

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PHIL MEZEY,

Plaintiff,

v.

SYNERGY THERMOGEN, INC.,

Defendant.

C.A. No. 2026-0834-CDW

**ORDER RESOLVING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DEFENDANT'S MOTION TO DISMISS ON
ENTITLEMENT TO ADVANCEMENT**

WHEREAS:

A. Defendant Synergy Thermogen, Inc. has sued Blackbrush Oil & Gas, L.P., an oil and gas exploration company, its key officers and principals, and related companies in Texas.¹ The Underlying Action arises out of a failed business relationship, in which Synergy contends the Texas defendants pretended to act as trusted business advisors but instead conspired to interfere with and harm Synergy's business.² Synergy asserts claims for breach of contract, tortious interference with contractual relations, fraud, fraudulent inducement, and breach of fiduciary duty.³

¹ *Synergy Thermogen, Inc. v. Blackbrush Oil & Gas, L.P.*, Cause No. 25-BC01B-011 (Tex. Bus. Ct.) ("Underlying Action").

² 4th Am. Pet. ¶¶ 1–11, Underlying Action (Aug. 4, 2026), Transmittal Aff. of Heather S. Townsend, Esq. Ex. 3, Dkt. 16. ("Fourth Amended Petition" and cited as "4th Am. Pet.>").

³ *Id.* ¶¶ 156–98.

B. Plaintiff Phil Mezey, one of Blackbrush’s principals, seeks advancement from Synergy for fees and expenses he is incurring in the Underlying Action.⁴ Mezey contends he is entitled to advancement because Synergy has alleged in the Underlying Action that he (1) agreed to become a director of Synergy and (2) in fact did become one, and Synergy’s certificate of incorporation⁵ and bylaws⁶ provide advancement for individuals serving in both of those capacities.⁷

C. The operative pleading in the Underlying Action when Mezey filed this advancement action, the Third Amended Petition, included two counts based on Mezey’s agreement to serve as director: promissory estoppel and statutory fraud.⁸ After Mezey commenced this advancement action, Synergy filed the Fourth Amended Petition, removing those counts.⁹

⁴ See Verified Compl. for Advancement, Dkt. 1 (“Complaint” and cited as “Compl.”).

⁵ 2d Am. & Restated Cert. of Incorpor. of Synergy Thermogen, Inc., Compl. Ex. A, Dkt. 1 (“Certificate” and cited as “Cert.”).

⁶ Bylaws of Synergy Thermogen, Inc., Compl. Ex. B (“Bylaws”).

⁷ See Compl. ¶ 2.

⁸ Pls.’ 3d Am. Pet. ¶¶ 157–64, 193–97, Underlying Action (Nov. 14, 2025) (“Third Amended Petition” and cited as “3d Am. Pet.”). The Third Amended Petition is Exhibit A to Synergy’s opening brief. See Def. Synergy Thermogen, Inc.’s Opening Br. in Support of its Mot. to Dismiss or Stay Pl.’s Compl. for Advancement and in Opp’n to Pl.’s Mot. for Summ. J., Dkt. 13 (“Synergy Opening Br.”).

⁹ See generally Redline of 4th Am. Pet., Pl.’s Reply Br. in Further Support of His Mot. for Summ. J. and Answering Br. in Opp’n to Def.’s Mot. to Dismiss or to Stay Ex. 4, Dkt. 16.

D. The remaining claims in the Underlying Action assert that Mezey, together with other defendants, breached his fiduciary duties by “attempting to force Synergy out of business, taking advantage of Synergy’s financial distress by stealing Synergy’s technology, trade secrets, and confidential information to use for their own purposes, and misrepresenting ownership of Synergy’s technology.”¹⁰

E. Synergy alleges Mezey owed fiduciary duties in his capacity as a “trusted business advisor[]” to Synergy, under a Board Member & Advisory Agreement (“BMAA”)¹¹ and under Texas law, because “Synergy relied upon, placed confidence in, and wholly trusted” Mezey.¹²

F. Synergy maintains Mezey had “specific knowledge, expertise and perspective” in the oil and gas industry that Synergy lacked and relied on Mezey’s advice and guidance concerning its strategic growth and business affairs since 2020.¹³ Synergy also contends Mezey advised Synergy he “had the experience, network, and internal financial ability to guarantee Synergy access to early lease revenue, sufficient capital, low-cost debt, additional clients, and

¹⁰ Pet’r’s Orig. Pet. ¶ 176, Underlying Action (Mar. 25, 2025), Transmittal Aff. of Tyler D. Mayhew, Esq. Ex. 2, Dkt. 10 (“Pet’r’s Orig. Pet.”); *see also* 4th Am. Pet. ¶ 198.

¹¹ The BMAA is attached as Exhibit 1 to Exhibit E to the Complaint.

¹² 4th Am. Pet. ¶ 194.

¹³ *Id.* ¶¶ 27, 190–91, 195.

contracts that would deploy Synergy’s technology at hundreds of well sites that would make Synergy’s business a success.”¹⁴

G. Prior to the BMAA’s execution, in a February 2021 letter, Mezey communicated with prospective investors on Synergy’s behalf, stating Mezey “will provide leadership on the board of directors.”¹⁵

H. In order to invest in and develop Synergy’s business, Mezey and other parties formed a special purpose LLC to enter into the BMAA with Synergy on June 10, 2021.¹⁶ Section 1 of the BMAA says “[Synergy] hereby agrees . . . to appoint a board member to the Company (in accordance with Section 7[(j)a below)” and that the Advisor agrees “that Phillip Mezey shall serve as the board member to Company to represent and be appointed by the Advisor.”¹⁷ Section 7(a) and Exhibit B of the BMAA provide “the Advisor shall appoint Phillip Mezey” to the board “in an interim capacity” “from the time of this Agreement,” and after, to a “two-year term.”¹⁸ Synergy’s board approved the BMAA through a written consent.¹⁹

¹⁴ *Id.* ¶ 193.

¹⁵ *Id.* ¶ 197; Ltr. from P. Mezey, Blackbrush Co-Founder and Board Member (Feb. 5, 2021), Compl. Ex. E Ex. 2 (“February 2021 letter” and cited as “Feb. 2021 Ltr.”).

¹⁶ 4th Am. Pet. ¶¶ 53, 61, 190–96; *see* Compl. ¶ 15.

¹⁷ *See* BMAA § 1.

¹⁸ *See id.* § 7(a).

¹⁹ *See* Written Consent in Lieu of a Special Mtg. of the Bd. of Dirs. of Synergy Thermogen, Inc. (Apr. 16, 2021), Transmittal Aff. of Tyler D. Mayhew, Esq. Ex. 1, Dkt. 10 (“Written Consent”).

I. The terms of the BMAA indicate Mezey would be appointed to Synergy's board, but Mezey concedes he never actually served as a Synergy director or received board-level information entrusted to Synergy directors.²⁰

J. On March 30, 2026, Mezey sent an advancement demand to Synergy.²¹ The demand included a written undertaking "to repay any expenses (including attorneys' fees) paid, advanced or reimbursed by Synergy to the extent that it is ultimately determined that" Mezey is not entitled to indemnification by Synergy under its Certificate, Bylaws, or the Delaware General Corporation Law.²²

K. On April 17, 2026, Synergy rejected the advancement demand.²³ According to Synergy, Mezey is not entitled to indemnification and advancement because "Mezey was never formally appointed to the Board of Directors of Synergy or became an officer thereof," judicial estoppel bars his demand, and, even if Mezey's role was in a covered capacity, the claims against him do not arise "by reason of the fact" of his purported status as a prospective board member.²⁴

²⁰ Synergy Opening Br. Ex. D, Mezey Dep. 229.

²¹ Ltr. from Nicholas D. Mozal, Esquire to Synergy Thermogen, Inc. (Mar. 30, 2026), Compl. Ex. C.

²² *Id.*

²³ Ltr. from William B. Larson, Jr., Esquire to Nicholas D. Mozal, Esquire (Apr. 17, 2026), Compl. Ex. D.

²⁴ *Id.* at 1.

L. On June 25, 2026, Mezey filed the Verified Complaint for Advancement.²⁵ The parties stipulated to a schedule for briefing as Mezey moved for summary judgment on the issue of his entitlement to advancement, while Synergy moved to dismiss this case on laches grounds or to stay it pending the resolution of the Underlying Action.²⁶

M. The court heard oral argument on August 31, 2026, and took the matter under advisement on that date.²⁷

IT IS ORDERED, this 22nd day of October, 2026, that:

1. The parties' motions differ in procedural posture.²⁸
2. Mezey, as is common in advancement cases, moved for summary judgment.²⁹ 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 law." Ct. Ch. R. 56(a).³⁰ "Summary

²⁵ Compl., Dkt. 1.

²⁶ Dkts. 8–9.

²⁷ Dkt. 23.

²⁸ See Dkts. 10, 13.

²⁹ See Dkt. 10.

³⁰ Court of Chancery Rule 56 was amended after this case was filed. 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>. According to the comment accompanying amended Rule 56, 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.

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 the proceedings for which advancement is sought.’” *Rhodes v. bioMerieux, Inc.*, 2024 WL 669034, *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).

3. Synergy did not move for summary judgment. It moved “under Court of Chancery Rule 12(b)(3) and this Court’s inherent authority” to dismiss the action on laches grounds or stay it pending resolution of the Underlying Action.³¹ Synergy contends Mezey slept on his advancement rights for 15 months and is only now seeking advancement, as the parties head to trial, “to gain a litigation and financial advantage” in the Underlying Action.³²

³¹ See Dkt. 13.

³² Synergy Opening Br. 1, 4–6, 26–31.

4. Mezey asserts mandatory advancement rights under the Certificate because he agreed to become a director.³³ Article VI, Section

A states:

The Company shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was, or has agreed to become, a director 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, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an “**Indemnatee**”), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of an Indemnatee in connection with such action, suit or proceeding and any appeal therefrom.³⁴

5. Further, Article VI, Section C provides:

In the event that the Company does not assume the defense of any action, suit, proceeding or investigation of which the Company receives notice under this Article, the Company shall pay in advance of the final

³³ See Compl. ¶ 26.

³⁴ Cert. art. VI, § A.

disposition of such matter any expenses (including attorneys' fees) incurred by an Indemnatee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom; provided, however, that the payment of such expenses incurred by an Indemnatee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnatee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnatee is not entitled to be indemnified by the Company as authorized in this Article, which undertaking shall be accepted without reference to the financial ability of the Indemnatee to make such repayment; and further provided that no such advancement of expenses shall be made under this Article if it is determined that (i) the Indemnatee did not act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Company, or (ii) with respect to any criminal action or proceeding, the Indemnatee had reasonable cause to believe conduct was unlawful.³⁵

6. Mezey also asserts mandatory advancement under the Bylaws for his role as a purported interim board member.³⁶ Article VII, Section 7.02 provides:

The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law (including Section 145 of the General Corporation Law of the State of Delaware and Section 17(h) of the Investment Company Act of 1940) as it presently exists or may hereafter be amended and/or supplemented, any person (a

³⁵ *Id.* art. VI, § C.

³⁶ Compl. ¶¶ 2, 4, 28; *see also* Bylaws art. VII, § 7.02.

“**Covered Person**”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or 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 or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Covered Person.³⁷

7. Under these provisions of Synergy’s Certificate and Bylaws, an individual has a mandatory right to advancement if they are made a party to any proceeding by reason of the fact that they are, were, or agreed to become a director or officer of Synergy.

8. Mezey’s agreement to serve as a Synergy director is a covered capacity under the plain and unambiguous language of the Certificate. The Certificate defines a covered person as one who “is or was, or has agreed to become, a director or officer of [Synergy].”³⁸ Mezey agreed to become a director in the February 2021 letter and under the

³⁷ Bylaws art. VII, § 7.02.

³⁸ Cert. art. VI, § A.

BMAA in June 2021.³⁹ Mezey is thus entitled to advancement if the claims in the Underlying Action arise against him “by reason of the fact” that he agreed to serve as a Synergy director.

9. An advancement claim arises “by reason of the fact” of an individual’s corporate capacity “if there is a nexus or causal connection between any of the underlying proceedings . . . and [their] official corporate capacity . . . without regard to [their] motivation for engaging in that conduct.”⁴⁰ The requisite nexus or causal connection “is established if the corporate powers were used or necessary for the commission of the alleged misconduct.”⁴¹

10. “By reason of the fact” is interpreted “broadly and in favor of indemnification and advancement,”⁴² but the court does not construe the requirement “so broadly as to encompass every suit brought against an officer and director.”⁴³

11. Opposing Mezey’s summary judgment motion, Synergy contends that Mezey is not entitled to advancement because the underlying claims concern Mezey’s alleged misuse of information

³⁹ 4th Am. Pet. ¶¶ 61, 190–97; *see* Compl. ¶¶ 15–17; 3d Am. Pet. ¶ 40; BMAA §§ 1, 7(a); Feb. 2021 Ltr.; *see also* Written Consent.

⁴⁰ *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 214 (Del. 2005).

⁴¹ *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1011 (Del. Ch. 2007).

⁴² *Alalfi Fam. Tr. v. Cohen*, 2020 WL 13854374, at *3 (Del. Ch. Feb. 19, 2020).

⁴³ *Weaver v. ZeniMax Media, Inc.*, 2004 WL 243163, at *3 (Del. Ch. Jan. 30, 2004).

entrusted to him as an advisor, not conduct arising “by reason of the fact” that Mezey had agreed to serve as director.⁴⁴

12. “Delaware law recognizes the potential for parties to eliminate their advancement obligations by amending their claims.”⁴⁵ When amended claims eliminate the basis for an advancement right, the advancement dispute may be moot.⁴⁶ Such efforts may prompt the court’s “skepticism” toward “artful attempts at pleading around such a right.”⁴⁷ The court looks to substance over form.⁴⁸ “The ‘mere relabeling’ of claims will not support modification when the underlying litigation remains substantially the same.”⁴⁹

⁴⁴ Synergy Opening Br. 16–26; *see also* Def. Synergy Thermogen, Inc.’s Reply Br. in Supp. of its Mot. to Dismiss or Stay Pl.’s Compl. 4–10, Dkt. 18. Though Synergy did not itself move for summary judgment, it correctly notes the court may grant summary judgment in its favor when denying Mezey’s motion. *See* Synergy Opening Br. 1 n.1 (citing *Sun-Times Media Gp. v. Black*, 954 A.2d 380, 388 (Del. Ch. 2008)). This inherent authority was made explicit with the June 2026 amendments to Court of Chancery Rule 56. *See* Ct. Ch. R. 56(f) (“When presented with a motion for summary judgment, the Court may grant summary judgment for a nonmovant[.]”).

⁴⁵ *Carr v. Glob. Payments Inc.*, 2019 WL 6726214, at *4 (Del. Ch. Dec. 11, 2019) (citing *Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, at *6 (Del. Ch. May 28, 2015)); *see also* *Xu Hong Bin v. Heckmann Corp.*, 2010 WL 187018, at *2 (Del. Ch. Jan. 8, 2010) (concluding that a corporation could avoid advancement by representing that it “is not pursuing, and will not pursue” certain pre-merger claims).

⁴⁶ *Carr*, 2019 WL 6726214, at *4.

⁴⁷ *Id.*

⁴⁸ *Barr v. Genesis CMG Hldgs., LLC*, 2025 WL 3720720, at *4 (Del. Ch. Dec. 23, 2025).

⁴⁹ *Carr*, 2019 WL 6726214, at *4 (citing *Brown v. LiveOps, Inc.*, 903 A.2d 324, 325 (Del. Ch. June 12, 2006)); *Keller v. Steep Hill, Inc.*, 2023 WL 5624215, at *9 (Del. Ch. Aug. 31, 2023) (“[O]ur courts focus not on what label is ascribed to a claim, but rather the conduct underlying it.”).

13. Here, the Fourth Amended Petition substantively changed the claims against Mezey by removing the promissory estoppel and statutory fraud counts based on his agreement to serve on Synergy's board.⁵⁰ Although the prior petitions referred to Mezey as a "board member,"⁵¹ the court examines the underlying conduct, not the label attached to the role.⁵² Mezey was not appointed to the board, invited to a board meeting, or given any information customarily provided to a new board member.⁵³ Any remaining claims concern his advisory and commercial activities and seek to hold him responsible for the other entity defendants' obligations. Next, I assess whether those claims arise by reason of his agreement to serve as a Synergy director.

14. The fiduciary duty claim arises from the advisory relationship between Mezey and Synergy.⁵⁴ Synergy alleges that it trusted Mezey's engineering knowledge, industry experience, and ability

⁵⁰ See Redline of 4th Am. Pet. ¶¶ 175–83, 201–02, Pl.'s Reply Br. in Further Support of His Mot. for Summ. J. and Answering Br. in Opp'n to Def.'s Mot. to Dismiss or to Stay Ex. 4, Dkt. 16.

⁵¹ Pet'r's Orig. Pet. ¶¶ 1, 9, 175.

⁵² *Barr*, 2025 WL 3720720, at *4 ("Delaware law recognizes the ability of a defendant corporation to moot an advancement dispute by removing any [claims] that would trigger an advancement right . . . [.]"); See *Carr*, 2019 WL 6726214, at *7 (quoting *Brown*, 903 A.2d 324, 329 ("The court 'looks to substance as well as form, and it would be inequitable to allow [a party] to evade advancement' if the amendments are mere cosmetic modifications that leave the underlying claim essentially unaltered.")).

⁵³ Synergy Opening Br. Ex. D, Mezey Dep. 229.

⁵⁴ 4th Am. Pet. ¶¶ 189–201.

to obtain financing and customers, and that he breached the resulting duties by withholding advice, diverting investment, and misusing Synergy's equipment and information.⁵⁵ The alleged duties and breaches concern the business advice and assistance he undertook to provide.⁵⁶ Those undertakings are distinct from his agreement to serve as a director. Thus, Synergy's corporate powers were not "used or necessary for the commission of the alleged misconduct."⁵⁷ Instead, the claims concern personal obligations arising from Mezey's advisory relationship, which did not require him to exercise entrusted corporate powers.⁵⁸

15. The tortious interference claim concerns the Underlying Action defendants' refusal to endorse Synergy's technology and their withholding of data validating its performance, which allegedly caused prospective investors and customers to withdraw their support.⁵⁹ The claim thus arises from the alleged withholding of commercial support, which has no connection to Mezey's agreement to serve on Synergy's board.

⁵⁵ *Id.* ¶¶ 190–98.

⁵⁶ *Id.* ¶¶ 189–201.

⁵⁷ *Bernstein*, 953 A.2d 1003, 1011.

⁵⁸ *See Weaver*, 2004 WL 243163, at *3.

⁵⁹ 4th Am. Pet. ¶¶ 168–74.

16. The alter ego allegations seek to hold Mezey liable for the entity defendants' obligations because he allegedly controlled those companies and used them to evade liability.⁶⁰ The claim concerns failures to raise capital, finance and deploy equipment, and obtain authorization for vendor commitments.⁶¹ These were obligations undertaken by the entity defendants in their dealings with Synergy.⁶² The fraud and negligent misrepresentation claims similarly concern assurances about financing, equipment deployment, customers, and ownership of Synergy's technology.⁶³ These claims arise from the parties' commercial dealings. Seeking to impose those liabilities on Mezey through his ownership and control of the defendant companies does not connect them to his agreement to serve as a Synergy director.

17. The conspiracy allegations concern a coordinated effort to undermine Synergy by withholding promised commercial support, misusing its technology and equipment, diverting investment, interfering with investors, and obtaining litigation information from former employees.⁶⁴ The alleged conspiracy concerns the same business

⁶⁰ *Id.* ¶¶ 213–15.

⁶¹ *Id.* ¶¶ 156–67.

⁶² *Id.* ¶ 157.

⁶³ *Id.* ¶¶ 175–88.

⁶⁴ *Id.* ¶¶ 216–19.

conduct as the other claims.⁶⁵ Mezey's alleged liability rests on his participation in those efforts and does not arise from his agreement to serve on Synergy's board.

18. Based on the Fourth Amended Petition, the claims against Mezey in the Underlying Action do not arise by reason of Mezey's agreement to serve as a director of Synergy. Synergy therefore has no advancement obligation to Mezey under its Certificate or Bylaws. I thus recommend that summary judgment be granted in favor of Synergy.⁶⁶

19. This is a Final Report under Court of Chancery Rule 144(b)(2). Under Rule 144(d)(2) and the Chancellor's assignment letter, any party seeking to take exceptions to this Final Report must file a notice of exceptions by October 27, 2026.

/s/ Christian Douglas Wright
Magistrate in Chancery

⁶⁵ See *id.* ¶¶ 156–215.

⁶⁶ Because of this recommendation, I do not reach the merits of Synergy's motion to dismiss.