

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHEN M. ESPOSITO and
SCOTT K. NICHOLS,

Plaintiff,

v.

DRIVERS HISTORY
INFORMATION SALES LLC,
TRANSUNION, and
TRANSUNION LLC,

Defendant.

C.A. No. 2026-0579-DG

**ORDER RESOLVING PARTIES' CROSS-MOTIONS FOR
SUMMARY JUDGMENT ON ENTITLEMENT TO ADVANCEMENT**

WHEREAS:

A. This is an advancement action.¹

B. Plaintiffs Stephen M. Esposito and Scott K. Nichols are co-founders and former Managers and Officers of Defendant Drivers History Information Sales LLC (“Information Sales”) and of nonparties Drivers

¹ See generally Compl., Dkt. 1.

History, Inc. (“DHI”) Driver History Sales Corp. (“DHSC”) (collectively, “Drivers History”).²

C. Defendant TransUnion is a publicly traded Delaware-incorporated “consumer credit reporting agency” that analyzes credit information used to generate credit reports and scores.³ Defendant TransUnion LLC is TransUnion’s wholly owned subsidiary.⁴ TransUnion acquired Information Sales in November 2014 (the “Acquisition”).⁵

D. Esposito, Nichols, Information Sales, TransUnion, and TransUnion LLC are defendants in a lawsuit brought by Eric Poe in the United States District Court for the District of New Jersey on October 16, 2020 (the “Underlying Proceeding”).⁶ On March 14, 2021, Poe filed his First Amended Complaint in the Underlying Proceeding.⁷

E. In the Underlying Proceeding, Poe alleges that, in 2007, he entered into a contract with Drivers History to provide business development

² Compl. ¶ 3. Information Sales was formed in 2009 as DHI’s successor-in-interest. Compl. ¶ 9. DHI is the successor-in-interest of unincorporated DHSC. Compl. Ex. A (“Poe Compl.”) ¶ 12, Dkt. 4.

³ Compl. ¶ 11.

⁴ Compl. ¶ 10.

⁵ Compl. ¶ 4.

⁶ Compl. ¶ 2; *see* Poe Compl.

⁷ *See generally* Poe Compl.

services in exchange for an interest in Drivers History’s economic success (the “Consulting Agreement”).⁸ Poe alleges that “Esposito signed the Consulting Agreement on behalf of [Drivers History].”⁹

F. Poe alleges that Drivers History, acting through Plaintiffs, breached the Consulting Agreement when it failed to pay Poe, following the Acquisition, to deprive or attempt to deprive Poe of the benefit of his bargain.¹⁰ Poe seeks to hold Esposito, Nichols, Information Sales, TransUnion, and TransUnion LLC jointly and severally liable for the alleged breach and requests, among other relief, payment of commissions purportedly owed under the Consulting Agreement, damages, and a full and accurate accounting of all sales revenue.¹¹

G. Poe alleges that Plaintiffs formed Information Sales on April 12, 2009 and later caused DHI to transfer all of its assets, stock, and liabilities to Information Sales.¹² Poe contends that DHSC, acting through Nichols, terminated the Consulting Agreement on September 25, 2009, but continued

⁸ Compl. ¶ 14; Poe Compl. ¶¶ 32, 36.

⁹ Poe Compl. ¶ 36.

¹⁰ Poe Compl. ¶¶ 125–26.

¹¹ Poe Compl. at 33–34; Pls.’ Opening Br. in Supp. of Mot. for Summ. J. (“POB”) 3, Dkt. 19.

¹² Poe Compl. ¶¶ 65–66, 79.

to pay commissions to Poe as required.¹³ On September 15, 2010, Poe and DHSC entered into an amended Consulting Agreement, which Poe alleges did not alter his rights, including his entitlement to payment.¹⁴

H. Poe further alleges that the Acquisition was a “coordinated scheme” to deprive Poe of his contractual rights under the Consulting Agreement.¹⁵ As part of the alleged scheme, Poe argues that TransUnion purchased a 76.5% interest in DHIS Investments LLC (“Investments”).¹⁶ TransUnion LLC later replaced Investments as the holding company of Information Sales, after which TransUnion and TransUnion LLC ultimately caused Investments to be cancelled.¹⁷

I. On November 18, 2020, Plaintiffs sent a demand for mandatory advancement fees and expenses relating to their defense in the Underlying Proceeding to Defendants (the “First Demand”).¹⁸ Plaintiffs asserted a right to advancement under the Amended and Restated Operating Agreement of

¹³ Poe Compl. ¶¶ 75–78.

¹⁴ Poe Compl. ¶¶ 87–90.

¹⁵ Poe Compl. ¶ 96.

¹⁶ Poe Compl. ¶ 97. Esposito contends that he stayed on as the Chief Executive Officer of Investments and Information Sales following the Acquisition through execution of his Employment Agreement with TransUnion LLC. Compl. ¶¶ 4, 21, 53.

¹⁷ Defs.’ Answer ¶ 20, Dkt. 15.

¹⁸ Compl. ¶ 56.

DHIS Investments LLC (the “Investments Operating Agreement”).¹⁹

Defendants did not respond to the First Demand.²⁰

J. On March 8, 2023, the parties entered into a Tolling and Standstill Agreement (the “Tolling Agreement”) to toll the statute of limitations on Plaintiffs’ claims for indemnification and advancement and Defendants’ equitable defenses.²¹

K. On February 17, 2026, Plaintiffs terminated the Tolling Agreement and renewed their demand for advancement pursuant to the Investments Operating Agreement (the “Second Demand”).²²

L. On March 10, Defendants denied the Second Demand, arguing that “the alleged fraudulent misconduct [was] designed to benefit [the Plaintiffs] in their individual capacities, rather than anything they did in their capacities as officers or members of [Information Sales].”²³

M. On April 17, Plaintiffs sent another demand, seeking advancement from each Defendant under the Investments Operating Agreement, the Amended and Restated Operating Agreement of Information

¹⁹ Compl. Ex. F, Dkt. 4.

²⁰ Compl. ¶ 56.

²¹ Compl. ¶ 57; *see* Compl. Ex. G, Dkt. 4.

²² Compl. ¶ 58; *see* Compl. Ex. H, Dkt. 4.

²³ Compl. ¶ 59; Compl. Ex. I, at 1, Dkt. 4.

Sales (the “Information Sales Operating Agreement”), and TransUnion’s Fifth Amended and Restated Bylaws (the “TransUnion Bylaws”), and explaining in greater detail the grounds for their claimed entitlement (the “Third Demand”).²⁴ Defendants did not respond to the Third Demand.²⁵

N. On May 8, Plaintiffs filed the Verified Complaint for Advancement,²⁶ and on June 5, they filed a motion for summary judgment on the issue of entitlement.²⁷ The parties stipulated to a schedule for briefing Plaintiffs’ motion for summary judgment.²⁸ On June 17, Defendants filed a cross-motion for summary judgment.²⁹

O. On July 21, the Court heard oral argument on the parties’ cross-motions and took the matter under advisement as of that date.³⁰

IT IS ORDERED, this 2nd day of October, 2026, that:

1. Under Court of Chancery Rule 56, “the Court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of

²⁴ Compl. ¶ 60; Compl. Ex. J, at 2–5, Dkt. 4.

²⁵ Compl. ¶ 60.

²⁶ Dkt. 1.

²⁷ Dkt. 18.

²⁸ Dkt. 22.

²⁹ Dkt. 28.

³⁰ Dkt. 64.

law.”³¹ “The [movant has] the initial burden of demonstrating the absence of a material factual dispute. If the [movant meets] their burden, the burden shifts to the nonmovant to present some specific, admissible evidence that there is a genuine issue of fact for a trial.”³²

2. When the parties file cross-motions for summary judgment and identify no “disputed issue of fact material to the disposition of either motion, then the Court may deem the motions to be a stipulation for decision on the merits based on the record submitted with the motions.”³³ If so, the usual summary judgment standard of “drawing inferences in favor of the nonmov[ant] does not apply.”³⁴

3. “Summary judgment is an appropriate way to resolve advancement disputes because ‘the relevant question turns on the application of the terms of the corporate instruments setting forth the purported right to

³¹ Ct. Ch. R. 56(a). Court of Chancery Rule 56 was amended effective June 1, 2026. *See* Order Amending Rules 46, 54–65.1, 67, 69–72, 77–78, 81–83, 85–88, and 100 of the Court of Chancery Rules, <https://courts.delaware.gov/forms/download.aspx?id=328858>. The revisions are intended to align Rule 56 “to the extent possible” with its counterpart in the Federal Rules of Civil Procedure, and “[e]xcept as noted, no substantive change in the interpretation of the rule [is] intended, and prior Delaware authorities interpreting the rule remain applicable.” *Id.* at 8.

³² *Ogus v. SportTechie, Inc.*, 2023 WL 2746333, at *9 (Del. Ch. Apr. 3, 2023) (citation modified).

³³ Ct. Ch. R. 56(h).

³⁴ *Am. Legacy Found. v. Lorillard Tobacco Co.*, 886 A.2d 1, 18 (Del. Ch. 2005).

advancement and the pleadings in the proceedings for which advancement is sought.”³⁵ “In determining whether to award advancement, the Court will look to the plain meaning of the advancement provisions in the governing instruments.”³⁶

4. Both Plaintiffs assert a right to mandatory advancement under two different contracts, and Esposito additionally asserts rights under a third.

5. Plaintiffs first allege a right to mandatory advancement Section 3.12 of the Information Sales Operating Agreement.³⁷ Sections 3.12(d) and 3.12(f) state, respectively, in relevant part:

The Company shall indemnify and hold harmless each Member and each individual who is or was, or has agreed to become, a Manager or Officer of the Company, or is or was serving, or has agreed to serve, at the request of the Company, as a director, officer, manager or trustee of, or in a similar capacity with, a corporation, partnership, another limited liability company, joint venture, trust or other enterprise (including any employee benefit plan) (each, an “Indemnitee”) from all liabilities, losses, costs, expenses and damages³⁸

³⁵ *Rhodes v. bioMerieux, Inc.*, 2024 WL 669034, at *7 (Del. Ch. Feb. 19, 2024) (quoting *Senior Tour Players 207 Mgmt. Co. LLC v. Golftown 207 Hldg. Co., LLC*, 853 A.2d 124, 126–27 (Del. Ch. 2004)).

³⁶ *Id.* (citation modified); *Gilbert v. Unisys Corp.*, 2024 WL 3789952, at *8 (Del. Ch. Aug. 13, 2024).

³⁷ See POB 22–25; Compl. ¶¶ 28–32. The Information Sales Operating Agreement is attached as Exhibit C to the Complaint. See Compl. Ex. C.

³⁸ Information Sales Operating Agreement § 3.12(d).

In the event that the Company does not assume the defense of any claim, action, suit or proceeding of which the Company receives notice under this Section 3.12, the Company shall pay in advance of the final disposition of such matter any expenses (including reasonable legal fees and expenses) incurred by an Indemnitee in so defending³⁹

6. Plaintiffs also allege a right to mandatory advancement under Sections 3.12 and 15.8 of the Investments Operating Agreement.⁴⁰ Section 3.12 mirrors the relevant portions of the Information Sales Operating Agreement.⁴¹ Section 15.8 states, in relevant part:

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.⁴²

7. Esposito also asserts a right to mandatory advancement under Sections 7.01 and 7.02 of the TransUnion Bylaws.⁴³ Sections 7.01 and 7.02 of the TransUnion Bylaws state, respectively, in relevant part:

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative

³⁹ Information Sales Operating Agreement § 3.12(f).

⁴⁰ See POB 31–35; Compl. ¶ 32. The Investments Operating Agreement is attached as Exhibit D to the Complaint. See Compl. Ex. D.

⁴¹ Investments Operating Agreement § 3.12.

⁴² Information Sales Operating Agreement § 15.8.

⁴³ See POB 35–42; Compl. ¶ 47–53. The TransUnion Bylaws are attached as Exhibit E to the Complaint. See Compl. Ex. E.

(hereinafter a “proceeding”), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise . . . shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law . . .⁴⁴

In addition to the right to indemnification conferred in Section 7.01, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article VII⁴⁵

8. Under the foregoing provisions of the Information Sales Operating Agreement, the Investments Operating Agreement, and the TransUnion Bylaws, a Manager or Officer of TransUnion or any of its subsidiaries, including Information Sales and TransUnion LLC, has a mandatory right to advancement if they are made a party to any proceeding by reason of the fact that they are or were a Manager or Officer of TransUnion or any of its subsidiaries.

⁴⁴ TransUnion Bylaws § 7.01.

⁴⁵ TransUnion Bylaws § 7.02.

9. The relevant provisions are unambiguous. Plaintiffs are “Indemnitees” under the plain language of the Information Sales Operating Agreement and the Investments Operating Agreement. Both agreements define an “Indemnitee” as “each Member and each individual who is or was, or has agreed to become, a Manager or Officer of [Information Sales or Investments].”⁴⁶ Plaintiffs were each Managers of Information Sales and Investment.⁴⁷ In addition, Esposito was the Chief Executive Officer of Investments and its subsidiaries pursuant to Section 4.3 of the Investments Operating Agreement.⁴⁸

10. An advancement claim arises “by reason of the fact” of an individual’s corporate capacity if there is a “causal connection or nexus between any of the underlying proceedings ... and [their] official corporate capacity ... without regard to [their] motivation for engaging in that conduct.”⁴⁹ The requisite causal connection or nexus “is established if the

⁴⁶ Investments Operating Agreement § 3.12(d); Information Sales Operating Agreement § 3.12(d).

⁴⁷ TransUnion Bylaws § 3.1(b)(ii)(stating “[t]he Managers initially designated pursuant to this Section 3.1(b)(ii) shall be Stephen M. Esposito and Scott K. Nichols”); *see also* Def.’s Opening Br. In Supp. of its Cross-Mot. For Summ. J. and in Opp. to Mot. of Pl. for Summ. J. (“DAB”) ¶ 8, Dkt. 28 (conceding that “Nichols was also a Manager of Information Sales.”).

⁴⁸ Investments Operating Agreement ¶ 36; *see also* DAB ¶ 38 (admitting that Esposito was an officer of Information Sales).

⁴⁹ *Tafeen v. Homestore, Inc.*, 2004 WL 556733 at *4 (Del. Ch. Mar. 22, 2004).

corporate powers were used or necessary for the commission of the alleged misconduct.”⁵⁰

11. Defendants make three arguments in opposition to Plaintiffs’ claim for advancement.⁵¹

12. First, Defendants contend that the Underlying Proceeding does not assert claims against Esposito or Nichols in their capacities as Managers or Officers of Information Sales or Investments.⁵² This argument fails.

13. Poe alleged, among other things, that Esposito signed the Consulting Agreement on behalf of Investments; that DHI, acting through Nichols, terminated the original Consulting Agreement; that Plaintiffs structured the Acquisition; and that Plaintiffs “are required to provide an accounting” pursuant to the Consulting Agreement.⁵³ These allegations clearly and unambiguously implicate Plaintiffs’ official corporate capacity and the exercise of corporate powers.

14. Second, Defendants maintain that Plaintiffs are not entitled to advancement from TransUnion because the claims in the Underlying Proceeding are not asserted against Plaintiffs in their capacities as Managers

⁵⁰ *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1011 (Del. Ch. 2007).

⁵¹ *See generally* DAB.

⁵² DAB 24–29.

⁵³ Poe Compl. ¶¶ 36, 75–78, 97, 121.

and Officers of Investments.⁵⁴ This argument fails for reasons similar to the first.

15. Poe alleged that Plaintiffs “structured or attempted to structure their transaction . . . in a manner to deprive or attempt to deprive Mr. Poe of the benefit of his bargain, and in a manner that would instead deliver Mr. Poe’s economic benefit to [Plaintiffs and/or Defendants].”⁵⁵ Furthermore, the Underlying Proceeding asserts that Esposito, through his post-closing role as an Officer of Investments, failed to cause Investments to provide Poe with contractually required financial payments.⁵⁶ The allegations in the Underlying Proceeding clearly and unambiguously implicate Plaintiffs’ official corporate capacity and the exercise of corporate powers.

16. Third, Defendants argue that any entitlement to advancement ended following the dismissal of the TransUnion entities from the Underlying Proceeding.⁵⁷ The argument fails because the entities’ dismissal is irrelevant. The nature of Poe’s claims against Plaintiffs does not change depending upon whether Defendants remain parties in the Underlying Proceeding.

⁵⁴ DAB 32.

⁵⁵ Poe Compl. ¶¶ 124–125.

⁵⁶ Poe Compl. ¶¶ 106–109.

⁵⁷ DAB 35.

17. The Court thus rejects Defendants’ attempt to avoid their voluntarily assumed obligation to advance legal fees and expenses to their former Managers and Officers.

Fees-on-Fees and Interest

18. Delaware law is clear that Plaintiffs are entitled to fees-on-fees for their success on the merits of their advancement suit.⁵⁸ Section 7.03 of the TransUnion Bylaws also states that when a covered person brings an action to enforce their rights, “if successful in whole or in part . . . , [they] shall also be paid the expense of prosecuting the claim” for advancement.⁵⁹

19. Plaintiffs are entitled to prejudgment interest at the legal rate.⁶⁰ “A party from whom advancement is improperly withheld ‘is entitled to interest computed from the date of demand,’ defined as the date on which the party ‘specified the amount of reimbursement demanded and produced his written promise to pay.’”⁶¹

⁵⁸ See *Leiske v. Kidd*, 2026 WL 265493, at *5 (Del. Ch. Feb. 2, 2026) (“Under settled Delaware law, fees-on-fees are awarded to a successful plaintiff in an advancement action to prevent the victory from being [P]yrrhic.”) (citing *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 561–62 (Del. 2002)).

⁵⁹ TransUnion Bylaws § 7.03.

⁶⁰ See 6 Del. C. § 2301(a).

⁶¹ *Pontone v. Milso Indus. Corp.*, 100 A.3d 1023, 1058 (Del. Ch. 2014) (quoting *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 826 & n.10 (Del. 1992)).

20. This is a Report under Court of Chancery Rule 144. Under Rule 144(d)(2) and the Chancellor's assignment letter,⁶² any party wishing to take exception to this Report must file a notice of exceptions by October 7, 2026.

21. If no exceptions are taken by October 7, or the Chancellor or a Vice Chancellor affirms this Report after exceptions, then within five business days of the expiration of the exceptions deadline or the issuance of the affirming decision, the parties must meet and confer to determine the fees and pre-judgment interest Plaintiffs are owed for successfully prosecuting this action and submit a proposed order implementing this decision that includes a plan for resolving fee disputes similar to the plan laid out in *Danenberg v. Fittracks, Inc.*⁶³

/s/ *Danielle Gibbs*
Magistrate in Chancery

⁶² Dkt. 6.

⁶³ 58 A.3d 991, 1003–04 (Del. Ch. 2012).