

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LONGSHOT HOLDINGS, INC.,	)	
	)	
Plaintiff,	)	C.A. No. N22C-04-129 MAA CCLD
	)	
v.	)	
	)	
QUAKER CHEMICAL	)	
CORPORATION, d/b/a Quaker	)	
Houghton, a Pennsylvania corporation,	)	
	)	
	)	
Defendant.	)	

Submitted: July 24, 2026

Decided: October 8, 2026

POST-TRIAL OPINION

James H. S. Levine, Esquire, and Emily L. Wheatley, Esquire, of TROUTMAN PEPPER LOCKE, LLP, Wilmington, Delaware, and Brian W. Ledebuhr, Esquire (Argued), of VEDDER PRICE, Chicago, Illinois, *Attorneys for Plaintiff Longshot Holdings, Inc.*

Sydney S. Liebesman, Esquire and Kasey H. DeSantis, Esquire (Argued), FOX ROTHSCHILD, LLP, Wilmington, Delaware, *Attorneys for Defendant Quaker Chemical Corporation.*

Adams, J.

INTRODUCTION

This post-trial decision resolves a breach of contract action concerning a post-closing dispute. The parties, who had originally planned to do a straight stock sale, shifted to an alternative transaction structure to avoid certain tax liabilities for the buyer. This shift involved the transfer of the sold business' stock to a holding company in what is called an "F-Reorganization" pursuant to the Internal Revenue Code. This F-Reorganization created an additional entity layer between the original shareholders of the sold company and the company itself. That middle-layer entity became the seller in the transaction.

After closing, the middle-layer entity began a liquidation, causing its shareholders—originally the shareholders of the sold entity—to incur taxable gains from the liquidation proceeds. The middle-layer entity brought this action, seeking to have the buyer of the business indemnify the seller for the tax liability of its shareholders, pursuant to a clause in the transaction contract which provides the "Seller" of the business would be entitled to some tax indemnification from the buyer.

This case proceeded to trial because the term "Seller" as used in the transaction document is ambiguous, potentially meaning either that middle-layer entity or its shareholders. This post-trial opinion resolves the ambiguity, finding the preponderance of the evidence shows the term "Seller" meant only the middle-layer

entity, meaning the buyer is only liable to indemnify for the middle-layer entity's tax liability, meaning the buyer is not required to indemnify the ultimate shareholders for their taxable gains on the liquidation of the middle-layer entity.

Even if the seller/middle-layer succeeded on liability, it is unable to prove entitlement to damages by a preponderance of the evidence. The shareholders of this entity, as the ones facing tax liability, alone bore the liability. The Court further finds that the seller/middle-layer entity has failed to prove the existence of damages by a preponderance of the evidence, foreclosing the Court from forming any conclusions regarding damages.

FINDINGS OF FACT¹

A. The Parties.

Plaintiff Longshot Holdings, Inc. ("Longshot") is a Delaware corporation with a principal place of business in South Dakota.² Before the instant disputed transaction, Plaintiff was the owner of the stock of the former Coral Chemical Company ("Coral"), an Illinois S-Corporation—meaning Coral was treated as a

¹ The facts referenced herein are either findings of the Court by a preponderance of the evidence or stipulated by the Parties.

² D.I. 104 ("PTO") at 7. While Longshot's version of the case caption includes various individuals and a trust as plaintiffs, they are no longer parties to this action. Their only cause of action was dismissed on summary judgment. *See* D.I. 27 (containing the Second Amended Complaint, in which Count I is between Longshot and the defendant, while Count II is between the remaining plaintiffs and the defendant); D.I. 75 at 32:18-23 (dismissing Count II on summary judgment).

pass-through entity for federal income tax purposes.³ As the name suggests, Coral was a chemical company.⁴

Defendant Quaker Chemical Corporation d/b/a Quaker Houghton (“Quaker”) is a Pennsylvania Corporation.⁵ As the name suggests, Quaker is another chemical company.⁶

Coral was owned by John Schueneman, a resident of South Dakota; Shane Schueneman, John’s son, a Wisconsin resident; T. Joseph Schueneman, a Nebraska resident; and MJS Gift Trust (the “Trust”), a South Dakota trust (the Schuenemans, with the Trust, the “Individual Shareholders”).⁷

B. The Schuenemans Decide to Sell Coral.

In 2019, John and Shane Schueneman decided they wished to sell Coral.⁸ At the time, the Schuenemans held the majority of Coral’s stock.⁹ In pursuing a sale, Coral retained RSM US, LLP to serve as the tax advisor on the deal.¹⁰

³ PTO at 7.

⁴ *Id.* at 6.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 8. John Schueneman worked for Coral from 1967 until the transaction. PTO at 7. Shane Schueneman worked for Coral for over 20 years. *Id.*

⁹ *Id.* Prior to the transaction, John Schueneman held 69.5%, Shane Schueneman held 25%, the MJS Gift Trust held 5% and T. Joseph Schueneman, held 0.41%. *Id.* at 7-8.

¹⁰ *Id.* at 8.

Coral began negotiations with Quaker for Quaker to acquire Coral.¹¹ During negotiations with Quaker, John Schueneman expressed his desire to retire upon selling Coral.¹² On July 23, 2020, the Parties executed a letter of intent for Quaker to acquire 100% of Coral's stock.¹³ The parties commenced due diligence.¹⁴

C. The F-Reorganization and MIPA.

In September 2020, Quaker raised concerns about Coral's S-Corporation election, noting one of Coral's shareholders had not signed the S-election form.¹⁵ Quaker was concerned that, once acquired, Coral would face significant tax liability because of the potentially defective election.¹⁶

After exploring options for an alternative sale structure, the Parties agreed to pursue an F-Reorganization of Coral pursuant to the Internal Revenue Code.¹⁷ The F-Reorganization included the following steps: (1) the creation of Longshot, (2) the conversion of 100% of the Individual Shareholders shares in Coral for 100% of the Longshot shares, and (3) the employment of certain Internal Revenue Code elections, such as the pass-through S status for Longshot, all of which ultimately

¹¹ *Id.*

¹² Tr. 1 (Schueneman) at 54:1-2. Citations to the three-day trial transcript (dated 12.2.25, 12.6.25, and 2.23.26) are referenced at "Tr. 1," "Tr. 2," and "Tr. 3" respectively.

¹³ PTO at 8.

¹⁴ *Id.*

¹⁵ *Id.*; Tr. 1 (McGrath) at 228:8-230:3.

¹⁶ Tr. 1 (McGrath) at 229:10-231:12.

¹⁷ PTO at 9. The F-Reorganization was proposed by Plaintiff's representatives. *Id.* at 8 (defining Plaintiff's representatives); Tr. 1 (McGrath) at 243:3-5.

culminated in Longshot owning 100% of Coral, and the Individual Shareholders owning 100% of Longshot.¹⁸ This was implemented in order to cure Coral's potentially defective tax election. Notably, Longshot was not obliged to liquidate after closing the sale of Coral's stock, meaning the Individual Shareholders could hold on to their 100% interest in Longshot instead of liquidating the company.¹⁹

The F-Reorganization was not implemented without some initial skepticism from the Individual Shareholders. In a due diligence document entitled the "Certain Material Issues" list produced by the Parties during negotiations over the potential transaction structure, Plaintiff called for "a full gross up to the Coral stockholders."²⁰ Accordingly, drafts of the Membership Interest Purchase Agreement ("MIPA") crafted by the parties began including provisions referencing the a "Gross-Up Amount" to be paid by Quaker to neutralize certain tax consequences of the F-Reorganization.²¹ In early drafts of the MIPA, the Gross-Up Amount was set as a fixed payment.²²

During due diligence, RSM created several schedules projecting the various financial ramifications of the transaction.²³ Several of these schedules contain a note

¹⁸ PTO at 10.

¹⁹ Tr. 3 (Walloch) at 45:9-12 (acknowledging that "nothing in the Internal Revenue Code required that Longshot be liquidated."). There is dispute over whether Longshot has completed a liquidation. Tr. 2 (McGrath) at 22:10-17.

²⁰ JX 34.

²¹ *See, e.g.*, JX 127 JX 127 at QUAKER_0025149.

²² *See* JX 78 at QUAKER_0023651.

²³ *See, e.g.*, JX 55; JX 72; JX 163.

next to an empty line item set aside to track taxable gains due to a post-closing liquidation of Longshot, noting “No Liquidation in F Reorg.”²⁴ Both parties approved RSM’s financial schedules, and the requisite Gross-Up Amount calculation, prior to closing.²⁵

Ultimately, on December 22, 2020, the Parties executed and immediately closed on the final MIPA.²⁶ The MIPA contained the following Gross-Up Amount definition:

“Gross-up Amount” means an amount needed to ensure that Seller realizes the same amount of after-Tax proceeds from the sale of the Membership Interests, taking into account receipt of this “Gross-up Amount,” that Seller would have realized had the transaction contemplated by this Agreement been a direct sale of 100% of the capital stock of Pre Conversion Coral to Purchaser (without an election under Section 338(h)(10) or 338(e) of the Code) versus a sale of the Membership Interests following the Pre-Closing Reorganization Transactions. For purposes of this definition, it shall be assumed that Seller is subject to an income Tax at the highest combined marginal Tax rate applicable to Seller.²⁷

“Seller” is elsewhere defined as Longshot, with “Owners” being defined as the Individual Shareholders, collectively.²⁸

The MIPA characterizes the “Seller” as “duly qualified or licensed to do business and...in good standing in each jurisdiction in which the character of the

²⁴ See, e.g., JX 55; JX 72; JX 163.

²⁵ JX 71; JX 72; JX 118 at QUAKER_0021779; JX 119.

²⁶ JX 127.

²⁷ *Id.* at QUAKER_0025149.

²⁸ *Id.* at QUAKER_0025246.

properties it owns, operates or leases or the nature of its activities makes such qualification or licensure necessary...”²⁹

The MIPA also contains a Tax Indemnification Provision, which provides, in part:

The Purchaser will indemnify and hold harmless Seller from and against, and will pay to Seller the monetary value of, (i) any Taxes imposed on the Company in any Post Closing Period and (ii) any incremental U.S. federal, state and local income Taxes in excess of the Gross-up Amount incurred or suffered as a result of a redetermination of the amount of Gross-up applicable to the transaction directly by Seller on the sale of Membership Interests pursuant to this Agreement.³⁰

Annex 1 of the MIPA identified certain assets which were excluded from the transaction and retained by Longshot.³¹

Quaker paid \$53,000,000 to Longshot in exchange for the membership interests in Coral, paying an additional Gross-Up Amount of \$643,978 which was agreed to by the Parties on December 9, 2020.³²

D. Post-Closing Calculations and Conflict.

After closing, throughout 2021, RSM prepared various financial schedules for the Parties tracking the tax consequences of the MIPA, which continued the pre-

²⁹ *Id.* at QUAKER_0025160.

³⁰ *Id.* at QUAKER_0025189.

³¹ *Id.* at QUAKER_0025208.

³² PTO at 11.

closing trend of not incorporating the tax ramifications for gains arising out of a liquidation of Longshot in the Gross-Up Amount calculation.³³

In an email dated August 21, 2021, a tax partner at RSM posited the Individual Shareholders would be “stuck with the gain when [they] pull[] the rest of the cash out” of Longshot via a liquidation and noted, “I am not sure they grasped it,” referring to the Individual Shareholders.³⁴

On November 24, 2021, RSM provided Quaker with a final Gross-Up calculation, which now (for the first time) incorporated taxable gains to the Individual Shareholders arising out of a post-closing liquidation of Longshot.³⁵ The latest figures called for an additional Gross-Up Amount payment of roughly \$1.4 million.³⁶ RSM’s final calculations also identified certain state-level taxes owed by Longshot itself.³⁷

Longshot began liquidation immediately after closing, when Schueneman elected to distribute all the proceeds of the sale to the Individual Owners, rather than hold them at the Longshot entity-level.³⁸ As noted above, this liquidation was neither called for by the MIPA nor required by the Internal Revenue Code.

³³ Tr. 2 (McGrath) at 47:21-48:10; JX 163.

³⁴ JX 173.

³⁵ JX 206; JX 207.

³⁶ JX 206; JX 207.

³⁷ JX 207.

³⁸ Tr. 1 (Schueneman) at 79:14-22.

Quaker refused to pay the additional portion of the Gross-Up Amount demanded by Longshot, so Longshot filed the instant action.

PROCEDURAL HISTORY

Longshot filed this action on April 20, 2022.³⁹ In the ultimately operative Second Amended Complaint, Longshot raised a single cause of action for breach of contract against Quaker.⁴⁰ The Individual Shareholders brought a separate count alleging breach of contract against Quaker, contending they were beneficiaries under the MIPA.⁴¹ The gravamen of Longshot's claim was that the final definition for Gross-Up Amount obliged Quaker to indemnify the Individual Shareholders for tax liability incurred as a result of Longshot's liquidation.⁴²

On November 25, 2024, the Court ruled on a motion for summary judgment filed by Quaker.⁴³ In that ruling, the Court dismissed the Individual Shareholders' cause of action against Quaker, finding that they were not third-party beneficiaries who could assert rights under the MIPA.⁴⁴

The Court could not resolve Longshot's claim against Quaker on summary judgment. The Court explained that, because the term "Seller" as used in the MIPA was ambiguous, potentially referring to just Longshot or also the Individual

³⁹ D.I. 1.

⁴⁰ D.I. 27.

⁴¹ *Id.*

⁴² *Id.*

⁴³ D.I. 73; D.I. 75.

⁴⁴ D.I. 75 at 32:18-23.

Shareholders, the Court could not ascertain whether the tax liability of the Individual Shareholders incurred because of the liquidation of Longshot was covered under the MIPA's Gross-Up Amount.⁴⁵ If "Seller" was meant to refer to the Individual Shareholders, their tax liability for the liquidation of Longshot post-closing was potentially required to be indemnified by Quaker as part of the Gross-Up Amount. If Seller instead referred only to Longshot, the Individual Shareholders would not be able to seek a Gross-Up Amount which neutralized their personal tax liability, since Longshot itself did not sustain the liquidation gains at the entity level.

To resolve this ambiguity, the Parties proceeded to trial, which occurred in two parts. Fact witness testimony occurred on December 2 and 3, 2025, with expert testimony on February 13, 2026.⁴⁶ John Schueneman testified, as did Quaker's Michael McGrath.⁴⁷ Joseph Walloch served as Longshot's expert witness on damages.⁴⁸ RSM's Sarah Neff was deposed, and her deposition transcript was

⁴⁵ *Id.* at 31:1-32:12.

⁴⁶ D.I. 131. At the time of the transaction, McGrath was the Vice President of Global Tax at Quaker. Tr. 1 (McGrath) at 222:22-223:1.

⁴⁷ D.I. 131. McGrath was actively involved in the negotiations and due diligence for the transaction, giving him firsthand knowledge regarding the issues in this case. Tr. 1 (McGrath) at 224:9-228:7 (McGrath discussing his familiarity with due diligence, the Gross-Up amount calculations, letter of intent, and discussion with legal and financial advisors). Schueneman, by contrast, testified that although Longshot agreed to the F reorganization, he "d[idn't] understand these reorganizations very well." *Id.* (Schueneman) at 130:12-13.

⁴⁸ *Id.*

included in the joint exhibit list for trial,⁴⁹ but Neff did not testify at trial, and the deposition transcript was not introduced at trial.⁵⁰

On April 8, 2026, Longshot filed an opening post-trial brief.⁵¹ Quaker filed an answering brief on May 8, 2026,⁵² with Longshot filing a reply brief on May 27, 2026.⁵³ On June 10, 2026, the Court heard post-trial argument.⁵⁴ On July 24, 2026, the Court received the post-trial argument transcript and took the matter under advisement.⁵⁵

STANDARD OF REVIEW

In a bench trial, the judge, as fact-finder,⁵⁶ “must assess the credibility of each witness and determine the weight given to the testimony.”⁵⁷ To reach a verdict on the issues, the court considers admitted exhibits, the testimony of witnesses, the Parties’ arguments, and Delaware law.⁵⁸ The court can consider “each witness’s means of knowledge; strength of memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it

⁴⁹ JX 351.

⁵⁰ D.I. 141.

⁵¹ D.I. 134 (“OB”).

⁵² D.I. 135 (“AB”).

⁵³ D.I. 137 (“RB”).

⁵⁴ D.I. 139.

⁵⁵ D.I. 140.

⁵⁶ See, e.g., *Shallcross Mortg. Co. v. Ewing*, 2024 WL 3738713, at *1 (Del. Super. Aug. 9, 2024) (citation omitted).

⁵⁷ *Williams v. Bay City, Inc.*, 2009 WL 5852851, at *1 (Del. Super. Dec. 23, 2009) (citation omitted).

⁵⁸ *Outbox Sys., Inc. v. Trimble, Inc.*, 2024 WL 1886089, at *7 (Del. Super. Apr. 30, 2024).

has been contradicted; the witnesses' biases, prejudices, or interests; the witnesses' manner or demeanor on the witness stand; and all circumstances that according to the evidence, could affect the credibility of the testimony.”⁵⁹ After reviewing the evidence presented, the court is “free to accept or reject any and or all sworn testimony.”⁶⁰

A party bears the burden of proving its claims by a preponderance of the evidence.⁶¹ Proof by a preponderance of the evidence means “proof that something is more likely than not.”⁶² If the evidence presented by the Parties “is inconsistent, and the opposing weight of the evidence is evenly balanced, then ‘the party seeking to present a preponderance of the evidence has failed to meet its burden.’”⁶³ “All elements of a claim must be proven by a preponderance of the evidence, including the plaintiff’s damages.”⁶⁴

⁵⁹ *Zenith Energy Terminals Joliet Hldgs. LLC v. CenterPoint Props. Tr.*, 2024 WL 3570165, at *3 (Del. Super. July 29, 2024) (citation omitted).

⁶⁰ *Pardo v. State*, 160 A.3d 1136, 1150 (Del. 2017).

⁶¹ *See, e.g., Navient Sols., LLC v. BPG Off. P’rs XIII Iron Hill LLC*, 2023 WL 3120644, at *10 (Del. Super. Apr. 27, 2023) (citation omitted).

⁶² *Feenix Payment Sys., LLC v. Blum*, 2024 WL 2768386, at *10 (Del. Super. May 29, 2024).

⁶³ *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 545 (Del. Super. 2005) (quoting *Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991) (TABLE)), *aff’d*, 886 A.2d 1278 (Del. 2005).

⁶⁴ *See, e.g., Buck v. Viking Hldg. Mgmt. Co. LLC*, 2024 WL 4352368, at *21 (Del. Super. Sept. 30, 2024) (citation omitted).

ANALYSIS

1. The MIPA's Definition of "Seller" is Ambiguous, Necessitating the Consideration of Extrinsic Evidence.

As an initial matter, the Parties dispute whether the MIPA is ambiguous, requiring the Court to evaluate extrinsic evidence.⁶⁵ The Court need not wade deep into this issue, as the Court already made this determination at the summary judgment stage.

In ruling on Quaker's motion for summary judgment, the Court held "there is ambiguity in the contract over the term 'Seller.' Although Quaker contends that it is unambiguous that Seller excludes the individual shareholders, the Court is not convinced of that case."⁶⁶ This declaration serves as the binding law of the case, and the Court will not reevaluate it here.⁶⁷ The MIPA is ambiguous, with "Seller" being susceptible to multiple reasonable interpretations, and the Court will consider extrinsic evidence.⁶⁸

⁶⁵ AB at 24; RB at 2.

⁶⁶ D.I. 75 at 31:12-16 (citation modified).

⁶⁷ See, e.g., *Schneider Nat'l Carriers, Inc. v. Kuntz*, 2022 WL 1222738, at *13 (Del. Super. Apr. 25, 2022) ("The court's prior determinations that the Tractor Acquisition Covenant is susceptible to multiple reasonable interpretations—and is therefore ambiguous—is the law of the case. The law of the case doctrine usually requires that matters previously ruled upon by the same court be put to rest." (citation modified)).

⁶⁸ E.g. *Sunline Com. Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 847 (Del. 2019).

2. The Extrinsic Evidence Shows the Gross-Up Amount Does Not Incorporate the Tax Consequences of Longshot's Liquidation.

Longshot contends the extrinsic evidence demonstrates the term “Seller” refers to both Longshot and the Individual Shareholders, meaning the tax consequences suffered by the Individual Shareholders due to the liquidation of Longshot should be incorporated into the Gross-Up Amount.⁶⁹ Quaker contends the term “Seller” refers only to Longshot, so the Parties never intended for the Gross-Up Amount to include gains incurred by Individual Shareholders due to the liquidation of Longshot.⁷⁰ The preponderance of the evidence supports Quaker's position, meaning Longshot has failed to show a breach of the MIPA.

First, RSM, Longshot's tax advisor, evinced the mutual understanding of the Parties that the Gross-Up Amount would not reflect the liquidation of Longshot. In the pre-closing financial schedules, RSM repeatedly noted that its calculations anticipated “No Liquidation in F Reorg.”⁷¹ The Parties did not revisit this issue before or immediately after closing, instead accepting RSM's figures and calculating the Gross-Up Amount accordingly.⁷² This indicates that Longshot, RSM, and Quaker were not contemplating a Gross-Up Amount which reflected payment to the owners of Longshot for the liquidation of Longshot, meaning the Parties did not

⁶⁹ OB at 28.

⁷⁰ AB at 40.

⁷¹ JX 55; JX 72; JX 163.

⁷² JX 71; JX 72; JX 118 at QUAKE_0021779; JX 119.

anticipate the Individual Shareholders were “Sellers” entitled to a Gross-Up Amount reflecting this liquidation.⁷³

Second, this mutual understanding is further reflected by the post-closing conduct of the Parties. For nine months after closing, Longshot did not raise the issue of incorporating the liquidation into the Gross-Up Amount.⁷⁴ Instead, ten months of recalculations of the Gross-Up Amount passed before Longshot caused RSM to provide a new calculation which purported to incorporate the consequences of a liquidation gain.⁷⁵ Prior to closing, Longshot had not indicated to Quaker that it would liquidate after the transaction.⁷⁶ Longshot’s silence on the issue immediately after closing further evinces a mutual understanding that liquidation tax ramifications would not be incorporated into the Gross-Up Amount.

⁷³ Longshot relies on the deposition testimony of Sarah Neff of RSM, who did not testify at trial, to argue the “No Liquidation in F Reorg” tag on these documents was a mere placeholder. *See* RB at 17 (citing JX 351). The Court is not persuaded that a deposition quote unpaired with credible trial testimony supports a finding, by a preponderance of the evidence, in favor of Longshot. This is especially true where the deposition transcript was not introduced into evidence at trial. D.I. 141. The Court also notes McGrath testified that he never asked RSM what “no liquidation in F-reorg meant” because “[t]here was no point to. They said it right here,” and there was no “point in [asking]” because a liquidation is not a mandatory part of an F-Reorganization. Tr. 2 (McGrath) at 79:4-80:10. McGrath further testified that he did not “know what [Longshot] intended to do with the money after the sale” process. *Id.* at 80:11-18.

As Quaker’s expert, George Koutouras, testified, “[i]n the case of an F-reorganization, [a liquidation] is not a foregone conclusion, and so it’s a function of the circumstances of a particular transaction.” Tr. 3 (Koutouras) at 64:17-19.

⁷⁴ Tr. 2 (McGrath) at 47:21-48:10; JX 163.

⁷⁵ JX 206; JX 207.

⁷⁶ Tr. 2 (McGrath) at 22:18-20.

Third, the MIPA does not reference a forthcoming liquidation of Longshot.⁷⁷ If *both* Parties anticipated a post-closing adjustment to the Gross-Up Amount to reflect a liquidation, the Court would expect that to at least be referenced in the MIPA. This is not the case here. Instead, the decision to liquidate was unilaterally held with Longshot, who did not provide sufficient evidence that Quaker knew of a forthcoming liquidation until months *after* closing.⁷⁸

Fourth, while John Schueneman testified that he informed Quaker of his plans to retire after closing,⁷⁹ this itself does not prove that Quaker knew of a forthcoming liquidation of Longshot after closing. The two decisions are not intrinsically linked—Longshot could have survived unliquidated while Schueneman retired. The uncertainty that Longshot would liquidate is further reflected by the fact that Longshot retained some assets after closing.⁸⁰

Fifth, in an email dated August 21, 2021—months after the execution of the MIPA—Phyllis Gannon, a tax partner at RSM noted the Individual Shareholders would be “stuck with the gain when [they] pull[] the rest of the cash out” of Longshot and wrote, “I am not sure they grasped it,” meaning Longshot was warned about the tax ramifications of a liquidation but did not realize the scope of the risk.⁸¹ This

⁷⁷ JX 127.

⁷⁸ JX 206; JX 207.

⁷⁹ Tr. 1 at 54:1-2.

⁸⁰ JX 127, Annex 1; Tr. 2 (McGrath) at 24:13-25:8. *See also* Tr. 2 (McGrath) at 80:2-10 (noting the absence of a mandatory liquidation in a F-Reorganization).

⁸¹ JX 173.

reflects the exact opposite of a mutual understanding that a liquidation was inevitable and would be funded by Quaker.⁸²

Sixth, the MIPA itself, while not always clear and consistent in its term usage, has separate definitions for “Seller” (meaning Longshot) and “Owners” (meaning the Individual Shareholders).⁸³ This definition scheme, while not dispositive given the above-discussed ambiguity concerning the true definition of “Sellers,” supports a finding that “Seller,” as used in the Gross-Up Amount, does not refer to the Individual Shareholders. Combining this evidence with the remaining record, the Court finds the preponderance of the evidence shows Longshot alone was referenced in the Gross-Up Amount definition.

While the Certain Material Issues list produced by the Parties during deal negotiations calls for “a full gross up to the Coral stockholders,”⁸⁴ this document was produced months before closing, limiting the Court’s reliance on it, and does not itself outweigh the opposing evidence showing the Parties did not have a *mutual*

⁸² In fact, McGrath testified that Quaker’s tax counsel, BDO, was “surprised” about the updated calculation from Longshot and RSM. Tr. 2 (McGrath) at 53:7-16. *See also* Tr. 2 (McGrath) at 77:23-78:1 (“It seemed evident that Longshot would continue as a going concern”). Schueneman testified he did not expect Quaker would be willing to pay the Gross-Up Amount incorporating liquidation gains when Longshot provided that revised Goss-Up Amount. Tr. 1 (Schueneman) at 93:9-94:10. This testimony indicates the absence of a mutual understanding that the revised Gross-Up Amount incorporating liquidation gains was something to which Longshot was entitled under the MIPA.

⁸³ JX 127 at QUAKER_0025146.

⁸⁴ JX 34.

understanding that Longshot was planning a liquidation for which Quaker could expect a higher Gross-Up Amount.

The Court acknowledges that prior drafts of the MIPA were revised to shift the Gross-Up Amount from a fixed numerical figure to a to-be-determined amount.⁸⁵ While this enables post-closing adjustments to the Gross-Up Amount, this definitional shift itself does not prove that Quaker and Longshot understood that a liquidation of Longshot was imminent and the Gross-Up Amount would be adjusted to reflect this liquidation and compensate the Individual Shareholders.

Longshot argues that any interpretation of the definitions of Gross-up Amount and Seller which renders the tax liabilities of the Individual Shareholders uncovered renders the Tax Indemnification Provision meaningless, since Longshot is a pass-through entity.⁸⁶ Longshot's argument fails because it has *some* entity-level tax liability, meaning the provision has some effect even without applying it to liquidation-related taxes.⁸⁷ That the entity-level taxes were ultimately minimal and only state-level is of no moment,⁸⁸ as the clause still has *some* effect, even if not a massive one.⁸⁹

⁸⁵ See JX 78 at QUAKER_0023651.

⁸⁶ OB at 29-31.

⁸⁷ E.g. JX 207 at LONGSHOT0008514 (calculating entity-level taxes).

⁸⁸ RB at 11 (discussing the *de minimis* nature of the taxes owed by Longshot to several states).

⁸⁹ *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 287 (Del. 2001) (noting contracts should be interpreted in a way that does not render any provisions illusory or *meaningless*, not in a way that renders all provisions applicable to a particular case (citations omitted)).

Longshot highlights the definition of Gross-Up Amount, which provides that the Gross-Up Amount is to be calculated so as to ensure that “Seller” receives “the same amount of after-Tax proceeds from the sale...that Seller would have realized had the transaction contemplated by this Agreement been a direct sale of 100% of the capital stock of Pre-Conversion Coral to Purchaser.” while Longshot, an entity created for the F-Reorganization transaction model, could never have sold 100% of pre-conversion capital, since it never had it.⁹⁰ According to Quaker, this provision only calls for a *hypothetical* computation, in which *Longshot* is assumed to have held and sold all of the shares of pre-conversion Coral, and the Gross-Up Amount is calculated accordingly.⁹¹ Ultimately, the Court is not persuaded this shows that “Seller” should be interpreted to reference both Longshot and its Individual Shareholders. Quaker is correct that the clause can be interpreted as envisioning a calculation based on the hypothetical in which Longshot owned all of the stock in Coral from the outset.

Longshot also highlights the testimony of John Schueneman, who testified that Seller is elsewhere used to refer to a business “duly qualified or licensed to do business” in certain jurisdictions, but that Coral, not Longshot, held these licenses, indicating the flexible use of the word “Seller.”⁹² While this perhaps further evinces

⁹⁰ OB at 28 (citing JX 127).

⁹¹ AB at 32-33 (citing Tr. 2 (McGrath) at 101:12-102:6).

⁹² Tr. 1 (Schueneman) at 143:15-144:9.

the ambiguity surrounding the definition of the term “Seller,” it does not show that Seller is intended to reference the Individual Shareholders, as the clause appears to reference Coral. This testimony does not move the needle towards Longshot’s desired result.

Considering the foregoing, and the remaining testimony and evidence in the record, the Court finds Longshot has not proven a contractual obligation for Quaker to pay a heightened Gross-Up Amount to the Individual Shareholders as “Sellers” because of the liquidation of Longshot. Longshot has not shown that both parties understood Quaker would be on the hook for a higher Gross-Up Amount due to the liquidation. This alone defeats Longshot’s claims, since Longshot has not shown a contractual obligation which was breached, but the remaining analysis into damages is provided in the interest of justice.

3. Longshot Has Not Proven Damages.

a. Longshot has not proven its entitlement to damages for taxes incurred by the Individual Shareholders.

While Longshot cannot show a breach of contract by Quaker, its claims independently fail due to the failure to prove damages. Longshot must prove it is entitled to damages by a preponderance of the evidence.⁹³ Longshot must show “the

⁹³ *JanCo FS 2, LLC v. ISS Facility Servs., Inc.*, 344 A.3d 1009, 1038 (Del. Super. 2025) (citation omitted).

existence of damages provable to a reasonable certainty, and that the damages flowed from the defendant's violation of the contract.”⁹⁴

Longshot seeks a \$1.4 million damages figure constituting that remaining chunk of Longshot's proposed Gross-Up Amount which was not indemnified by Quaker.⁹⁵ This remainder purportedly equals the taxes incurred by the Individual Owners because of Longshot's liquidation.⁹⁶

Quaker first targets Longshot's damages figure by pointing out that it is the Individual Owners, not Longshot, who have faced tax consequences from Longshot's liquidation, meaning Longshot itself has suffered no damages even if Quaker had breached the MIPA.⁹⁷ Longshot responds by citing Schueneman's testimony that Longshot paid the taxes on behalf of the Individual Owners, therefore incurring damages.⁹⁸

This argument is unsuccessful. To the extent Quaker can be said to have breached the MIPA (it did not), the Parties directly aggrieved by Quaker's conduct are the Individual Shareholders, not Longshot. The Individual Shareholders—those who actually lost money—are not a party to this lawsuit. Schueneman's decision to have Longshot indemnify the Individual Shareholders for the Individual

⁹⁴ *Base Optics Inc. v. Liu*, 2015 WL 3491495, at *16 (Del. Ch. May 29, 2015) (citation modified).

⁹⁵ OB at 49.

⁹⁶ OB at 50.

⁹⁷ AB at 47-48.

⁹⁸ RB at 24 (citing Tr. 1 (Schueneman) at 93).

Shareholders' taxes⁹⁹ creates a break in the chain of causation: any injury to Longshot was directly caused by Schueneman's decision to have the entity indemnify its Individual Owners, not Quaker's purported breach. Beyond citing Schueneman's testimony, Longshot provides no caselaw showing that such an indirect injury to Longshot entitles it to compensation from Quaker.¹⁰⁰ Accordingly, the bulk of Longshot's damages theory fails.

Further, as Quaker identifies, Longshot's damages theory fails for a lack of supporting proof.¹⁰¹ Longshot relies on an RSM-produced schedule calculating a new Gross-Up Amount which incorporates the gains on the liquidation of Longshot.¹⁰² Several problems arise. First, the figures in that schedule are uncorroborated.¹⁰³ Longshot points to Longshot's tax returns, which contain figures documenting the gain allocated to each of the Individual Shareholders,¹⁰⁴ but Longshot does not provide proof that those tax returns were used to calculate the Gross-Up Amount proposed by RSM. Longshot produced records of various checks

⁹⁹ Tr. 1 (Schueneman) at 92:7-94:16.

¹⁰⁰ See *HLSP Hldgs. Corp. v. Fortune Mgmt., Inc.*, 991 A.2d 18 (Del. 2010) (affirming Superior Court's dismissal of a claim, on summary judgment, where the injury suffered was felt by the shareholders of a corporation, not the corporation itself). The Court further notes that the shareholders did not produce their tax returns to Quaker. Tr. 3 (DeSantis) at 51:18-19.

¹⁰¹ AB at 48.

¹⁰² JX 207.

¹⁰³ Longshot produced no evidence as to who performed the calculation of the final gross-up amount or the formula used.

¹⁰⁴ JX 215 at QUAKER_0017144, QUAKER_00171907049, QUAKER_0017154, QUAKER_0017159.

sent to various governmental entities and contends these checks demonstrate payment was made for liquidation-related taxes, but these checks do not clearly articulate the purpose for which they were paid.¹⁰⁵ Some of the checks were not sent to government authorities, but were instead paid to RSM or Glenda Schueneman.¹⁰⁶ Testimony on what taxes were paid and by whom is contradictory, with Schueneman claiming to have paid the taxes of all Individual Shareholders,¹⁰⁷ while Walloch testified the Individual Shareholders were required to pay the taxes themselves.¹⁰⁸

With this uncertainty, the Court cannot declare, by a preponderance of the evidence, that Longshot's damages figure is reliable, even if it were damages actually suffered by Longshot for which Longshot could recover. The Court is not convinced by a preponderance of the evidence that Longshot's Individual Shareholders incurred the tax liability reflected in Longshot's damages figure, due to a completed liquidation of Longshot, and then paid those taxes. Longshot failed to prove it is entitled to a remainder of the Gross-Up Amount by a preponderance of the evidence.

¹⁰⁵ JX 327. In addition, the total amount of the checks produced is nearly \$3 million, more than double what Longshot is requesting as damages in this action and \$1 million more than the \$2 million final Gross-Up number in JX207. While it appears that Longshot paid certain governmental entities taxes, the problem here is Longshot fails to provide evidence that the numbers in the K-1 forms formed the basis of the gross-up calculation by RSM (JX 207).

¹⁰⁶ *See e.g.* JX 327 at LONGSHOT0012525 (a check directed to RSM, not a government body and LONGSHOT0012528 (paid to Glenda Schueneman)).

¹⁰⁷ Tr. 1 (Schueneman) at 90:11-17.

¹⁰⁸ Tr. 3 (Walloch) at 51:2-10.

b. Longshot is not entitled to damages for a purported miscalculation of the Gross-Up Amount or prejudgment interest.

Longshot also pursues \$395,109 because of a purported calculation error in the Gross-Up Amount already paid by Quaker in which RSM apparently used a different tax rate than that called for in the MIPA, deflating the figure.¹⁰⁹ Longshot contends that RSM (its own advisor) used actual tax rates instead of maximum tax rates, causing the deflation.¹¹⁰

As an initial matter, it is unclear under which theory Longshot pursues this claim. Longshot's post-trial briefing otherwise makes no reference to a breach claim based on this issue. Further, Longshot's briefing makes no reference to the elements of a promissory estoppel or quasi-contract cause of action. As noted above, it was RSM (working on behalf of Longshot) who made the error, not Quaker. Accordingly, Longshot seeks payment of additional funds in the absence of a theory justifying their remission. This claim for damages fails on that basis alone.

Longshot claims these damages based on its expert's report, which does not articulate whether or how these damages would be applicable if Longshot failed to prove that Quaker must pay damages for the Individual Shareholders' tax liability—the very situation present here.¹¹¹

¹⁰⁹ OB at 51.

¹¹⁰ *Id.*

¹¹¹ JX 287 at 18.

The definition for Gross-Up Amount in the MIPA provides that, for purposes of the Gross-Up Amount, the applicable tax rate shall be the maximum tax rate applicable to Seller.¹¹² As discussed above, the Court is not convinced that Seller should be interpreted to refer to anyone but Longshot, a pass-through entity not subject to *any* federal tax rate. Indeed, at trial, Quaker's expert pointed out that the tax rate employed in the Gross-Up Amount is arguably too *high* since the applicable federal rate is zero.¹¹³

The Court is not persuaded that the preponderance of the evidence shows Longshot is entitled to a higher Gross-Up Amount based on an increased applicable tax rate or that the figure proposed by Longshot to remedy this purported issue is accurate.

Because Longshot failed to prove any of its claims, its claim for prejudgment interest is likewise denied.¹¹⁴

CONCLUSION

The Court finds as follows:

1. Longshot failed to prove, by a preponderance of the evidence, a breach of the MIPA.

¹¹² JX 127 at QUAKER_0025149.

¹¹³ Tr. 3 (Koutouras) at 78:11-21.

¹¹⁴ OB at 51.

2. Failure to prove a breach notwithstanding, Longshot failed to prove any damages for its claims.

If there are any open issues not addressed or mooted by this post-trial opinion, the Parties shall notify the Court by letter within five days. Otherwise, this opinion shall serve as the final judgment in this action.

IT IS SO ORDERED.

/s/ Meghan A. Adams

Meghan A. Adams, Judge