

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PETER A. WALKER,

Plaintiff,

v.

C.A. No. 2026-0733-CDW

ICON MANAGEMENT
AGGREGATOR L.P. and ICON
TOPCO L.P.,

Defendants.

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

WHEREAS:

A. Icon Management Aggregator L.P. (“Partnership”), Icon Topco L.P. (“Topco”), Instructure Holdings, Inc. (“Instructure”), and Icon Topco GP LLC (“Topco GP”) sued Peter A. Walker, the former chief financial officer of Instructure, seeking declarations that an amendment to the Partnership’s call right and a notice exercising that right are valid and enforceable.¹ The litigation (“Underlying Action”) arises from the repurchase of Walker’s vested Class C units for no consideration following his resignation from Instructure.² Walker challenges the

¹ Verified Compl. for Declaratory J. ¶¶ 39–50, *Icon Mgmt. Aggregator L.P. v. Walker*, C.A. No. 2025-1261-NAC (Del. Ch.), Dkt. 1 (“Underlying Complaint” and cited as “Underlying Compl.”); *see also* Verified Compl. for Advancement ¶ 40, Dkt. 1 (discussing the Underlying Complaint) (“Complaint” and cited as “Compl.”); Defs.’ Opening Br. in Supp. of Their Mot. for Summ. J. 3, 6–7, Dkt. 25 (“Defs.’ Opening Br.”).

² Underlying Compl. ¶ 35.

amendment and repurchase through counterclaims against the plaintiffs in the Underlying Action³ and third-party claims against Kohlberg Kravis Roberts & Co. (“KKR”).⁴

B. Walker seeks advancement from the Partnership and Topco (“Defendants”) for the fees and expenses he is incurring in the Underlying Action.⁵ He asserts the claim under Section 6.04(f) of the Partnership’s partnership agreement.⁶ That provision requires Defendants to advance fees and expenses incurred by a qualifying person (“Indemnatee”) who is made a party to or is otherwise involved in a proceeding, without a determination of their ultimate entitlement to indemnification, upon receipt of a written undertaking to repay amounts advanced if indemnification is ultimately unavailable.⁷ In full, Section 6.04(f) states:

The right to indemnification conferred in this Section 6.04 shall include the right to be paid or reimbursed by the Partnership in a timely manner for the expenses (including, without limitation, attorneys’ fees) incurred by an Indemnatee entitled to be indemnified under Section 6.04(e) who was, is or is threatened to be made party to, or is otherwise involved in,

³ For purposes of the Underlying Action, the Partnership, Topco, Instructure, and Topco GP are referred to collectively as the “Underlying Plaintiffs.”

⁴ Underlying Compl. ¶¶ 41–42.

⁵ See Compl. ¶¶ 1–3, 8, 80–86.

⁶ Am. & Restated Ltd. P’ship Agr’t of Icon Mgmt. Aggregator, L.P. § 6.04(f), Compl. Ex. A (“Partnership Agreement” and cited as “P’ship Agr’t”).

⁷ P’ship Agr’t § 6.04(f). The formal definition of “Indemnatee” is in Section 6.04(b) of the Partnership Agreement.

any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Partnership) in advance of the final disposition of the proceeding and without any determination as to the Indemnatee's ultimate entitlement to indemnification and without regard to Indemnatee's financial condition or ability to repay amounts advanced. Such expenses shall, at the request of the Indemnatee entitled to be indemnified under Section 6.04(e), be advanced by the Partnership on behalf of such Indemnatee in advance of the final disposition of a proceeding so long as such Indemnatee shall have provided the Partnership with a written undertaking, by or on behalf of such Indemnatee, to repay all amounts so advanced if it shall ultimately be determined that such Indemnatee is not entitled to be indemnified under this Section 6.04 or otherwise.⁸

C. The dispute traces to KKR's acquisition of Instructure in November 2024.⁹ To induce Walker to remain with Instructure following the acquisition, Walker, Defendants, and KKR entered into a letter agreement ("Letter Agreement").¹⁰ The Letter Agreement granted Walker Class C profit interest units in the Partnership ("Class C Units") and provided KKR a right to repurchase those units if Walker left

⁸ *Id.* Topco is obligated to pay or cause to be paid the Partnership's fees and expenses, including the Partnership's obligations under Section 6.04. *See Id.* § 6.03.

⁹ Compl. ¶¶ 28–29; *see also* Defs.' Opening Br. 5.

¹⁰ *Id.*

Instructure.¹¹ Walker remained chief financial officer for approximately six months before giving notice on June 5, 2025 of his resignation, effective July 4.¹²

D. After Walker resigned, a majority of the holders of the outstanding Class C Units purported to amend the call right provision in the Partnership Agreement (“Call Right Amendment”).¹³ The amendment permitted the Partnership, after a termination that was not “qualified,” to repurchase vested Class C Units within twelve months of termination at their fair market value when notice of repurchase was given.¹⁴ On July 28, Defendants notified Walker they intended to exercise that right and repurchase his units at a purported fair market value of \$0 (“Call Notice”).¹⁵ Defendants then repurchased the units and extinguished Walker’s Class C Units in full.¹⁶

E. The Underlying Plaintiffs filed the Underlying Action to establish the validity and enforceability of the Call Right Amendment and the Call Notice.¹⁷ Walker’s answer in the Underlying Action included a total of ten counterclaims against the Underlying Plaintiffs

¹¹ Compl. ¶¶ 29, 30; *see also* Defs.’ Opening Br. 5.

¹² Compl. ¶ 32.

¹³ Compl. ¶ 34; *see also* Defs.’ Opening Br. 6.

¹⁴ *Id.*

¹⁵ Compl. ¶ 35; *see also* Defs.’ Opening Br. 6.

¹⁶ Compl. ¶ 36.

¹⁷ *See* Underlying Compl. 1, 17; *see also* Defs.’ Opening Br. 6–7.

and third-party claims against KKR.¹⁸ In joining KKR as a third-party defendant, Walker alleges KKR controlled Defendants and KKR's employees directed the challenged conduct.¹⁹

F. Walker also demanded advancement from Defendants under the Partnership Agreement and supplied a written undertaking.²⁰ On November 21, the Partnership confirmed it would comply with its advancement obligations under Section 6.04(f).²¹ The parties negotiated a *Fittracks* order²² and Walker thereafter submitted monthly demands, including demands for fees incurred from October 2025 through February 2026.²³ Defendants objected to at least half of the fees demanded and have not satisfied their payment obligations.²⁴

¹⁸ Compl. ¶ 41; *see also* Def. Peter A. Walker's Ans. to Pls.' Verified Compl. with Affirmative Defenses, Verified Countercls. and 3d-Party Compl., *Icon Mgmt. Aggregator L.P. v. Walker*, C.A. No. 2025-1261-NAC (Del. Ch. Dec. 29, 2025), Dkt. 16 ("Underlying Countercls."). Neither side filed the Underlying Complaint or Underlying Counterclaims as part of the evidentiary record in this case, but the court may still consider them here. *See Cianciulli v. Webinar.Net, Inc.*, 2025 WL 2831336, at *2 n.6 (Del. Ch. Oct. 6, 2025) ("The Court may take judicial notice of filings in the Underlying Action."); Ct. Ch. R. 56(c)(3) ("The Court . . . may consider other materials in the record or suitable for judicial notice"); D.R.E. 202(d)(1) ("The court may, without request of a party, take judicial notice of . . . (C) the records of the court in which the action is pending and of any other court of this State or federal court sitting in or for this State.").

¹⁹ Compl. ¶¶ 41, 42.

²⁰ *Id.* ¶ 43; Compl. Ex. C; *see also* Defs.' Opening Br. 7.

²¹ Compl. ¶ 44; Compl. Ex. D; *see also* Defs.' Opening Br. 7.

²² Compl. Ex. B.

²³ Compl. ¶¶ 45–50; *see also* Defs.' Opening Br. 7.

²⁴ Compl. ¶¶ 46–50.

G. In January 2026, Defendants purported to adopt a written consent rescinding the Call Right Amendment and revoking the Call Notice.²⁵ On February 20, 2026, Defendants moved to dismiss the Underlying Action as moot because of the purported rescission.²⁶ Walker disputes that the rescission moots the Underlying Action.²⁷

H. Walker filed this action on June 4.²⁸ Defendants answered on June 30.²⁹ The parties then briefed cross-motions for summary judgment on Walker's entitlement to advancement.³⁰ On September 1, the court heard oral argument on the cross-motions and took the matter under advisement.³¹

I. Under Court of Chancery Rule 56, “[t]he Court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” Ct. Ch. R. 56(a). “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 advancement and the pleadings in

²⁵ *Id.* ¶¶ 52–54; *see also* Defs.’ Opening Br. 8.

²⁶ Compl. ¶ 57; *see also* Defs.’ Opening Br. 8.

²⁷ Compl. ¶ 58.

²⁸ *Id.* 1.

²⁹ Defs.’ Answer to Verified Compl. for Advancement 1, Dkt. 17.

³⁰ Dkts. 23, 25, 32–33.

³¹ Judicial Action Form, Dkt. 37.

the proceedings for which advancement is sought.” *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)). “In determining whether to award advancement, the [c]ourt will look to the plain meaning of the advancement provisions in the governing instruments.” *Id.* (citation modified).

IT IS ORDERED, this 21st day of October, 2026, that:

1. Defendants do not dispute Walker’s entitlement to advancement for defending against their claims in the Underlying Action.³² The balance of this Report thus focuses on the disputed issues: whether Walker is entitled to advancement for prosecuting his counterclaims and third-party claims. As explained below, Walker’s counterclaims against Defendants are advanceable because they arise from the same dispute and serve to defeat or offset Defendants’ affirmative claims, but his third-party claims against KKR are not.

The Advancement Right

2. Walker argues the Partnership Agreement grants him advancement for all fees and expenses incurred in the Underlying

³² Compl. ¶ 22; *see also* Defs.’ Combined Answering Br. in Opp’n to Pl.’s Mot. for Summ. J. & Reply Br. in Further Supp. of Their Mot. for Summ. J. 4–5, Dkt. 33 (“Defs.’ Reply Br.”).

Action.³³ Walker contends this right includes his counterclaims and third-party claims.³⁴

3. Section 6.04(e) of the Partnership Agreement requires the Partnership to indemnify and hold harmless any Indemnitee “who was or is a party, or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in right of the Partnership), by reason of such Person’s status as an Indemnitee in and of itself, or by reason of any actions or omissions or alleged actions or omissions arising out of such Indemnitee’s activities either on behalf of the Partnership or in furtherance of the interests of the Partnership or arising out of or in connection with the Partnership and/or any of its Subsidiaries, in each case, against all claims, liabilities, damages, losses, costs and expenses . . . of any nature whatsoever.”³⁵

4. Further, Section 6.04(f) mandates advancement for an Indemnitee “who was, is or is threatened to be made party to, or is otherwise involved in” a proceeding.³⁶

³³ Compl. ¶ 66.

³⁴ *Id.* ¶ 85.

³⁵ P’ship Agr’t § 6.04(e). Plaintiff qualifies as an Indemnitee due to his service as an employee/officer and status as former or current Partner.

³⁶ *Id.* § 6.04(f).

Advancement is Warranted for Walker’s Counterclaims

5. Advancement for fees and expenses incurred in pursuing counterclaims is governed by the two-part test established under *Citadel Holding Corporation v. Roven*.³⁷ Under the two-part *Roven* test, a counterclaim is advanceable if it is “(1) ‘necessarily part of the same dispute,’ in the sense that it qualifies as a compulsory counterclaim under the prevailing Delaware and federal procedural standard, and (2) ‘advanced to defeat, or offset’ the affirmative claims.” *Pontone v. Milso Indus. Corp.*, 100 A.3d 1023, 1055 (Del. Ch. 2014) (“*Pontone II*”) (quoting *Roven* and discussing other authorities).

6. As to the first part of the *Roven* test, “[a] counterclaim is compulsory if it, among other requirements, ‘arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim.’” *Id.* (quoting Fed. R. Civ. P. 13(a)(1) and citing Ct. Ch. R. 13(a)). “The test used to determine whether a claim and counterclaim arise out of the same ‘transaction or occurrence’ is whether the two bear a ‘logical relationship.’” *Id.* at 1056–57 (citing authorities). The “logical relationship” requirement is “viewed liberally to promote judicial economy,” *Transamerica Occidental Life Ins. Co. v. Aviation Off. of Am., Inc.*, 292 F.3d 384, 389 (3d Cir. 2002), and is “informed by considerations such as whether [the claim and counterclaim] share issues of fact and

³⁷ 603 A.2d 818 (Del. 1992).

law in common or would involve presentation of the same evidence,” *Pontone II*, 100 A.3d at 1057 (citing authorities).

7. As to the second part of the *Roven* test, the term “offset” for advancement of compulsory counterclaims “should be read broadly.” *Krauss v. 180 Life Scis. Corp.*, 2022 WL 665323, at *9 n.81 (Del. Ch. Mar. 7, 2022) (citing *Pontone v. Milso Indus. Corp.*, 2014 WL 2439973, at *4–5 (Del. Ch. May 29, 2014) (“*Pontone I*”). In *Pontone I*, the court explained the Supreme Court’s ruling in *Roven* as holding that a compulsory counterclaim for “illegal corporate control” was advanceable because “any recovery on that counterclaim presumably would have offset the director’s liability on the [Securities Exchange Act of 1934] Section 16(b) claim,” even though it “could [not] have negated or defeated the claim.” *Pontone I*, 2014 WL 2439973, at *5.³⁸ The court reaffirmed this point in *Pontone II*, stating that if success on a compulsory counterclaim could “produce an offsetting damages award,” then it qualifies for advancement. 100 A.3d at 1056.

8. Applying the two-part *Roven* test here, I find the counterclaims—counts One, Two, Five, Seven, Eight, Nine, and Ten—are advanceable. Defendants concede Count One is advanceable.³⁹

³⁸ See also *Pontone I*, 2014 WL 2439973, at *5 (noting a broad reading of offset “comports with Delaware public policy in favor of advancement”) (citations omitted).

³⁹ Defs.’ Reply Br. 7 n.4.

Counts Two, Five, Seven, Eight, Nine, and Ten bear a logical relationship to the claims in the Underlying Complaint because each challenges the amendment and repurchase the Underlying Plaintiffs attempt to validate in the Underlying Action.⁴⁰ Counts Two and Five allege that adopting the amendment without Walker's consent and repurchasing his vested units for no consideration violated fiduciary and contractual duties.⁴¹ Counts Seven and Eight characterize that same repurchase as an unauthorized taking and unjust retention of Walker's investment.⁴² Count Nine alleges the amendment and repurchase exploited contractual silence in bad faith to deprive Walker of the protections afforded his vested equity.⁴³ Count Ten alleges those acts violated promises, made on the counterclaim-defendants' behalf, restricting when his units could be repurchased and protecting them against unilateral changes after vesting.⁴⁴ Resolving these claims will require examining the same agreements and circumstances of the amendment and repurchase as in the Underlying Action.⁴⁵ Their additional elements do not eliminate that factual and legal overlap.

⁴⁰ Underlying Countercls. ¶¶ 196–327.

⁴¹ *Id.* ¶¶ 196–211 (Count Two); ¶¶ 238–56 (Count Five).

⁴² *Id.* ¶¶ 274–84 (Count Seven); ¶¶ 285–95 (Count Eight).

⁴³ *Id.* ¶¶ 296–313 (Count Nine).

⁴⁴ *Id.* ¶¶ 314–27 (Count Ten).

⁴⁵ *See* Underlying Compl. ¶¶ 11–49.

9. These counterclaims, if successful, would also serve to defeat the Underlying Plaintiffs' asserted entitlement to acquire Walker's units on the challenged terms. The fiduciary duty, contract, and implied covenant claims contest the lawful adoption or exercise of the amended Call Right.⁴⁶ The conversion and unjust enrichment claims rest on the alleged invalidity of that amendment and the resulting lack of authority to take Walker's units or retain his investment.⁴⁷ The promissory estoppel claim seeks enforcement of promises that would independently restrict the challenged amendment and repurchase.⁴⁸ Success would therefore undermine the declarations sought in the Underlying Action. Defendants' objection that the counterclaims seek damages and other relief beyond those declarations does not change their defensive function.⁴⁹

10. Because Walker's counterclaims satisfy both parts of the *Roven* test, I find they are advanceable insofar as asserted against the Underlying Plaintiffs.

⁴⁶ Underlying Countercls. ¶¶ 196–211 (Count Two); ¶¶ 238–56 (Count Five); ¶¶ 296–313 (Count Nine).

⁴⁷ *Id.* ¶¶ 274–84 (Count Seven); ¶¶ 285–95 (Count Eight).

⁴⁸ *Id.* ¶¶ 314–27 (Count Ten).

⁴⁹ See Defs.' Opening Br. 14–16; Defs.' Reply Br. 7–9.

Advancement is Not Warranted for Walker’s Third-Party Claims

11. Walker’s third-party claims—counts Three, Four, and Six, and counts Seven, Eight, and Ten as they are asserted against KKR—are not advanceable. “The general rule is that offensive litigation is not advanceable.”⁵⁰ In *Krauss*, the court denied summary judgment on entitlement to advancement for a third-party claim because the claimant had not established that the claim against previously unnamed parties was compulsory or served to defeat the claims against her.⁵¹

12. Walker argues that his third-party claims need not satisfy *Roven* because Section 6.04(f) provides advancement to an Indemnatee “made party to” or “otherwise involved in” a covered proceeding, without limiting coverage to expenses incurred “in defending” that proceeding.⁵² But the court recently rejected the same argument in *Edmundson v. Theorem Technologies, Inc.*: the omission of “in defending” language does not, by itself, dispense with *Roven*’s requirements.⁵³ The court explained that *Krauss* applied the compulsory counterclaim

⁵⁰ *Krauss*, 2022 WL 665323, *9 (quoting *Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, *11 (Del. Ch. May 28, 2015)).

⁵¹ *Id.*

⁵² Pl. Peter A. Walker’s Opening Br. in Supp. of His Mot. for Summ. J. Against Defs. Icon Mgmt. Aggregator L.P. & Icon Topco L.P. 27; P’ship Agr’t § 6.04(f).

⁵³ 2026 WL 2688857, at *8 n.69 (Del. Ch. Sept. 14, 2026). The Report in *Edmundson* is currently on exceptions before a constitutionally appointed member of the court. See Exceptions Reassignment Ltr., *Edmundson v. Theorem Tech., Inc.*, C.A. No. 2026-0647-CDW, Dkt. 35.

requirement even though the governing language in *Krauss* was not limited to “in defending” and covered expenses incurred “otherwise participating” in a covered proceeding.⁵⁴ Thus, although Section 6.04(e)’s reference to investigating or defending claims does not expressly exclude offensive litigation, neither that provision nor Section 6.04(f)’s broad participation language establishes that Walker’s third-party claims are exempt from *Roven*.

13. Walker’s claims against KKR do not satisfy that standard. Rule 13(a) requires certain counterclaims against an opposing party; Rule 14(a)(1) permits, but does not require, impleader of a nonparty potentially liable for the claim against the defending party.⁵⁵ KKR asserted no claim against Walker, and joining it does not make his claims against it compulsory. Nor has Walker shown that pursuing affirmative relief against KKR serves to defeat or offset the claims against him. As in *Krauss*, the assertion of additional claims against a previously unnamed party does not establish their defensive character.⁵⁶ Walker therefore is not entitled to advancement for those claims.

⁵⁴ *Edmundson*, 2026 WL 2688857, at *8 n.69 (citing *Krauss*, 2022 WL 665323, at *2, *8 n.74).

⁵⁵ Ct. Ch. R. 13(a)(1), 14(a)(1).

⁵⁶ *See Krauss*, 2022 WL 665323, at *9 (“I cannot conclude, as a matter of law, that Krauss was acting to defeat claims against her by pleading an additional claim against third-party defendants. Krauss cites no authority that would support a different result.”).

**Walker is Entitled to Fees-on-Fees
and Interest to the Extent of His Success**

14. Walker is entitled to fees on fees to the extent of his success on the merits of this advancement action. This is the default rule in Delaware, and the Partnership Agreement does not provide otherwise. *See Leiske v. Kidd*, 2026 WL 265493, at *5 (Del. Ch. Feb. 2, 2026) (citing *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 561–62 (Del. 2002)); *see also Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 178, 182–83 (Del. Ch. 2003).

15. Walker is also entitled to prejudgment interest at the legal rate.⁵⁷ Prejudgment interest is ordinarily awarded as a matter of right. *See Roven*, 603 A.2d at 826. “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.’” *Pontone II*, 100 A.3d at 1058 (quoting *Roven*, 603 A.2d at 826 & n.10).

* * *

16. This is a Report under Court of Chancery Rule 144. Under Rule 144(d)(2) and the Chancellor’s assignment letter,⁵⁸ any party seeking to take exception to this Report must file a notice of exceptions by October 26, 2026.

⁵⁷ *See* 6 Del. C. § 2301(a).

⁵⁸ Dkt. 3.

17. If no exceptions are taken by October 26 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 an affirming decision from a constitutionally appointed officer of this court, the parties must meet and confer 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.*⁵⁹

/s/ Christian Douglas Wright
Magistrate in Chancery

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