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OF THE
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RE: *Invictus Special Situations Master I, L.P. v. Invictus Global Management, LLC, et al.*, C.A. No. 2023-1099-NAC

Dear Counsel:

This letter decision resolves the Motion to Amend Judgments ("Motion to Amend") brought by all Defendants;[1] the Motion for Leave to Supplement the Motion to Amend ("Motion for Leave") brought by Amit Patel, Invictus Special Situations I GP, LLC ("Invictus GP"), and Invictus Global Management, LLC ("IGM");[2] and Cindy

[1] Dkt. 384; Dkt. 401; Dkt. 403.

[2] Dkt. 443; Dkt. 447; Dkt. 460.

Chen Delano's supplemental submissions concerning the Motion to Amend.[3] For the reasons stated herein, I deny both motions.

I. BACKGROUND

Some background on the procedural history of this *expedited* case, which has been ongoing since *2023*, is helpful. In 2019, Patel and Delano founded Invictus GP and IGM.[4] At all relevant times, Patel and Delano controlled Invictus GP and IGM.[5] In 2020, Invictus Special Situations Master I, L.P. ("Fund") executed a partnership agreement designating Invictus GP as its general partner.[6] The Fund also executed an investment management agreement which designated IGM as the Fund's investment management company ("Management Agreement").[7] Invictus GP and IGM continued as the Fund's general partner and investment manager until September 29, 2023, when a supermajority of limited partners removed and replaced IGM and Invictus GP with TREO Asset Management, LLC and TREO Vitus GP, LLC ("TREO").[8]

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[3] Dkt. 440; Dkt. 448; Dkt. 461.

[4] *Invictus Special Situations Master I, L.P. v. Invictus Glob. Mgmt., LLC*, 2024 WL 1646093, at *1 (Del. Ch. Apr. 17, 2024).

[5] *Id.* (citing PTO ¶¶ 9–10 (Dkt. 106)).

[6] *Id.*

[7] *Id.*

[8] *Id.* at *2.

After IGM and Invictus GP were removed, IGM kept documents relating to the Fund that were necessary for the Fund's ongoing operations ("Books and Records").[9] IGM also kept over $9 million of funds tied to debtor-in-possession financing extended by the Fund to DeCurtis Holdings LLC and DeCurtis LLC, and the Tuesday Morning Corporation ("Retained Funds").[10]

TREO, acting through the Fund, brought this expedited proceeding on October 30, 2023, to recover the Books and Records and the Retained Funds.[11] In response, Defendants asserted counterclaims for advancement.[12] The Fund asserted certain defenses to advancement arising under ERISA because the outside investments made in the Fund were, in part, ERISA plan assets.[13] Initially, the court and the parties contemplated a trial on all issues on January 11 and 12, 2024.[14] Then, owing to a breakdown of the discovery process, the court bifurcated this proceeding such that the scope of the January trial would be confined to the Books and Records issue.[15] Five days before trial, on a Saturday, Defendants removed the case to the United

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[9] *Id.*

[10] Dkt. 214 at 7.

[11] *See generally* Compl. (Dkt. 1).

[12] *See* Dkt. 40.

[13] Dkt. 51; *see generally* Dkt. 218; Dkt. 336.

[14] *See* Dkt. 39.

[15] *See generally* Dkt. 111.

States District Court for the District of Delaware.[16] Defendants' counsel did not appear for the Monday morning pre-trial conference two days later.[17] Trial did not happen.

The District Court promptly remanded the case, finding the notice of removal both untimely and meritless.[18] The court finally held trial on the counts of the Fund's complaint relating to the return of the Books and Records on February 6, 2024.[19] The day before trial, Defendants filed a letter with the court indicating that they planned to address only arguments relating to a subset of the Books and Records and would turn over any other documents to the Fund.[20] Yet they did not. Defendants continued to withhold all the Books and Records, and, despite their letter on the eve of trial stating otherwise, Defendants argued in post-trial briefing that the Fund's claims should fail in their entirety.[21]

In my post-trial opinion, I determined that the Fund was entitled to any documents related to the Fund and its management and ordered specific performance

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[16] Dkt. 82.

[17] *See* Dkt. 84; Dkt. 112.

[18] *See* Dkt. 86.

[19] Dkt. 114.

[20] Dkt. 109; Dkt. 110.

[21] *See* Dkt. 119; Dkt. 127; *Invictus*, 2024 WL 1646093, at *8.

under Section 7 of the Management Agreement.[22] I also noted that IGM was not required to turn over documents unrelated to the Fund.[23] On April 17, 2024, I entered an Order and Partial Final Judgment resolving the Books and Records issue ("Books and Records Order").[24] Of note, the order compelled "*Defendants* . . . to turn over to the Fund [the Books and Records of] . . . Invictus Global Management, LLC[.]"[25] Defendants' proposed order, which was filed alongside their post-trial brief, although I did not enter it, similarly contemplated compelling "*Defendants* . . . to turn over to the Fund" certain documents "in the possession and control of Invictus Global Management, LLC[.]"[26]

The parties then embarked on briefing and arguing cross-motions for summary judgment to resolve the Retained Funds claim and advancement counterclaims. I determined first that IGM had wrongfully withheld the Retained Funds.[27] To implement this ruling, I entered a form of order that was "agreed-to" by the parties

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[22] *Invictus*, 2024 WL 1646093, at *4–9.

[23] The number of such documents was likely small. *Id.* at *9.

[24] Dkt. 134.

[25] *Id.* ¶ 2 (emphasis added).

[26] Dkt. 119 Ex. A ¶ 3 (emphasis added).

[27] Dkt. 214.

("Retained Funds Order").[28] The order's operative clauses do not mention any defendant besides IGM.[29]

In a series of subsequent rulings I determined that, although Defendants would be entitled to advancement under the relevant contracts, ERISA Section 1110[30] precluded advancement here.[31] In April 2026, through an interlocutory appeal, the Delaware Supreme Court comprehensively resolved the advancement counterclaims in Defendants' favor, determining that Section 1110 did not, in fact, present a barrier to advancement.[32] Shortly after the Supreme Court's opinion was first published, the Justices issued a corrected opinion clarifying that the Fund's claims were "state-law claims in state court" as opposed to "state-law fiduciary duty claims in state court."[33]

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[28] Dkt. 209; Dkt. 210.

[29] *See* Dkt. 210.

[30] 29 U.S.C. § 1110.

[31] Dkt. 227; Dkt. 332; Dkt. 383.

[32] *See Invictus Glob. Mgmt., LLC v. Invictus Special Situations Master I, L.P.*, 362 A.3d 297, 299–300 (Del. April 13, 2026, revised May 4, 2026).

[33] *See* Opinion at 18, *Invictus Glob. Mgmt., LLC v. Invictus Special Situations Master I, L.P.*, No. 283, 2025 (Del. Apr. 13, 2026) (Dkt. 29); Correction memorandum regarding Revised Opinion, *Invictus Glob. Mgmt., LLC v. Invictus Special Situations Master I, L.P.*, No. 283, 2025 (Del. May 4, 2026) (Dkt. 33).

The Supreme Court opinion says little about the Books and Records or Retained Funds issues.[34]

Before the interlocutory appeal, Defendants filed the Motion to Amend.[35] The crux of this motion is an argument that the court erred by entering implementing orders on the Books and Records and Retained Funds issues. Specifically, Defendants contend that the court erred when it imposed obligations on Patel, Delano, and Invictus GP, even though they were not parties to the Management Agreement and the Fund only asserted in its complaint that IGM wrongfully withheld the Retained Funds.[36]

Following the Supreme Court's ruling, the parties filed a stipulation and proposed order outlining the remaining issues in this case.[37] The parties agreed that the Fund would file a second amended complaint to moot a Motion to Dismiss tied to the Motion to Amend, leaving only the Motion to Amend, a "New Motion" further

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[34] To be clear, the scope of the interlocutory appeal did not include either the Books and Records Order or the Retained Funds Order. *See* Notice of Appeal from Interlocutory Orders, *Invictus Glob. Mgmt., LLC v. Invictus Special Situations Master I, L.P.*, No. 283, 2025 (Del. July 1, 2025) (Dkt. 1).

[35] *See* Dkt. 384. This motion was tied to a Motion to Dismiss an amended complaint filed by the Fund. *Id.*

[36] *Id.*

[37] *See* Dkt. 435.

addressing the Motion to Amend, and any outstanding items tied to the Fund's ongoing advancement obligations to be decided.[38]

The New Motion, submitted by Patel, Invictus GP, and IGM, is the Motion for Leave.[39] The Motion for Leave argues, on top of the Motion to Amend, that IGM should be permitted to relitigate the Retained Funds issue because it was prejudiced by not receiving advancement until after the Supreme Court ruled in April 2026.[40] Delano also filed supplemental submissions contending that the corrected language in the Supreme Court's opinion confirms that the prior judgments in this case should be amended.[41] The Court heard oral argument on the Motion to Amend, the Motion for Leave, and the supplemental submissions on October 29, 2026.[42]

II. ANALYSIS

A. Legal Standard

Under Court of Chancery Rule 54(b), an order "that adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties does not end the action

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[38] *Id.*

[39] *See* Dkt. 443.

[40] *Id.* ¶ 1.

[41] *See* Dkt. 440.

[42] Dkt. 480.

as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."[43]

> "Rule 54(b) does not, on its face, 'identify a standard for determining when it would be warranted to revise an earlier interlocutory order' under the second sentence, but the 'law-of-the-case doctrine fills the gap.' That is, at a minimum, modifying an order under Rule 54(b) calls for the court to apply the same standard it uses when considering whether to modify a finding or holding that has become law of the case."[44]

"The law of the case doctrine . . . is intended to prevent pernicious serial litigation of issues already decided in the matter at bar."[45] It is a "self-imposed restriction that prohibits courts from revisiting issues previously decided, with the intent to promote 'efficiency, finality, stability and respect for the judicial system.'"[46]

"Once a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that

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[43] Ct. Ch. R. 54(b).

[44] *Tornetta v. Musk*, 326 A.3d 1203, 1223 (Del. Ch. 2024), *aff'd in part, rev'd in part on other grounds sub nom. In re Tesla, Inc. Deriv. Litig.*, 351 A.3d 1005 (Del. 2025) (quoting *Perry v. Neupert*, 2019 WL 719000, at *28 n.221 (Del. Ch. Feb. 15, 2019)); *see also Tornetta*, 326 A.3d at 1223 n.94 ("[W]hile Rule 54(b) gives a [] court discretion to revisit earlier rulings in the same case, such discretion is subject to the caveat that where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." (quoting *U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC*, 899 F.3d 236, 256–57 (4th Cir. 2018))).

[45] *Sciabacucchi v. Malone*, 2021 WL 3662394, at *4 (Del. Ch. Aug. 18, 2021).

[46] *State v. Wright*, 131 A.3d 310, 321 (Del. 2016) (quoting *Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 39 (Del. 2005)).

court unless compelling reason to do so appears."[47] Such compelling reasons include where a previous ruling was "clearly in error[,]" where "there is sufficient equitable concern of preventing injustice[,]" or where "there has been an important change of circumstances."[48]

B. The Orders Should Not Be Amended

Delano, Patel, and Invictus GP claim that the Books and Records Order, which compels "Defendants" to turn over Books and Records held by IGM, should be amended to clarify that it only runs against IGM because only IGM was a party to the Management Agreement.[49] To be sure, generally, "only a party to a contract may be sued for breach of that contract."[50] But this rule comes with various exceptions[51]

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[47] *Zirn v. VLI Corp.*, 1994 WL 548938, at *2 (Del. Ch. Sept. 23, 1994); *see also Dinkevich v. Deutsche Telekom AG*, 2025 WL 1752098, at *3 (Del. Ch. June 20, 2025).

[48] *Sullivan v. Mayor of Town of Elsmere*, 23 A.3d 128, 134 (Del. 2011); *Hamilton v. State*, 831 A.2d 881, 887 (Del. 2003).

[49] Dkt. 384.

[50] *Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 817 A.2d 160, 172 (Del. 2002).

[51] *See, e.g.*, *Flores v. Strauss Water Ltd.*, 2016 WL 5243950, at *15 (Del. Ch. Sept. 22, 2016); *Westendorf v. Gateway 2000, Inc.*, 2000 WL 307369, at *4 (Del. Ch. Mar. 16, 2000). Delano incorrectly contends that Defendants' argument is "not a procedural technicality subject to waiver—it is a substantive limitation on liability[.]" Dkt. 461 at ¶ 19. In fact, this argument can be waived. *See Medicalgorithmics S.A. v. AMI Monitoring, Inc.*, 2016 WL 4401038, at *18 (Del. Ch. Aug. 18, 2016) ("In footnotes in their post-trial briefing, defendants argue that Spectocor cannot be held liable under the 2014 SAA because it, unlike AMI, did not sign the agreement. Spectocor originally raised this argument in June 2015 in a speaking motion for

and Defendants did not raise this issue at the Books and Records trial. Had Defendants done so, Plaintiffs would have had a chance to respond, and the court could have addressed the issue, with the benefit of full briefing, at that time. Instead, Defendants did not raise this point until they filed the Motion to Amend. In fact, as mentioned above, *Defendants'* proposed order, filed with their post-trial briefing in the Books and Records phase, also contemplated compelling Defendants, as a group, to cause the documents held by IGM to be turned over to the Fund using precisely the language they now contend is erroneous.[52] This dissonance in Defendants' argument is striking.[53]

The same goes for the Retained Funds Order. There, the form of order submitted by the parties was negotiated and agreed to, and nobody at the time objected.[54] In any event, the Retained Funds Order mentions only IGM.[55]

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judgment on the pleadings. Medicalgorithmics filed a brief opposing that motion, after which Spectocor failed to file a reply brief or to pursue the motion further. As such, I conclude that Spectocor has abandoned that motion and waived the argument.").

[52] Dkt. 119 Ex. A.

[53] Nor does the Motion to Amend explain how the Books and Records Order is clearly in error given that, as stipulated by the parties, Patel and Delano "controlled IGM at all relevant times." *Invictus*, 2024 WL 1646093, at *1 (citing PTO ¶¶ 9–10 (Dkt. 106)).

[54] *See* Dkt. 209.

[55] *See* Dkt. 210 ¶¶ 1–3.

Delano notes that this court in *Frederick-Conaway v. Baird* clarified "sloppy" language from a decision in 2012 in a subsequent case involving the same entity in 2015.[56] There is no question that this court has the power to clarify its judgments when they are erroneous or unclear and such error or lack of clarity has a materially prejudicial effect on a party.[57] *Frederick-Conaway* is a good example of that. That case says nothing, though, about the facts at hand here: two judgments that are not clearly in error and contain language similar, if not identical, to language submitted by or agreed to by the parties. If anything, it further confirms that the facts here do not warrant revising either judgment.

Lastly, it has always been the case—and the parties have always known—that Patel and Delano did not sign the Management Agreement in their individual capacities.[58]

In sum, the Motion to Amend falls well short of identifying any error, injustice, or changed circumstances such that the law of the case doctrine would not preclude amending the Books and Records Order or the Retained Funds Order. The motion appears to be a last-gasp effort to revive an argument that could have been raised in

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[56] 159 A.3d 285, 297 (Del. 2017) (Supreme Court opinion affirming Court of Chancery order clarifying earlier decision).

[57] *See id.*

[58] Dkt. 1 Ex. B (copy of Management Agreement in original complaint signed by only IGM).

early 2024 and, having been left unsaid, was waived at that time.[59] To hold otherwise would be to reward Defendants' strategic decision not to pursue certain arguments in bifurcated proceedings, only to raise them later and claim legal error by this court under the auspices of Rule 54(b). That is not consistent with the purpose of the law of the case doctrine, which operates to "promote[] the finality and efficiency of the judicial process."[60]

C. The Corrected Language In The Supreme Court Opinion Does Not Change This Outcome

In her supplemental submissions,[61] Delano claims that the Supreme Court's amended opinion, which removes a reference to "state-law fiduciary duty claims" brought by the Fund, "forecloses any argument that the judgments previously entered in this case rest on a fiduciary duty theory that might reach non-signatories . . . ."[62] To Delano, the Supreme Court's correction is a new and material addition to the law of the case. This argument is meritless.

The Supreme Court's opinion says little about this court's earlier judgments, nor is there any suggestion that the high court intended its correction to upend the

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[59] *E.g.*, *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999).

[60] *Tornetta*, 326 A.3d at 1223 (internal quotation marks omitted).

[61] For the sake of completeness, and because the Fund was afforded a chance to respond, I address the supplemental submissions on their merits.

[62] Dkt. 440 ¶ 8.

rulings unrelated to advancement made in this case. And although the original complaint made passing references to breaches of fiduciary duty, it was always apparent, as this court found numerous times, that the Fund's claims were grounded in the language of the Management Agreement.[63]

Delano's supplemental submissions are an attempt to ascribe meaning to the Supreme Court's decision to correct its language that is not present in the language of the corrected opinion. They do not move the needle.

D. IGM Does Not Get A Do-Over

Patel, IGM, and Invictus GP's Motion for Leave invites the Court to go even further. They contend, because they were not receiving advancement until long after the court issued the Retained Funds Order, they were unable to present certain evidence and expert testimony that—in their view—would have tipped the scales in IGM's favor.[64] The remedy here, according to Patel, IGM, and Invictus GP, is to vacate the Retained Funds Order, and the associated bench ruling, in their entirety and go back to discovery.[65]

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[63] *E.g.*, *Invictus*, 2024 WL 1646093, at *1–3.

[64] *See* Dkt. 443.

[65] *Id.* ¶ 39. Although Patel, IGM and Invictus GP bring this argument under the umbrella of the Motion to Amend, to avoid prejudice to the Fund, it is apparent that the remedy they seek would require vacating the Retained Funds Order and then giving the parties the opportunity to take expert discovery and be heard on the merits a second time. That is extraordinary.

There is no question that a delay in recognizing advancement rights can be prejudicial to the party seeking advancement.[66] The remedy sought here, though, is unheard of and, in any case, unwarranted. As Patel, IGM, and Invictus GP note, they are "unaware of any decision by this Court related to amending a judgment as an equitable remedy to correct the injustices that results from a wrongful failure to advance fees and expenses."[67] I am unsurprised that I, too, was unable to find a case implementing such an extreme remedy.

Yet I need not dwell on what happens when a remedy for delayed advancement runs into the law of the case doctrine because even if the remedy sought here was available, it would not be appropriate. Defendants litigated this case with sophisticated Delaware counsel for years. This included the summary judgment briefing on the Retained Funds issue. And much of the delay in this case was brought upon Defendants by themselves. Trial on the advancement issues could have proceeded in January 2024. Defendants' discovery positions and subsequent untimely and meritless notice of removal narrowed and then cancelled it. Nor did Defendants, during summary judgment briefing on the Retained Funds issue, request a stay, submit a Rule 56(d) affidavit asserting a lack of facts essential to justify their opposition, or otherwise suggest to the court that they would be unable to mount a

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[66] *See, e.g.*, *Perryman v. Stimwave Techs. Inc.*, 2020 WL 2465720, at *4 (Del. Ch. May 13, 2020).

[67] Dkt. 443 ¶ 40.

defense without the documents and expert testimony they now claim was necessary to their defense.[68]

To sum up, the Motion for Leave fails to articulate why the court should entertain this argument. It, too, is denied.

III. CONCLUSION

For the foregoing reasons, I deny the Motion to Amend and the Motion for Leave. This litigation has been long and hard-fought. With this ruling—I hope—I close the book on the merits of each side's claims and counterclaims at the trial court level. I greatly appreciate the parties' ongoing efforts and hard work to bring the remainder of this proceeding in this court to an orderly and efficient close.

IT IS SO ORDERED.

Sincerely,

/s/ Nathan A. Cook

Vice Chancellor

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[68] This is to say nothing of the merits of the proposed supplement and over 800 pages of exhibits attached to the Motion for Leave. I note that, as the Fund points out, the "new" evidence Defendants point to was in the record at the time of summary judgment briefing on the Retained Funds issue. *See, e.g.*, JX0046; JX0049; JX0054; JX0212; JX0215; JX0218. Moreover, it is unclear how an expert affidavit on market practice in debtor in possession lending is relevant to IGM's withholding of funds *after* it was terminated as the Fund's investment manager.