EFiled: Oct 21 2025 03:09PM EDT
Filing ID 77409967
Case Number 243,2025

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 **PUBLIC VERSION** **Filed on October 21, 2025**

APPELLEES/CROSS-APPELLANTS' REPLY BRIEF

Meredith Martin Addy
(*pro hac vice*)
ADDYHART LLC
10 Glenlake Parkway, Suite 130
Atlanta, Georgia 30328
312.320.4200
meredith@addyhart.com

Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
FARNAN LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0300
Facsimile: (302) 777-0301
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

Attorneys for Appellees/Cross Appellants Invention Investment Fund I, L.P., Invention Investment Fund II, LLC, Intellectual Ventures I LLC and Intellectual Ventures II LLC

Dated: October 6, 2025

TABLE OF CONTENTS

[redacted]

TABLE OF CITATIONS

Cases

Rules

REPLY ARGUMENT ON CROSS-APPEAL

I. LG's Telematic Units are "Foundry Products," thus Excluding them from Licensed Offerings

The parties dispute whether any input by LG on the design process removes the at-issue telematics units from the scope of Foundry Products. IV Opening Brief at 39 (hereinafter, "IV.OBr.39"), LG Reply Brief at 25-26 (hereinafter, "LG.RBr.25-26"). IV's position, based on the License Agreement's ordinary meaning and LG's agreements with its customers, is that, if LG provides any input to the design, that input must be approved and incorporated by the customer, thus making the telematics units "manufactured … solely" based on the customer's design. LG argues, by contrast, that any design input by LG *automatically* removes the product from the Foundry Product exception. LG.RBr.25-26. Under LG's unreasonable interpretation, a single input by LG regardless of its nature would disqualify every product as a Foundry Product. LG's interpretation fails to consider the realities of the foundry manufacturing process, requiring customer approval, because the product must operate within the rest of the customer's system. *See, e.g.,* [B0728-0729 (LG's Woo testifying: "The specifications are all different, and how they are activated are also different")]. LG cannot change its design without approval from the customer, which is key to the Foundry Products definition.

A. LG Misstates the Scope of Review by Asserting Reasonable Inferences are Inappropriate

LG improperly asserts under its Scope of Review that the cross-motions for summary judgment removed the requirement of the court to draw inferences in favor of the nonmoving party. LG.RBr.23, citing Del. Sup. Ct. R. 56(h), and *Farmers for Fairness v. Kent County*, 940 A.2d 947, 955 (Del. Ch. 2008). Such is not the case here, where IV recognized at the Superior Court that under LG's interpretation, "at best, the evidence indicates ***there are genuine issues of material fact*** as to what critical terms of the License Agreement mean and how they apply here." [B0337] (emphasis added), citing [B0324-0331(setting forth disputed facts under LG's unworkable interpretation)]; *accord* [B0242, B0268 (LG arguing factual issues exist under IV's interpretation)]. Therefore, LG's assertion that the Court ignore reasonable inferences under LG's interpretation is wrong.

B. "Foundry Products" Are An Exception to "Licensed Offerings"

LG also appears to argue that because the accused telematics units could possibly fall under "Licensed Offerings," they cannot be "Foundry Products." LG.R.Br.24. However, the plain language of the License Agreement is clear on this point: "Notwithstanding the foregoing [defining Licensed Offerings(s)], Licensed Offering(s) shall not include Foundry Products." [A211]. Therefore, the issue is not whether the accused telematics units may be "Licensed Offerings," in the abstract, but rather, that they meet the requirements for "Foundry Products," expressly

excluding them from Licensed Offerings. *Id.* LG's arguments about potential differences between Foundry Products and Licensed Offerings are irrelevant here. LG.RBr.27-28.

C. LG Improperly Extracts the Term "Solely" from its Context of the "Foundry Products" Definition

In order to promote its unworkable definition, LG excises "solely" from its context in the License Agreement, ignoring that the definition relies on "products manufactured":

> **"*Foundry Products*"** shall mean **products manufactured** by [LG] for or on behalf of [GM/Toyota], **solely** according to [GM/Toyota's] proprietary **design specifications**, ….

[A211-212 (bold underlining added)]. Indeed, products "manufactured … solely according to GM/Toyota's proprietary design specifications" makes sense and resolves LG's protestations.

First, LG's reliance on the Superior Court's determination that the "Foundry Products" definition "requires that the ***customer alone control the design***" highlights the Superior Court's error. LG.R.Br.25 (emphasis, underlining added), citing [A311]. That is not what the definition of Foundry Products requires. Rather, it is the "manufacture" that must be solely according to the "customer's design." [A211-212]. Along those lines, the Agreements with GM and Toyota require that any input LG may have to the "design" must be adopted by GM/Toyota into their

design for manufacture. For example, Article 5.1(2) of the Toyota agreement states, in part:

[B1252 (Toyota Agreement, Article 5)(emphasis added)], *accord* [B1349 (GM Agreement)]. Because any LG "drawing" or "specification" must be approved, then the "manufacture" is "solely" according to that customer's "design." [A211-212]; *see also,* [B1252 ("

")]. That LG may have "contributed" to the design does not matter once it is approved and adopted for "manufacture" by GM/Toyota.

Indeed, the purported facts that LG raises do not affect this analysis. First, the GM/Toyota agreements explicitly specify that nothing can be changed without their approval. [B1252 (Article 5.1(2)], [B1264 ("

")]. Hence, LG's purported twenty thousand pages of "confidential technical documents" must be approved for incorporation into GM/Toyota's design specification, making them irrelevant to this analysis. LG.RBr.25 (citing lists of documents). LG's "over

engineers" and LG's internal specifications also cannot change the plain language of the GM/Toyota agreement, and that they may be "inaccessible by customers" also has nothing to do with whether they are "manufactured solely" according to GM/Toyota's specifications as required by the GM/Toyota agreements with LG. LG.R.Br.26 (citing testimony, not agreement language).

Indeed, GM/Toyota only hired LG to make telematics units that are manufactured solely according to GM/Toyota's specific manufacturing requirements. [B728-729 (24:2-25:22)(LG's Woo testifying about GM/Toyota products: "They're different products .... The specifications are all different, and how they are activated are also different.")] *accord* [B0768-0769 (64:25-65:3)(software documents provided by customer)], [B0762 (58:17-25)], [B0764 (60:6-16)(GM sends requirements that they need)], [B0768 (64:4-10)], [B0731-0732 (27:20-28:7)(customer requests functionality)]. That telematics units may be "built to LG specifications" is expected and does not alter that those specifications have to be approved and incorporated by GM/Toyota into their own "proprietary design specifications" in order for LG to manufacture the telematics units, meaning that GM/Toyota control the design specifications for manufacturing solely. [B1252, B1263-1264]; *see also* LG.R.Br.26, citing [AR361-363 (87:2-88:2)(discussing GM's CTS), AR366-367 (LG's Woo testifying about LG's "proprietary designs," ***but not testifying about*** required GM/Toyota approval)]. Indeed, this type of

[redacted]

arrangement is not unusual for agreements relating to foundry products, as explained by IV's licensing expert. [B0693-0694]. LG's reliance on GM's trial counsel's unsupported litigation statement cannot change the requirements of the LG/Toyota agreements. LG.RBr.26, citing [AR508].

Whether LG may have designs included in what is approved for manufacture by GM/Toyota is irrelevant. What matters is that those designs must be approved by GM/Toyota and then incorporated into the overall proprietary design specifications for manufacturing, which are solely GM/Toyota's. [A211], [B1252 (Toyota approves all drawings and specifications)], [B1263-1264 (GM controls changes)], [B0727-0728].

D. LG's Interpretation Renders the Industry Understanding of "Foundry" Meaningless

1. "Foundry" has a Specialized Meaning Regardless of Whether this Section of the License Agreement is Ambiguous

The term "Foundry" has a specialized meaning regardless of whether this section of the License Agreement is deemed ambiguous. As this Court has repeatedly stated, the "true test is not what the parties to the contract intended [the term] to mean, but what a reasonable person in the position of the parties would have thought it meant." *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 740 (Del. 2006). "An unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract." *Estate of*

Osborn v. Kemp, 991 A.2d 1153, 1160 (Del. 2010). "The buyer provides the design for the product which the foundry is to manufacture." [B0869], *accord* [B0167-0168] citing [B0692-0694]. Hence a Foundry Product is one that the Foundry (here LG) makes to the "buyer's" or "customer's" design. However, nothing in that definition requires that, if the Foundry has any input, then the product no longer qualifies as a Foundry Product. LG's unreasonable interpretation would read-out the word Foundry entirely, or at least make it ambiguous because its purpose in the section would not be evident. No reasonable customer would have entered into the contract under LG's interpretation because the customer would not know whether the product that LG created would satisfy the customer's requirements or be able to work within the customer's overall system. *See Estate of Osborn*, 991 A.2d at 1160.

IV's licensing expert explained the industry meaning of "foundry" to support IV's plain meaning of the term in the License Agreement, but it also shows that LG's interpretation does not make sense. *See id.*; *see also* A398 (Court indicating that parole evidence inadmissible to contradict plain meaning, but could be introduced for another purpose). Therefore, IV's expert's opinions, which aid in the understanding of the License Agreement and do not contradict the plain meaning, are admissible under D.R.E. 702. *See Playtex FP, Inc., v. Columbia Cas. Co.*, 622 A.2d 1074, 1075-76 (Del. Super. Ct. 1992)(finding that "because of the specialized nature of the language used in the insurance contracts at issue, expert testimony was

necessary to enable an intelligent interpretation of the contracts."). LG's criticism of IV's expert as offering a "legal opinion" is unfounded, especially because LG recognizes on the previous page that IV provided "expert[] opinion based on industry usage." LG.RBr.27 (reciting IV's argument that "its expert's opinion based on industry usage should control.").

2. Under LG's Interpretation, No LG Product Would Ever Qualify as a Foundry Product

LG now attempts to retreat from its unreasonable position that "LG involvement 'in any way' negates the 'Foundry Products' exemption." LG.RBr.28; IV.OBr.43, citing [B0210]; *see also* [B0271 ("to the exclusion of all else")]; *accord* [AR073, AR414].[1] However, LG's attempts to explain its position by referencing its own statement in the same paragraph only reinforces the unreasonableness of LG's position—"[g]iven the strict requirement imposed by the word 'solely,' the telematics units cannot be 'Foundry Products' …." *Id.* Again, LG fails to address that it is "manufacture" that must be "solely" according to the customer's design, not whether LG may have had any input into that design. Not surprisingly, LG fails to respond to IV's argument (IV.OBr.45-47) that under LG's interpretation, no LG

[1] In violation of Del. Supr. Ct. R. 14(e), LG repeats several documents and transcript pages previously cited in IV's appendix, resulting in over 300 redundant appendix pages, including Dkts. 244, 268, 294, 451, pages from trial testimony, pages from 30(b)(6) Yoon Transcript, pages from 30(b)(6) Woo Transcript.

product would ever qualify as a Foundry Product. That silence speaks volumes and confirms the unreasonableness of LG's position.

E. IV's Interpretation Comports with the Plain Language, the Industry's Understood Usage, and the Undisputed Facts

LG incorrectly states the IV offers no competing interpretations except for expert opinion. Such is not the case as LG tacitly admits with its citation to nine (9) pages of IV's argument on the matter. LG.RBr.26, citing IV.0Br.39-47; *see* also Sec. I.D., *supra* (explaining IV interpretation). As set forth above and in the opening brief on cross-appeal, IV's "competing interpretation" places the term "solely" within the surrounding context of the section in which it appears, recognizing the "manufactured … solely" requirement.

Indeed, LG chose not to address IV's specific arguments and evidence provided by LG's own corporate representative, Mr. Woo, confirming LG's written agreements with its customers accord with IV's position. Specifically, the agreements require that the customers controlled the design of the telematics unit, that changes could only be made with the customer's explicit approval, and that any changes requested by the customer had to be made. [B1252], [B1263-1264], [B0727-0728]; [B0822, B0828], *see, also* Sec. I.C., *supra*. LG also failed to reply to IV's position that GM/Toyota restrictions imposed on LG of non-use and non-sale such units are common restrictions that would be understood in the industry as applying to Foundry Products. [B0693-0694], IV.OBr.44, *accord* [B0167-0168].

Indeed, once Foundry Product is understood, the plain meaning comports with the industry understanding. As set forth in IV's opening brief (IV.OBr.46), the plain meaning of the term "foundry products" is instructed by, for example, the GM CTS document, which sets forth in explicit and excruciating detail, the GM design specifications. *See, e.g.,* [B0819-0832], [B1261-1346], [B1347-1352]. The Toyota/GM specifications by which LG manufactures the products may not be deviated from without explicit Toyota/GM approval; LG ***must*** implement any change demands requested by Toyota/GM [B0822, B0828], [B1264], [B1347 (GM)]; and LG has no right to the Toyota/GM products either for its own use or to sell the products to others [B1258 (Toyota)], *accord* [B0828, B1349] (GM)].

F. IV's Interpretation Requires Reversal and LG's Requires Remand

Under IV's correct interpretation, no genuine issues exist that the telematics units ***are*** Foundry Products, requiring reversal of the contrary summary judgment decision. However, even under LG's flawed interpretation, this case can be resolved because the GM/Toyota agreements show that any contribution made by LG must be approved by the customer. At the very least, under LG's interpretation genuine factual issues ***may*** exist as to whether the telematics products made according to LG's agreements with GM/Toyota were "manufactured … solely" according GM/Toyota's design specifications. *See, e.g., GMG Cap*, 36 A.3d at 784.

[redacted]

II. LG Failed to Prove its Purported Damages Based on Only the Unsupported Lump Sum Amounts Requested from GM and Toyota

A. Even if Considered, the Letters Provide No Evidence Other than a Bald Number

LG does not dispute that the October 2023 damages letters are (1) its ***only*** evidence of the amount of damages, (2) were generated ***after*** this litigation ensued, and (3) are unsupported. LG.RBr.38-43. LG further admits that it has made no independent determination of damages from the GM and Toyota correspondence—it has not attempted to confirm the numbers ***in any way***, not even something as simple as asking GM and Toyota for underlying support: "Plaintiff did not present—or even seek—underlying evidence supporting the amounts GM or Toyota claim or how they related to Plaintiff's claims." [B1214-1215] citing [B0947], [B0956-0957], *see also* LG.RBr.39 (arguing that underlying records supporting asserted damages amounts are "unnecessary").

Based on that lack of substantiation, even if IV has an indemnity obligation to LG (which it does not, *see, e.g.,* Sec. III, *infra*), IV is not required to indemnify for unsupported amounts. *LCT Cap. LLC v. NGL Energy Ptrs., LP*, 249 A.3d 77, 98 (Del. 2021). LG mischaracterizes *LCT*. Although the court did find that the fraud damages were identical to the quantum meruit claims such that LCT could not recover twice for the same loss, this was because LCT failed to provide separate damages support for the fraud claim. *Id.* at 98. Thus, the *LCT* court would not award

these damages; such is the case here where LG failed to provide any evidence other than the unsupported letters.

Allowing LG to obtain these "damages" from IV without any evidence of their veracity sets a dangerous precedent and encourages exaggerated or even false indemnity demands. See e.g., *United States v. Garrett*, 2025 U.S. Dist. LEXIS 138727, at *18-19 (D.S.D. Jul. 17, 2025)(noting that defendant's scheme of submitting false indemnity requests covered 2 years and allowed them millions of dollars to which they were not entitled). The Superior Court's decision to allow the letters to go to the jury for their purported truth of damages calculations was reversible error.

B. LG's Position that Underlying Records are "Unnecessary" Underscores its Lack of Evidence

In supporting a damages claim generally, a plaintiff must present underlying evidence to support the amount sought. Although Delaware does not require certainly in the award of damages and estimates are permitted, damages must be proven with a "reasonable degree of precision" and a plaintiff "cannot recover damages that are merely speculative or conjectural." *Medicalgorithmics S.A. v. AMI Monitoring, Inc.*, 2016 Del. Ch. LEXIS 128, at *81 (Del. Ch. Aug. 18, 2016); *accord Henne v. Balick*, 51 Del. 369, 373 (Del. 1958)(citation omitted). "Responsible estimates of damages … are permissible so long as the court has a basis to make such a responsible estimate." *Medicalgorithmics*, 2016 Del. Ch. LEXIS 128, at *81

(Del. Ch. Aug. 18, 2016), citing *Beard Res., Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch. 2010); *aff'd sub nom*, *ASDI, Inc. v. Beard Res., Inc*., 11 A.3d 749 (Del. 2010). Without such underlying evidence, a plaintiff could claim whatever damages he or she wanted and a defendant would be unable to probe the merits of that number. Such is precisely what LG has done here. Although LG professes that the letters from GM and Toyota alone are enough to support is number, those letters provide nothing more than GM and Toyota's unsupported statements about damages. And, simply because they came from GM and Toyota does not alone make them sufficient.

For example, in *Medicalgorithmics*, the plaintiff, similarly to LG here, did not offer an independent damages expert, relying instead on a "simplistic calculation" of damages presented through its CEO. *Medicalgorithmics* at 82. The court held that Medicalgorithmics' "damages estimate was based on unrealistic and speculative assumptions." *Id.* This case is even more devoid of support. While the court in *Medicalgorithmics* determined the analysis provided by the CEO was speculative, here there is not even an analysis to support the numbers presented; just two number provided by two LG customers without support. Without such underlying support, presentation to the jury was legal error. *See Henne*, 146 A.2d at 397 (holding where no evidence was presented to support the damages claim, the "trial judge erred in submitting to the jury the question of" damages). Additionally, without such

underlying support, the decision of the jury is not based on a preponderance of the evidence. *Id.* at 81.

It was LG's burden and entirely within LG's power and control to obtain a responsible calculation of the purported damages from Toyota and GM. *See Henne*, 146 A.2d at 396 (holding the "burden is upon the plaintiff to furnish such proof."). Yet, LG admitted it did not even bother to ask for the underlying support. Mere reliance on Toyota/GM's word is not ***responsible*** estimate upon which the Superior Court should have allowed the letters to go to the jury. *Id*. Without such underlying evidence, a plaintiff could claim whatever damages he or she wanted, and a defendant would be unable to probe the merits of that number.

Indeed, if LG was not claiming that IV owed it indemnity, LG certainly would not blindly [redacted] without confirmation. Instead, a reasonable indemnitor would ask for the underlying records and confirm the theories upon which the numbers were derived. LG has done none of that here, and, notably, [redacted]:

> Q. And as you've already said, [redacted], right?
>
> A. [redacted].
>
> Q. Has LG [redacted]
>
> A. We have not had that discussion.

[redacted]

* * *

Q. So the answer to my question [redacted] is yes?

A. Yes, of course.

Q. Okay. But there's no document that reflects that, correct?

A. No.

* * *

Q. All right. And you want this jury to believe [redacted]?

A. Yes.

* * *

Q. There's not even a confirming e-mail, correct?

A. No.

Q. There's not a shred of paper?

A. No.

[B0932 – 0935 (LG witness Mr. Yoon)], *accord* [B0939 (261:9-14)(Toyota)]. Indeed, Mr. Yoon also testified that he did not even know if LG had [redacted]. [B0935 (257:13-15)]. This level of informality starkly contrasts with the lengthy and complicated agreements that LG entered into with both Toyota and GM relating to the underlying telematics units.[2]

[redacted]

[2] LG attempts to distinguish IV's cases based on the facts. LG.RBr.42-43. However, contrary to LG's attempted distinctions, IV argues LG's lack of evidence results in a failure of proof, resulting in legal error. *Henne*, 51 Del. at 373.

C. LG Ignores IV's Continued Trial Reservation on the Letters' Limited Admission

LG takes issue with IV's block quote of the admission of PTX-496 (IV.OBr.49), arguing that is not one of the two letters offered for the damages amount. LG.RBr.35. PTX-496 is a November 18, 2021 letter from GM to LG that does not include damages numbers. However, it is the first of three letters from either GM or Toyota to LG that were admitted in the same manner. IV.OBr.49 (citing admission of the two letters in question). The other two letters, of course, being the two in question. The three letters were all admitted under the same limitations (IV.OBr.49 (citing record for each letter)), as the below table shows:

PTX-496 GM to LG Nov. 2021	PTX-485 Toyota to LG Oct. 25, 2023	PTX-469 GM to LG Oct. 3, 2023
[A451 (142:8-22)]	[A476-477 (180:20-181:4)]	[A491 (211:1-7)]
MR. SCHWENTKER: Your Honor, we're not offering PTX-496 for the truth of the matter asserted. We're offering it to – for its effect on the recipient that they received notice from their customer. THE COURT: Mr. Waldrop? MR. WALDROP: Your Honor, if we're going to allow documents in for the effect of the listener, that's Court's rule, we're fine with that. THE COURT: So this is not being offered for the trust of the matter asserted, but it's being offered for	MR. SCHWENTKER: Your Honor, I move to admit and publish PTX-485. MR. WALDROP: The Court's already ruled on this. THE COURT: With reservations, MR. WALDROP: With reservations,	MR. SCHWENTKER: Your honor, I move to admit a publish PTX-496. MR. WALDROP: With reservations, Your Honor. THE COURT: Okay.

PTX-496 GM to LG Nov. 2021	PTX-485 Toyota to LG Oct. 25, 2023	PTX-469 GM to LG Oct. 3, 2023
another permissible basis, notice, demonstration of notice; is that correct? MR. SCHWENTKER: Yes. THE COURT: Okay. I'll allow it.	Your Honor. Thank you. THE COURT: Okay.	

The procedural history of these letters is important and shows why their admission is limited. When Mr. Waldrop objected to the unrestricted admission of PTX-485, stating that "the Court's already ruled on this," he is referring to the limited admission made for PTX-496 for the GM letter (above), which followed the Superior Court's ruling that, even though the letters are hearsay, they are "admissible pursuant to Rules 902(11) and 902(12) …." [A314-315]. The same holds for PTX-469.

Indeed, it makes no logical sense to suggest that the Superior Court only admitted PTX-496 for notice but then admitted PTX-485 and PTX-469 for the truth of the matter. PTX-496 was drafted *before* this litigation ensued, but PTX-485 and PTX-469 were drafted during the litigation on October 23, 2023, and October 3, 2023. Indeed, these are the only documents that provide a value to the purported damages suffered by LG, and they were only generated in this case *after* IV pointed out that LG's case was unripe because LG was not damaged. IV.OBr.9-10, [B0110],

[B0143]. LG brought the lawsuit on November 29, 2022 [A001], almost a year before these two letters were even generated.

Therefore, Mr. Waldrop's position as a condition to admission that the Superior Court has already ruled on this matter refers to the Superior Court ruling that the "documents were allowed in for the effect of the listener and not the truth of the matter" of the unsupported damages. [A451 (142:8-22)], [A476-477 (180:20-181:4)], [A491 (211:1-7)]. Yet, LG admits that the jury considered the letters for the truth of the matter. [B1233].

LG's position that IV never challenged the admission of the October 2023 indemnification letters lacks merit. While IV takes issue with the litigation induced letters and their litigation induced certification, contrary to LG's implication, IV's challenge here is not that the letters here as inadmissible hearsay, recognizing that the Superior Court admitted them as exceptions after certification by LG. Instead, IV challenges reliance on the contents of the letters as evidence of facts because both were objected to at trial and are entirely unsupported. IV properly preserved its objections in its JNOV, asserting that LG's indemnification letters were naked assertions of the alleged amounts owed and were not supported by any other evidence. [B1090]. "LG has ***no substantive support*** for the amount of damages from which a jury could assess with ***any***, let alone ***reasonable***, degree of certainty." B1091(emphasis added). In defies credulity to believe that, if LG does not recover

these amounts from IV, that [redacted] without getting the bases for their demanded amounts.

IV maintains its objections to the contents of the letters being considered for the value of the damages as entirely unsupported.

[redacted]

III. LG Has Not Proved it Owes any Indemnity Obligation to GM or Toyota

A. LG Admits that it [redacted]

LG's waiver argument relating to its [redacted] fails. IV repeatedly raised this position throughout the proceedings as well as on JNOV. [B1152], *see also* [B1184-1185], [B1412], [B1438], [B1152]; *see also* Del. Supr. Ct. R. 14(b)(vi)(A)(3).

B. LG Provides No Evidence that It Is the Entity that Owes Indemnity to GM or Toyota

Per the License Agreement, IV would owe an indemnity to LG Electronics Inc, Korea (LGE), the plaintiff here. However, Plaintiff LG has not shown that ***it*** is the entity that owes indemnity to either GM or Toyota. While LG testified that it has an "understanding" with GM/Toyota and [redacted] [B0933 (255:9-11)("we have an understanding …."), B0935 (257:7-8)("[redacted]"), *accord* [B0939-0940 (261:9-14, 23-24)], such an "understanding" without more does not create an indemnity responsibility. *CL Invs., L.P. v. Advanced Radio Telecom Corp*., 2000 Del. Ch. LEXIS 178, at *24-25 (Del. Ch. Dec. 15, 2000). To the extent, LG somehow alleges an implied indemnification because of this good relationship, that argument was not raised and is waived. Del. Supr. Ct. R. 14(b)(vi)(A)(3).

[redacted]

1. LGE Failed to Show an Indemnity Obligation to GM

LG offers nothing to cure its lack of evidence of an owed indemnity responsibility to GM. Simply put, LG has no enforceable agreement with GM to indemnify GM. LG.Br.47-50. On appeal, LG relies on the unexecuted General Terms and Conditions ("GTC"). However, that document specifies no parties, but only generically "buyer" and "seller." It does not specify which LG entity is responsible, and LG's purported course of conduct to support its indemnity obligation to GM fails because [redacted]. LG.RBr.48-49. That might be sufficient if the dispute was between LG and GM. The dispute here is whether IV is required to reimburse LG for what would be a voluntary payment to its customer. Indeed, as the Superior Court noted:

> To the extent LG voluntarily decided to assume the indemnification obligations of its subsidiaries, that is not "damage" related to IV's breach—it is a choice LG made. These obligations cannot be properly passed through to IV. Accordingly, such voluntary payments are not recoverable damages against IV.

[A315-316]. Under Delaware law, "[t]he voluntary payment doctrine bars recovery [from a third party] of payment voluntarily made with full knowledge of the facts." *Broadkill Beach Builders, LLC. v. Frampton*, 2025 Del. Super. LEXIS 329, at *13 (Del. Super. June 30, 2025). As there is no document to bind LG, LG cannot transfer that purported obligation to IV.

[redacted]

2. LG Failed to Show an Indemnity Obligation to Toyota

LG's contradictory explanation leaves it with nothing but "course of conduct," which fails to cure the lack of evidence of an owed indemnity responsibility to Toyota. LG.Br.50-52. LG's prior "course of conduct" [redacted] does not create damages and cannot bind IV for [redacted]. *See Broadkill Beach Builders*, 2025 Del. Super. LEXIS 329, at *13 (voluntary payment doctrine bars recovery from a third party).

Indeed, Plaintiff LG Korea (LGE) admits that Toyota relied on the 2016 Agreement with LG Japan (B0835) to allegedly trigger indemnity and ***not*** the 2020 Agreement. LG.RBr.50; *see also* [A936 (Toyota requesting indemnification from LG Elecs. USA, Inc., pursuant to "article 27.4 of the parts Transaction Master Agreement, between Toyota Motor Corporation and ***LG Electronics Japan Inc***." (emphasis added).)], [B1258-1259]. But then LGE claims that it reads the 2016 Agreement with LG Electronics Japan together with the 2020 Agreement with *LG Korea* (LGE) to require indemnity by LGE. LG.RBr.51, [B0835-0838]. Oddly, even though Plaintiff LG is relying on this 2020 Agreement, it argues that section 3 of that 2020 Agreement, requiring specific actions by LG in order to trigger indemnity, somehow does not apply. *Id.; see also* IV.OBr.62-63 (setting forth 2020 Agreement requirements for indemnity). LG's two positions cannot be reconciled. Either the 2016 Agreement relied upon by Toyota with LG ***Japan*** applies, under

[redacted]

which Plaintiff LG has no contractual obligation indemnify Toyota, because it was not a party to that 2016 Agreement, or the 2020 Agreement between Plaintiff LG and Toyota applies but Plaintiff LG admittedly failed to perform its obligations to trigger indemnity under section 3:

> Q. Did Toyota seek indemnification in its October 2023 indemnification letter under this provision [of the 2020 Agreement]?
>
> A. No, it pointed to the 2016 agreement.
>
> Q. So do those provisions [2020 Agreement perquisites for indemnification] apply in this case?
>
> A. They do not.

[B1001].

Under neither theory does Plaintiff LG have an indemnity obligation for which IV is liable. LG's course of conduct argument cannot save the day. LG's [redacted], as the Superior Court noted, are not damages for which IV is liable. *See Broadkill Beach Builders*, 2025 Del. Super. LEXIS 329, at *13.

C. LG Cannot Cure Ripeness by Manufacturing an Indemnification Obligation *After* the Litigation was Filed

Even if the Court accepts the litigation-induced letters [A937-938] directed to the wrong LG entity, as well as the lack of any formal written agreement for LGE to indemnify either GM or Toyota for the at-issue telematics units, LG's argument is

[redacted]

not ripe because [redacted].[3] [A001]. LG takes the unreasonable position that the moment IV filed its litigations against GM and Toyota in 2021, LG's indemnification obligations became ripe because it knew that it would "imminently suffer an injury." LG.RBr.44, citing *Town of Cheswold v. Cent. Del. Bus. Park,* 188 A.3d 810, 816 (Del. 2018). However, LG had not suffered injury. Logically, it cannot be that LG knew when IV filed a litigation against its customers that LG owed an indemnity obligation. There had been no decision, no damages, not even attorneys' fees. Even after IV's settlements with GM and Toyota, LG was not under imminent injury because it still [redacted].

LG's reliance on *Connorex-Lucinda, LLC v. Rex Res Holdings, LLC*, 2022 Del. Super. LEXIS 1433 (Del. Super. Ct. Nov. 29, 2022) is inapplicable. There, the plaintiff went into actual debt, borrowing $1.9 million to cover expenses because the defendant had not paid plaintiff what it owed. *Connorex-Lucinda* at *12. LG [redacted] and has not suffered injury, imminent or otherwise.

[3] This issue is not waived. Ripeness goes to subject matter jurisdiction. *Nask4Innovation Sp. Z.o.o. v. Seller*s, 2022 Del. Ch. LEXIS 225, *6, n.20 (Del. Ch. Sep. 12, 2022), quoting *Bebchuk v. CA, Inc*., 902 A.2d 737, 740 (Del. Ch. 2006). "As such, the court has a positive duty to raise this issue on its own motion, even if neither party objects to the exercise of power of the case." *Id. and see, Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 477 (Del. 1989)(dismissing appeal because underlying matter was unripe, when the issue first raised by the Supreme Court *sua sponte*); *Imbraguilio v. Unemployment Ins. Appeals Bd.*, 223 A.3d 875, 787 (Del. 2019)(Litigant may raise subject matter jurisdiction at any time. (citation omitted)).

[redacted]

D. The Superior Court Incorrectly Sent Contract Interpretation to the Jury

Contract interpretation is a question of law reviewed *de novo*. Contrary to LG's argument, IV did not waive the improper submission of indemnification to the jury. LG.RBr.52. Del. Supr. Ct. R. 14(b)(vi)(A)(3) does not prohibit IV from appealing this issue. That rule states: "The merits of any argument that is not raised in the body ***of the opening brief*** [on appeal in ***this Court***] shall be deemed waived…." *Id.*(emphasis added). IV raised this issue. *See* IV.OBr.63. LG, notably, cites no case law in support of its assertion. Notably, LG does not challenge the merits of IV's argument here. Because there is no reasonable dispute that LGE cannot bind IV to [redacted], there were no disputed facts to send to the jury, and sending this legal issue to the jury was in error.

[redacted]

CONCLUSION

IV requests the Court reverse the Superior Court's summary judgment ruling that the telematics units are not Foundry Products, and/or hold LG's damages and indemnification were unripe and/or too speculative to present to the jury, requiring judgement in IV's favor. IV maintains its requests that the Court affirm the issues in LG's appeal.

Dated: October 6, 2025

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan
Brian E. Farnan (Bar No. 4089)
Michael J. Farnan (Bar No. 5165)
919 North Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0300
Facsimile: (302) 777-0301
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

Attorneys for Appellees/Cross Appellants Invention Investment Fund I, L.P., Invention Investment Fund II, LLC, Intellectual Ventures I LLC and Intellectual Ventures II LLC

Meredith Martin Addy
(*pro hac vice*)
ADDYHART LLC
10 Glenlake Parkway, Suite 130
Atlanta, Georgia 30328
312.320.4200
meredith@addyhart.com