EFiled: Oct 17 2025 12:48PM EDT
Filing ID 77321062
Case Number 356,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IRV EDWARDS, M.D., MARK BELL, M.D., BRUCE HENSEL, M.D., and STEVE MARON, M.D.,

Plaintiffs Below,
Appellants,

v.

GIGACQUISITIONS2, LLC, GIGCAPITAL2, INC., UPHEALTH, INC., AVI KATZ, RALUCA DINU, CHIRINJEEV KATHURIA, THE NEEDHAM GROUP, INC., and, NEEDHAM & COMPANY, LLC,

Defendants Below,
Appellees.

No. 356, 2025

Court Below: Court of Chancery of the State of Delaware,
C.A. No. 2024-0591-LWW

PUBLIC VERSION FILED - OCTOBER 17, 2025

APPELLANTS' OPENING BRIEF

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NATURE OF PROCEEDINGS

In 2020, Defendants made a series of materially false representations and omissions to Plaintiffs.[1] The misrepresentations were intended to deceive Plaintiffs' company, Cloudbreak—a burgeoning healthcare startup—into merging with a group of worthless sham companies and being brought public through a SPAC transaction. Among their worst offenses, Defendants doctored diligence materials by inflating the companies' revenue and growth figures, all in an attempt to hide the companies' alarmingly bleak financials from Cloudbreak. And it worked. In June 2021, Cloudbreak's members relied on Defendants' misrepresentations and voted to finalize the merger and SPAC transaction, which occurred that same month.

Falsity is not an issue in this appeal, and no party disputes that the diligence materials featured false revenue projections, descriptions of the underlying business, and financial information. The only issue is whether a trio of Plaintiffs' tort claims—fraudulent inducement, negligent misrepresentation, and civil conspiracy—are timely. The Chancery Court found they were not and, in doing so, committed multiple errors of law that require reversal.

[1] "Plaintiffs" refers to Irv Edwards, M.D., Mark Bell, M.D., Bruce Hensel, M.D., and Steve Maron, M.D. "Defendants" refers to The Needham Group, Inc. and Needham & Company, LLC (collectively, "Needham"), GigAcquisitions2, LLC, GigCapital2, Inc., UpHealth, Inc., Avi Katz, Raluca Dinu, and Chirinjeev Kathuria.

Under Delaware law, a claim accrues when each of its elements—including injury—has been met. Yet, the Chancery Court concluded that accrual of Plaintiffs' claims occurred at the moment of misrepresentation, even though Plaintiffs did not suffer any injury until months later when they detrimentally relied on those misrepresentations in connection with the SPAC transaction. By starting the clock before Plaintiffs' claims were even viable, the Chancery Court imposed a limitations bar that Delaware law does not recognize.

The Chancery Court also erred in rejecting Plaintiffs' specific accrual dates. Plaintiffs' injuries materialized when the SPAC transaction closed on June 9, 2021—at which point Cloudbreak was sold, the true value of Plaintiffs' equity was lost, and Defendants realized the fruits of their fraudulent scheme. Alternatively, Plaintiffs' claims accrued on June 2, 2021, when Cloudbreak's members decisively voted to approve the merger and consummate the SPAC transaction. The earlier vote held by Cloudbreak's board in November 2020 was merely an interim step to reach the determinative member vote. Plaintiffs' claims are timely under either June accrual date.

Finally, the Chancery Court wrongly held that Plaintiffs' claims did not toll. Not only was the falsity of several of Defendants' misrepresentations undiscoverable by Plaintiffs (particularly considering the private nature of the sham companies) until Plaintiffs gained access to Defendants' previously unshared presentations, but

Needham's active participation in the fraud—by way of intentionally manipulating financials for distribution to potential investors—was both inherently unknowable and fraudulently concealed until 2023, when confidential evidence of its role became publicly available in a separate litigation. Delaware tolling doctrines thus rendered Plaintiffs' claims timely, and the Chancery Court's refusal to apply them was error.

For the reasons below, this Court should reverse the Chancery Court's dismissal of Plaintiffs' claims as untimely and remand for further proceedings.

SUMMARY OF ARGUMENT

1. Well-established Delaware law provides that a claim accrues once each of its elements are met. Yet, the Chancery Court held that Plaintiffs' claims—all of which are based on Defendants' misrepresentations—accrued at the time of the misrepresentations, before Plaintiffs ever suffered an injury (a crucial element of all tort claims). That was wrong. Affirming will represent a significant departure from the law and unleash a cascade of harmful policy consequences, including eroding certainty, barring recovery for real harm, and flooding courts with premature claims.

2. The Chancery Court erred when it rejected Plaintiffs' arguments that their claims accrued in June 2021, at the earliest. Plaintiffs detrimentally relied on Defendants' misrepresentations on June 9, 2021—the date the induced SPAC transaction closed. Alternatively, Plaintiffs' detrimental reliance occurred on June 2, 2021—the date of Cloudbreak's member vote, which was necessary to adopt the Business Combination Agreement and approve the SPAC transaction. The board vote in November 2020 was merely an interim measure that did not injure Plaintiffs.

3. The Chancery Court further erred by refusing to toll Plaintiffs' claims. Not only was the falsity of some misrepresentations undiscoverable, but Needham's integral participation in the fraudulent scheme was inherently unknowable to and fraudulently concealed from Plaintiffs until 2023, when documents demonstrating Needham's involvement were publicly revealed. Tolling was thus warranted.

STATEMENT OF FACTS

I. FACTUAL BACKGROUND

A. Cloudbreak quickly becomes a leading healthcare startup.

Cloudbreak Health, LLC was founded by Jamey Edwards to improve health outcomes for non-English speaking medical patients by providing 24/7 access to HIPAA-complaint video remote interpretation and translation services. Op. at 2; A291.

In 2015, Cloudbreak's founder approached plaintiffs Irv Edwards, M.D., and Mark Bell, M.D., to invest in Cloudbreak, which they did.[2] Op. at 2; A291. Recognizing Cloudbreak's potential, Edwards and Bell invested significantly in Cloudbreak and received common units equating to a 15.7% ownership interest, each, in return. Op. at 2; A291. Edwards also became a member of Cloudbreak's board of directors. Op. at 2; A291. Plaintiff Steve Maron, M.D., was also an early investor who received common units equating to a 3.16% ownership interest. Op. at 2; A291. Plaintiff Bruce Hensel, M.D.—Cloudbreak's chief medical officer—was granted Cloudbreak options that vested in 2016. Op. at 2; A291. In 2015, Kayne Anderson Capital Advisors, L.P., an asset management firm, made a large investment in Cloudbreak in exchange for a financial interest. Op. at 2.

[2] In addition to their extensive clinical experience, Edwards and Bell founded and currently run EMA, which operates emergency medicine departments in more than 20 hospitals. A291.

Cloudbreak quickly emerged as a pioneering player in the healthcare sector. Op. at 2; A291–93. By 2020, Cloudbreak was performing more than 85,000 encounters per month on more than 10,000 video endpoints across 1,200 healthcare facilities nationwide, and generating more than 1,000,000 minutes of telemedicine consultation each month. A292.

B. Kathuria and Needham initiate a fraudulent scheme to offload the worthless Portfolio Companies.

In November 2019, defendant Chirinjeev Kathuria co-founded UpHealth Services, which later became UpHealth Holdings, Inc. Op. at 3; A291. UpHealth was the parent company of a consortium of healthcare companies (the "Portfolio Companies"). Op. at 4; A283, 286.

The Portfolio Companies stood in stark contrast to Cloudbreak. Whereas Cloudbreak's future was promising—on account of its significant revenue, growing valuation, and increasing market share—the Portfolio Companies were "struggling and debt-ridden" shams.[3] Op. at 4; A292; *see also* A283, 285 (alleging that the Portfolio Companies were "sham entities, which had no real business, significant debts, and insurmountable regulatory and compliance issues" and had "little to no prospect of long-term growth").

[3] In fact, Cloudbreak sold for $180 million in 2024—a figure that actually reflected a depressed valuation due to distressed circumstances. *See* A337; *see also* A338 (alleging that Cloudbreak's true valuation was likely between $250–$300 million).

In March 2020, Kathuria recruited defendant Needham—a prominent investment bank—to find merger partners for the Portfolio Companies and bring them public via a SPAC. Op. at 4; A293. In exchange for its services, Needham would be compensated primarily by success-based fees that heavily incentivized it to get a deal done. Op. at 4; A293–94. Perhaps because of this incentive structure, Needham flouted its obligation to independently due diligence the Portfolio Companies' financials and, instead, actively colluded with Kathuria to doctor the Portfolio Companies' financial projections, models, and forecasts, which were then used to induce potential investors. Op. at 4; A294–95.

Internally, Needham recognized that the Portfolio Companies were in a dire financial state. Its employees privately acknowledged that "get[ting] lucky with a SPAC" was the "only shot" it had to make money off the companies, while simultaneously admitting that a SPAC deal "d[id]n't really make sense" as structured. Op. at 5; A296, 298–99. When one Needham employee was tasked with falsifying revenue numbers of certain Portfolio Companies, he commented: "like what are we doin here . . . this doesn't feel right haha." A297–98. Yet, Needham nonetheless doctored and fabricated away, participating in the fraud to a degree no investment bank would ever have been expected to have been engaged in.

While Needham was manipulating the Portfolio Companies' financials for investment presentations, Kathuria was lying to investors and inflating the valuation

of the Portfolio Companies. One internal Needham conversation recounted how Kathuria "lied through his teeth" during a meeting with a potential investor. A299–300. In another conversation, one Needham employee ridiculed Kathuria's $1.2 *billion* valuation of the Portfolio Companies: "I just want to know what they're thinking haha so 150 parties pass on a $350M valuation. Response: actually we're worth $1.2B." A296–97. Others described Kathuria as "ludicrous" and suffering from "[d]elusions of grandeur." A300–01.

Yet, despite its awareness of the Portfolio Companies' worthlessness and Kathuria's dishonesty, Needham readily collaborated with Kathuria to misrepresent the Portfolio Companies' financials and distribute them to potential investors. A301. On multiple occasions, Needham blindly accepted Kathuria's edits to investor presentations that introduced misrepresentations about the Portfolio Companies' revenues and business model. *See, e.g.*, A301–03. Needham also fabricated revenue figures by attributing the revenues of seven Portfolio Companies to only four companies, A297–304—a maneuver that one Needham employee called a "terrible look for us," A298–99. And while Needham was doctoring the numbers, Kathuria was falsely claiming KPMG had "audited" the Portfolio Companies' financials, even though KPMG never actually conducted any independent audit. A304; *see also* A304–05 (internal Needham communication recognizing that a proper audit was "obviously hugely important for a SPAC").

C. Defendants join forces and target Cloudbreak for the merger.

Kathuria and Needham reached out to dozens of investors in their attempt to find a SPAC transaction to offload the Portfolio Companies. A304–05. By September 2020, Kathuria and Needham had secured the commitment of defendant Avi Katz, the CEO of defendant GigCapital2, Inc.—a Delaware-incorporated SPAC that completed its initial public offering in June 2019. Op. 3, 5; A288–89, A308. Katz, a veteran SPAC sponsor with a controversial reputation,[4] also served as the managing member of GigCapital2's sponsor, defendant GigAcquisitions2. Op. 3; A289. Defendant Raluca Dinu was a founding managing partner and director of GigCapital2, and Katz's wife. Op. 3; A289.

Katz, like Kathuria and Needham, recognized the worthlessness of the Portfolio Companies. A308. So, when Kathuria suggested targeting Cloudbreak as a merger prospect, Katz took the lead on negotiations with Cloudbreak.[5] Op. at 5; A308–09. Cloudbreak was the ideal target for Defendants' scheme, as it was a legitimate business with significant potential and increasing revenues—the exact

[4] For allegations concerning Katz's troubling SPAC history, and ensuing litigation, *see* A305–07.

[5] There was a secondary reason that Katz assumed primary negotiating responsibility with Cloudbreak: Cloudbreak's management distrusted Kathuria. Op. at 5; A308–09. Indeed, in May 2020 (before Kathuria and Katz began working together), Needham had contacted Cloudbreak to see if Cloudbreak had any interest in working with Kathuria, but Cloudbreak refused to associate with Kathuria. A308–09.

type of company that would increase the SPAC's value and, in turn, the Portfolio Companies' value. A308.

Armed with a body of fictitious financial figures and a viable target, Katz, Kutharia, and Needham launched their attack.

D. Defendants make materially false representations and omissions regarding the Portfolio Companies' financials.

Between September and October 2020, Katz solicited Cloudbreak to join the SPAC transaction. Op. at 5; A310. Katz assured Cloudbreak that he had independently diligenced the Portfolio Companies (when, in fact, he had not) and that their financials were sound. Op. at 5–6; A310; *see also* A328 (alleging that Katz also "repeatedly informed" Kayne, Cloudbreak's private equity investor, "that he had diligenced the deal").

Katz's solicitations were accompanied by investor presentation materials prepared by Defendants. A310. These presentations, originally created by Needham, supposedly audited by KPMG, and purportedly verified by Katz, were provided to Cloudbreak to convince its owners to sell the company. A311–12. The problem? The presentations were full of materially false misrepresentations—fabricated financials that deceitfully presented the Portfolio Companies as having high revenues and promising business activities—while omitting crucial facts that would have given any investor significant concern. Op. at 6; A311–12.

In October 2020, for instance, Defendants sent Cloudbreak a set of diligence materials that included an investor presentation purporting to provide details about each of the Portfolio Companies. Op. at 6; A312. That October 2020 presentation was replete with material misrepresentations and omissions regarding the Portfolio Companies' financials. *See generally* A312–24 (identifying numerous falsehoods contained in the October 2020 presentation). For example, the October 2020 presentation contained fabricated revenue figures, *see, e.g.*, Op. at 7; A313–21, doctored growth figures, *see, e.g.*, A324–25, misrepresented business activity, *see, e.g.*, A322, and failed to disclose key facts regarding one of the Portfolio Companies' insolvency, unpaid taxes and fees, and conflict of interest with Kathuria, *see, e.g.*, A323.

Another presentation, provided to Cloudbreak by Kathuria and Needham in June 2020, was similarly full of material misrepresentations. Op. at 7; *see generally* A325–27 (identifying numerous falsehoods contained in the June 2020 presentation). For example, the June 2020 presentation falsely stated that one of the Portfolio Companies had signed contracts with several countries in Southeast Asia and North Africa when, in reality, no such contracts existed. Op. at 7; A327. The June 2020 presentation also claimed that one of the Portfolio Companies had entered into a contract worth $138 million, when other presentation materials (not shared with Cloudbreak) revealed that the contract was worth only $60 million, at most.

Op. at 7; A326–27. And, like the October 2020 presentation, the June 2020 presentation contained false growth figures and made similarly material omissions. Op. at 7; A327.

Defendants' investor presentations, and Katz's assurances, were intended to deceive Cloudbreak's owners into selling the company through the SPAC transaction. A310, 311–12. And that's exactly what happened.

E. Plaintiffs detrimentally rely on Defendants' materially false representations and omissions in June 2021.

Plaintiffs relied on Defendants' misrepresentations on June 2, 2021, when Cloudbreak's board of directors and members voted determinatively to approve the merger with GigCapital2.[6] Op. at 9; A328, 329. The SPAC transaction closed one week later, on June 9. Op. at 9.

The June 2 vote followed a November 20, 2020 vote, in which Cloudbreak's board of directors voted to approve the SPAC transaction and enter into the "Business Combination Agreement" (BCA). Op. at 8; A328; *see generally* A37. That vote, however, was not sufficient to ensure that the SPAC transaction would move forward and close. In fact, both Cloudbreak and Defendants had determined

[6] The SPAC transaction was a two-step process. First, GigCapital2 facilitated the merger of five Portfolio Companies into UpHealth Holdings. Op. at 8; A287–88. Second, Cloudbreak and UpHealth Holdings were merged into GigCapital2 and brought public as UpHealth, Inc. Op. at 8; A287–88.

that a formal member vote was required after the November vote for the transaction to proceed. A329. This determination was consistent with multiple provisions of the BCA, each of which contemplated a member vote. A59, 73–74. Thus, the June member vote was the only vote that actually approved the merger.

Unsurprisingly, given the Portfolio Companies' effective worthlessness, the SPAC transaction was a devastating financial failure for Cloudbreak. UpHealth, Inc.—the public entity formed through the SPAC—filed for bankruptcy within two years of the SPAC transaction and saw its stock price sink to $.05 a share. A286; *see also* A335–37 (detailing UpHealth, Inc.'s spectacular implosion, and ensuing litigation). Remarkably, not even three years after the SPAC transaction closed, UpHealth, Inc. sold Cloudbreak to a private equity firm for $180 million in order to pay its debts. A337–38.[7] Defendants, on the other hand, benefited from the lucrative SPAC transaction, at the expense of Cloudbreak, its owners, and the public. A287.

II. PROCEDURAL HISTORY

A. Plaintiffs' Complaint

Plaintiffs filed suit against Defendants on May 31, 2024. Plaintiffs filed an amended complaint on October 11, 2024. *See generally* A282.

[7] Cloudbreak's success did not slow after the SPAC transaction. In fact, Cloudbreak acquired its primary competitor after it was sold to private equity, leading one publication to refer to it as the new "US Healthcare Interpreting Giant." A286–87.

Relevant here, Plaintiffs' amended complaint asserted claims for fraudulent inducement, A339–40 (Count I), negligent misrepresentation, A342–43 (Count III), and civil conspiracy, A344 (Count V).

Defendants moved to dismiss the amended complaint. A408, 530, 582. Plaintiffs opposed, A641, and Defendants replied, A756, 794, 830. The Chancery Court held oral argument on the motions to dismiss on April 4, 2025.

B. The Motion to Dismiss Opinion

The Chancery Court issued its opinion on the motions to dismiss on July 25, 2025, granting Defendants' motions with prejudice. *See generally* Op. 1–49.[8]

The opinion has five parts: (1) a recitation of the facts and procedural history, Op. at 1–13; (2) a personal jurisdiction analysis regarding a defendant that is not relevant to this appeal, *id.* at 14–23; (3) a standing analysis concerning a claim that is not relevant to this appeal, *id.* at 24–27; (4) a statute of limitations analysis, *id.* at 27–42; and (5) a reasonable conceivability analysis concerning claims that are not relevant to this appeal, *id.* at 24–49. This appeal concerns errors made by the Chancery Court in the fourth part.

The Chancery Court began its timeliness analysis by noting that each of the claims at issue—fraudulent inducement, negligent misrepresentation, and civil

[8] The Chancery Court's opinion is referred to as "Op." and is attached as Exhibit A to this brief.

conspiracy—is subject to a three-year limitations period. Op. at 29. It then held that these claims accrue *at the time of the misrepresentation*. *See, e.g.*, *id.* at 30 ("A fraudulent inducement claim accrued when the alleged misrepresentations were made."); *id.* at 30–31 ("A negligent misrepresentation claim similarly accrue when the challenged statements are made."); *id.* at 31 (holding the same with respect to a civil conspiracy claim).

On this basis, the Chancery Court rejected the dates on which Plaintiffs argued their claims accrued—namely, June 9, 2021 (the date of the SPAC transaction's closing) and June 2, 2021 (the date of the Cloudbreak member vote). *Id.* at 32. The "wrongful acts," in the Chancery Court's view, were the "fraudulent or misleading statements" themselves. *Id.* at 35. The Chancery Court thus reasoned that neither of Plaintiffs' proposed accrual dates "changes the claims' untimeliness because the purported fraudulent and misleading statements were made months prior." *Id.* at 32. The Chancery Court also rejected Plaintiffs' alternative arguments that the statute of limitations should toll. *Id.* at 36–41.

The Chancery Court ultimately dismissed Counts I, III, and V as untimely. *Id.* at 42; *see also id.* at 49.[9] Plaintiffs filed a timely notice of appeal on August 13, 2025.

[9] The Chancery Court also held that Count VII—violation of Delaware's Deceptive Trade Practices Act—was untimely to the extent it related to misrepresentations and omissions contained in the diligence materials. Op. at 42, 49. That holding is not on appeal.

ARGUMENT

I. THE CHANCERY COURT ERRED IN HOLDING THAT PLAINTIFFS' CLAIMS ACCRUED AT THE TIME OF THE MISREPRESENTATIONS

A. Question Presented

Despite black-letter Delaware law providing that a claim does not accrue until each of its elements has been met, the Chancery Court held that Plaintiffs' tort claims accrued at the time of misrepresentation. Op. at 30–31. Was it error for the Chancery Court to hold that a tort claim can accrue even in situations where the tortfeasor's conduct has not caused an injury? *See* A656 (arguing that the statute of limitations for Plaintiffs' claims did not begin to run until all elements were satisfied, including detrimental reliance).

B. Scope of Review

This Court reviews questions of law, "including the Court of Chancery's 'formulation and application of legal principles.'" *de novo*. *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 483–84 (Del. 2024) (quoting *Reddy v. MBKS Co.*, 945 A.2d 1080, 1085 (Del. 2008)).

C. Merits of the Argument

1. Under Delaware law, tort claims accrue at the time of injury.

Delaware law is clear: "Claims accrue when the elements of those claims have been met." *Lehman Bros. Holdings, Inc. v. Kee*, 268 A.3d 178, 190 (Del. 2021). This rule is straightforward and sensible. It is straightforward because a litigant need only

discern a claim's elements in order to determine whether that claim has begun to accrue. And it is sensible because a claim is definitionally comprised of a set of elements—when those elements are satisfied, the claim comes into existence, and its statute of limitations begins to run.

An essential element of all tort-based claims, like the claims at issue in this appeal, is an injury. *See ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 732 (Del. 2020) ("For tort claims, . . . the wrongful act occurs *at the time of injury*." (emphasis added)); *Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Anduril III, L.P.*, 2025 WL 1807887, at *14 (Del. Ch. June 30, 2025) (characterizing "injury" as a "basic element" of tort claims).[10] Without an injury, the elements of a given tort claim have not been met, and the claim does not begin to accrue.

The injury for a given tort claim is determined by the nature of the claim itself. That means that some claims accrue upon the tortfeasor's actions. This Court has

[10] This Court has long relied on Restatement provisions incorporating this concept. *See, e.g.*, *Bell Helicopter Textron, Inc. v. Arteaga*, 113 A.3d 1045, 1052 n.28 (Del. 2015) ("To some extent, at least, every tort rule is designed both to deter other wrongdoers and to compensate the injured person." (quoting Restatement (Second) of Conflicts of Laws § 145 cmt. c. (1971))); *Turner v. Lipschultz*, 619 A.2d 912, 916 n.6 (Del. 1992) (the "two princip[al] elements of . . . tort" are "conduct and injury" (quoting Restatement (Second) of Conflicts of Laws § 146 cmt. d. (1971))). Courts outside of Delaware are in accord. *See, e.g.*, *Bolden v. Se. Pennsylvania Transp. Auth.*, 21 F.3d 29, 35 (3d Cir. 1994) ("It is basic to tort law that an injury is an element to be proven." (quoting *Kazatsky v. King David Mem'l Park, Inc.*, 527 A.2d 988, 995 (Pa. 1987))); *cf.* John C. P. Goldberg, *On Being A Nuisance*, 99 N.Y.U. L. Rev. 864, 871 (2024) ("A tort is a wrongfully inflicted injury.").

held, for example, "that a claim for invasion of privacy by intrusion accrues when the defendant *intrudes* upon the plaintiff's private affairs, while a claim for invasion of privacy by publication accrues when the defendant *publicizes* private information about the plaintiff." *Isaac v. Politico LLC*, --- A.3d ----, 2025 WL 2437093, at *12 (Del. Aug. 25, 2025). Other claims accrue when the injured party detrimentally reacts to the tortfeasor's action. *See, e.g.*, *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 2000 WL 1476663, at *13 (Del. Ch. Sept. 27, 2000) (holding that, for common law fraud, a plaintiff must "show that it detrimentally relied upon the defendant's disclosures").

Against this doctrinal backdrop, the Chancery Court's analysis falters.

2. The Chancery Court misapplied Delaware law by tying claim accrual to the time of misrepresentation, not injury.

Each of the three claims at issue involve the same injury: *detrimental reliance* on a misrepresentation or omission.[11]

To establish a claim for fraudulent inducement, the injured party is "required to establish the elements of common law deceit, which include misrepresentation of a material fact, made to induce action, and *reasonable reliance on the false statement to the detriment of the person relying*." *SPay, Inc. v. Stack Media Inc.*, 2021 WL

[11] Going forward, Plaintiffs use the term "misrepresentation" to refer to false representations *and* omissions, both of which were contained in Defendants' diligence materials contained both. *See supra* at 10–12.

1109181, at *3 (Del. Ch. Mar. 23, 2021) (emphasis added) (quoting *Gloucester Hldg. Corp. v. U.S. Tape & Sticky Prod., LLC*, 832 A.2d 116, 124 (Del. Ch. 2003)). The same is true for a negligent misrepresentation claim. *See Touch of Italy Salumeria & Pasticceria, LLC v. Bascio*, 2014 WL 108895, at *5 (Del. Ch. Jan. 13, 2014) ("Fraud and negligent misrepresentation share an essential element; the party asserting these claims *must have relied to his detriment upon the supposedly actionable statement or silence*." (emphasis added)). And because Plaintiffs' civil conspiracy claim is premised on Defendants' fraudulent inducement, *see* A344, Plaintiffs' detrimental reliance is an element of this claim as well, *see NACCO Indus., Inc. v. Applica Inc.*, 997 A.2d 1, 35 (Del. Ch. 2009) ("Although the elements of a claim for civil conspiracy are flexible, it is essential that there be an underlying wrongful act, such as a tort or a statutory violation." (citing *Empire Fin. Servs. v. Bank of New York (Delaware)*, 900 A.2d 92, 97 (Del. 2006))).

Accordingly, Plaintiffs' claims could not have accrued until Plaintiffs detrimentally relied on Defendants' misrepresentations, *see, e.g.*, *Lehman Bros.*, 268 A.3d at 190; *ISN Software*, 226 A.3d at 732–33. In the absence of such detrimental reliance, the elements of Plaintiffs' tort claims could not have been met, prohibiting the clock from running.

The Chancery Court thus misapplied the law when it held that Plaintiffs' claims accrued "when the alleged misrepresentations were made." Op. at 30; *see*

also id. at 31 (holding that accrual begins "when the challenged statements are made"); *id.* at 32 (holding that Plaintiffs' claims did not accrue in June 2021 "because the purported fraudulent and misleading statements were made months prior"). Holding that the claims accrued at the time the misrepresentations were made ignores whether Plaintiffs detrimentally relied on those misrepresentations. In other words, it overlooks one of the defining characteristics of the torts at issue—whether there was an injury. *See supra* at 17.

The Chancery Court's error stemmed from its misinterpretation of the term "wrongful act," as used in this Court's precedent. *See, e.g.*, Op. at 30 (citing *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312 (Del. 2004)). In *Wal-Mart*, this Court stated: "[A] cause of action 'accrues' under [10 *Del. C.* §] 8106 at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action." 860 A.2d at 319. As this Court has recently made clear, "wrongful act" means *the tort itself*. *See, e.g.*, *Lehman Bros.*, 268 A.3d at 190 (observing that a claim accrues at the time of the wrongful act, and that, "[s]tated differently," accrual occurs when the claim's elements have been met); *id.* at 186 ("Fraud claims, negligence claims, and unjust enrichment claims accrue when the elements of those claims have been met.").

Here, the Chancery Court treated the making of misrepresentations as the "wrongful act." *See, e.g.*, Op. at 31 n.138 (defining "at the time of the wrongful act" as "the date of the alleged misrepresentation"). That was wrong. While the making

of a misrepresentation is *an* element of Plaintiffs' claims, it does not satisfy *all* elements of those claims. *See supra* 17–18. Under the Chancery Court's reasoning, therefore, a claim accrues as long as some (but not all) of its elements are satisfied—a rule that directly contravenes Delaware law.

To put a finer point on it, the Chancery Court treated the tortfeasor's conduct as the "wrongful act" that triggered accrual. While that may be true for claims where the tortfeasor's conduct alone causes the requisite injury (*e.g.*, invasion of privacy), the same cannot be said for claims where the injury arises from the response to the tortfeasor's conduct. Plaintiffs' claims here, each of which requires detrimental reliance on a tortfeasor's misrepresentation, fall into the latter category.

The Chancery Court cited several cases in support of its position, *see* Op. at 30–31 nn.135–39, 163, but none help it. Most of the cases stand for the proposition that accrual begins "at the moment of the wrongful act"[12]—but, as discussed above, the "wrongful act" is the *tort*, not an isolated element of the claim. The other cases state that fraudulent inducement claims accrue on the day the misrepresentation is made, but each is distinguishable. *See Winkelvoss Cap. Fund, Ltd. Liab. Co. v. Shaw*,

[12] *See Kilcullen v. Spectro Sci., Inc.*, 2019 WL 3074569, at *7 (Del. Ch. July 15, 2019); *Wal-Mart*, 860 A.2d at 319; *In re Coca-Cola Enterprises, Inc.*, 2007 WL 3122370, at *5 (Del. Ch. Oct. 17, 2007), *aff'd*, 954 A.2d 910 (Del. 2008); *Krahmer v. Christie's Inc.*, 903 A.2d 773, 778 (Del. Ch. 2006); *see also Glassberg v. Boyd*, 116 A.2d 711, 717 (Del. Ch. 1955) (referring to the concept but using the term "overt act"); *Freedman v. Beneficial Corp.*, 406 F. Supp. 917, 924 (D. Del. 1975) (same).

2019 WL 994534, at *6 (Del. Ch. Mar. 1, 2019) (treating the statute of limitations as running *after* the date the misrepresentations were made); *Jeter v. Revolutionwear, Inc.*, 2016 WL 3947951, at *3, 9 (Del. Ch. July 19, 2016) (holding that counterclaims filed in December 2015 were untimely where misrepresentations were made in February 2011 and subsequently detrimentally relied on in March 2011).[13] In any event, none of the cases cited by the Chancery Court were decided by this Court, and none were decided before this Court held in *Lehman Bros.* that a claim begins to accrue when its elements have been met. 268 A.3d at 190.

This Court should not countenance such a deviation from its jurisprudence and well-settled Delaware law.

3. Affirming would not only be a departure from Delaware law, but would also lead to undesirable policy consequences.

This Court should reject any suggestion that a tort claim accrues prior to the satisfaction of each of its elements—particularly the fundamental requirement of

[13] The Chancery Court quoted a third case for this proposition, *see* Op. at 30 n.137 (quoting "*Pivotal Payments Direct Corp. v. Planet Payment, Inc.*, 2020 WL 7028597 at *5 (Del. Ch. Nov. 3, 2020)")—however, the language quoted by the Chancery Court does not appear in that decision. The remaining cases cited by the Chancery Court in footnote 137 stand for the separate proposition that a fraudulent inducement claim accrues no later than the completion of the contract the misrepresentation sought to induce. *See* Op. at 30 n.137 (quoting *Puig v. Seminole Night Club, LLC*, 2011 WL 3275948, at *3–4 (Del. Ch. July 29, 2011); *Optical Air Data Sys., LLC v. L-3 Commc'ns Corp.*, 2019 WL 328429, at *6 (Del. Super. Jan. 23, 2019); *Jeter*, 2016 WL 3947951, at *9).

injury. To hold otherwise would be contrary to bedrock principles of tort law in Delaware and in jurisdictions across the country,[14] and would result in significant adverse policy outcomes.

If the Chancery Court's reasoning is affirmed, the upshot for plaintiffs is that their claims may accrue even before they have suffered an injury. If a claim accrues at the time of a false representation, the limitations period could expire before a plaintiff suffers any harm at all (and, in many cases, before the plaintiff realizes a false representation was made in the first place), barring recovery for real injuries once they eventually manifest. Such an outcome would undermine the protective purpose of limitations periods and yield manifestly unjust results.

The rule would be equally problematic for defendants. Allowing tort claims to be brought without an injury would expose defendants to costly and burdensome litigation even where no actual harm had occurred. Such a rule would collapse the

[14] *See, e.g.*, *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 140 (N.Y. 2009) ("A tort claim accrues as soon as the claim becomes enforceable, i.e., when all elements of the tort can be truthfully alleged in a complaint." (internal quotation marks omitted)); *Hebrew Acad. of San Francisco v. Goldman*, 42 Cal. 4th 883, 898 (Cal. 2007) ("[A]ccrual sets the date as the time when the cause of action is complete with all of its elements—the elements being generically referred to by sets of terms such as 'wrongdoing' or 'wrongful conduct,' 'cause' or 'causation,' and 'harm' or 'injury.'" (alterations and some internal quotation marks omitted)); *Waxler v. Household Credit Servs., Inc.*, 106 S.W.3d 277, 283 (Tex. App. 2003) ("[A] cause of action only accrues when facts come into existence supporting *each element of the tort*." (emphasis in original)).

distinction between tort law and regulatory enforcement, as private individuals would be permitted to sue defendants for false representations without necessarily having ever been harmed by those representations.

Finally, ruling that tort claims can accrue before there is an injury would flood the courts with premature and speculative claims. The judicial system would be overrun with speculative disputes as a result, undermining traditional concepts of ripeness and standing that function, in part, to preserve judicial economy. *Cf. Saunders v. Lightwave Logic, Inc.*, 2025 WL 1793978, at *3 n.9 (Del. June 30, 2025) ("Statutes of limitation . . . serve as instruments of court management, promote judicial economy, and are commonly justified on judicial efficiency." (quoting 51 Am. Jur. 2d *Limitation of Actions* § 9 (2025))); *S'holder Representative Servs. LLC v. Alexion Pharms., Inc.*, 2021 WL 3925937, at *7 (Del. Ch. Sept. 1, 2021) (observing that the ripeness doctrine "advances" the "ideals of judicial economy").

Tort law is designed to compensate those who have suffered real harm. *See Bell Helicopter*, 113 A.3d at 1052 n.28. The Chancery Court's decision undercuts that objective. This Court should affirm its precedent and hold that a tort claim accrues only when *all* of its elements—including injury—are satisfied. Any earlier accrual point would erode the predictability, fairness, and purpose of tort law.

II. THE CHANCERY COURT ERRED IN HOLDING THAT PLAINTIFFS' CLAIMS WERE UNTIMELY

A. Question Presented

The Chancery Court held that Plaintiffs' claims were untimely because they accrued at the time Defendants' misrepresentations were made in 2020. Op. at 32–36. Was it error to hold that Plaintiffs' claims did not accrue until June 2021, which is when Plaintiffs detrimentally relied on Defendants' misrepresentations? *See* A657–61 (arguing that Plaintiffs' claims accrued on the date of the SPAC transaction closing, June 9, 2021, or the adoption of the BCA by Cloudbreak members, June 2, 2021).

B. Scope of Review

This Court reviews a decision granting motions to dismiss *de novo*. *Olenik v. Lodzinski*, 208 A.3d 704, 714 (Del. 2019); *see also Isaac*, --- A.3d ----, 2025 WL 2437093, at *6 ("[W]hether the statute of limitations bars a claim is a question of law subject to *de novo* review."). At the motion to dismiss stage, like the Chancery Court, this Court "must 'accept as true all of the plaintiff's well-pleaded facts,' and 'draw all reasonable inferences' in plaintiff's favor." *Olenik*, 208 A.3d at 714 (quoting *Allen v. Encore Energy Partners, L.P.*, 72 A.3d 93, 100 (Del. 2013)).

C. Merits of the Argument

As explained above, Plaintiffs' claims accrued when they detrimentally relied on Defendants' misrepresentations. *See supra* § I. Thus, whether Plaintiffs' claims are timely turns on *when* their detrimental reliance occurred.

1. Plaintiffs' claims accrued on June 9, 2021, the date the SPAC transaction closed.

Under Delaware law, tort claims arising out of business transactions (like the SPAC transaction here) accrue *at the transaction's closing*. *See, e.g.*, *Lehman Bros.*, 268 A.3d at 181. This Court's 2021 decision in *Lehman Brothers* clarified that claims for recission, unjust enrichment, and false information all accrued at a real estate transaction's closing. The closing represented the moment in time where the buyer "finalized the transaction that transferred the purchase money to the Sellers in exchange for a purportedly worthless deed" and when the parties "finalized the transaction based on a mutual mistake." *Id.* at 190–91. Moreover, this Court noted that any claims brought by the lender for fraud or negligence also "would have accrued at closing when [the lender] relied on the false information the Sellers provided to fund [the buyer's] purchase" of the property. *Id.* at 197.

Lehman Brothers thus stands for the commonsense principle that a transaction's closing is the date of accrual for claims seeking the redress of wrongful conduct intended to facilitate the transaction—just like Plaintiffs' claims, which are each based on Defendants' misrepresentations that were intended to deceive

Plaintiffs into agreeing to and approving the SPAC transaction. Other Delaware cases, including cases cited in *Lehman Brothers* itself, confirm the same. *See, e.g.*, *id.* at n.94 (citing *Lee v. Linmere Homes, Inc.*, 2008 WL 4444552, at *3 (Del. Super. Ct. Oct. 1, 2008) (holding that fraudulent misrepresentation and negligence claims "related to the purchase of a home accrues on the date of the settlement or closing")). The home purchase context at issue in *Lee* is a particularly apt analogy to the SPAC transaction here. In a home purchase, the buyer and seller first enter into a purchase agreement that outlines the terms of the deal and is usually subject to certain conditions precedent. The transaction is then finalized at closing, if those conditions have been satisfied. *Lee* and other cases recognize the importance of closing: It is at that point that the party aggrieved by a transaction suffers a concretized injury. *See, e.g.*, *Kilcullen*, 2019 WL 3074569, at *7 ("Where a fraud claim alleges false representations and warranties in a purchase agreement, the fraud claim accrues at closing."); *Certainteed Corp. v. Celotex Corp.*, 2005 WL 217032, at *8 (Del. Ch. Jan. 24, 2005) (holding that a plaintiff's tort claims accrued at closing, when "it was injured by receiving [title to facilities,] the value and nature of which were not as represented").

Here, Plaintiffs were not injured until the SPAC transaction closed on June 9, 2021. Before then, Plaintiffs had only entered into the BCA, which was effectively the SPAC transaction's purchase agreement equivalent. As the BCA itself

recognizes, various conditions needed to be satisfied before the SPAC transaction could close. *See* A93. If any of those conditions was not satisfied, closing could not occur, the SPAC transaction would not have consummated, and Plaintiffs would not have been injured.

2. Alternatively, Plaintiffs' claims accrued on June 2, 2021, when the BCA was adopted and the SPAC transaction approved.

Even if Plaintiffs were not injured when the SPAC transaction closed—at which point Cloudbreak was *actually* sold—their claims are still timely. That is because, at the very earliest, Plaintiffs were injured when they agreed to the SPAC transaction, which did not occur until June 2, 2021.

As explained above, Cloudbreak could not participate in the SPAC transaction without a member vote *after* the BCA was signed. *Supra* at 12–13. By its plain terms, the execution of the BCA was an interim measure. Section 4.21 provided:

> Board Approval; Vote Required. The Company Board . . . has duly . . . recommended that the Members approve and adopt this Agreement and approve the Merger and directed that this Agreement and the Transactions (including the Merger) be submitted for consideration by the Company's Members. The Requisite Approval is the only vote of the holders of any class or series of Units of the Company *necessary to adopt this Agreement and approve the Transactions*. The Written Consent, if executed and delivered, would qualify as the Requisite Approval and no additional approval or vote from any holders of any class or series of Units of the Company would then be necessary to adopt this Agreement and approve the Transactions.

A73–74 (emphasis added). Other BCA provisions confirm the necessity of a member vote. *See, e.g.*, A59 ("The Company has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, *subject to receiving the Requisite Approval, to consummate the Transactions*." (emphasis added)).[15]

Put differently, the member vote was a condition precedent that had to occur in order for the BCA to become effective. *See Thompson St. Cap. Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 2025 WL 1213667, at *9 (Del. Apr. 28, 2025) ("A condition precedent is an act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises." (internal quotation marks omitted)). The parties understood as much. *See* A329 (alleging that the member vote "was critical, as without it the deal could not move forward and close, as Cloudbreak and the Defendants had determined . . . [that] a member vote needed to be held"). Until the member vote was held, no party assumed any obligations under the BCA. *Cf. Aveanna Healthcare, LLC v. Epic/Freedom, LLC*, 2021 WL 3235739, at *25 (Del. Super. Ct. July 29, 2021) ("An unexcused and

[15] In fact, the BCA (and the SPAC transaction itself) was conditioned not only on a vote required by Cloudbreak's members, but also on two additional votes: one by GigCapital2's members and another by the member of Cloudbreak's merger subsidiary. *See* A79 (requiring such votes in order to approve the BCA and the SPAC transaction).

unsatisfied condition keeps a dependent duty from accruing . . . ."). The earliest that Plaintiffs' claims could have accrued, then, is when the member vote was held on June 2, 2021—the day Plaintiffs adopted the BCA and approved the SPAC transaction in reliance on Defendants' misrepresentations. *See, e.g.*, A328, 329–30.

The Chancery Court rejected treating June 2, 2021 as the date of accrual for Plaintiffs' claims. Op. at 35–36. Instead, it appears to have reasoned that because "[t]he alleged wrongful acts are fraudulent or misleading statements predating the Cloudbreak BCA's execution in November 2020," Op. at 35, Plaintiffs detrimentally relied on Defendants' statements at the time the BCA was executed. But, as just discussed, the BCA was non-binding until June 2021. Any detrimental reliance on Defendants' misrepresentations by way of consummating the BCA thus could not have occurred until the member vote in June 202l, at the earliest.

The Chancery Court also recognized Defendants' assertions that the member vote was predetermined, though it declined to address the merits of those challenges. Op. at 35 n.160 ("Regardless of whether the member vote was predetermined, the Complaint cites no statement after November 2020 relied on by the plaintiffs in voting on the merger."). First, the Chancery Court referenced a "drag-along" right found in Cloudbreak's LLC agreement: [redacted] A512–13 (emphasis added). As this text makes clear, the

drag-along right was not automatic; it had to be exercised by the "Drag Parties" (*i.e.*, Cloudbreak's board and majority-interest holders). And the allegations support the conclusion that the right was never exercised. *See, e.g.*, A329. Indeed, had the drag-along right been exercised, there would have been no reason to have the member vote at all.

Second, the Chancery Court referred to "Member Support Agreements" which ostensibly bound certain members to vote in support of the BCA and the SPAC transaction. Op. at 35 n.160. Even if those agreements could be considered at the motion to dismiss (and, to be clear, they are not[16]), treating any such agreements as binding would have created an obvious redundancy within the BCA by obviating the need to have the member vote at all. *See, e.g.*, A73–74 (requiring a member vote in order to "adopt this Agreement and approve the Transactions"). This Court avoids such interpretive outcome. *See In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 575 (Del. 2019) ("Contracts are to be interpreted in a way that does not render any provisions illusory or meaningless." (internal quotation marks omitted)). Moreover, any agreements to vote would violate Cloudbreak's LLC agreement, which prohibits

[16] This Court "derive[s] the facts relevant to the motions to dismiss from the pleadings and the documents incorporated by reference in the pleadings" only. *Isaac*, --- A.3d ---, 2025 WL 2437093, at *1 n.1.

[redacted] of the company, if a merger is approved. A512–13.

Consistent with the above, the parties recognized the need to hold a determinative member vote in June 2021 after the BCA was signed in November 2020. *See* A329. Either way, one thing is for sure: to the extent the approval of the BCA is when Plaintiffs were injured by Defendants' misrepresentations, that approval occurred on *June 2, 2021*, rendering each of Plaintiffs' claims timely.[17]

[17] Even if Plaintiffs were injured when the interim measure of signing the BCA occurred in November 2020, they were *also* injured in June 2021. If a plaintiff detrimentally relies on a single misrepresentation at two different points in time, suffering two distinct resulting injuries, each of those points of time gives rise to a separate claim. *See, e.g.*, *Yoon Chul Yoo v. Arnold*, 2013 WL 12335872, at *5 (C.D. Cal. Mar. 25, 2013), *aff'd*, 615 F. App'x 868 (9th Cir. 2015). Here, the participants of the November 2020 vote were Cloudbreak's board of directors, and they were voting only on whether to agree to terms that might be approved by the member vote. A328. The June 2021 vote was a *member* vote, not a board vote, and had the effect of contractually binding Cloudbreak to the BCA and the SPAC transaction. A329. Thus, the circumstances of the June 2021 member vote (and, for that matter, the SPAC transaction closing), independently satisfy the elements of Plaintiffs' claims, *Lehman Bros.*, 268 A.3d at 190, meaning that those claims accrued in June 2021 even if they also accrued in November 2020.

III. THE CHANCERY COURT ERRED IN FAILING TO FIND THAT PLAINTIFFS' CLAIMS TOLLED

A. Question Presented

The Chancery Court held that the statute of limitations for each of Plaintiffs' claims did not toll. Op. at 36–41. Was it error for the Chancery Court to ignore that certain material misrepresentations contained in Defendants' diligence materials were unknowable to Plaintiffs and that Plaintiffs were unable to discover the extent of Needham's participation in the fraudulent scheme (and, in fact, were actively misled by Needham regarding its involvement) until confidential documents demonstrating Needham's role were publicly revealed in a 2023 litigation? *See* A667–71 (arguing that Plaintiffs could not have known that certain representations were false or discerned the extent of Needham's wrongdoing until 2023).

B. Scope of Review

Whether a statute of limitations was tolled is a question of law. *See Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1, 15 (Del. 2005). This Court reviews questions of law *de novo*. *Sunder Energy*, 332 A.3d at 483–84.

C. Merits of the Argument

1. The falsity of certain representations was unknowable to—and fraudulently concealed from—Plaintiffs.

Even if this Court finds that Plaintiffs were injured before June 2021, it should nonetheless reverse the Chancery Court's holding that the limitations period for Plaintiffs' claims did not toll. *See* Op. at 36–41 (rejecting tolling arguments).

Delaware law recognizes several tolling doctrines. Two are relevant here. Under the first, the "discovery rule," a statute of limitations is tolled "where the injury is 'inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.'" *Wal-Mart Stores*, 860 A.2d at 319 (quoting *Coleman v. Pricewaterhousecoopers, LLC*, 854 A.2d 838, 842 (Del. 2004)). Under the second, the doctrine of fraudulent concealment, "a statute of limitations . . . can be 'disregarded when a defendant has fraudulently concealed from a plaintiff the facts necessary to put [the plaintiff] on notice of the truth.'" *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1146 (Del. 2025) (quoting *In re Tyson Foods, Inc.*, 919 A.2d 563, 585 (Del. Ch. 2007)). For that doctrine to apply, "a plaintiff must allege an affirmative act of actual artifice by the defendant that either prevented the plaintiff from gaining knowledge of material facts or led the plaintiff away from the truth. *Id.* at 1146–47 (internal quotation marks omitted).

The Chancery Court's tolling analysis focused solely on the discovery rule, concluding that Plaintiffs could have discovered that Defendants' representations

were false in 2020. *See* Op. at 41 ("[N]othing prevented the plaintiffs from doing their own diligence into the Portfolio Companies and requesting additional information on their financial wellbeing."); *see also id.* ("The disclaimers in the June and October Presentations . . . would have put the plaintiffs on notice of potential inaccuracies in the presentations and that they should conduct their own analysis.").

As Plaintiffs alleged, the falsity of certain material representations made by Defendants could only be proved by comparing those representations with others made in presentations that *were never shared with Cloudbreak*. For example, the October presentation stated that one of the Portfolio Companies "serviced 2,000 patients a day." A322. That number was demonstrably false, as made clear by "a separate presentation . . . that was not shared with Cloudbreak," which claimed that the respective Portfolio Company "saw 1,000 patients in a day" (which, for its part, was also false). *Id.* Similarly, the June presentation claimed that one Portfolio Company had a five-year, $138 million contract with the government of Mali. A326. This figure was also false: "As an alternative presentation, not shared with Cloudbreak, revealed, the purported contract in Mali was worth—at most—$60 million, not $138 million." *Id.* Plaintiffs could not have known that these fraudulent representations were false until the concealed presentations were uncovered. Plaintiffs' claims based on these misrepresentations should have tolled accordingly.

The Chancery Court's suggestion that Plaintiffs could have done their own diligence into the Portfolio Companies ignores reality. Plaintiffs were uniquely reliant on Defendants' representations during the diligence process, given that each of the Portfolio Companies was private, none engaged in any meaningful public reporting, and some operated and were incorporated internationally. A294; A41. Plaintiffs were thus dependent on Defendants to provide honest assessments of material that Defendants had in fact reviewed through a legitimate diligence process.

For these reasons, the Chancery Court's tolling analysis was flawed and should be reversed. This is particularly true given the relevant procedural posture. *See BTIG, LLC v. Palantir Techs., Inc.*, 2020 WL 95660, at *6 (Del. Super. Ct. Jan. 3, 2020) ("At this stage in the proceedings, the Court must accept the facts as alleged in the Complaint. If the factual discovery demonstrates otherwise, then a dispositive motion may resolve the matter prior to trial.").

2. In any event, Plaintiffs' claims against Needham specifically did not accrue until the extent of Needham's involvement in the fraudulent scheme was revealed in 2023.

Finally, at minimum, the Chancery Court erred in refusing to toll Plaintiffs' claims against Needham. The Chancery Court's decision treated the Defendants as a unitary group, drawing no distinctions between the Defendants with respect to the applicability of any tolling doctrines. *See* Op. at 36–41. That was error.

The statute of limitations for Plaintiffs' claims against Needham were tolled under the discovery rule and the fraudulent concealment doctrine. Even assuming that Plaintiffs knew (or could have known) that the representations regarding the Portfolio Companies' financials were materially false, *Needham's active participation in the fraudulent scheme* was inherently unknowable to Plaintiffs until 2023, when previously confidential documents were disclosed in a litigation involving Needham. *See BTIG*, 2020 WL 95660, at *5. Those documents are damning—demonstrating, for instance, that Needham artificially combined the revenues of multiple Portfolio Companies to inflate the reported revenue figures. *See, e.g.*, *supra* at 10–12. Without access to such documents, Plaintiffs would have had no way of knowing about Needham's involvement in the wrongdoing.[18] Nor would Plaintiffs have ever expected such an ostensibly respected investment bank to have engaged in such an active level of misconduct.

Moreover, while Katz and Kathuria affirmatively represented that they had diligenced the Portfolio Companies' information, *see, e.g.*, A310, 328; A352, Needham did the opposite, distancing itself from the diligence materials provided to Cloudbreak. As the Chancery Court's decision itself notes, the October presentation

[18] Nor would it have made sense for Plaintiffs to assume the Needham—a global investment bank—would have engaged in such blatantly fraudulent conduct. *Cf. Microsoft Corp. v. Amphus, Inc.*, 2013 WL 5899003, at *20 (Del. Ch. Oct. 31, 2013) (considering the reputation of the defendant within the inquiry notice analysis).

"stated that Needham was not responsible for its veracity and that the information provided had been prepared by management of [UpHealth]." Op. at 41 (internal quotation marks omitted); *see also* A356. The June presentation included a similar disclaimer. *See* Op. at 41. Of course, that was an outright lie, as confirmed by the confidential documents uncovered in 2023. Needham's deceptive and purposefully inaccurate disclosures are the exact types of "affirmative act[s]" that "led [Plaintiffs] away from the truth," warranting tolling under the fraudulent concealment doctrine. *LGM Holdings*, 340 A.3d 1134 at 1146–47.

The Chancery Court missed the mark by treating the Defendants the same and failing to recognize Needham's unique posture. Plaintiffs were actively misled by Needham regarding its involvement in the fraudulent scheme and had no reason to believe that Needham was a culpable party until 2023, when a trove of inculpatory evidence became public. The statute of limitations for Plaintiffs' claims against Needham thus tolled until 2023, rendering those claims timely.

CONCLUSION

For the foregoing reasons, this Court should reverse the Chancery Court's dismissal of Counts I, III, and V as untimely, and remand for further proceedings.

Date: September 30, 2025

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CERTIFICATE OF SERVICE

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