not tell whether Viasat had appropriately considered certain pertinent factors.¹²¹ Consequently, Grant Thornton ruled for L3Harris in that amount.¹²²

For Disputed Item 3, the same general analysis applies. This item concerns a \$3,790,793 adjustment to the Work in Progress (WIP) inventory the parties call the “bone pile.”¹²³ The Reference Statement describes a two-step process for calculating

¹¹⁶ See APA sched. 1.01(h); *see also* Def.’s Opening Br. 38-39.

¹¹⁷ Blank Dep. 104-05.

¹¹⁸ Final Report 22.

¹¹⁹ *Id.* at 22-23.

¹²⁰ *Id.* at 23.

¹²¹ *Id.* at 23 n.52.

¹²² *Id.* at 24.

¹²³ *Id.* at 25; *see* Compl. ¶ 55; Answer ¶ 55.

these WIP reserves. Viasat must first calculate a “system recommended reserve” equal to the value of WIP aged more than 24 months and then evaluate and adjust that figure “considering additional factors (e.g., known issues in WIP projects less than 24 months aged).”¹²⁴

Grant Thornton determined that Viasat followed this process and considered known issues.¹²⁵ The parties disagreed on how those issues affected the recovery rate.¹²⁶ Viasat allegedly assigned this defective inventory a recovery rate approaching 100 cents on the dollar.¹²⁷ Because the Reference Statement only directed Viasat to engage in “evaluation and adjustment” to the reserve without providing a valuation metric, Tier 1 of the Accounting Principles was insufficient to resolve the dispute.¹²⁸ Grant Thornton then looked to Tier 2 and found that Viasat’s calculation was “not determined in accordance with GAAP.”¹²⁹

Viasat contends that because its calculations for Disputed Items 2 and 3 complied with the Reference Statement, Tier 1 of the Accounting Principles is satisfied.¹³⁰ It insists that the inquiry ends, even though the Reference Statement

¹²⁴ APA sched. 1.01(h).

¹²⁵ Final Report 32-33.

¹²⁶ *Id.* at 32.

¹²⁷ *See* Def.’s Ex. D at 28-29.

¹²⁸ *See* APA sched. 1.01(h); APA § 1.01(a).

¹²⁹ Final Report 32-33; Blank Dep. 109-10.

¹³⁰ Pl.’s Opening Br. 44-45 & n.10; Pl.’s Answering Br. 35-36.

does not provide an accounting methodology for Disputed Items 2 and 3, because Target Working Capital was set from Viasat's pre-closing application of the same policies.¹³¹ The APA lacks any such requirement.

If Viasat's reading were adopted, a subjective adjustment by management would avoid analysis under GAAP, despite the lack of substantive limit in the Reference Statement. Viasat's accounting team could, for example, value "bone pile" inventory at 100 cents on the dollar, and L3Harris would have no recourse.¹³² Under that approach, Tier 2 would be meaningless as applied to inventory reserves.¹³³

Grant Thornton properly applied the Reference Statement first and looked to GAAP because the Reference Statement gave no substantive answer for Disputed Items 2 and 3. This approach was consistent with Grant Thornton's contractual mandate.¹³⁴ Accordingly, Viasat's claim that Grant Thornton deviated from the APA fails concerning Disputed Items 2 and 3. L3Harris's motion for summary judgment is granted on those items; Viasat's cross-motion is denied.

¹³¹ Pl.'s Opening Br. 44-45 & n.10; Pl.'s Answering Br. 35-36.

¹³² See Def.'s Opening Br. 21, 31.

¹³³ *Osborn*, 991 A.2d at 1159 (explaining that Delaware courts will not "read a contract to render a provision or term 'meaningless or illusory'" (quoting *Sonitrol Hldg. Co. v. Marceau Investissements*, 607 A.2d 1177, 1183 (Del. 1992))).

¹³⁴ See APA §§ 1.01(a), 2.08(a); *supra* note 64 and accompanying text.

III. CONCLUSION

Viasat's summary judgment motion on Count I is granted as to Disputed Item 1; L3Harris's cross-motion on that item is denied. Viasat is entitled to a declaration that Grant Thornton exceeded its authority by evaluating Disputed Item 1 under GAAP, which contravened the prohibitions in the Reference Statement.

L3Harris's motion for summary judgment on Count I is granted as to Disputed Items 2 and 3; Viasat's cross-motion on those items is denied. Grant Thornton did not exceed its authority in resolving Disputed Items 2 and 3.

The parties are directed to confer and submit a proposed form of judgment implementing these rulings within 14 days.