



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LG ELECTRONICS INC.,

Plaintiff Below,  
Appellant/Cross-Appellee,

v.

INVENTION INVESTMENT FUND I,  
L.P., INVENTION INVESTMENT  
FUND II, LLC, INTELLECTUAL  
VENTURES I LLC, and  
INTELLECTUAL VENTURES II LLC,

Defendants Below,  
Appellees/Cross-Appellants.

No. 243,2025

On Appeal from the Superior Court  
of the State of Delaware,  
C.A. No. N22C-11-145 SKR-CCLD



**APPELLANT'S/CROSS-APPELLEE'S REPLY AND ANSWERING BRIEF**

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## **REPLY ARGUMENT ON APPEAL**

### **I. The Superior Court Erred in Adopting Both Damages Caps**

IV's brief confirms the Superior Court erred in adopting the first and second damages caps. For the Court's convenience, LG addresses IV's arguments in the same sequence as IV's brief.

#### **A. The Superior Court Misinterpreted the Agreement in Adopting IV's Second Damages Cap**

##### **1. IV Confirms the Superior Court Did Not Apply the Agreement's "Plain Language"**

Trying to defend the Superior Court's supposedly "plain language" second damages cap, IV repeatedly ignores the Agreement's plain language or rewrites its provisions. [IV.Br17-19.] For example:

- IV implies §5.1 limits IV's liability, [IV.Br17-18], despite §5.1 never mentioning liability, [A215 §5.1];
- IV relies on §5.1(A)'s "IVIL Payment" definition, [IV.Br17], despite §9.6 using §5.1's separately defined term "License Fee" instead, [A220 §9.6];
- IV effectively rewrites §9.6 to read "the [portion of the] License Fee received by a Party under Paragraph 5.1[.]" to circumvent §5.1's "License Fee" definition, [IV.Br18 (quoting A220) (altered)];

- IV equates the “IVIL Payment” with “the amount [IVIL] *received* under the Agreement,” [IV.Br17-18],<sup>1</sup> despite §5.1 never using the word “received,” [A215 §5.1], and despite IV admitting “IVIL *received* the entire amount of LG’s payment into its bank account[,]” [IV.Br22]; and
- IV invokes provisions reciting “Party” and “Licensor,” [IV.Br18 (quoting §9.6, §9.16)], while ignoring those terms’ definitions in the Agreement’s preamble, [A211].

IV’s inability to provide supporting “plain language” confirms the second damages cap is erroneous. [LG.Br29-35.]

## 2. IV Cannot Rebut LG’s Interpretation

IV’s eleven arguments against LG’s interpretation lack merit. [IV.Br19-22.]

First, IV applies “plain meaning,” [IV.Br19], instead of the Agreement’s express “Party” definition, [A211]. This is improper. *Mehiel v. Solo Cup Co.*, 2005 WL 5750634, at \*5 (Del. Ch. May 13, 2005). Further, IV cannot dispute that the phrases [REDACTED] and [REDACTED] confirm a two-Party Agreement, or that IV’s interpretation renders §9.6’s first sentence nonsensical. [*Compare* LG.Br30, *with* IV.Br19-22.] IV’s non-response confirms its interpretation is wrong.

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<sup>1</sup> Unless otherwise indicated, all emphases have been added, and all internal citations and internal quotation marks have been omitted.

Second, while IV cites the definition and usage of “Licensor,” it fails to rebut LG’s arguments regarding either. [Compare LG.Br29-31, with IV.Br19-20.] Instead, IV *admits* that “‘**Licensor**’ can mean ... both **IV[IL] and III together**, depending on the context.” [IV.Br20.] As this is how the Agreement’s preamble defines “Licensor,” [A211], IV’s admission confirms that, when the preamble defines “Party” using “Licensor,” it refers to both “**IVIL and III together**.” [A211.]

Third, IV’s §9.16 quotations are inapposite. [IV.Br18-19.] As LG explained, its interpretation is *consistent* with §9.16 because “each” would be unnecessary if “Licensor” were either III or IVIL alone. [LG.Br32.] IV *confirms* this by admitting the “context”-dependent nature of “Licensor.” [IV.Br20.] And LG’s interpretation does not affect III’s “rights, obligations or undertakings[,]” nor does IV explain how it would. [IV.Br19.]

Fourth, IV incorrectly suggests the “Party” definition informs the meaning of “Licensor.” [IV.Br20.] This is backwards—the preamble defines “Licensor” first and then incorporates that defined term into “Party.” [A211.]

Fifth, IV’s “notification” argument, [IV.Br20-21 (citing A221 §9.15)], fails for four reasons:

1. IV’s cited §9.15 merely provides the mechanics for notices, without mentioning liability. [A221-222 §9.15.]

2. IV never argued below that §9.6 required LG to separately notify III for damages to accrue, [A549-553], so this argument is waived. *In re Oracle Corp. Derivative Litig.*, 339 A.3d 1, 17-18 (Del. 2025).
3. LG sent notice of breach to all entities listed in §9.15, including III. [AR896-898.]
4. IV’s argument that “aggregate liability” is “dependent on notification” would require interpreting §9.6’s notification clause (“as of the date that such Party has been notified of a claim”) as modifying “aggregate liability.” [A220 §9.6.] But when LG advanced this interpretation on summary judgment (“SJ”), IV opposed it<sup>2</sup> by arguing the notification clause instead modifies the clause “the License Fee received by a Party under Parag[ra]ph 5.1[.]” [AR597-598 & n.6.] Under IV’s SJ-adopted position, the “License Fee received by a Party ... as of the [notice] date” is what caps the “aggregate liability.” [A220 §9.6.] Because IV’s witness confirmed “LG paid \$ [REDACTED] to Intellectual Ventures” via its “entities” IVIL and III [REDACTED] *in 2019*, [AR842 (T.662:3-12)], IV’s SJ-adopted interpretation means that,

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<sup>2</sup> This interpretation means that LG’s damages are uncapped. [AR438-440.]

when IV breached in 2021 and received LG’s notice in 2022, its liability was capped (if at all) at \$[REDACTED].

Sixth, although IV disputes that “the term ‘License Fee’ refers only to the entire \$[REDACTED],” [IV.Br20], that is exactly how §5.1 defines “License Fee,” [A215 §5.1]. IV itself so confirms. [IV.Br7 (“\$[REDACTED] (the ‘Licensee Fee’)”); IV.Br17]. This definition controls. *Mehiel*, 2005 WL 5750634, at \*5.

Seventh, IV misconstrues LG’s discussion of “IVIL Payment” and “III Payment.” [IV.Br21.] Neither LG’s brief nor the Agreement “speaks about *individual* liability,” [IV.Br21], or connects §9.6’s damages cap to §5.1’s defined terms “IVIL Payment” and “III Payment.” [LG.Br32-33; A215 §5.1; A220 §9.6.]

Eighth, IV incorrectly accuses LG of “ignor[ing]” §9.6’s phrase “received by a party” and “fail[ing] to address” the Superior Court’s related discussion. [IV.Br21-22 (citing A607 n.61).] LG addressed both, even identifying three separate flaws with the Superior Court’s discussion. [LG.Br33-35 (quoting A607 n.61).] Though IV addresses the third flaw (see “Tenth” below), it cannot rebut the first two. [Compare LG.Br33-35, with IV.Br21-22.] IV even confirms the second flaw—the effective rewriting of §9.6 to read “the [portion of the] License Fee received by a Party under Parag[ra]ph 5.1[.]” [LG.Br34]—by acknowledging that “IVIL

Payment” and “III Payment” are each only a “*portion of*” the “\$ [REDACTED] ... ‘Licensee Fee[.]’” [IV.Br7].

Ninth, IV barely defends the Superior Court’s contradictory damages cap rulings in a footnote, [IV.Br22 n.3], probably because the contradictions are undeniable, as LG explained. [LG.Br20-25; Part I.C.1, *infra*.]

Tenth, IV admits “IVIL *received* the entire amount of LG’s payment into its bank account[.]” [IV.Br22.] So, even if IVIL subsequently “transferred III’s portion out,” [IV.Br22], IVIL “received” the entire \$ [REDACTED] “License Fee,” and this satisfies §9.6, [A220 §9.6].

Finally, §9.7 is inapposite because §9.6 does not allocate liabilities between different entities, so LG’s interpretation does not make IVIL “responsible” for any III-specific liability. [IV.Br22.] Rather, §9.6 sets a cap on liability in case of breach. [A220 §9.6.] Because IV breached the Agreement and caused damages exceeding \$ [REDACTED], it is liable for (at least) that amount. IV can only blame itself.

This Court should reverse the \$ [REDACTED] second damages cap.

**B. IV Waived Its Unpled §9.6 Damages Cap Affirmative Defense**

IV does not dispute that (1) IV never raised §9.6’s damages cap in any original or amended pleadings, or during discovery; (2) §9.6’s damages cap meets the definition of an affirmative defense; and (3) unpled affirmative defenses are waived.

[Compare LG.Br16-20, with IV.Br23-26.] Although these concessions should end the matter, IV raises four feeble arguments against waiver.

First, IV's two cited Delaware cases are inapposite. [IV.Br23.] In *Hyman Reiver & Co. v. Rose*, the plaintiff claimed a 10% sales commission, and the defendant countered with evidence "that plaintiff was entitled to a commission of only 5%." 147 A.2d 500, 502-04 (Del. 1958). *Hyman's* defense, unlike §9.6's damages cap, was not an affirmative defense because it directly challenged the 10% claim rather than "constituting a defense to it" "assuming [it] to be true." *Am. Fam. Mortg. Corp. v. Acierno*, 1994 WL 144591, at \*2 (Del. Mar. 28, 1994). Besides, *Hyman's* no-"affirmative defense" statement did not affect the outcome, *Hyman*, 147 A.2d at 504, so it is non-binding *dictum*, *In re Fox Corp.*, 312 A.3d 636, 650 n.75 (Del. 2024). IV's other (non-binding) case merely followed the SJ ruling being challenged. *New Castle County v. Hersha Hospitality Mgmt., L.P.*, 2025 WL 1203501, at \*7 (Del. Super. Ct. Apr. 25, 2025). Two wrongs do not make a right.

Second, IV's artificial distinction between waivable fact-specific defenses involving jury fact-finding and allegedly non-waivable legal defenses is wrong. [IV.Br24-25.] The possible need for contract interpretation does not preclude waiver. [*Id.*] A defense is waivable because it is a "defense, *in law or fact*," Del. Sup. Ct. R. 12(b), "constituting an avoidance or affirmative defense," which must



be pled, *id.* R. 8(c). Even several of Rule 8(c)’s exemplary affirmative defenses (e.g., “res judicata,” “statute of limitations”) are legal issues for the court that are waived if unpled. *E.g., The Rsrvs. Dev. Corp. v. Esham*, 2009 WL 3765497, at \*4-5 (Del. Super. Ct. Nov. 10, 2009) (finding statute of limitations waived). Thus, defenses implicating legal issues are no less waivable than fact-specific defenses.

Third, IV quibbles with LG’s non-Delaware cases, but does not dispute their most salient point: damages caps are waivable affirmative defenses. [*Compare* LG.Br18-19, *with* IV.Br25-26.] Instead, IV argues those cases do not address waiver of *contractual* damages caps raised *before* trial. [IV.Br25-26.] But caselaw confirms neither distinction avoids waiver. *E.g., Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp.*, 15 F.3d 1222, 1225-27 (1st Cir. 1994) (finding waiver of unpled contractual damages limitation defense); *Bradbury v. PTN Pub. Co.*, 1998 WL 386485, at \*9-10 (E.D.N.Y. July 8, 1998) (same); *Marshall v. Payne*, 2018 WL 5308176, at \*2-3 (Del. Super. Ct. Oct. 25, 2018) (finding waiver of affirmative defense raised in motion to amend answer); *Esham*, 2009 WL 3765497, at \*4-5 (finding waiver of affirmative defense raised at SJ).

Finally, on prejudice, IV only argues “there was no *jury* prejudice against LG.” [IV.Br26.] IV does not deny that prejudice is unnecessary for waiver, or that

LG was greatly prejudiced outside of trial. [LG.Br19-20.] Merely avoiding *additional prejudice* to LG at trial does not negate LG’s existing prejudice.

**C. IV Cannot Support Its Untimely Second Damages Cap**

**1. IV’s Inconsistent Positions Warrant Judicial Estoppel**

IV admits: “on summary judgment, the court ‘determined that *IV’s liability* is limited to \$ [REDACTED].” [IV.Br28 (quoting A340).] This admission refutes the Superior Court’s basis for denying judicial estoppel—that, supposedly, on SJ, “[IV] took no position, and *the Court made no ruling, concerning [IV’s] maximum liability.*” [A604.] Further, because the SJ ruling limited “*LG’s* maximum recoverable *damages* from IV” to \$ [REDACTED], [A317], IV’s admission confirms this ruling equated IV’s maximum liability with LG’s maximum damages, [LG.Br21-23]. And IV’s admission highlights the inconsistency between the SJ ruling capping IV’s liability at \$ [REDACTED] and the post-trial ruling that “*[IV’s] liability* is limited to the IVIL Payment ... \$ [REDACTED].” [A608.]

IV’s five attempts to avoid judicial estoppel fail. First, IV ineffectively distinguishes *Motors Liquidation* because “General Motors admitted that it would be estopped.” [IV.Br27.] Judicial estoppel can apply without such an admission. *Julian v. E. States Const. Serv., Inc.*, 2009 WL 1211642, at \*6-8 (Del. Ch. May 5, 2009) (enforcing judicial estoppel without such admission).

Second, unable to show it “made no inconsistent arguments,” [IV.Br27], IV tries *ex post* to differentiate between damages (“what LG can receive”) and liability (“what IV owes”) based on §5.1’s \$ [REDACTED] “IVIL Payment.” [IV.Br27 (citing A215, A220).] But nobody mentioned the “IVIL Payment” or distinguished damages from liability during SJ, as IV’s dearth of SJ record citations confirms. [IV.Br27-28.] Instead, IV argued, and the Superior Court agreed, that §5.1’s \$ [REDACTED] “License Fee” capped LG’s damages and IV’s liability. [LG.Br21-23.] That is why, before inventing its second damages cap, IV enshrined in the Pretrial Stipulation its position that “the Court has determined that *IV’s liability is limited to \$ [REDACTED] dollars, the amount that LG paid* for the License Agreement, pursuant to Section 9.6,” [A340], and “*limited LG’s allegations to \$ [REDACTED]*,” [A361].

Third, IV cannot avoid its SJ arguments. Barely mentioning its SJ brief, [IV.Br28], IV never grapples with its SJ brief’s argument that, because §9.6 limits liability “to the *license fee received by a party* under ¶5.1[.]” [A178; A188-189], “*LG can seek ... the amount it paid in license fees, i.e., \$ [REDACTED]*,” [A194 (citing A178, A188-189)]. And IV ignores its SJ reply brief and the SJ hearing, where IV equated its liability with LG’s damages. [*Compare* LG.Br22 (citing A272, A852-853 (108:21-109:12)), *with* IV.Br28.]

Fourth, unable to defend its SJ arguments, IV instead raises a strawman:

[N]othing in [IV's SJ brief] states that LG can receive \$[REDACTED] *and no less*. ... The Superior Court certainly didn't hold that, if damages were applicable, they would be no *less than* \$[REDACTED].

[IV.Br28 (original emphases).] LG never suggested IV made—or the Superior Court adopted—this argument, since the jury could have awarded (but did not) less than \$[REDACTED]. IV instead argued—and convinced the Superior Court—on SJ that LG could seek \$[REDACTED] *and no more*. [A194; A912-913 (168:23-169:5); A316-317.] IV's later argument, however, “caps [LG's] damages” and “cap[s IV's] liability” at \$[REDACTED] *and no more*. [A551; AR876.] This inconsistent second cap is not “more specific,” [IV.Br28], than \$[REDACTED]—it is \$[REDACTED] less.

Finally, IV's cases are inapposite. [IV.Br26-28.] The Superior Court's adoption of IV's first damages cap on SJ distinguishes *Whittington v. Dragon Group, L.L.C.*, 2011 WL 1457455, at \*9 (Del. Ch. Apr. 15, 2011) (finding no reliance on earlier contradictory statement). And IV's contradictory positions distinguish *La Grange Communities, LLC v. Cornell Glasgow, LLC*, 2013 WL 4816813, at \*5 (Del. Sept. 9, 2013) (finding positions “not inconsistent”).

## 2. IV Cannot Satisfy the Law-of-the-Case Doctrine's Reconsideration Requirements

IV argues the law-of-the-case doctrine cannot apply because there supposedly is no “inconsistency between the decisions.” [IV.Br30.] This is wrong, as LG showed. [Part I.C.1, *supra*; LG.Br20-25.]

IV's arguments about reconsideration also fail. Procedurally, IV's admission that its second damages cap was a “request for reconsideration or reargument” is fatal. [IV.Br29 (quoting LG.Br24).] “A motion for reargument shall be ... filed within 5 days” of the challenged decision. Del. Sup. Ct. R. 59(e). This “five-day rule ... is jurisdictional,” so “[t]he trial judge d[oes] not have discretion to extend the deadline.” *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1110 (Del. 2006). Here, IV waited **16 days** after the SJ ruling before raising its second damages cap argument. [A299-324; A561; A564-566 (124:8-126:10); A568-572 (131:8-135:7).] The Superior Court therefore lacked jurisdiction and erred by considering IV's reargument. *Brown v. Weiler*, 1998 WL 665064, at \*1 (Del. Sept. 15, 1998) (finding no jurisdiction over reargument motion filed after 17 days).

Regardless, IV cannot satisfy the limited grounds for reconsideration. As IV's cases reinforce, the law-of-the-case doctrine allows reconsideration of “a prior decision that is clearly wrong, produces an injustice or should be revisited because of changed circumstances.” *Frederick-Conaway v. Baird*, 159 A.3d 285, 296 (Del.

2017); *see Arizona v. California*, 460 U.S. 605, 619 n.8 (1983) (reciting similar standard). IV identifies no injustice or changed circumstances. [IV.Br29-30.] IV only argues the original damages cap was “clearly wrong” “*if* the prior decision was interpreted such that LG could be awarded \$ [REDACTED] *and nothing less*, which seems to be what LG intends[.]” [IV.Br30.] This is IV’s same strawman as in Part I.C.1, *supra*. Nobody (including LG) advanced this view, as IV’s lack of citation confirms. Rather, the SJ ruling held “LG’s *maximum* recoverable damages from IV ... are \$ [REDACTED].” [A316-317; *see also* A912-913 (168:23-169:5); A340; A361.]

Finally, IV’s other cases are inapposite. *Moses*’s prior decision relied on “facts which subsequent testimony revealed to be otherwise”—circumstances absent here. *Moses v. State Farm Fire & Cas. Ins. Co.*, 1992 WL 179488, at \*2 (Del. Super. Ct. June 25, 1992). And *Lorillard* recites basic contract interpretation principles without mentioning the law-of-the-case doctrine. *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739-40 (Del. 2006).

### **3. IV Cannot Justify the Departure from the Pretrial Stipulation**

IV does not dispute that (1) the Pretrial Stipulation recited a \$ [REDACTED] cap, not IV’s second \$ [REDACTED] cap; and (2) IV never moved to modify the Pretrial Stipulation or showed manifest injustice under Rule 16(e). [*Compare* LG.Br26-28,

with IV.Br30-32.] Nor does IV mention the Superior Court’s reliance on the Pretrial Stipulation’s blanket reservations of rights, despite LG’s arguments about this issue. [Compare LG.Br27-28, with IV.Br30-32.] Because this blanket reservation was the Superior Court’s *sole* basis for denying waiver, [A606], IV’s inability to defend it warrants reversal.

IV cannot avoid waiver by cabining *Alexander* and *Realty Enterprises* to unpled “prejudicial trial issues” and “cause of action,” respectively. [IV.Br30-32.] Waiver attaches to any issue not raised in the Pretrial Stipulation because it “shall control the subsequent course of *the action*[,]” Del. Sup. Ct. R. 16(e), and “control[] the parameters of *the issues presented for the court’s consideration*,” *Gannett Co. v. Bd. of Managers of the Del. Crim. Just. Info. Sys.*, 840 A.2d 1232, 1238 (Del. 2003); *see also* 6A Fed. Prac. & Proc. Civ. §1522 n.6 (3d ed.) (“Claims, issues, defenses, or theories of damages not included in the pretrial order are waived[.]”). For this reason, this Court in *Gannett* vacated the Superior Court’s decision on FOIA-related legal issues absent from the pretrial stipulation. 840 A.2d at 1238-39. And in *Rexnord Industries, LLC v. RHI Holdings, Inc.*, the court excluded a purely legal “statute of limitations defense because Defendants failed to include it in the pretrial stipulation.” 2009 WL 377180, at \*5-6 (Del. Super. Ct. Feb. 13, 2009). IV has no response to *Gannett* and *Rexnord*. [Compare LG.Br27, with IV.Br30-32.]

Because IV has no response, it again argues LG was not prejudiced at “the *jury* trial.” [IV.Br32; *see* Part I.B, *supra*.] But prejudice is not required for waiver here. *Gannett*, 840 A.2d at 1238-39 (precluding issue not raised in pretrial stipulation without considering prejudice); *Rexnord*, 2009 WL 377180, at \*5-6 (same). Regardless, Rule 16 and the Pretrial Stipulation have numerous case-narrowing goals which IV’s failure to include its second damages cap undermined, thereby prejudicing LG. *See* Del. Sup. Ct. R. 16(a)-(e). IV does not even dispute LG’s great prejudice outside of trial. [LG.Br19-20.] Nor could it, as IV’s eve-of-trial second damages cap further reduced LG’s damages by \$[REDACTED], while depriving LG of *all* pre-trial opportunities to address this defense, including seeking discovery and adjusting litigation strategy. LG’s prejudice is even more poignant as IV never tried to amend the Pretrial Stipulation or show manifest injustice.

Finally, IV cannot rely on an abuse-of-discretion standard. [IV.Br16, IV.Br32.] Where, as here, the issues involve whether the Superior Court exceeded the scope of a pretrial stipulation, this Court reviews *de novo*. *Gannett*, 840 A.2d at 1237. Regardless, IV’s inability to support the Superior Court’s sole basis for rejecting waiver confirms the Superior Court abused its discretion.

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This Court should reverse both erroneous damages-cap decisions.



## II. The Superior Court Erred in Denying Prejudgment Interest

Although IV does not dispute that prejudgment interest in legal actions is a right not subject to discretion, [*compare* IV.Br33-35, *with* LG.Br36-39], it advances two arguments against prejudgment interest.

First, IV insists prejudgment interest should be denied unless LG [REDACTED] [REDACTED] out-of-pocket. [IV.Br33-34.] But there is no legal basis for this requirement. IV cannot even dispute that no Delaware case requires out-of-pocket payments before awarding interest, and non-Delaware authorities reject such a prerequisite. [*Compare id.*, *with* LG.Br40-43.]

IV's cases are inapplicable. [IV.Br33-34.] Three cases *awarded* prejudgment interest. *Moskowitz v. Wilmington*, 391 A.2d 209 (Del. 1978); *O'Riley v. Rogers*, 2013 WL 4773076 (Del. Super. Ct. Sept. 4, 2013); *Trans-World Airlines, Inc. v. Summa Corp.*, 1987 WL 5778 (Del. Ch. Jan. 21, 1987). The other two denied interest either because rescissory damages already captured lost opportunities, *Deane v. Maginn*, 2024 WL 3043968, at \*2 (Del. Ch. June 18, 2024), or because the non-compensatory damages covered future harm, *Salt Meadows Homeowners Ass'n, Inc. v. Zonko Builders, Inc.*, 2023 WL 1370997, at \*7 (Del. Super. Ct. Jan. 31, 2023).

Here, LG's damages are compensatory and cover funds withheld from LG.

Had IV paid when LG's injury accrued in 2021, LG could have [REDACTED] [REDACTED] or invested the funds toward [REDACTED]. [LG.Br43-46.] Instead, IV's retention of funds and earned interest deprived LG of the time value of money, while LG's [REDACTED] have burdened it. [*Id.*] So, IV, not LG, is receiving a windfall by not paying interest on ill-gotten funds. [*Id.*]

Second, IV argues §9.6 precludes prejudgment interest. [IV.Br34-35.] As §9.6 is silent about interest, it provides no textual support for IV's argument. [A220 §9.6.] While IV equates prejudgment interest with damages to fit within §9.6, [IV.Br34-35], this Court already rejected this argument: "[P]rejudgment interest does not constitute an element of damages controlled by the uninsured motorist policy's coverage limits." *State Farm Mut. Auto. Ins. Co. v. Enrique*, 2011 WL 1004604, at \*2 (Del. Mar. 22, 2011). Instead, "prejudgment interest is an expense associated with the defense costs and strategy in the case." *Id.* (affirming prejudgment interest exceeding insurance cap).

Although IV characterizes *Enrique* as a tort case, [IV.Br35], *Enrique* also adjudicated a contract-based defense arising from an insurance policy cap. 2011 WL 1004604, at \*1. And another court applied *Enrique* in a breach-of-contract case by refusing to subject prejudgment interest to a liability-limiting clause. *Noramco LLC v. Dishman USA, Inc.*, 2023 WL 1765566, at \*6 (D. Del. Feb. 3, 2023), *vacated*-

*in-part on other grounds*, 2024 WL 3423711 (3d Cir. July 16, 2024). Even the Superior Court could not side with IV on this argument. [A588.]

The prejudgment-interest denial should be reversed.



### III. The Superior Court Erred in Denying Costs

IV does not dispute that §9.6's cap applies only to "a theory of liability *arising out of* this Agreement," and that costs arise from LG's prevailing-party status rather than IV's breach of the Agreement. [*Compare* LG.Br50 (quoting A220 §9.6), *with* IV.Br36-38.] Because §9.6's requirement is unsatisfied, it cannot cover costs or support the costs denial.

Even if this were not dispositive, IV's three arguments against costs also fail. First, IV can hardly dispute that interpreting §9.6 as precluding costs renders the Agreement's [REDACTED] and §4.4 superfluous. [LG.Br48.] Unable to distinguish [REDACTED], IV addresses a different clause—§5.1's payment language—even though LG discussed and quoted [REDACTED] cost-shifting language. [*Compare* LG.Br48 (quoting [REDACTED]), *with* IV.Br36-37 (addressing §5.1).] And IV's argument that §4.4 is just about the German lawsuits begs the unanswered question: why does §4.4 expressly preclude cost-shifting if §9.6 already (supposedly) precludes costs? [*Compare* LG.Br48, *with* IV.Br36-37.] Thus, [REDACTED] and §4.4 contradict §9.6's alleged preclusion of costs.

Second, IV again characterizes *Enrique* as a tort case. [IV.Br37.] But *Enrique* also adjudicated a contract-based defense regarding an insurance policy cap, 2011 WL 1004604, at \*1, and another court applied *Enrique* in a breach-of-contract case. *Noramco*, 2023 WL 1765566, at \*6. IV makes this characterization because it has

no response to *Enrique*'s own analogy of costs to prejudgment interest, which *Enrique* exempts from contractual caps. *Compare* 2011 WL 1004604, at \*1, with [IV.Br37]. Thus, §9.6's cap is inapplicable to costs.

Third, IV does not dispute that the Superior Court's cited cases do not equate costs and incidental damages, or that the court quoted *dictum* from *Peyton* to justify its decision. [*Compare* IV.Br37-38, with LG.Br49-50.] So, IV claims the Superior Court "did not conflate costs with incidental damages," [IV.Br37], despite the opinion stating otherwise, [A587 ("[C]aselaw suggests litigation costs are incidental damages.'")].

This Court should reverse the denial of costs.

## **SUMMARY OF ARGUMENT ON CROSS-APPEAL**

1. Denied. LG's telematics units are not "Foundry Products" because they are not made "*solely*" according to customers' proprietary design specifications. The Superior Court's correct interpretation required exclusive design control, which LG's customers do not have. Offering no valid interpretation, IV advances improper expert opinion and mischaracterizations, while the evidence shows LG made its units using its own proprietary design specifications.

2. Denied. GM's and Toyota's October 2023 indemnification letters were correctly admitted as non-hearsay business records. Aside from being waived, IV's notice-only admission argument rests on a different letter with different exhibit number, date, and content. Further, LG proved causation and damages through competent evidence, and the jury agreed by awarding LG's exact damages amount requested. IV's apportionment requirement and demand for underlying customer records lack legal support and contradict its litigation choices.

3. Denied. LG's breach claim was ripe from the start, because IV's lawsuits against GM and Toyota based on LG's products led them to demand indemnification before LG sued IV. Competent evidence confirms LG owes indemnity under contracts with its customers, and the jury properly resolved any related factual disputes. IV's challenges are waived or meritless.

### **ARGUMENT ON CROSS-APPEAL**

LG disagrees with certain statements in IV's Nature of Proceedings and Statement of Facts sections. [IV.Br1-2; IV.Br6-15.] Because only some disputed statements impact the cross-appeal, LG addresses them in the context of its responses below.

**I. The Superior Court Correctly Ruled LG’s Telematics Units Are Not “Foundry Products”**

**A. Question Presented**

Did the Superior Court correctly interpret the Agreement’s “Foundry Products” definition and properly conclude LG’s telematics units are not “Foundry Products,” where the interpretation rests on plain contractual language while IV offers no competing construction, and where the undisputed facts confirm LG’s control over the units’ design while IV presents no genuinely disputed material facts?

**B. Scope of Review**

This Court reviews contract interpretation and summary judgment (“SJ”) decisions *de novo*. *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140 (Del. 2009). Because the parties filed cross-SJ motions on “Foundry Products” without asserting any material factual disputes, [A309-312; A320-324], they “stipulat[ed] for decision on the merits based on the record submitted with the motions,” Del. Sup. Ct. R. 56(h). “Thus, the usual standard of drawing inferences in favor of the nonmoving party does not apply.” *Farmers for Fairness v. Kent County*, 940 A.2d 947, 955 (Del. Ch. 2008).



## C. Merits of Argument

### 1. LG's Telematics Units Are "Licensed Offerings," Not "Foundry Products"

The Agreement grants, *inter alia*, licenses and releases covering "Licensed Offerings." [A302-303; A212 §2.1; A214 §4.3(b).] The Agreement broadly defines "Licensed Offerings" as "*all* of" the "current and future *products*, processes, services or technologies that are: *made or used by*" LG or its subsidiaries. [A211; A303.] The Agreement exempts "Foundry Products" from being Licensed Offerings, and narrowly defines "Foundry Products" as:

products manufactured by Licensee or any Licensee Subsidiary for or on behalf of a third party, *solely* according to such *third party's proprietary design specifications*, [REDACTED], whereby such third party sells or distributes such products as its own products under its own mark or trade indicia.

[A211-212.] Thus, "Foundry Products" must be made "*solely*" according to a third party's proprietary design specifications. [*Id.*]

Although it does not seriously contest that LG-made telematics units meet the "Licensed Offerings" definition, IV's no-breach SJ motion argued these units are "Foundry Products." [B0157-B0179.] LG's breach SJ motion argued, *inter alia*, these units are "Licensed Offerings" and not "Foundry Products." [AR69-77.] Resolving these cross-motions, the Superior Court interpreted the Agreement and concluded LG's telematics units are not "Foundry Products." [A309-312.]

The Superior Court correctly interpreted the “Foundry Products” definition by giving the word “solely” its ordinary meaning of “alone, i.e., to the exclusion of all else.” [A311.] Case law supports this ordinary meaning. *Husted v. A. Philip Randolph Institute*, 584 U.S. 756, 768 (2018) (“‘Solely’ means ‘alone.’”); *Neumann v. AT&T Commc’ns, Inc.*, 376 F.3d 773, 783 (8th Cir. 2004) (“‘Solely’ means ‘to the exclusion of alternate or competing things[.]’”). So does the dictionary. [AR514]; *Lorillard*, 903 A.2d at 738 (approving dictionary use to determine plain meaning). Applying this plain meaning, the Superior Court correctly concluded the “Foundry Products” definition “requires that the customer alone controls design.” [A311.]

Under this interpretation, the undisputed evidence shows “Toyota and GM did not ‘solely’ control the design of the telematic[s] units” because “LG controlled the design of the base telematic unit[.]” [A311-312.] LG produced over 20,000 pages of confidential technical documents evidencing its engineers’ independent work in designing and developing telematics units, [AR111-129; AR152-167], including: development timelines and management plans, [AR200-268]; system architecture descriptions, [AR270-317]; circuit schematics, [AR320-327]; and internal software engineering guides, [AR329-350.] Reflecting the extensive work of over [REDACTED] LG engineers in designing and developing telematics units, these LG-internal specifications are highly confidential and inaccessible by customers. [AR357-358]

(28:25-29:12); AR359 (57:5-58:16).] LG thus developed and made its telematics units according to its own proprietary design specifications. [AR361-363 (87:2-93:5); AR195-196 (127:8-129:10); AR366-367.]

Even before LG filed suit, GM confirmed this fact for IV: “The reality is that the product [telematics unit] is *built to LG specifications* and is identified as coming from and manufactured by LG with markings directly on the product.” [AR508.] The Superior Court recognized this reality: “Rather than blindly follow the design specifications of Toyota and GM, LG was heavily involved in all aspects of telematic unit design, exclusively controlling some aspects.” [A312.]

Accordingly, the Superior Court correctly concluded that, “[b]ecause the telematics units were not made ‘solely’ pursuant to Toyota or GM’s design specifications, they are not Foundry Products.” [A312.]

**2. IV Offers No Competing Interpretation, Except for Improper Expert Opinion and Mischaracterization of LG’s Position**

IV never explicitly articulates its proposed interpretation of “Foundry Products” or any alternative construction of “solely.” [IV.Br39-47.] This silence concedes the correctness of the Superior Court’s interpretations. *See ITG Brands, LLC v. Reynolds Am., Inc.*, 2019 WL 4593495, at \*11 (Del. Ch. Sept. 23, 2019) (finding concession where party “offers no competing interpretation”).

At most, IV asserts that “Foundry” is a “specialized” term, so its expert’s opinion based on industry usage should control. [IV.Br11; IV.Br44; IV.Br46.] But IV has not shown the “Foundry Products” definition is ambiguous, such that industry usage might be appropriate. *Bell Atl. Meridian Sys. v. Octel Commc’ns Corp.*, 1995 WL 707916, at \*6 (Del. Ch. Nov. 28, 1995) (ruling industry usage is only appropriate where there is an ambiguity). Nor is it appropriate for an expert to offer legal opinions about a contract’s meaning and scope. *Mine Safety Appliances Co. v. AIU Ins. Co.*, 2015 WL 5818071, at \*2 (Del. Super. Ct. Aug. 4, 2015) (“Interpretation of the legal principles that determine the parties’ duties and obligations, is a matter exclusively for the Court.”). The Superior Court correctly declined to “turn to extrinsic evidence” and rejected “IV’s attempts to muddy the waters by introducing expert opinion on the meaning of the definition of Foundry Products,” because “the definition of Foundry Products is clear on its face.”<sup>3</sup> [A311.]

Further, the expert incorrectly opined that “solely” alone demarcates the line distinguishing “Foundry Products” from “Licensed Offerings.” [IV.Br10-11; IV.Br44.] But Foundry Products can differ from Licensed Offerings for other

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<sup>3</sup> If extrinsic evidence were appropriate, then pre-execution negotiation exchanges show LG replaced broader draft language prohibiting contract manufacturing with the “Foundry Products” definition to narrowly confine this exemption and broadly protect LG’s products. [AR98-99 ¶3.] IV accepted it without substantive modification. [*Id.*]

reasons. For example, Foundry Products—which LG must make and third parties must sell—cannot satisfy Licensed Offerings’ definitional prong (b), which requires that third parties make and LG sells such products. [A211-212.] Likewise, chips used by LG within telematics units are Licensed Offerings under the definition’s prong (a), but cannot be Foundry Products because LG does not make the chips. [Id.] Since the expert contradicts the Agreement’s plain language, his interpretation cannot be right. *See Wang v. Injective Labs Inc.*, 2025 WL 1825571, at \*13 (D. Del. June 26, 2025) (excluding expert opinion contradicting agreement’s plain language).

So, IV raises a strawman by attributing to LG an extreme interpretation under which LG’s involvement “in any way” negates the “Foundry Products” exemption. [IV.Br43-45.] IV’s citations to GM’s CTS document and the Agreement do not even address this strawman interpretation. [Id. (citing B1341-1343, A211-212).] IV’s sole “support” is an out-of-context selective quotation from one page in LG’s 35-page SJ brief, [id. (citing B210)], conveniently disregarding LG’s clear statement just two sentences later that, “[g]iven the strict requirement imposed by the word ‘solely,’ the telematics units cannot be ‘Foundry Products’ because ... LG develops and manufactures the telematics units according to its own proprietary design.” [B210.] IV’s strawman interpretation therefore does not reflect LG’s measured position.

More importantly, this Court reviews the *Superior Court's* interpretation, not LG's supposed position below. Here, there is no indication the Superior Court adopted this strawman interpretation, [A309-312], and even less reason to assume it did. *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 385 n.2 (2008) (“[I]t would be inappropriate for the reviewing court to assume, absent indication in the [Trial] Court’s opinion, that the lower court adopted a party’s incorrect argument.”). This may be why IV attacks its strawman, instead of the Superior Court’s actual interpretation. [IV.Br41-47.]

Finally, IV nonsensically argues “GM/Toyota alone controlled the *manufacture* of the telematics units.” [IV.Br10; IV.Br40; IV.Br42-43.] Because “Foundry Products” must be “manufactured ... *solely* according to such *third party's proprietary design specifications*[,]” [A211-212], the relevant question is who controls the “design,” as the Superior Court correctly held, [A311-312], not who controls the “manufacture.” This may explain why IV did not even make, and the Superior Court thus did not address, this argument on SJ. [B169-176; A309-312; A320-324.] As such, it is now waived. *In re Oracle*, 339 A.3d at 17-18.

### **3. LG’s Customers Do Not Solely Control the Products’ Design**

IV attempts to create material factual disputes regarding whether LG’s telematics units are Foundry Products. [IV.Br41-42; IV.Br44-47.] But its six

arguments are unavailing.

First, IV incorrectly asserts GM and Toyota allegedly “control the design of the telematics units,” their specifications supposedly “govern the design of the customers’ telematic unit,” and they must approve any changes. [IV.Br41-42; IV.Br44.] LG’s Principal Engineer Changsik Woo, whose deposition IV cites for these assertions, repeatedly testified otherwise. For example, he consistently denied GM and Toyota control the design through functional requirements, such as GM’s CTS document, [AR501 (86:7-87:19)], explaining that LG “designs the telematics units with the goal of satisfying those requirements to the extent possible [but t]he customer’s requirements do not specify the design of the telematics units.” [AR366 ¶2.] “Instead, LG designs the telematics units and develops its own technical specifications for the telematics units.” [*Id.*] As another LG witness explained, customers “have requirements, they have wishes, just as I do when I go to pick out a smartphone. But they are not intimately involved in designing a telematics product.” [AR477 (128:2-10).]

When asked whether customers must approve LG’s changes to functional requirements, Woo emphasized the customers “have to agree with LGE” because, if they “did not agree with LGE,” then “[i]n the worst case scenario, we wouldn’t be able to develop the product.” [AR501 (87:20-88:2).] He gave an example where,

despite a customer requesting 5G in telematics units, the customer abandoned that plan after LG rejected this request. [AR502 (90:12-91:12).]

Second, IV emphasizes the telematics units are made for each customer's own use. [IV.Br44-46.] This is irrelevant. As the Superior Court noted, "LG controlled the design of the base telematic unit and then worked with Toyota and GM to modify them according to customer specifications." [A312.] So, even if LG customized certain telematics units to fit GM vehicles and other units to fit Toyota vehicles, this customization does not change one key fact: LG designed and manufactured both sets of telematics units based on its own proprietary design specifications.

Third, IV erroneously asserts "the telematics units here incorporate GM/Toyota technology." [IV.Br46.] Yet, IV offers *no* evidence supporting this assertion, with its citation to the Agreement being irrelevant on this issue. [*Id.* (citing A211).] But even if the LG-designed telematics units incorporate a customer's technology (they do not), they would remain "Licensed Offerings" because such "*technologies* [] are: (a) made or *used by*" LG. [A211]; *Sanyo Elec. Co. v. Intel Corp.*, 2021 WL 747719, at \*10 (Del. Ch. Feb. 26, 2021) (granting SJ that third-party chips' incorporation was "use" under license).

Fourth, IV quotes a GM document to suggest GM developed "all accused features" of the products. [IV.Br42 n.6.] But the quote addresses GM's *vehicle*



development without mentioning, much less denying, LG’s development of the *telematics* units. [B816.] In fact, GM acknowledged that “[m]any of the accused hardware and software components are *designed and developed by third parties*.” [AR563.]

Fifth, IV makes much ado about Woo’s knowledge about litigation and his document access. [IV.Br46.] As an engineer, he has no personal knowledge about IV’s suits against GM and Toyota. [AR540 (134:4-19).] But “LGE worked on their [telematics units] development, so we would be able to figure out what functionalities were included” in LG’s telematics units. [AR543 (168:5-8).] And complying with LG’s access restriction for confidential documents is not the same as being unfamiliar with restricted documents, as shown by Woo’s extensive testimony about an access-restricted LG software specification. [AR546-552 (173:23-179:16).]

Finally, even if LG’s customers (allegedly) had some control over the design process such as through contracts, [IV.Br42, IV.Br44-45, IV.Br46], IV offers no evidence the design of the telematics unit comes “*solely*” from the customers, as required by the “Foundry Products” definition. IV even admitted that LG *does* participate in the design. [B174 (admitting “LG implements the design specification requirements of its customers”).] Thus, even under IV’s skewed view, LG’s

telematics units are not “Foundry Products” because, as IV admits, LG makes these units based at least in part on its own proprietary design specifications.

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The Superior Court correctly interpreted “solely” in the “Foundry Products” definition, and properly ruled LG’s telematics units are not Foundry Products based on the undisputed factual record.

[REDACTED]

## **II. LG Proved Its Damages with Sufficient Certainty**

### **A. Question Presented**

Did the Superior Court correctly deny IV's motion for judgment notwithstanding the verdict ("JNOV") on damages where (1) IV builds its admissibility argument on the wrong document, and shows no error in the admission of LG's indemnification evidence under the Delaware Rules of Evidence ("D.R.E"), and (2) the jury properly credited LG's legally-sufficient indemnification evidence, notwithstanding IV's legally-unsupported demands for extraneous records?

### **B. Scope of Review**

In reviewing the denial of JNOV motions, this Court must view the evidence in the light most favorable to LG and "determine whether under any reasonable view of the evidence, the jury could justifiably find in favor of" LG. *Mercedes-Benz of N. Am. Inc. v. Norman Gershman's Things to Wear, Inc.*, 596 A.2d 1358, 1362 (Del. 1991). "[T]he factual findings of a jury will not be disturbed if there is *any* competent evidence upon which the verdict could reasonably be based." *Id.*

### **C. Merits Argument**

#### **1. The Superior Court Properly Admitted GM's and Toyota's Letters**

IV argues GM's and Toyota's indemnification letters were admitted only to show notice, not for the truth of the matter. [IV.Br48-50.] IV is wrong.

**a. IV's Argument about Notice-Only Admission Relies on Misdirection and Is Waived**

IV's argument rests on misdirection. As IV acknowledges, LG relied on two indemnification letters from GM and Toyota for LG's damages amount. [IV.Br48 (citing A936-938).] Toyota's October 25, 2023, letter was Exhibit No. PTX-469, [A936], while GM's October 3, 2023, letter was PTX-485, [A937-938].

IV's quotation supporting its argument, however, does not address either PTX-469 or PTX-485—it instead pertains to a *different* GM letter: PTX-496. [IV.Br49 (quoting A451 (T.142:8-22) (“[W]e’re not offering **PTX-496** for the truth of the matter asserted.”)).] In contrast to the October 2023 indemnification letters, PTX-496 is dated *November 18, 2021*. [B1260 (PTX-496).]

The letters were clearly different. IV understood these letters had different exhibit numbers, even citing its own appendix for this November 2021 letter, [IV.Br49 (citing “[B1260 (**PTX-496**)”)], before citing LG's appendix for the October 2023 letters, [IV.Br49 (citing “[A936 (**PTX-469**)” and “[A937 (**PTX-485**)”)]. The dates were also meaningfully different. GM's November 2021 letter cannot address LG's damages amount because it was sent shortly after IV sued GM in October 2021, and long before GM settled IV's lawsuit in April 2023. [*Compare* B1260, *with* A438-439 (T.129:13-130:14) *and* A473 (T.173:9-11).] Further, the letters' contents are different. GM's November 2021 letter notified LG of IV's

patent assertion, without mentioning any indemnification amount. [B1260; A452-A454 (T.143:3-145:4).] In contrast, the October 2023 letters state the indemnification amounts requested from LG. [A936-938.] Given these differences, IV knew (or should have known) its entire argument rested on a flawed premise.

And IV should have known it cannot now argue the October 2023 indemnification letters “were not admitted to prove damages.” [IV.Br50.] IV’s JNOV papers never challenged—and so the Superior Court’s JNOV denial never addressed—the admission of the October 2023 indemnification letters under D.R.E. 902 or the November 2021 letter for notice. [B1142-1159; B1179-1187; B1205-1219.] IV therefore waived this argument. *In re Oracle*, 339 A.3d at 17-18.

**b. The GM and Toyota Letters Were Properly Admitted**

Regardless, the Superior Court did not err in admitting the October 2023 indemnification letters as business records under D.R.E. 902.

In its SJ briefing, IV challenged the October 2023 indemnification letters as inadmissible hearsay. [A314-315.] LG countered these letters were not hearsay, including through D.R.E. 902(11) and 902(12) certifications from GM and Toyota. [B291-292.]

These certifications, executed by the same GM and Toyota employees who authored their respective October 2023 letters, met the requirements of D.R.E.

803(6) and 902(11)-(12). These GM and Toyota employees established their access and knowledge of relevant facts through their regular job responsibilities, and attested their respective letters satisfied D.R.E. 803(6)’s requirements. [AR649-650 ¶¶1-7; AR655-656 ¶¶1-7.] LG also amply served the certifications over a month before trial, thus meeting the Rules’ requirement. D.R.E. 902(11) (requiring notice “[b]efore the trial or hearing”). Based on these certifications, the Superior Court ruled the October 2023 letters were admissible over IV’s hearsay challenge. [AR747-751 (89:19-93:8); A314-315.] As IV does not appeal this admissibility ruling, [IV.Br48-50], any challenge is waived, Del. Supr. Ct. R. 14(b)(vi)(A)(3).

At trial, the Superior Court admitted into evidence GM’s indemnification letter, [A476-477 (T.180:20-181:4); A937-938 (PTX-485)], and Toyota’s indemnification letter, [A490-491 (T.210:21-211:9); A936 (PTX-469)]. IV did not object and merely requested preservation of its (now-abandoned) dispute with the pre-trial admissibility ruling. [A476-477 (T.180:17-181:4); A490-491 (T.210:21-211:9).]

The October 2023 indemnification letters were therefore properly admitted.

## **2. LG Sufficiently Proved Its Damages at Trial**

Mischaracterizing the October 2023 letters as “uncorroborated,” IV advances two arguments lacking merit. [IV.Br50-55.]

**a. IV Fails to Justify Its Apportionment Requirement**

IV argues LG did not “apportion[.]” the indemnification amounts. [IV.Br50, IV.Br54]. This argument fails.

The Superior Court twice rejected this argument. On SJ, the court characterized IV’s apportionment argument as “legally untethered” because “where a plaintiff demonstrates the fact of damages, the Court will not grant summary judgment because of a dispute in the amount of damages.” [A314.] Since LG’s documentary evidence showed “how IV’s alleged breach of the License Agreement caused at least some indemnifiable costs to LG[,]” “LG has met its burden of providing proof of damages and providing ‘a basis to make a reasonable estimate of damages,’ to be proved at trial.” [*Id.*] When IV’s JNOV motion rehashed this argument, the Superior Court again explained that “LG’s non-apportionment of its claimed indemnification amount does not ... mean that [it] has not sufficiently demonstrated its damages.” [B1215-1216 (original ellipsis and brackets).]

IV cites no authority to contradict the Superior Court’s rulings, and merely repeats its expert’s apportionment criticisms. [IV.Br50-51.] On cross-examination, however, IV’s expert conceded IV sued on 12 (not 5,739) patents, and IV’s lawsuits “helped bring about LG’s payment obligations to GM and Toyota.” [AR858 (T.1346:8-16); AR868-869 (T.1359:13-1360:17).] Likewise, IV’s corporate witness

conceded GM and Toyota settled “to avoid the risks and costs of litigation,” [AR846-849 (T.783:7-786:19)], and “[t]he risk was with the 12 patents.” [AR853 (T.957:6-8)]. IV’s expert further admitted GM “d[id] an allocation” of its expenses and fees in its indemnification request, [AR859-860 (T.1349:3-1350:17)], and Toyota also “d[id] an allocation of damages ... to LG” in its indemnification letter, [AR866 (T.1356:1-6)]. After hearing the testimony, the jury properly rejected the expert’s criticisms and credited LG’s evidence by awarding LG’s full request. [A419-420; B1232-1233.]

**b. LG’s Damages Were Not Speculative, and the Records Underlying the October 2023 Letters Were Unnecessary**

IV argues LG’s damages were speculative because LG did not provide GM’s and Toyota’s records underlying the customers’ indemnification amounts. [IV.Br50-54]. IV’s argument is wrong.

At trial, in addition to proving causation, [*e.g.*, AR858 (T.1346:8-16); AR857 (T.1344:3-6)], LG corroborated its damages by presenting (along with LG’s own reasoned analysis and explanation) the October 2023 indemnification letters in which GM sought \$ [REDACTED], [A937-938; AR814-827 (T.180:7-193:3)], and Toyota requested \$ [REDACTED], [A936; AR828-832 (T.209:11-213:12)], adding up to \$ [REDACTED], [AR837-838 (T.222:3-223:13)]. The jury credited this evidence



because, as the Superior Court recognized, “[t]he jury awarded LG \$ [REDACTED] in damages—the exact amount requested in the GM and Toyota indemnification letters.” [B1232.]

The Superior Court found LG’s evidence legally sufficient because “Delaware courts have repeatedly held that an ‘indemnification obligation is the measure of damages,’ in cases that implicate a contractual indemnity provision.” [B1232.] The law supports this finding. *E.g.*, *ITG Brands, LLC v. Reynolds Am., Inc.*, 2023 WL 6383240, at \*20 (Del. Ch. Oct. 2, 2023) (“[I]ndemnification obligation is the measure of damages[.]”); *Nucor Coatings Corp. v. Precoat Metals Corp.*, 2023 WL 6368316, at \*14 (Del. Super. Ct. Aug. 31, 2023).

Given LG’s legally sufficient evidence, the Superior Court properly allowed the jury to consider the evidence. [A314.] Although IV now argues the evidence “was insufficient to submit to the jury,” [IV.Br50-51; IV.Br54], IV’s JNOV papers never raised this issue, [B1142-1161; B1178-1191], thus waiving it, *In re Oracle*, 339 A.3d at 17-18. Regardless, the Superior Court did not determine, as IV argues, that its expert’s testimony somehow “qualified” the jury “to weigh all of the evidence.” [Compare IV.Br51 (citing B1214), with B1214.] Rather, the court recognized the jury “discredited” the expert’s testimony and “found LG proved its damages.” [B1216.]

Faced with an adverse verdict, IV insists on seeing GM’s and Toyota’s records underlying the October 2023 letters, [IV.Br50-54], even raising policy arguments based on false innuendos, [IV.Br54-55]. Yet, IV could have pursued these records itself through its subpoenas to GM and Toyota. [AR866-867 (T.1356:7-1357:15).] Instead, IV negotiated away the discovery and intentionally forewent the information at the center of its argument. [AR517-519; AR521-523).] IV’s insistence thus rings hollow.

Further, IV’s demand for underlying records has no support in its cases. First, in *Ware v. Rodale Press, Inc.*, [IV.Br52], the trial court dismissed the claim because the plaintiff only offered “an incomplete (and hardly precise) estimate,” without any supporting documentation. 322 F.3d 218, 225-26 (3d Cir. 2003). Here, LG presented both testimonial and documentary evidence demonstrating precise damages. [A936-938; AR833-838 (T.218:18-223:13).]

Second, *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513 (Del. Super. Ct. 2005), is inapposite. [IV.Br51.] In addition to being a bench trial, 884 A.2d at 517, “*Interim Healthcare* did not establish a rule that a plaintiff must always provide an allocation of an indemnification request to prove damages.” [B1232-1233 n.80.] Nor did it require records underlying indemnification requests. 884 A.2d at 570-71. Further, *Interim Healthcare* involved an indemnification request

for an agreement’s total amount, despite contractual indemnification limitations to just pre-sales cost reports and certain liabilities. *Id.* at 570-71. As the Superior Court noted, the LG-IV Agreement does not contain a similar “indemnification limitation,” [B1232-1233 n.80], and “IV never argued that LG’s indemnification obligations towards Toyota or GM were contractually limited[,]” [B1216 n.69].

Third, *LCT Capital, LLC v. NGL Energy Partners LP*, 249 A.3d 77 (Del. 2021), [IV.Br51-52], did not turn on speculation, corroboration, or underlying records. Rather, the fraud damages were “identical to the compensation that LCT is entitled to receive for its *quantum meruit* claim, and LCT cannot recover twice for the same loss.” *LCT*, 249 A.3d at 98. Here, LG sought the benefit of its contractual bargain, not double recovery.

Fourth, the settlement agreement and related lump-sum payment in *Duncan v. STTCPL, LLC*, [IV.Br53], covered three different sites, while the indemnification obligation covered only one specific site. 2020 WL 829374, at \*10 (Del. Super. Ct. Feb. 19, 2020). As the evidence did not specify the amount for just the indemnified site, the court found any damages to be speculative. *Id.* Here, LG offered evidence showing the indemnification amount for each customer, [A936-938], and IV’s expert conceded each customer did an allocation, [AR859-866 (T.1349:3-1356:6)].

Fifth, *United States v. Garrett*, 2025 WL 1994396, at \*6 (D.S.D. July 17, 2025), [IV.Br55], is a criminal case involving the submission of false indemnity requests to the federal government. It has no relevance to this breach-of-contract civil case.

In sum, the Superior Court correctly held the evidence supported the jury's damages award. [B1216-1217.]

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The Superior Court correctly denied IV's damages-related JNOV motion.

### **III. LG Owes GM and Toyota Indemnification Due to IV's Breach**

#### **A. Question Presented**

Did the Superior Court correctly deny IV's motion for JNOV when (1) IV's JNOV motion never mentioned ripeness, and LG's breach claim is ripe anyway; (2) competent evidence supports the jury's findings that LG owes GM and Toyota indemnification; and (3) IV waived any challenge to the jury determining LG's indemnification obligations, and, regardless, the Superior Court properly submitted that issue to the jury?

#### **B. Scope of Review**

LG incorporates the Scope of Review in Cross-Appeal Part II.B, *supra*.

#### **C. Merits of Argument**

##### **1. LG's Breach Claim Has Been Ripe Throughout This Litigation**

Although IV's JNOV motion never mentioned ripeness, [B1142-1159], IV criticizes the JNOV ruling because LG's breach claim was supposedly unripe, [IV.Br5; IV.Br56-59]. IV is wrong.

"A case is ripe for judicial review when the dispute has matured to the point where the plaintiff has suffered or will imminently suffer an injury." *Town of Cheswold v. Cent. Del. Bus. Park*, 188 A.3d 810, 816 (Del. 2018). LG's breach claim easily clears this hurdle: LG was injured because IV's October 2021

complaints against GM and Toyota that targeted LG’s products breached the Agreement and triggered LG’s indemnification obligations to GM and Toyota. [A438-439 (T.129:13-130:14); A446-452 (T.137:17-143:9); A494-499 (T.218:22-223:13); AR804-813 (T.158:23-167:3).]

IV’s three arguments against ripeness lack merit. First, IV challenges ripeness because LG [REDACTED]. [IV.Br56-57.] But this argument ignores that “an obligation to indemnify is an ‘injury in fact,’” as the Superior Court recognized. [A591]; *Connorex-Lucinda, LLC v. Rex Res Holdings, LLC*, 2022 WL 17543209, at \*5 (Del. Super. Ct. Nov. 29, 2022) (finding debt to third party constitutes injury). LG’s “[REDACTED]” is why the Superior Court found “some injury in fact here” and allowed LG’s Amended Complaint over IV’s ripeness objection. [AR3-4 (3:19-4:11); AR37-38 (37:10-38:4).] IV has no response to that ruling. [IV.Br56-59.]

Second, IV argues LG’s [REDACTED] are “uncertain,” “contingent,” or “prospective,” and LG “invites advisory litigation.” [IV.Br56-58; IV.Br64.] This argument improperly conflates “the fact of damages” with “the amount.” *SIGA Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1122 (Del. 2015). Further, as the trial evidence showed, [REDACTED] [REDACTED] [REDACTED]. [B933 (T.255:7-20); B995-996

(T.336:1-337:12).] Merely because [REDACTED]

does not make them uncertain.

Third, IV argues LG did not incur indemnification obligations until after LG sued IV in November 2022. [IV.Br57-59; IV.Br13-14 (incorrectly asserting Toyota had not sought indemnification by selectively quoting B289 n.8).] This is factually incorrect. Toyota notified LG of IV’s infringement allegations and “ask[ed] indemnification” in October 2021. [AR884-885; A446-450 (T.137:21-141:4).] GM similarly notified LG of IV’s allegations in November 2021, [B1260; A450-454 (T.141:6-145:9)], and by July 2022, began sending indemnification invoices to LG, [AR882; AR883; AR804-813 (T.158:23-167:3)]. These pre-November 2022 indemnification demands confirm LG’s injury and distinguish this case from IV’s cited cases implicating hypotheticals and contingencies. *See XL Specialty Ins. Co. v. WMI Liquidating Tr.*, 93 A.3d 1208, 1217-18 (Del. 2014) (dismissing declaratory judgment count resting on hypothetical events); *Lima USA, Inc. v. Mahfouz*, 2021 WL 5774394, \*8 (Del. Super. Ct. Aug. 31, 2021) (dismissing where only threat made without indemnification demand).

Although LG’s damages amount continued to increase after November 2022 because IV continued litigating against LG’s customers, the amount was fixed once GM and Toyota settled with IV and sent their final indemnification invoices in 2023.

[A936-938.] IV cites no case rejecting ripeness merely because post-complaint developments increased the damages amount. [IV.Br57-59.] To the contrary, “since ripeness is peculiarly a question of timing, it is the situation *now* ... that must govern.” *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 140 (1974). Thus, “[r]ipeness should be determined by considering factual developments that occurred after the complaint was filed[.]” 13B Fed. Prac. & Proc. Juris. §3532.7 n.5 (3d ed.); *see, e.g., Whitaker v. Monroe Staffing Servs., LLC*, 42 F.4th 200, 208 (4th Cir. 2022) (finding ripeness based on “factual developments that occurred after the complaint”). As IV itself admits, “there certainly is a case or controversy *now*[.]” [IV.Br58-59.]

## **2. LG Owes GM and Toyota Indemnification**

### **a. LG Owes GM Indemnification**

Competent evidence supports LG’s indemnification obligation to GM:

Q. ...[I]s there any doubt in your mind as to who owes indemnification obligations to GM?

A. No, not at all.

Q. Who is it?

A. It’s LG Electronics Inc.

[B919 (T.209:6-10).] In support, LG witness Hongsun Yoon testified that, since 2014, LG’s sales of telematics units to GM have been governed by GM’s General Terms & Conditions (“GTC”), and LG must “abide by these terms and conditions.”



[B903-906 (T.193:9-196:19).] GM’s GTC requires, *inter alia*, LG to “indemnify” GM against patent infringement claims. [B905 (T.195:1-21); B828.] Under the GTC, [REDACTED], [B915-918 (T.205:23-208:15); B999-1000 (T.340:23-341:23)], and now “[REDACTED] as a result of IV’s lawsuit against GM[,]” [B928-929 (T.218:22-219:1)].

IV raises four meritless arguments. First, IV notes that LG [REDACTED] [REDACTED]. [IV.Br59.] But IV’s JNOV motion did not challenge LG’s indemnification obligations on this basis, [B1147-1152], so it is waived. *In re Oracle*, 339 A.3d at 17-18. Regardless, LG’s [REDACTED] are no less real merely because [REDACTED] [REDACTED]. As Yoon explained, though LG decided to “pursue this case [REDACTED]” because “[t]here’s a breach of contract here[,]” [REDACTED] [REDACTED]. [B927-928 (T.217:21-218:6); B933 (T.255:7-20); B995-996 (T.336:1-337:12).]

Second, IV questions the GTC’s applicability because it is unsigned and lacks certain details. [IV.Br59-60.] Yoon testified, however, that LG is the GTC’s “Seller,” GM is the “Buyer,” and all LG telematics units sold to GM since 2014 have been governed by the GTC. [B905-906 (T.195:10-196:15).] Because “[a] contract for sale of goods may be made in any manner sufficient to show agreement,

including conduct by both parties which recognizes the existence of such a contract[,]" 6 Del. C. §2-204(1), GM's GTC is a binding contract between LG and GM. This fact is confirmed by the writing itself, [B828], other writings evidencing the parties' understanding of this contract, [AR890; AR891; B913-914 (T.203:4-204:19)], and LG's conduct in [REDACTED], [REDACTED], [B917-918 (T.207:21-208:15); B999-1000 (T.340:23-341:23)]. As the Superior Court concluded, [B1213 n.54], this evidence allowed the jury to reject IV's position regarding the GTC. *See Honeywell Int'l Inc. v. Air Prods. & Chems., Inc.*, 872 A.2d 944, 951 (Del. 2005) (finding "parties' intent to be bound by" agreement was "independently established by" years of performance under agreement's terms).

Third, IV asserts the indemnification obligation belongs to LG's subsidiary LG Electronics U.S.A., Inc. ("LGEUS") based on GM's use of Yoon's business address. [IV.Br59-61 (citing A937).] Not so. GM views LG as the GTC's counterparty, especially since LGEUS does not sell telematics units to GM. [AR891; A453 (T.144:14-20); B914 (T.204:7-19).] GM used Yoon's business address only because it sent materials to *him* in his capacity as the attorney designated *by LG* to deal with GM's indemnification issues. [A452 (T.143:16-23); AR810 (T.164:5-22).]

Finally, IV challenges Yoon's "understanding" of GM's October 2023 letter.

[IV.Br61.] But IV waived this challenge by not timely objecting. *Med. Ctr. of Del., Inc. v. Loughheed*, 661 A.2d 1055, 1060 (Del. 1995). Regardless, IV ignores that LG (not LGEUS) sells telematics units to GM, is bound by the GTC, and [REDACTED]. [A452-453 (T.143:7-23, T.144:14-20); B917-918 (T.207:21-208:15); B960 (T.282:3-14).] These facts are consistent with GM’s October 2023 letter’s indemnification request to LG, quotation of the GTC’s indemnification clause, and statement that “LGE appears to be the sole supplier of the” telematics units. [A937-938.] As Yoon has handled GM-LG indemnification issues for “more than ten years,” [AR810 (T.164:5-10)], he reasonably testified GM’s letter referred to LG.

Because competent evidence supports the jury’s finding that LG owes GM indemnification, the Superior Court properly upheld it. [B1211-1214.]

**b. LG Owes Toyota Indemnification**

Competent evidence also supports LG’s indemnification obligation to Toyota:

Q. So putting all this together, the two agreements, who has the obligation to indemnify Toyota in this case?

A. LG Electronics Inc.

[B927 (T.217:4-7).] As Yoon explained, LG’s Japanese subsidiary entered into a 2016 Agreement with Toyota. [B923-924 (T.213:19-214:11); B1250-1259.] In 2020, LG adopted, modified, and supplemented that contract via a 2020 Agreement,

acknowledging LG “is obligated to indemnify Toyota against third party patent infringement claims” under the 2016 Agreement. [AR886; B925-927 (T.215:12-217:7).] LG has honored its obligation under the 2016 Agreement by [REDACTED] [REDACTED]. [B927 (T.217:8-16).] Under this obligation, “[REDACTED].” [B929 (T.219:2-4).]

IV’s two contrary arguments lack merit. First, IV asserts the indemnification obligation belongs to LG’s Japanese subsidiary under the 2016 Agreement. [IV.Br59; IV.Br61-62.] This assertion misconstrues Yoon’s testimony. Rather than “concede” Toyota sought indemnification “solely” under the 2016 Agreement, [IV.Br61-62 (citing B1001)], Yoon’s cited testimony merely confirmed §3 of the 2020 Agreement “do[es not] apply in this case.” [B1001 (T.342:1-15).] Elsewhere, Yoon explained that, when the two agreements are read together, the 2020 Agreement adopted, modified, and supplemented the 2016 Agreement, such that LG must indemnify Toyota. [B926-927 (T.216:1-217:7).] The parties’ course of conduct confirms this understanding because LG, not its Japanese subsidiary, [REDACTED] [REDACTED] under the 2016 Agreement. [B918 (T.208:2-15); B927 (T.217:4-16); B999-1000 (T.340:23-341:23).]

Second, IV argues LG failed to satisfy purportedly applicable conditions in

the 2020 Agreement. [IV.Br62-63]. This argument incorrectly assumes LG’s indemnification obligation arose from the 2020 Agreement’s §3. [IV.Br62-63.] As Yoon explained, Toyota’s October 2023 indemnification letter did not rely on this §3—it instead “pointed to the 2016 [A]greement.” [B1001 (T.342:1-15); *see also* A936 (seeking indemnification under 2016 Agreement’s §27.4).] The §3 conditions are irrelevant.

Accordingly, the Superior Court properly upheld the jury’s finding that LG owes Toyota indemnification. [B1208-1211.]

### **3. The Superior Court Did Not Err in Submitting LG’s Indemnity Obligations to the Jury**

Finally, IV cannot overturn the JNOV ruling because the Superior Court let the jury determine LG’s indemnity obligations. [IV.Br63.]

Initially, neither IV’s JNOV motion nor the JNOV ruling addressed this argument, [B1142-1159; B1205-1219], so IV cannot challenge the JNOV ruling on this basis. *In re Oracle*, 339 A.3d at 17-18. Only IV’s new trial motion addressed this argument, [B1117 n.5; B1225-1226], and IV waived any challenge to the new trial ruling, Del. Supr. Ct. R. 14(b)(vi)(A)(3).

Even if this argument were not waived, there was no abuse of discretion. *James v. Glazer*, 570 A.2d 1150, 1156 (Del. 1990). Instead, the Superior Court properly rejected IV’s argument on procedural and substantive grounds. [B1226.]

Procedurally, the Superior Court held “IV waived any argument related to whether it was legal error to have the jury determine” LG’s indemnity obligations because “IV never raised this argument at trial or objected to the Court’s submission of that question to the jury.” [B1226 (citing *Med. Ctr.*, 661 A.2d at 1060).] IV does not challenge this waiver finding, [IV.Br63], so IV’s argument is now doubly waived. Del. Supr. Ct. R. 8, 14(b)(vi)(A)(3); *In re Philadelphia Stock Exch., Inc.*, 945 A.2d 1123, 1134 (Del. 2008).

Substantively, *IV* disputed numerous facts regarding LG’s indemnity obligations, as IV’s appeal brief confirms. [IV.Br59-63 (disputing indemnity facts); *see also* AR632-634.] *IV* persuaded the Superior Court on SJ to find “a genuine dispute of material fact regarding the extent of LG’s contractual indemnification liability to Toyota and GM.” [A315.] At trial, *IV* successfully urged the Superior Court to instruct the jury to “determine” whether “the obligation to indemnify GM and Toyota falls on some party that is not a plaintiff in this case[.]” [*Compare* AR782-783, *with* AR870 (T.1505:7-14).] Given IV’s factual disputes and request for a jury determination of these disputes, the Superior Court properly submitted “the conflicting evidence” to the jury. [B1226.]

## **CONCLUSION**

The Court should reverse the judgment below as to the issues raised in LG's appeal and affirm the rulings challenged in IV's cross-appeal.

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