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RE: *Stephen M. Esposito, et al. v. Drivers History Information Sales LLC, et al.*, C.A. No. 2026-0579-DG (LWW)

Dear Counsel:

This letter opinion resolves exceptions to a Magistrate in Chancery's Final Report granting the plaintiffs' motion for summary judgment on entitlement to advancement and denying the defendants' cross-motion. After a de novo review, I conclude that the exceptions must be overruled in part and sustained in part. The plaintiffs are entitled to advancement from Drivers History Information Sales LLC and TransUnion LLC under two limited liability company agreements. Under the stricter standard in TransUnion's bylaws, however, plaintiff Stephen Esposito is not entitled to advancement from TransUnion.

## I. BACKGROUND[1]

Plaintiffs Stephen M. Esposito and Scott K. Nichols co-founded non-party Drivers History, Inc. ("DHI"), a New Jersey corporation, in 2006 to collect public driving records for insurance companies.[2] Esposito served as DHI's Chief Executive Officer and Nichols served as its Chief Technology Officer.[3]

In October 2007, intervenor Eric Poe entered into a Consulting Agreement to provide business development services in exchange for sales commissions and 15% of the proceeds if the business were sold.[4] In a related New Jersey action (addressed below), Poe alleges that the Consulting Agreement was with Driver History Sales Corp. ("DHIS Corp.") and that Esposito signed on its behalf.[5] DHI and the plaintiffs,

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[1] The facts are drawn from the undisputed record submitted with the parties' cross-motions for summary judgment. *See* Order Resolving Parties' Cross-Mots. for Summ. J. on Entitlement to Advancement (Dkt. 68) ("Final Report") ¶ 2.

[2] Verified Compl. for Advancement (Dkt. 1) ("Compl.") ¶¶ 7-8, 13; Defs.' Answer to Verified Compl. for Advancement (Dkt. 15) ("Answer") ¶¶ 7-8, 13.

[3] Compl. ¶¶ 7-8; Answer ¶¶ 7-8.

[4] Compl. ¶ 14; Final Report ¶ E; Compl. Ex. A (Dkt. 4, First Am. Compl. in *Poe v. Driver Hist. Sales Corp.*, C.A. No. 20-14586 (D.N.J.)) ("NJ Compl.") ¶¶ 32, 36, 56-57.

[5] *See* NJ Compl. ¶¶ 36, 40-43; Defs.' Opening Br. in Supp. of Exceptions (Dkt. 77) ("Defs.' Opening Br.") 8-9; *see also* Final Report ¶ E.

however, maintain that DHI was the contracting party and that DHIS Corp. was a line of business within DHI's accounting system.[6]

In August 2009, Esposito and Nichols formed defendant Drivers History Information Sales LLC ("Information Sales") as a New Jersey limited liability company, and DHI transferred all of its assets, stock, and liabilities to Information Sales.[7] In May 2013, non-party DHIS Investments LLC ("Investments") was formed as a New Jersey limited liability company for the sole purpose of holding membership interests in Information Sales.[8]

In November 2014, defendant TransUnion LLC—an indirect, wholly owned subsidiary of publicly traded defendant TransUnion—acquired a majority interest in Investments and the remaining equity of Information Sales (the "Acquisition").[9] As

[6] Compl. ¶ 14 n.2; Pls.' Answering Br. in Opp'n to Defs.' Exceptions (Dkt. 79) ("Pls.' Answering Br.") 7 & n.4; *see also* NJ Compl. ¶¶ 39, 44.

[7] Compl. ¶¶ 9, 15; Answer ¶¶ 9, 15; Compl. Ex. C ("Information Sales LLC Agreement") 1; Final Report ¶ B & n.2.

[8] Compl. ¶ 9; Answer ¶ 9; Compl. Ex. D ("Investments LLC Agreement") 1, § 2.2.

[9] Compl. ¶¶ 4, 10-11, 18; Answer ¶¶ 10-11, 18; Investments LLC Agreement 1; Final Report ¶¶ C, H.

part of the Acquisition, Investments and Information Sales converted into Delaware limited liability companies.[10]

Under Investments' November 12, 2014 Amended and Restated Operating Agreement (the "Investments LLC Agreement") and Information Sales' December 29, 2015 Amended and Restated Operating Agreement (the "Information Sales LLC Agreement"), Esposito and Nichols served as Managers of both entities.[11] Esposito also entered into an employment agreement with Investments and TransUnion LLC to continue serving as Chief Executive Officer of Investments and Information Sales for a term ending no later than December 31, 2017.[12]

In 2016, TransUnion LLC acquired the remaining minority interests, replaced Investments as the holding company of Information Sales, and caused Investments to be canceled.[13]

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[10] Compl. ¶ 19; Answer ¶ 19; Information Sales LLC Agreement 1; Investments LLC Agreement 1.

[11] Investments LLC Agreement § 3.1(b)(ii) (designating Esposito and Nichols); Information Sales LLC Agreement § 3.1(b)(ii) (designating Esposito); Compl. ¶¶ 7-8, 36, 38-39; Answer ¶¶ 7-8, 36, 38-39 (admitting that Nichols was also a Manager of Information Sales); Final Report ¶ 9.

[12] Compl. ¶ 21; Answer ¶ 21; Compl. Ex. B ("Employment Agreement") §§ 1(a), 2; *see also* Investments LLC Agreement § 4.3; Information Sales LLC Agreement § 4.3.

[13] Compl. ¶¶ 10, 20; Answer ¶¶ 10, 20; Information Sales LLC Agreement 1; Final Report ¶ H.

In October 2020, Poe sued for unpaid commissions and sales proceeds under the Consulting Agreement in the United States District Court for the District of New Jersey (the "New Jersey Action").[14] In March 2021, Poe filed an amended complaint (the operative "New Jersey Complaint") against DHIS Corp., Information Sales, TransUnion LLC, TransUnion Intermediate Holdings, Inc., TransUnion, Esposito, and Nichols. He asserted claims for declaratory judgment, breach of contract (including a veil-piercing theory against Esposito and Nichols), fraud against Esposito and Nichols, and aiding and abetting fraud and tortious interference against the TransUnion entities.[15] Generally, Poe alleges that Esposito and Nichols never formally incorporated DHIS Corp. but signed the Consulting Agreement on its behalf and used it as a sham entity to defraud him.[16] He further alleges that the 2009 transfer of DHI's assets and liabilities to Information Sales and the 2014 Acquisition were structured to deprive him of his 15% share of the sale proceeds and ongoing

[14] Compl. ¶ 22; Answer ¶ 22; Final Report ¶¶ D-F.

[15] Compl. ¶ 23; NJ Compl. ¶¶ 110-52; Final Report ¶¶ D, F.

[16] NJ Compl. ¶¶ 12, 36-37, 43. Poe further alleges that in September 2009, Nichols sent him a letter on behalf of DHIS Corp. terminating the Consulting Agreement while agreeing to abide by post-termination payment obligations. *Id.* ¶¶ 75-77; Final Report ¶ G. And Poe alleges that DHIS Corp. executed an addendum to the Consulting Agreement in 2008 and a payment modification in 2010. NJ Compl. ¶¶ 63, 87; Final Report ¶ G.

commissions, and that Information Sales and TransUnion failed to provide an accounting demanded in August 2020.[17]

In August 2024, Information Sales and the TransUnion entities settled with Poe and were dismissed from the New Jersey Action with prejudice.[18] As is undisputed by the parties, only Esposito, Nichols, and DHIS Corp. remain defendants in the New Jersey Action.[19]

Following a tolling agreement between the parties, Esposito and Nichols renewed their demands for advancement in February and April 2026 and provided signed undertakings.[20] After the defendants refused to advance fees, the plaintiffs filed a Verified Complaint (the "Complaint") in this court on May 8, 2026. They brought claims for advancement against Information Sales under the Information Sales LLC Agreement (Count I), against TransUnion LLC as successor to Investments under the Investments LLC Agreement (Count II), and on behalf of Esposito against TransUnion under TransUnion's Fifth Amended and Restated

[17] NJ Compl. ¶¶ 68, 80-81, 96–99, 106-109, 124-25; Final Report ¶¶ F-H. The New Jersey Complaint refers to DHI, DHIS Corp., and Information Sales collectively as "Driver History." NJ Compl. ¶ 2.

[18] Final Report ¶ 16.

[19] *Id.*; *see also* Defs.' Opening Br. 11-12; Pls.' Answering Br. 34-35.

[20] Compl. ¶¶ 56-60; Compl. Exs. F-J; Final Report ¶¶ I-M.

Bylaws (the "Bylaws") (Count III), along with a claim for fees on fees (Count IV).[21]

The parties cross-moved for summary judgment on entitlement to advancement.[22] The motions were argued before the Magistrate on July 21, 2026 and submitted for decision at that time.[23] On October 2, 2026, the Magistrate issued a Final Report granting the plaintiffs' motion, denying the defendants' cross-motion, and awarding full advancement, fees on fees, and prejudgment interest.[24] The defendants timely filed a Notice of Exceptions on October 7, 2026, and briefing was completed on November 5, 2026.[25]

Because trial in the New Jersey Action is set to begin on November 9, I resolve the exceptions on an emergency basis.

## II. ANALYSIS

The Court of Chancery reviews exceptions to a Magistrate's final report de novo.[26] The exceptions are evaluated "on the record before the Magistrate in

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[21] Compl. ¶¶ 62-92; Compl. Ex. E (Fifth Amended and Restated Bylaws of TransUnion) ("Bylaws"); Final Report ¶¶ 7, N.

[22] Final Report ¶ N (citing Dkts. 18, 28).

[23] *Id.* ¶ O (citing Dkt. 64).

[24] *Id.* ¶¶ 8-21.

[25] Dkts. 69, 77, 79; Defs.' Reply Br. in Further Supp. of Exceptions (Dkt. 81) ("Defs.' Reply Br.").

[26] *See* Ct. Ch. R. 144(b)(2); *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

Chancery, unless the Reviewing Judge determines to expand the record for good cause shown."[27] Because the exceptions turn on questions of law applied to an undisputed paper record, a new hearing is unnecessary.[28]

### A. Clarifications of the Underlying Record

Before turning to the governing instruments, a point of clarification on the underlying pleadings is warranted. In the Final Report, the Magistrate applied the "by reason of the fact" standard derived from 8 *Del. C.* § 145 to the Information Sales LLC Agreement, the Investments LLC Agreement, and TransUnion's Bylaws.[29] She found a causal nexus between the claims in the New Jersey Action and Esposito's and Nichols's official capacities based, in part, on assertions in the plaintiffs' Complaint here characterizing the New Jersey Complaint.[30] The Magistrate credited assertions that "Esposito signed the Consulting Agreement on behalf of Investments," that "DHI, acting through Nichols, terminated the original Consulting Agreement," and that "Esposito, through his post-closing role as an

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[27] Ct. Ch. R. 144(e).

[28] *See DiGiacobbe*, 743 A.2d at 184; *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 266 (Del. 2022); Ct. Ch. R. 56(i); Final Report ¶ 2.

[29] Final Report ¶¶ 8, 10.

[30] *Id.* ¶¶ E, G, 13, 15; *see* Compl. ¶¶ 14, 16, 53; Defs.' Reply Br. 6-8.

Officer of Investments, failed to cause Investments to provide Poe with contractually required financial payments."[31]

As the defendants correctly observe, those statements depart from the text of the New Jersey Complaint and largely reflect inaccurate paraphrasing and bracket usage in the Complaint here.[32] In the New Jersey Complaint, Poe alleges that Esposito signed the Consulting Agreement in October 2007 "on behalf of DHIS Corp."—nearly six years before Investments was formed in May 2013.[33] Poe also alleges that Nichols sent the September 2009 termination letter on behalf of "DHIS Corp.," and Esposito and Nichols concede in their briefing that Poe advances no claim based on that termination.[34] Further, the paragraphs of the New Jersey

[31] Final Report ¶¶ 13, 15 (citing NJ Compl. ¶¶ 36, 75-78, 106-09).

[32] *Compare* Compl. ¶¶ 14, 16, 53, *with* NJ Compl. ¶¶ 36, 77, 106-09; *see* Defs.' Opening Br. 29-30, 35; Defs.' Reply Br. 6-8. Paragraph 36 of the New Jersey Complaint alleges that Esposito signed the Consulting Agreement "on behalf of DHIS Corp.," but paragraph 14 of the Complaint here substituted "on behalf of [Drivers History]"—a bracketed alteration repeated in the Final Report (though the Final Report later stated that he signed "on behalf of Investments"). Final Report ¶¶ E, 13; *see* NJ Compl. ¶ 36; Compl. ¶ 14. Similarly, paragraph 16 of the Complaint replaced "DHIS Corp." with "[DHI]" when quoting paragraph 77 of the New Jersey Complaint, and paragraph 53 of the Complaint attributed post-closing conduct to Esposito as an officer of Investments not found in paragraphs 106 through 109 of the New Jersey Complaint. *See* NJ Compl. ¶¶ 77, 106-09; Compl. ¶¶ 16, 53; Final Report ¶¶ 13, 15.

[33] NJ Compl. ¶¶ 36, 43; Investments LLC Agreement 1.

[34] NJ Compl. ¶ 77; Compl. ¶ 16; Pls.' Answering Br. 8 n.5.

Complaint cited for the assertion regarding Esposito's post-closing role at Investments do not mention Esposito or Investments.[35] In conducting my de novo review, I do not credit those statements in the Final Report or Complaint and instead evaluate Poe's allegations as pleaded in the New Jersey Complaint.

### B. Advancement Under the LLC Agreements

The Information Sales LLC Agreement and the Investments LLC Agreement (together, the "LLC Agreements") contain identical indemnification and advancement provisions in Section 3.12.[36] The defendants do not dispute that Esposito and Nichols are "Indemnitees" under Section 3.12(d) of both LLC Agreements through their service as managers and officers of Information Sales and Investments.[37] Nor do the defendants dispute that TransUnion LLC was the successor to Investments' obligations under the Investments LLC Agreement when it acquired Investments and caused it to be canceled.[38]

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[35] NJ Compl. ¶¶ 106-09.

[36] Information Sales LLC Agreement § 3.12; Investments LLC Agreement § 3.12; Final Report ¶ 6.

[37] Defs.' Opening Br. 14 n.5, 17; Final Report ¶ 9.

[38] Defs.' Reply Br. 5 (stating that "Defendants have never disputed that TransUnion LLC succeeded to Investments"); *see also* Investments LLC Agreement § 15.8; *OrbiMed Advisors LLC v. Symbiomix Therapeutics, LLC*, 2024 WL 747567, at *7-8 (Del. Ch. Feb. 23, 2024).

In the Final Report, the Magistrate omitted the second half of Section 3.12(d) and evaluated Counts I and II under the corporate "by reason of the fact" standard.[39] That was error. Both sides highlight the omitted language of Section 3.12(d)—the defendants to argue that its exculpation proviso limits coverage to official-capacity conduct, and the plaintiffs to argue that it supports broader advancement rights than Section 145.[40] Under the Delaware Limited Liability Company Act, parties have broad freedom to define advancement rights by contract, and the LLC Agreements did just that.[41] Rather than adopt the "by reason of the fact" standard, Section 3.12(d) requires each entity to indemnify each Indemnitee for losses and expenses:

> arising from any threatened, pending, settled or completed claim, action, suit or proceeding in which an Indemnitee is or was a party or threatened to be made party arising from or relating to the Company (including any such Person's status as a Member, Manager or Officer . . .), provided that such Person is entitled to exculpation under Section 3.12(a), 3.12(b) or 3.12(c), as applicable, with respect thereto (or, if such claim, action, suit or proceeding does not relate to such Person's status as a Member,

[39] Final Report ¶¶ 5, 8, 10.

[40] Defs.' Opening Br. 17-20; Pls.' Answering Br. 36-39.

[41] *See* 6 *Del. C.* § 18-108; *DeLucca v. KKAT Mgmt., L.L.C.*, 2006 WL 224058, at *7, *13 (Del. Ch. Jan. 23, 2006) (observing that limited liability company agreements need not employ Section 145's "by reason of the fact" standard and that parties have "contractual freedom" under Delaware law to craft advancement provisions); *cf. Morgan v. Grace*, 2003 WL 22461916, at *2 & n.13 (Del. Ch. Oct. 29, 2003) (explaining that 6 *Del. C.* § 18-108 is "broadly enabling" and "allow[s] the contracting parties to determine the extent of indemnification in their agreements").

> Manager or Officer, such Person would have been entitled to exculpation with respect thereto under Section 3.12(c) if such Person had been an Officer).[42]

Section 3.12(f), in turn, governs advancement. It mandates that if the entity does not assume the defense of "any claim, action, suit or proceeding of which the [c]ompany receives notice under this Section 3.12," it "shall pay in advance of the final disposition of such matter any expenses (including reasonable legal fees and expenses) incurred by an Indemnitee in so defending."[43] Advancement is conditioned only on receipt of an undertaking to repay if the Indemnitee is ultimately determined not to be entitled to indemnification.[44]

The phrase "arising from or relating to the Company" in Section 3.12(d) does not require official-capacity conduct as a condition to advancement.[45] The defendants' argument that the proviso in Section 3.12(d)—"provided that such Person is entitled to exculpation under Section 3.12(a), 3.12(b) or 3.12(c)"—limits coverage to actions taken "in his, her, or its capacity as such" is belied by the

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[42] Information Sales LLC Agreement § 3.12(d); Investments LLC Agreement § 3.12(d).

[43] Information Sales LLC Agreement § 3.12(f); Investments LLC Agreement § 3.12(f).

[44] Information Sales LLC Agreement § 3.12(f); Investments LLC Agreement § 3.12(f).

[45] *DeLucca*, 2006 WL 224058, at *9-10, *12; *see also Lillis v. AT&T Corp.*, 904 A.2d 325, 332 (Del. Ch. 2006).

contracts.[46] First, Sections 3.12(a) through (c) only address internal liability "to the Company, any other Member or any Manager," not third-party claims.[47] Second, the parenthetical immediately after the proviso covers proceedings that "do[] not relate to such Person's status as a [m]ember, [m]anager or [o]fficer," so long as the indemnitee satisfied the conduct standards of Section 3.12(c).[48] Because Section 3.12(d) covers indemnitees in proceedings "arising from or relating to the [c]ompany" even if the claims are unrelated to their official status, the only conditions in the proviso are merits-based conduct standards that cannot be adjudicated at this stage.[49]

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[46] Defs.' Opening Br. 17-21; Defs.' Reply Br. 18-21.

[47] Information Sales LLC Agreement § 3.12(a)-(c); Investments LLC Agreement § 3.12(a)-(c).

[48] Information Sales LLC Agreement § 3.12(c)-(d) (requiring that the person "acted or omitted to act in the good faith and reasonable belief that such course of conduct was in the best interests of the [c]ompany," and that the conduct "did not constitute willful misconduct, recklessness, or criminal activity" or "a breach or violation of any agreement" with the company or its affiliates); Investments LLC Agreement § 3.12(c)-(d) (same). In addition, the sentence immediately after the proviso in Section 3.12(d) refers to "[t]he foregoing right of indemnification." Information Sales LLC Agreement § 3.12(d). By contrast, provisions in Sections 3.12(d), (f), and (h) expressly refer to both "indemnification or advancement." *Id.* § 3.12(d), (f), (h).

[49] *See Homestore, Inc. v. Tafeen*, 888 A.2d 204, 212, 214 (Del. 2005); *Morgan*, 2003 WL 22461916, at *2-3; Defs.' Reply Br. 20.

The New Jersey Action arises from and relates to both Information Sales and Investments. Information Sales was named as a defendant in the New Jersey Complaint, and Investments held the membership interests in Information Sales and was a party to the Acquisition.[50] And even if an official-capacity nexus were required, Counts I and II of the New Jersey Complaint challenge the 2009 transfer of DHI's assets and liabilities to Information Sales, Information Sales' post-2009 underpayment of commissions, and the 2014 Acquisition in which Esposito and Nichols executed the closing certificate as managers of Investments.[51] Those covered allegations are intertwined with the defense of the New Jersey Action, making Esposito and Nichols entitled to advancement from Information Sales and TransUnion LLC under the LLC Agreements.[52] The August 2024 dismissal of the

[50] NJ Compl. ¶¶ 10, 97-98; Investments LLC Agreement 1, § 2.2; Compl. Ex. D at 1-4.

[51] NJ Compl. ¶¶ 79-86, 96-98, 106-09, 117-25; Compl. Ex. D at 1-4. Allegations that corporate officials structured transactions or withheld corporate payments for personal economic gain do not defeat advancement. *See Tafeen*, 888 A.2d at 214; *Reddy v. Elec. Data Sys. Corp.*, 2002 WL 1358761, at *5-6 (Del. Ch. June 18, 2002), *aff'd*, 820 A.2d 371 (Del. 2003) (ORDER); *Perconti v. Thornton Oil Corp.*, 2002 WL 982419, at *4 (Del. Ch. May 3, 2002).

[52] *See Mooney v. Echo Therapeutics, Inc*., 2015 WL 3413272, at *8 (Del. Ch. May 28, 2015); *Holley v. Nipro Diagnostics, Inc.*, 2014 WL 7336411, at *9 (Del. Ch. Dec. 23, 2014).

corporate defendants from the New Jersey Action did not terminate those advancement obligations.[53]

### C. Esposito's Claim Under the TransUnion Bylaws

Esposito's claim for advancement against TransUnion is governed by TransUnion's Bylaws rather than the LLC Agreements.[54] Section 7.01 of the Bylaws provides indemnification to any person made a party to a proceeding:

> by reason of the fact that he or she is or was a director or an officer of [TransUnion] or, while a director or officer of [TransUnion], is or was serving at the request of [TransUnion] as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise . . . .[55]

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[53] The defendants argue in the alternative that any advancement obligation ended when Information Sales and the TransUnion entities settled with Poe and were dismissed with prejudice from the New Jersey Action. Defs.' Opening Br. 37-39; Defs.' Reply Br. 28-31. Unlike cases where the plaintiff dismissed or abandoned the advanceable claims against the indemnitee, an entity codefendant does not extinguish an indemnitee's contractual advancement rights by being dismissed from the underlying lawsuit and leaving the indemnitee to defend the same conduct. *See Mooney*, 2015 WL 3413272, at *6-7. By the defendants' own description of the New Jersey Action, the issues for trial against Esposito and Nichols include whether the 2009 transfer of assets to Information Sales was fraudulent, whether Esposito and Nichols structured the Acquisition to deprive Poe of his 15% share of the sale proceeds, and whether they failed to pay Poe amounts owed under the Consulting Agreement after the sale. Defs.' Opening Br. 11-12, 38-39; Defs.' Reply Br. 29. Those issues arise from and relate to Information Sales and Investments, meaning that the advancement obligations of Information Sales and TransUnion LLC are ongoing.

[54] Compl. ¶¶ 79-88; Bylaws § 7.01.

[55] Bylaws § 7.01.

Section 7.02 grants advancement of expenses incurred in defending "any such proceeding," and Section 7.03 places the burden of proving non-entitlement on TransUnion.[56]

Even accepting that Esposito served as an officer of Investments and Information Sales "at the request of" TransUnion after the Acquisition's closing in November 2014 until his employment ended in December 2017,[57] Section 7.01 requires that Esposito be made a party to the New Jersey Action "by reason of the fact" of that service.[58] A proceeding is brought "by reason of the fact" of an individual's corporate service only if there is a causal nexus between the underlying claims and the individual's official capacity. Such a connection exists where corporate powers were used or necessary for the commission of the challenged actions during the covered service.[59]

The New Jersey Complaint establishes that Esposito was not sued by reason of his post-closing service as an officer of Investments or Information Sales. Every

[56] *Id.* §§ 7.02-03.

[57] Defs.' Reply Br. 5, 25; Employment Agreement § 1(a).

[58] Bylaws § 7.01.

[59] *See Tafeen*, 888 A.2d at 214; *Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1011 (Del. Ch. 2007); *Marino v. Patriot Rail Co.*, 131 A.3d 325, 339-40 (Del. Ch. 2016).

pre-closing act Poe challenges—the 2007 Consulting Agreement, the 2009 asset transfer to Information Sales, and the structuring of the 2014 Acquisition—occurred before that service began.[60] As for post-closing conduct, Poe seeks to hold Esposito liable for breach of the Consulting Agreement on a veil-piercing theory directed at DHIS Corp. The remaining allegations about unpaid post-closing commissions and an August 2020 accounting demand do not mention Esposito—and, as to the 2020 demand, postdate his employment by nearly three years.[61]

The record establishes that the claims in the New Jersey Action do not arise from any exercise of corporate power by Esposito during his post-closing service at

[60] NJ Compl. ¶¶ 36, 63, 79, 87, 96-99; *see Bernstein*, 953 A.2d at 1010-11 (holding that an individual is entitled to advancement only for acts occurring after taking on the covered position); *Marino*, 131 A.3d at 340, 344-45 (explaining that coverage extends to actions taken while serving in a covered capacity); *Charney v. Am. Apparel, Inc.*, 2015 WL 5313769, at *16-17 (Del. Ch. Sept. 11, 2015).

[61] NJ Compl. ¶¶ 106-09, 126; *see* Pls.' Answering Br. 58 (acknowledging the defendants' argument that the 2020 conduct occurred "after Esposito was no longer an Officer of Investments"); Defs.' Reply Br. 26-27, 29 (noting that the New Jersey pretrial order also omits any accounting issue).

TransUnion's request. Accordingly, the defendants' exception concerning Count III against TransUnion is sustained.

### D. Fees on Fees

Having prevailed in establishing their right to advancement, the plaintiffs are entitled to reasonable fees on fees proportionate to their success.[62] They are also entitled to prejudgment interest running from the date of their advancement demands and undertakings.[63] Although I sustained the defendants' exception on Esposito's claim against TransUnion under Count III, Esposito and Nichols established their entitlement to advancement for the New Jersey Action from Information Sales and TransUnion LLC under Counts I and II. Count III sought an additional source of

[62] *See Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 560-62 (Del. 2002); *Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 178, 184 (Del. Ch. 2003).

[63] *See* 6 *Del. C.* § 2301(a); *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 826 & n.10 (Del. 1992); *see also* Final Report ¶¶ 18-19.

payment for the same expenses. Because the plaintiffs succeeded on the core relief sought in this action, no reduction to their reasonable fees on fees is warranted.[64]

## III. CONCLUSION

For the above reasons, the defendants' exceptions are overruled as to Counts I, II, and IV of the Complaint and sustained as to Count III. The Final Report's recommendation to enter judgment for Esposito and Nichols and against Information Sales and TransUnion LLC on Counts I, II, and IV is adopted. The Final Report is reversed as to Count III against TransUnion; judgment is entered in favor of TransUnion on Count III. Within five business days, the parties must meet and confer on the amount of fees on fees and prejudgment interest owed to the plaintiffs and submit a proposed order implementing this decision that includes procedures for resolving ongoing advancement disputes.[65] IT IS SO ORDERED.

Sincerely yours,

*/s/ Lori W. Will*

Lori W. Will
Vice Chancellor

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[64] *See Fasciana*, 829 A.2d at 184-85 (noting that a plaintiff who achieves substantial relief should not have its fee award reduced because it did not prevail on every contention raised).

[65] *See Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 1003-04 (Del. Ch. 2012).