EFiled: Sep 22 2026 09:02AM EDT
Filing ID 80606119
Case Number 306,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PXP PRODUCING COMPANY LLC, Plaintiff Below/Appellant, v. MITENERGY UPSTREAM LLC, Defendant-Below/Appellee, and MEPUS HOLDINGS, LLC, Intervenor-Below/Appellee.	No. 306,2026 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0668-MTZ **PUBLIC VERSION** **FILED SEPTEMBER 22, 2026**

PLAINTIFF BELOW/APPELLANT
PXP PRODUCING COMPANY LLC'S OPENING BRIEF

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES iv

INTRODUCTION 1

NATURE OF PROCEEDINGS 3

SUMMARY OF ARGUMENT 5

STATEMENT OF FACTS 7

A. The Parties and Their Related Entities 7

B. The 2006 Purchase and Sale Agreement and MitEnergy's Decommissioning and Indemnity Obligations 8

C. The 2009 Sale to Energy XXI and the Distribution of the Proceeds 10

D. Energy XXI's 2016 Bankruptcy and MitEnergy's 2019 Dissolution and Cancellation 13

E. The Cox Bankruptcy, the Government's Decommissioning Orders, and Mitsui's April 29, 2024 Response 15

F. The Record and Decisions Below 19

ARGUMENT 24

I. THE COURT OF CHANCERY ERRED BY DISMISSING PXP'S AMENDED COMPLAINT FOR FAILING TO PLEAD THE SPECIFIC DATE OF MITENERGY'S DISSOLUTION 24

A. Question Presented 24

B. Standard and Scope of Review 24

C. Merits of Argument 25

1. The Amended Complaint Pleads That MitEnergy Knew Its Obligations, Disposed of Its Assets, and Cancelled Its Certificate Without Paying or Providing for Its Claims. 25

2. No Authority Requires a Plaintiff to Plead the Specific Date of Dissolution. 31

3. Even If the Date Were Required, the Pleaded Facts Support the Inference That MitEnergy's Distributions Occurred Within Its Dissolution and Winding Up. 34

II. THE COURT OF CHANCERY ERRED BY EXCLUDING JUDICIALLY NOTICEABLE FACTS UNDER RULE 12(D), AND IT COMPOUNDED THE ERROR BY REFUSING, WITHOUT EXPLANATION, PXP'S REQUEST FOR CONVERSION TO SUMMARY JUDGMENT 38

A. Question Presented 38

B. Standard and Scope of Review 38

C. Merits of Argument 39

1. Rule 201 Required the Court to Notice the Record Facts Because PXP Requested Notice, Supplied the Information, and No One Disputed the Facts. 39

2. The Court Below Wrongly Excluded the Facts Without Applying Rule 201 or Explaining the Choice, and With the Facts Noticed, the Complaint States a Claim 43

3. Having Excluded the Record Facts, the Court Erred by Refusing, Without Stating Any Reason, PXP's Pending Alternative Request to Convert the Motions and Permit the Limited Discovery That Would Have Supplied Them 45

III. THE COURT OF CHANCERY ERRED BY ENDING ITS ANALYSIS AT WHAT SECTION 18-804 MAKES LEGALLY POSSIBLE, NEVER ADDRESSING WHETHER EQUITY PERMITS A COMPANY TO EXPLOIT THAT POSSIBILITY AGAINST ITS KNOWN CLAIMANTS. 50

A. Question Presented 50

B. Standard and Scope of Review 50

C. Merits of Argument 51

1. Since *Schnell*, Delaware Courts Have Refused to Let Parties Use Legal Machinery to Accomplish Manifestly Inequitable Ends, and Nothing in the LLC Act Displaces That Principle. 51

2. The Complaint Alleges That MitEnergy Planned to Dissipate its Assets, Wait Until the Money Could Not Be Clawed Back, and Only Then Dissolve, Which Is the Misuse *Schnell* Condemns 53

CONCLUSION 56

EXHIBITS

PXP Producing Co. v. MitEnergy Upstream LLC,
2026 WL 1815896 (Del. Ch. June 23, 2026) ..... A

PXP Producing Co. v. MitEnergy Upstream LLC,
342 A.3d 402 (Del. Ch. June 26, 2025) ..... B

TABLE OF AUTHORITIES

Page(s)

Cases

Appriva S'holder Litig. Co. v. EV3, Inc.,
937 A.2d 1275 (Del. 2007) 39

Bäcker v. Palisades Growth Cap. II, L.P.,
246 A.3d 81 (Del. 2021) 51

Ball v. Div. of Child Support Enf't,
780 A.2d 1101 (Del. 2001) 47, 48

Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Joint Underwriting Ass'n,
137 F.3d 1293 (11th Cir. 1998) 42

Basic Capital Mgmt., Inc. v. Dynex Capital, Inc.,
976 F.3d 585 (5th Cir. 2020) 41

Boateng v. InterAmerican Univ., Inc.,
210 F.3d 56 (1st Cir. 2000) 41

Burns v. United States,
542 F. App'x 461 (6th Cir. 2013) 42

Capone v. LDH Mgmt. Hldgs. LLC,
2018 WL 1956282 (Del. Ch. Apr. 25, 2018) ..... *passim*

Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC,
27 A.3d 531 (Del. 2011) 24, 25

Deuley v. DynCorp Int'l, Inc.,
8 A.3d 1156 (Del. 2010) 25

Gen. Motors Corp. v. Cox,
304 A.2d 55 (Del. 1973) 48

In re Gen. Motors (Hughes) S'holder Litig.,
897 A.2d 162 (Del. 2006) 40

Heartland Payment Sys., LLC v. Inteam Assocs., LLC,
171 A.3d 544 (Del. 2017) 39

Jiménez v. Palacios,
250 A.3d 814 (Del. Ch. 2019), *aff'd*, 237 A.3d 68 (Del. 2020) 39, 41

Lagrone v. Am. Mortell Corp.,
2008 WL 4152677 (Del. Super. Sept. 4, 2008) 40

Langeman v. Garland,
88 F.4th 289 (D.C. Cir. 2023).....42

Lebanon Cnty. Emps.' Ret. Fund v. Collis,
311 A.3d 773 (Del. 2023) 35, 38

Malpiede v. Townson,
780 A.2d 1075 (Del. 2001) 26

Menominee Indian Tribe of Wis. v. Thompson,
161 F.3d 449 (7th Cir. 1998) 42

Moran v. Household International, Inc.,
490 A.2d 1059, 1080 (Del. Ch. 1985),
aff'd, 500 A.2d 1346 (Del. 1985) 51

O'Toole v. Northrop Grumman Corp.,
499 F.3d 1218 (10th Cir. 2007) 44

Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.,
998 F.2d 1192 (3d Cir. 1993) 41

PXP Producing Co. v. MitEnergy Upstream LLC,
2026 WL 1815896 (Del. Ch. June 23, 2026).....*passim*

PXP Producing Co. v. MitEnergy Upstream LLC,
342 A.3d 402 (Del. Ch. 2025) 3, 21, 37

In re Reinz Wis. Gasket, LLC,
2023 WL 2568326 (Del. Ch. 2023) 52

In re Rockefeller Ctr. Props., Inc. Sec. Litig.,
184 F.3d 280 (3d Cir. 1999) 46

Schnell v. Chris-Craft Industries, Inc.,
285 A.2d 437, 439 (Del. 1971) 51

Staehr v. Hartford Fin. Servs. Grp., Inc.,
547 F.3d 406 (2d Cir. 2008) (impliedly overruled on other grounds
by Merck & Co. v. Reynolds, 559 U.S. 633 (2010)) 41

Storey v. Camper,
401 A.2d 458 (Del. 1979) 47, 48

Tal v. Hogan,
453 F.3d 1244 (10th Cir. 2006) 42

Techmer Accel Hldgs., LLC v. Amer,
2010 WL 5564043 (Del. Ch. Dec. 29, 2010) ..... *passim*

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007) 44

Thomas v. Walt Disney Co.,
337 F. App'x 694 (9th Cir. 2009) 42

Thor Merritt Square, LLC v. Bayview Malls LLC,
2010 WL 972776 (Del. Ch. Mar. 5, 2010) 30, 31, 32

White v. Panic,
783 A.2d 543 (Del. 2001) 34

Zak v. Chelsea Therapeutics Int'l, Ltd.,
780 F.3d 597 (4th Cir. 2015) 41

In re Zantac (Ranitidine) Litig.,
342 A.3d 1131 (Del. 2025) 38

Zean v. Fairview Health Servs.,
858 F.3d 520 (8th Cir. 2017) 42

Statutes

6 *Del. C.* § 18-203 .....26, 31, 35, 53

6 *Del. C.* § 18-801 .....33, 41, 53

6 *Del. C.* § 18-803 .....33, 53

6 *Del. C.* § 18-804 .....26, 31, 36

6 *Del. C.* § 18-1104 51

Other Authorities

Ch. R. 12 46

D.R.E 201(c)(2).....39, 40

5 Wright & Miller, *Federal Practice & Procedure* § 1366 & n.33 (3d ed. 2004) 41

INTRODUCTION

At the end of an offshore lease's life, production stops, and decommissioning starts. Wells must be plugged, platforms dismantled, and the seafloor cleared. Everyone in the business knows that day is coming, often decades in the future, and that predecessor owners remain answerable until the decommissioning is complete. Selling a lease adds the buyer to the obligation; it does not remove the seller.

MitEnergy Upstream LLC ("MitEnergy") bought fifty percent of the Gulf of Mexico lease interests held by PXP Producing Company LLC's ("PXP") predecessor and promised both to pay for decommissioning and to indemnify PXP if PXP ever had to pay instead. Later, MitEnergy sold the lease interests and everything else it owned, sent the proceeds to its members and affiliates, set nothing aside for the decommissioning, dissolved in secret, and cancelled.

The bill has now come due. The federal government has ordered the former lease owners, including PXP and MitEnergy, to do the decommissioning work, at a cost estimated to exceed $200 million. MitEnergy's affiliates assert that MitEnergy's subsequent sale of the lease interests discharged its obligations and that its cancellation ended any claim. According to them, MitEnergy no longer exists, and the affiliates, who received the company's cash, cannot be held accountable.

Delaware law does not permit a limited liability company to dissolve and cancel that way. Statutes require that a company first pay its debts and contractual obligations, or make reasonable provision to pay for them, before ending its existence. In its pleadings, PXP alleged that MitEnergy did not follow the statutory process, and PXP asked the Court of Chancery to nullify the cancellation and appoint a receiver to aid the court's determination of whether MitEnergy improperly wound up.

But the Court of Chancery dismissed the case before it could start. The court faulted PXP because it could not plead the date MitEnergy's owners privately voted to dissolve, even though that date is not public. Worse, even though that date was in the court's record, the court declined to consider it, and then refused, without explanation, to permit the discovery that would have independently confirmed it. And then the court refused to analyze whether MitEnergy's actions were equitable, even if legally permitted.

PXP now seeks reversal of the Court of Chancery's decisions and remand for further proceedings.

NATURE OF PROCEEDINGS

This is an appeal from the dismissal of a two-count complaint in the Court of Chancery.

Plaintiff-below/Appellant PXP filed its action on June 20, 2024 and filed its Verified Amended Complaint on October 29, 2024.[1] Count I seeks nullification of MitEnergy Upstream LLC's Certificate of Cancellation. Count II seeks the appointment of a receiver for MitEnergy. Intervenor-below/Appellee MEPUS Holdings, LLC ("MEPUS"), the successor to a former member of MitEnergy, intervened to seek dismissal and oppose both Counts.

The Court of Chancery dismissed PXP's case in two Letter Opinions. On June 26, 2025, it rejected MEPUS's timeliness defense for lack of standing, but dismissed Count II (the "2025 Opinion") for failure to state a claim.[2] Count I remained pending. After answering, MEPUS moved for judgment on the pleadings

[1] The Amended Complaint is located at A598-A642 and the exhibits are located at A643-A1198. For clarity, references are to "AC" and the internal paragraph numbers.

[2] *PXP Producing Co. v. MitEnergy Upstream LLC*, 342 A.3d 402 (Del. Ch. 2025) [hereinafter "2025 Op."]. A copy of the decision is attached to this brief as Exhibit B.

on Count I, and PXP cross-moved. On June 23, 2026, the court granted MEPUS's motion as to Count I and denied PXP's cross-motion (the "2026 Opinion").[3]

PXP appeals from the 2025 Opinion, the 2026 Opinion, and the final judgment entered thereon. It seeks reversal, reinstatement of the Amended Complaint in full, and remand for further proceedings.

This is PXP's Opening Brief on appeal.

[3] *PXP Producing Co. v. MitEnergy Upstream LLC*, 2026 WL 1815896 (Del. Ch. June 23, 2026)) [hereinafter "2026 Op."]. A copy of the decision is attached to this brief as Exhibit A.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred by dismissing PXP's claims for failure to plead the date of MitEnergy's dissolution. The Amended Complaint alleges that MitEnergy knew it owed decommissioning and indemnity obligations, upstreamed $283 million and all of its lease cash flow to its members and affiliates, reserved nothing, and cancelled its certificate anyway. That states a violation of Sections 18-804(b)(1) and (b)(3) and Section 18-203 of the LLC Act, regardless of when the dissolution occurred. No authority requires a plaintiff to plead the dissolution date, and the March 8, 2019 certificate of cancellation supplies it by inference in any event.

2. The Court of Chancery erred by excluding judicially-noticeable facts drawn from its own docket. Delaware Rule of Evidence 201(c)(2) makes judicial notice mandatory on request, and noticed facts are in the Rule 12(c) record, not outside the pleadings. PXP requested notice of three categories of facts, each originating with MEPUS and none disputed. The court below excluded them under Rule 12(d) without applying Rule 201 or stating a reason. And it then refused, again without explanation, PXP's pending alternative request to convert the motions and permit limited discovery on those same facts.

3. The Court of Chancery erred by ending its analysis at what Section 18-804 makes legally possible without addressing whether MitEnergy's actions were equitable. Inequitable action does not become permissible simply because it is legally possible. Section 18-1104 preserves the rules of equity, and Section 18-804 exists to afford claimants mandatory protection. PXP alleges that MitEnergy upstreamed its assets to its members and affiliates, waited until it believed the money could not be recovered, and only then dissolved and cancelled without reserving any assets or making reasonable provision to pay for known decommissioning and indemnity obligations to PXP. That is the misuse of corporate process and form that Delaware law condemns, and it states a claim in equity regardless of whether the last distribution to its members occurred after MitEnergy's dissolution and before its cancellation.

STATEMENT OF FACTS

A. The Parties and Their Related Entities

PXP is a Delaware limited liability company and the successor by merger to Pogo Producing Company ("Pogo"), an oil and gas producer that once held leases in the Gulf of Mexico.[4] PXP holds Pogo's rights under the contract with MitEnergy.

MitEnergy was a Delaware limited liability company. It was formed on April 12, 2006, as an indirect subsidiary of Mitsui & Co., Ltd. ("Mitsui"), a Japanese corporation.[5] According to its corporate parents, MitEnergy was "a vehicle newly established in the U.S.A." by Mitsui, Mitsui & Co. (U.S.A.), Inc. ("Mitsui USA"), and Mitsui Oil Exploration Co., Ltd. ("MOECO") to acquire Gulf of Mexico oil and gas interests.[6] MitEnergy was cancelled on March 8, 2019.[7]

At the time of its cancellation, MitEnergy had two members, both Mitsui holding companies. MEPGOM LLC, formerly named Mitsui E&P (USA) LLC, held 70 percent. MOEX USA Corporation held 30 percent. Above them, the chain led upward through MOECO and Mitsui USA to Mitsui itself.[8]

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[4] AC ¶2.

[5] AC ¶3.

[6] AC ¶9 & Ex. G.

[7] AC ¶3 & Ex. C.

[8] AC ¶56.

MEPUS is another Mitsui affiliate and the surviving entity of a merger with MOEX USA, MitEnergy's 30-percent member.

B. The 2006 Purchase and Sale Agreement and MitEnergy's Decommissioning and Indemnity Obligations

In late 2005, Pogo and Mitsui began discussing a "Strategic Alliance" to acquire United States oil and gas reserves together.[9] Pogo was then considering a sale of its Gulf of Mexico assets, and Mitsui and MOECO offered to buy 50% of its Gulf of Mexico lease interests.[10] The parties signed a memorandum of understanding in March 2006.[11] And on April 20, 2006, Pogo and Mitsui (acting through newly created MitEnergy) signed the Purchase and Sale Agreement (the "PSA").[12] Under the PSA, MitEnergy acquired an undivided 50 percent interest in Pogo's oil, gas, and mineral leases off the shores of Texas and Louisiana, including federal Outer Continental Shelf leases and State of Louisiana leases (the "Leases").[13]

Oil and gas leases come with end-of-life obligations. When production ends, all wells must be plugged, platforms and pipelines must be dismantled and

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[9] AC ¶5 & Ex. D.

[10] AC ¶5.

[11] AC ¶¶6, 8 & Ex. E.

[12] AC ¶¶6, 8 & Ex. F.

[13] AC ¶8.

abandoned, and the seafloor must be cleared, all for purposes of protecting the environment, property and human life.[14] This work is known as decommissioning.[15]

The PSA addressed that work directly. In Section 2.06, MitEnergy agreed to "assume, pay and discharge" all liabilities "for plugging, abandonment, and surface restoration of the oil, gas, injection, water, or other wells located on the lands covered by the Leases."[16] The PSA defines those obligations as "Assumed Liabilities," and in Section 10.03(f), MitEnergy agreed to "defend, indemnify and hold harmless" Pogo for any damages arising from them.[17] Section 10.04 confirmed that MitEnergy's indemnity obligation would "survive indefinitely."[18] MitEnergy has never been released from the Assumed Liabilities or from its indemnity obligation to Pogo, now PXP.[19]

In addition to the PSA, MitEnergy had other decommissioning obligations arising from federal and state law, and additional contracts. Federal law imposes decommissioning obligations and joint-and-several liability upon every owner of a

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[14] AC ¶¶18, 20.

[15] *Id*.

[16] AC ¶10.

[17] AC ¶11.

[18] *Id*.

[19] AC ¶12.

lease interest, including predecessor owners, until the work is done.[20] If current owners fail to perform, then the Department of the Interior orders predecessor owners to perform instead.[21] Assigning the lease to someone else does not end the exposure because the assignor remains liable until decommissioning is complete.[22] For state-level leases, Louisiana law imposes continuing liability on predecessor owners absent an express release.[23] And when Louisiana approved MitEnergy's later assignments, it conditioned approval on preserving exactly that recourse.[24] The Lease Operating Agreements among the co-owners of the Leases add a further layer of contractual responsibility.[25]

C. The 2009 Sale to Energy XXI and the Distribution of the Proceeds

On November 20, 2009, MitEnergy divested all of its Gulf of Mexico oil and gas assets (substantially everything MitEnergy owned) to Energy XXI, Inc., for $283

[20] AC ¶¶18-19, 21.

[21] AC ¶18.

[22] AC ¶19.

[23] AC ¶24.

[24] *Id*.

[25] AC ¶¶14, 25.

million.[26] The lease interests themselves were assigned to a subsidiary, Energy XXI GOM, LLC, which remains their record title owner today.[27]

Under Section 2.06 of the purchase agreement between Energy XXI and MitEnergy, Energy XXI assumed decommissioning obligations "attributable to [MitEnergy]."[28] Under Section 10.03, Energy XXI agreed to indemnify "[MitEnergy] and its Affiliates" — defined as the "Seller Group" — for damages arising from those assumed liabilities.[29] And Section 12.08 provides that nothing in the agreement "shall be construed to give any Person other than the parties" any "legal or equitable right, remedy, or claim" under it.[30] Neither Pogo nor PXP appears anywhere in the agreement.

In conjunction with the Energy XXI transaction, MOECO stated in a November 24, 2009 press release that it would "reinvest the sale proceeds to other high growth potential opportunities in order to build a more robust and balanced business portfolio."[31] Mitsui's Form 6-K filing of the same date also confirmed that

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[26] AC ¶¶26, 28 & Exs. H, I.

[27] AC ¶26 n.2, ¶ 33.

[28] A1306-A1307 (MEPUS MTD Op. Br., Ex. 1, § 2.06); AC ¶48.

[29] A1324-A1325 (MEPUS MTD Op. Br., Ex. 1, § 10.03); AC ¶49.

[30] A1340-A1341 (MEPUS MTD Op. Br., Ex. 1, § 12.08).

[31] AC ¶27 & Ex. H.

"Mitsui w[ould] reinvest the sale proceeds to other high growth potential opportunities including upstream oil and gas business."[32] Neither announcement said the reinvestment would happen outside MitEnergy, or that the proceeds would leave the Company.[33]

In truth, the proceeds left, and quickly. According to a distribution schedule that MEPUS later filed in this case, MitEnergy distributed $240 million to its members in January 2010, mere weeks after closing.[34] And Mitsui USA's annual reports trace the money up the chain. Its 2010 report discloses a distribution of approximately $96.3 million from MEPGOM, which had received distributions from MitEnergy "as a result of sales of certain assets to a third party."[35] And its 2011 report discloses a further $7.6 million by the same route.[36] MitEnergy's cash flow from the Leases traveled the same direction, to members and affiliates.[37] Over its

[32] AC ¶28 & Ex. I.

[33] AC Exs. H & I.

[34] A1216 (MEPUS Opp. to Mot. to Appoint Receiver, Ex.1).

[35] AC ¶57.

[36] *Id*.

[37] AC ¶¶57-58.

lifetime, by MEPUS's own schedule, MitEnergy distributed $622,280,000 to its members.[38]

D. Energy XXI's 2016 Bankruptcy and MitEnergy's 2019 Dissolution and Cancellation

Energy XXI ultimately failed. Beginning in 2015, its SEC filings disclosed heavy leverage and a $1.3 billion write-down driven by the collapse in oil and gas prices.[39] By April 2015, federal regulators had demanded an additional $1 billion in financial assurance to secure Energy XXI's decommissioning liabilities, but Energy XXI could not promise to provide it.[40] A year later, Energy XXI and its affiliates filed for Chapter 11 protection in the Southern District of Texas, announcing that they had done so to eliminate $2.8 billion in debt.[41]

Energy XXI emerged from bankruptcy on December 13, 2016, under a Plan and Confirmation Order.[42] That Plan released the Energy XXI debtors from their obligations and permanently enjoined MitEnergy from enforcing any contractual obligation of Energy XXI to perform decommissioning on the Leases or to

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[38] A1216 (MEPUS Opp. to Mot. to Appoint Receiver, Ex.1).

[39] AC ¶30.

[40] *Id*.

[41] AC ¶29.

[42] AC ¶31.

indemnify MitEnergy for those liabilities.[43] From that date, the assumption and indemnity promises MitEnergy had obtained in the 2009 sale were unenforceable by MitEnergy against anyone.[44]

Energy XXI's failure told the tale of the broader industry. Between 2009 and 2019, more than two dozen Gulf of Mexico exploration and production companies filed for bankruptcy.[45] In most instances, those companies left predecessor lessees to answer for the debtors' unperformed decommissioning obligations.[46]

In contrast to Energy XXI's public failure, MitEnergy ended in private. In early 2019, MitEnergy dissolved and wound itself up without public notice and without a word to PXP.[47] What happened inside MitEnergy emerged only later, in this litigation, from MEPUS itself. At a February 25, 2025 hearing, MEPUS's counsel told the Court of Chancery that, "We have been able to confirm . . . that the unanimous written consents to dissolve are dated February 2019, a month before dissolution[.]"[48]

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[43] *Id*. & nn.3-4.

[44] AC ¶¶31, 51.

[45] AC ¶55 (identifying 25 such companies).

[46] *Id*.

[47] AC ¶¶70, 74.

[48] 2026 Op. at *3 n.25; A1908-A1909 (Hr'g Tr. Feb. 25, 2025, at 78-79) (citation omitted).

The sworn distribution schedule MEPUS filed below supplied the rest. MitEnergy held $2.58 million as it entered this final period.[49] It distributed those funds to its members across 2018 and 2019, ending with a final $580,000 in 2019.[50] MEPUS's own brief placed that last payment "prior to or upon the cancellation."[51]

On March 8, 2019, MitEnergy filed its Certificate of Cancellation with the Delaware Secretary of State.[52] Nothing else about its dissolution — not the consents, not the wind-up, not the destination of the final distributions — appeared in any public record.[53]

E. The Cox Bankruptcy, the Government's Decommissioning Orders, and Mitsui's April 29, 2024 Response

Energy XXI's troubles outlived its bankruptcy. In 2018, Energy XXI's parent became an indirect subsidiary of MLCJR LLC ("Cox"), and its subsidiary, Energy XXI GOM, LLC, continued to hold the Lease interests MitEnergy had assigned to it.[54] In May 2023, the Cox and Energy XXI entities filed for Chapter 11 protection,

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[49] A1216 (MEPUS Opp. to Mot. to Appoint Receiver, Ex.1).

[50] *Id*.

[51] A1246 (MEPUS MTD Op. Br. at 10).

[52] AC ¶¶1, 3 & Ex. C.

[53] AC ¶¶70, 74.

[54] AC ¶32.

again in the Southern District of Texas.[55] In February 2024, their cases were converted to Chapter 7 liquidations.[56] The Cox debtors then sent the federal government letters of lease relinquishment and anticipatory default.[57] Those letters disclosed that Cox and Energy XXI could not perform their decommissioning obligations, including the obligations under the Leases.[58]

The federal government turned to the predecessor owners. Three days after the Cox bankruptcy filing, the Bureau of Safety and Environmental Enforcement ("BSEE") issued a Decommissioning Order for the EC 334 Lease to its predecessor owners, including MitEnergy and PXP.[59] The Decommissioning Order directed the predecessor owners to perform decommissioning and to begin immediate maintenance and monitoring.[60] In February 2024, BSEE notified the predecessor owners that Energy XXI GOM was no longer maintaining or monitoring EC 334 and

[55] AC ¶33.

[56] *Id*.

[57] AC ¶35.

[58] *Id*.

[59] AC ¶34.

[60] *Id*.

gave them thirty days to take over. In response, PXP's affiliate stepped in as the designated agent.[61]

In June 2024, BSEE issued further Decommissioning Orders for the MP 72, MP 72/74, and MP 73 Leases.[62] BSEE again named MitEnergy and PXP and ordered maintenance and monitoring within thirty days, and it set a March 15, 2025 deadline to complete decommissioning.[63]

One well stands apart. For Well SS007, a subsea well on the MP 73 Lease, only MitEnergy and Energy XXI GOM ever accrued decommissioning liability — not Pogo, not PXP, not any other predecessor.[64] With Energy XXI GOM in liquidation and in default, BSEE notified MitEnergy on July 31, 2024, that Well SS007 "is sole liability of MitEnergy Upstream LLC."[65] The government estimates that decommissioning that one well could cost $2.5 million.[66] If no MitEnergy entity performs, the cost falls to United States taxpayers.[67] Across the MP leases as a

[61] AC ¶36.

[62] AC ¶37 & Exs. K-M.

[63] *Id*.

[64] AC ¶38 & Ex. M.

[65] *Id*.

[66] AC ¶38.

[67] *Id*.

whole, the government's published estimates put the decommissioning work for which MitEnergy bears continuing responsibility at more than $80 million.[68]

As the dominos fell, PXP went looking for MitEnergy. On February 6, 2024, PXP and two other predecessor owners wrote to MitEnergy and certain of its affiliates about the decommissioning obligations on the EC 334 and EC 335 Leases and asked MitEnergy to confirm that it would participate proportionally.[69] Months passed without an answer.[70] On May 3, 2024, PXP separately made a contractual demand under the PSA for indemnity across the Leases.[71] That demand received no response at all.[72]

The answer to the February letter finally came on April 29, 2024.[73] But it came from counsel for Mitsui, not MitEnergy.[74] The letter stated that MitEnergy had "divested itself of its Gulf of Mexico assets in 2009, transferring substantially all of its assets and obligations, including all decommissioning obligations, to

[68] AC ¶40. Now, the figure is approximately $200 million.

[69] AC ¶42.

[70] *Id*.

[71] AC ¶41 & Ex. O.

[72] *Id*.

[73] AC ¶43 & Ex. P.

[74] *Id*.

Energy XXI, Inc., as buyer."[75] It further stated, "MitEnergy was subsequently dissolved on March 8, 2019, having provided for payment of MitEnergy's contingent liabilities through its sale to Energy XXI nearly ten years prior."[76] The letter did not explain what contingent liabilities it meant, how they had been paid, to whom, or how the 2009 sale provided for them.[77] Instead, it asserted that MitEnergy "is no longer in existence or able to conduct business . . . and has no resources, to participate in decommissioning."[78] Notably, Mitsui's account of the sale differed from its own contemporaneous securities filing, which had said the proceeds would be reinvested in "other high growth potential opportunities" — not set aside for MitEnergy's liabilities.[79]

F. The Record and Decisions Below

PXP filed this action in June 2024 seeking nullification of MitEnergy's Certificate of Cancellation and appointment of a receiver. PXP's Amended Complaint alleges that MitEnergy knew of its decommissioning and indemnity obligations, disposed of its assets to its members and affiliates, and cancelled its

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[75] *Id*.

[76] *Id*.

[77] *Id*.

[78] AC ¶45.

[79] AC ¶44 & Ex. I.

certificate without paying or providing for those claims. It further alleges that the failure occurred "during its dissolution and wind up before filing its Certificate of Cancellation," and that MitEnergy's assets were transferred "in advance of and/or in connection with its dissolution, wind up, and cancellation," for the purpose of leaving MitEnergy "with no means to honor its contractual, legal and regulatory obligations."[80]

MEPUS's own filings confirmed certain facts about MitEnergy's demise. MEPUS submitted MitEnergy's distribution schedule, supported by a notarized affidavit attesting to its accuracy on personal knowledge.[81] No party challenged the schedule's accuracy. MEPUS's opening dismissal brief placed MitEnergy's final distribution "prior to or upon the cancellation in 2019."[82] And at the February 25, 2025 motion hearing, MEPUS's counsel confirmed that the unanimous written consents to dissolve are dated February 2019.[83]

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[80] AC ¶¶ 15, 61.

[81] A1216; A1217-A1218 (MEPUS Opp. to Mot. to Appoint Receiver, Ex. 1 & supporting Aff.).

[82] A1246 (MEPUS MTD Op. Br. at 10).

[83] 2026 Op. at *3 n.25; A1908-A1909 (Hr'g Tr. Feb. 25, 2025, at 78-79).

In the 2025 Opinion, the court denied MEPUS's motion to dismiss Counts I and II as untimely.[84] But the court concluded that PXP had not pled facts making a Section 18-804 violation reasonably conceivable because it had not alleged when MitEnergy dissolved or that any distribution followed dissolution, and on this ground, the court dismissed Count II for appointment of a receiver. It separately rejected PXP's receiver theories resting on potential veil-piercing claims.[85] The court below declined to consider MEPUS's distribution schedule because the court found that PXP had raised the schedule in briefing rather than in its pleading,[86] and it observed that those assertions "inspire a complex factual dispute" that could not be resolved at the pleadings stage.[87]

On September 8, 2025, after answering, MEPUS moved for judgment on the pleadings on Count I for nullification of MitEnergy's cancellation, on the ground that the 2025 Opinion's timing analysis for Count II applied equally to Count I.[88] PXP opposed and cross-moved.[89] In its briefing, PXP requested that the court take

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[84] 2025 Op. at 406-13.

[85] *Id*. at 413-20.

[86] *Id*. at 420-21.

[87] *Id*. at 420.

[88] A1964-A1972 (MEPUS Mot. for J. on the Pleadings).

[89] A1973-A1976 (PXP Cross-Mot.); A1977-A2024 (PXP Combined Br.).

judicial notice of the distribution schedule and its supporting affidavit, the statements in MEPUS's opening dismissal brief, and counsel's statements at the February 25, 2025 hearing.[90] PXP further requested that, if the timing of the dissolution and distributions presented fact issues, then in the alternative to taking judicial notice, the motions should be converted to summary judgment motions and targeted discovery permitted.[91] MEPUS, for its part, asked the court to take judicial notice of filings from the Energy XXI bankruptcy in support of its own defense.[92]

In the 2026 Opinion, the court recognized that on a Rule 12(c) motion it "may consider documents integral to the pleadings and facts subject to judicial notice."[93] But, as it had in the 2025 Opinion, the court excluded what it described as PXP's "unpled assertions about the timing of the Company's dissolution and its cash on hand" and noted that PXP had not sought leave to amend after the 2025 Opinion.[94] Rather than citing or applying Delaware Rule of Evidence 201, the 2026 Opinion treated the matter solely as a pleading issue and characterized the judicial notice

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[90] *See, e.g.*, A1994-A1998 (PXP Combined Br. at § II); A2076-A2079 (PXP Reply ISO Cross-Mot. at 5-8).

[91] A2012-A2013 (PXP Combined Br. § VI).

[92] A2059-A2066 (MEPUS Ans./Reply Br. § III.C).

[93] 2026 Op. at *3.

[94] *Id*. at *3-4.

request as "a third bite at the apple."[95] The 2026 Opinion also did not address its reason for declining PXP's request to convert the motions to summary judgment. The Court of Chancery ultimately granted MEPUS judgment on the pleadings on Count I and denied PXP's cross-motion.[96]

This appeal followed.

[95] *Id*. at *4.

[96] *Id*.

ARGUMENT

I. THE COURT OF CHANCERY ERRED BY DISMISSING PXP'S AMENDED COMPLAINT FOR FAILING TO PLEAD THE SPECIFIC DATE OF MITENERGY'S DISSOLUTION.

A. Question Presented

Did the Court of Chancery err by dismissing PXP's claim that MitEnergy violated the LLC Act's dissolution and winding-up process solely because PXP did not plead the specific date of MitEnergy's dissolution, when no authority requires that allegation, the pleaded facts supported an inference of the dissolution's timing, and the complaint alleges that MitEnergy violated Section 18-804 no matter when it dissolved?

This question was preserved in the 2025 Opinion at pages 415-16, the 2026 Opinion at pages *3-4, and in PXP's briefing regarding the cross-motions for judgment on the pleadings at A1997-1999 and A2074-2086.

B. Standard and Scope of Review

This Court reviews the grant of a motion to dismiss or of judgment on the pleadings *de novo*, without deference to the trial court's rulings.[97] This Court's *de*

[97] *See Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

novo review extends to whether the trial court "erred as a matter of law in formulating or applying legal precepts."[98]

C. Merits of Argument

1. The Amended Complaint Pleads That MitEnergy Knew Its Obligations, Disposed of Its Assets, and Cancelled Its Certificate Without Paying or Providing for Its Claims.

Compliance with Sections 18-804(b)(1) and (b)(3) is measured by what a company has paid or set aside when it files its certificate of cancellation. The Amended Complaint pleads facts to show it is reasonably conceivable that MitEnergy was cancelled without paying or providing for its claims. Simply put, that states a claim.

Delaware's pleading standard is minimal and plaintiff friendly. A court accepts all well-pleaded allegations, credits even vague allegations that give notice, and draws every reasonable inference in the plaintiff's favor.[99] Dismissal is appropriate only where a defendant establishes that the plaintiff could not recover "under any reasonably conceivable set of circumstances susceptible of proof."[100]

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[98] *Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1160 (Del. 2010).

[99] *Cent. Mortg. Co.*, 27 A.3d 531at 535-36.

[100] *Id.* at 536-37.

The inquiry runs to the complaint as a whole because "the plaintiff is entitled to all reasonable inferences that logically flow from the face of the complaint."[101]

Sections 18-804 and 18-203 prescribe a process by which a cancelling company must pay, or make reasonable provision for, known and statutorily foreseeable claims before cancellation. Section 18-804(b)(1) requires a dissolved company to pay or make reasonable provision to pay all claims "known to the limited liability company," a category the statute expressly extends to "contingent, conditional or unmatured contractual claims."[102] Subsection (b)(3) separately requires provision for claims that, on facts known to the company, are likely to arise or become known "within 10 years after the date of dissolution."[103] And Section 18-203 permits the certificate of cancellation to be filed only upon dissolution and the completion of winding up.[104] Thus, a plaintiff challenging a company's cancellation process states a claim by pleading facts making it reasonably conceivable that company obligations were known or foreseeable, that the company had assets, that nothing was paid or provided, and that the certificate of cancellation was filed

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[101] *See Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

[102] 6 *Del. C.* § 18-804(b)(1).

[103] *Id.* § 18-804(b)(3).

[104] *Id.* § 18-203.

anyway. Where those facts are established, nullification is available because a company "not wound up in accordance with the LLC Act[]" has not earned the finality cancellation confers.[105]

PXP's Amended Complaint pleads each element that the LLC Act requires.

Start with knowledge, which the Act measures by the company's actual knowledge at the time of cancellation.[106] An indemnification obligation is the paradigm case of the "contingent, conditional or unmatured contractual claim" the statute names, and it must be accounted for "irrespective of the likelihood that it will actually 'vest.'"[107] MitEnergy held exactly those kinds of obligations. Under the 2006 PSA, it assumed the decommissioning liabilities and agreed to indemnify Pogo (now PXP) for them, and it agreed that those promises would "survive indefinitely." Under federal and state law, it remained jointly and severally liable as a predecessor owner. And more than two years before cancellation, MitEnergy also knew that Energy XXI's bankruptcy plan discharged Energy XXI's obligations and permanently enjoined MitEnergy from enforcing them.[108]

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[105] *Capone v. LDH Mgmt. Hldgs. LLC*, 2018 WL 1956282, at *7 (Del. Ch. Apr. 25, 2018).

[106] *See id.* at *10-11.

[107] *See id.* at *8 (citation and emphasis omitted).

[108] AC ¶¶31, 51.

PXP also pleaded facts about MitEnergy's assets. MitEnergy sold substantially everything it owned to Energy XXI for $283 million in 2009, and the proceeds, along with the company's lease cash flow, went up the chain to its members and affiliates for reinvestment in "other high growth potential opportunities."[109] The Amended Complaint alleges that the statutory failure occurred "during its dissolution and wind up before filing its Certificate of Cancellation,"[110] and that all of MitEnergy's assets were transferred "in advance of and/or in connection with its dissolution, wind up, and cancellation," without payment or reasonable provision.[111]

MitEnergy's parent claims MitEnergy "provided for payment of [its] contingent liabilities through its sale to Energy XXI nearly ten years prior."[112] MEPUS invoked the same transaction.[113] That position concedes that the duty applied, so the only question is whether MitEnergy satisfied it. And adequacy is an evidentiary question, not a pleading standard.

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[109] AC ¶¶28, 57-58 & Ex. I.

[110] AC ¶15.

[111] AC ¶86.

[112] AC ¶43 & Ex. P.

[113] A2059-A2066 (MEPUS Ans./Reply Br. § III.C).

Either way, the Energy XXI agreement provides nothing. The agreement ran to MitEnergy, not its claimants, and Section 12.08 foreclosed any "legal or equitable right, remedy, or claim" in anyone else.[114] Whatever coverage the agreement did supply was extinguished by Energy XXI's bankruptcy. What remained was nothing, which is what Mitsui asserts MitEnergy had: "no resources."[115] A known, non-frivolous claim for a large sum cannot reasonably be answered with a reserve of zero.[116]

PXP alleges that the assets were disposed of in connection with the dissolution and winding up.[117] MitEnergy's own account of when it dissolved leads to the same conclusion. Mitsui's letter states that MitEnergy "dissolved on March 8, 2019" — the very day the certificate of cancellation was filed.[118] Take Mitsui at its word, and MitEnergy dissolved and cancelled on a single day, holding known obligations of at least $80 million and having set aside nothing for them. Either account supports PXP's claim, and choosing between them is not for the pleading stage.

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[114] AC ¶¶27, 48-49, 72; A1306-A1307; A1324-A1325; A1340-A1341 (MEPUS MTD Op. Br., Ex. 1, §§ 2.06, 10.03, 12.08).

[115] AC ¶¶45, 58 & Ex. P.

[116] *Capone*, 2018 WL 1956282, at *12-13.

[117] AC ¶¶15, 86.

[118] AC ¶43 & Ex. P.

Delaware courts have recognized precisely this claim on facts no stronger than these. In *Capone*, the court nullified the certificates of cancellation because the entities were dissolved and cancelled the same day with no reserves.[119] In *Techmer*, the court found a wind-up violation where the entity retained $59,892 against outstanding liabilities at cancellation — a failure of $59,892, not of $283 million.[120] And in *Thor Merritt*, the court denied dismissal of a nullification claim resting on the same allegations pleaded here — *i.e.*, known obligations and inadequate provisions during the wind-up process. The *Thor Merritt* court held that the controversies over the reasonableness of the provisions and the company's knowledge "involve issues of fact[]" that "cannot be determined on a motion to dismiss."[121]

The Amended Complaint pleads known obligations, assets disposed of, nothing set aside, and a certificate filed anyway. That states a claim for violation of Sections 18-804(b)(1) and (b)(3) and Section 18-203, regardless of when MitEnergy dissolved, so the dismissal of Counts I and II should be reversed.

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[119] *Capone*, 2018 WL 1956282, at *12-14.

[120] *Techmer Accel Hldgs., LLC v. Amer*, 2010 WL 5564043, at *10-11 (Del. Ch. Dec. 29, 2010) (decided under DRULPA's parallel provisions).

[121] *Thor Merritt Square, LLC v. Bayview Malls LLC*, 2010 WL 972776, at *4-5 (Del. Ch. Mar. 5, 2010).

2. No Authority Requires a Plaintiff to Plead the Specific Date of Dissolution.

No statute, rule of procedure, or decision of this Court requires a plaintiff challenging a cancellation to allege the calendar date on which the members consented to dissolve an LLC. In both the 2025 Opinion and the 2026 Opinion, the Court of Chancery erred by imposing that heightened pleading requirement and dismissing PXP's claims on that basis.

The primary issue with the requirement is that nothing in the LLC Act turns on that date. Section 18-804 obligates a dissolved company to pay or provide for its known and foreseeable claims. And Section 18-203 forbids the filing of a certificate of cancellation until dissolution and winding up are complete.[122] PXP's claim is that MitEnergy did neither. Given the statute and Rule 12 pleading standard, the dismissal wrongly rested on a fact that the statute makes immaterial.

The Court of Chancery's prior decisions confirm the point. In *Thor Merritt*, the nullification claim survived dismissal where the plaintiffs alleged that the entities distributed virtually all of their assets in April 2005 and filed certificates of cancellation effective December 6, 2006 — roughly nineteen months later.[123] Even

[122] 6 *Del. C.* §§ 18-203, 18-804.

[123] *Thor Merritt*, 2010 WL 972776, at **2, 5.

though the plaintiffs did not plead a dissolution date or post-dissolution distribution, the claim proceeded because the plaintiffs alleged known obligations, an inadequate provision, and cancellation.[124] In *Capone*, no provision was made at all, so the court adjudicated the claim and nullified the certificates without analyzing any distribution.[125]

Techmer, the decision from which the 2025 Opinion purportedly drew the requirement, does not actually supply the requirement. *Techmer* held that the parallel DRULPA obligations attach upon dissolution and that compliance is measured against the entity's assets as of that moment.[126] That is a statement about when the statute binds the company, not what a plaintiff must allege (a question *Techmer* did not reach).

Techmer's procedure and disposition confirm the error. It was decided on summary judgment, on a full record, and even then the court could not determine whether the principal distribution — $3,314,000 of merger proceeds — fell inside or outside the dissolution period.[127] Indeed, the court inferred the dissolution date

[124] *Id.* at *4-5.

[125] *Capone*, 2018 WL 1956282, at *12-14.

[126] *Techmer*, 2010 WL 5564043, at *8-9.

[127] *Id.* at *10-11.

from a public filing, not the pleadings, because the filing of a certificate of cancellation necessarily implies dissolution by that date at the latest.[128] In short, the court below demanded of PXP at the pleading stage the very fact that the *Techmer* court supplied for itself, by inference, from the public record.

The court's requirement is also unworkable because it conditions pleading on information the LLC Act permits a company to keep to itself. The Act requires no filing of the decision to dissolve, no notice to claimants or creditors, and no public record of the wind-up plan.[129] Member consents are internal documents.[130] PXP pleaded the dissolution date the same way the *Techmer* court derived it — backward from the cancellation date through the disposition of MitEnergy's assets.[131] A rule that dismisses claims for the absence of facts that the defendant alone possesses only rewards nondisclosure and misuse of the dissolution process under the Act.

The question at the pleading stage is whether PXP gave MEPUS notice of the claim. MEPUS plainly had notice because, in addition to moving to dismiss,

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[128] *Id.* at *10 (citing 6 *Del. C.* § 18-203). Specifically, the court looked to what the entity held when its existence ended, found $59,892 retained against outstanding liabilities, and held the wind-up noncompliant. *Id.* at *11.

[129] 6 *Del. C.* §§ 18-801, 18-803.

[130] AC ¶¶70, 74.

[131] AC ¶¶15, 70, 74, 77.

MEPUS filed a sworn distribution schedule to refute PXP's allegations, and MEPUS's counsel told the court when the consents to dissolve were signed.

Because the Amended Complaint states a violation of Sections 18-804(b)(1) and (b)(3) and Section 18-203 without an allegation of the dissolution date, and because both Orders below rest on the contrary premise, the 2025 Opinion and the 2026 Opinion should both be reversed.

3. Even If the Date Were Required, the Pleaded Facts Support the Inference That MitEnergy's Distributions Occurred Within Its Dissolution and Winding Up.

Assuming a plaintiff must place the distributions inside the dissolution period, PXP's Amended Complaint still states a claim because the dissolution period is inferable from PXP's alleged facts.

A plaintiff facing a motion to dismiss "[is] entitled to all reasonable factual inferences that logically flow from the particularized facts alleged[.]"[132] But the inference itself need not appear in the complaint. As explained in *Lebanon County*, "plaintiffs [are] not required to plead all inferences" and requiring them to do so "conflates a reasonable inference drawn from the pleaded facts with the pleaded facts

[132] *White v. Panic*, 783 A.2d 543, 549 (Del. 2001) (citation omitted).

themselves."[133] Nor does a competing, defendant-friendly inference justify dismissal.[134] Where two sets of inferences are available, "[d]iscovery and, if necessary, a trial will disclose which set of inferences prevails."[135]

Here, the dissolution period logically follows from MitEnergy's March 8, 2019 Certificate of Cancellation. Section 18-203 permits that filing only upon dissolution and the completion of winding up.[136] The certificate therefore establishes, as a matter of law and without reference to any internal document, that MitEnergy dissolved, wound up, and concluded that process on or before March 8, 2019. The only question is what MitEnergy did during that time.

The pleaded facts answer that question in PXP's favor. MitEnergy moved $283 million in sale proceeds and all of its lease cash flow to its members and affiliates,[137] failed to pay or provide for its obligations "during its dissolution and wind up before filing its Certificate of Cancellation,"[138] and transferred every asset

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[133] *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773, 804-05 (Del. 2023). Notably, *Lebanon County* applied that principle under Rule 23.1's more rigorous pleading standards. *Id*. at 795.

[134] *Id.* at 805.

[135] *Id.* at 805-06.

[136] 6 *Del. C.* § 18-203.

[137] AC ¶¶57-58 & Ex. I.

[138] AC ¶15.

"in advance of and/or in connection with its dissolution, wind up, and cancellation."[139] This left MitEnergy "with no means to honor its contractual, legal and regulatory obligations."[140] That the dispositions fell within the dissolution and winding up is reasonably inferable from that sequence, that certificate, and that pleaded purpose.

The inference also supports an additional statutory violation. Upon winding up, Section 18-804(a) directs a company's assets first to claimants and only then to members.[141] MitEnergy followed the opposite order by sending sale proceeds and lease cash flow to members and affiliates and saving nothing for claimants or reserves.

As explained above, these inferences are precisely the derivation the *Techmer* court itself performed, on the same statutory logic, when it fixed a dissolution date from a certificate of cancellation rather than from any party's assertion.[142] What the *Techmer* court treated as sound reasoning on a full record cannot be dismissed as a

[139] AC ¶86.

[140] AC ¶61.

[141] 6 *Del. C.* § 18-804(a)(1), (3).

[142] *Techmer*, 2010 WL 5564043, at *10.

"guess"[143] at the pleading stage — particularly where the LLC Act guarantees that no better source exists outside the company.

In sum, PXP pleaded a claim. The Court of Chancery erred first by imposing a heightened pleading requirement the statute does not contain, and again by refusing, having imposed it, to draw the reasonable inference that would have satisfied it.

[143] 2025 Op. at 415-16.

II. THE COURT OF CHANCERY ERRED BY EXCLUDING JUDICIALLY NOTICEABLE FACTS UNDER RULE 12(D), AND IT COMPOUNDED THE ERROR BY REFUSING, WITHOUT EXPLANATION, PXP'S REQUEST FOR CONVERSION TO SUMMARY JUDGMENT.

A. Question Presented

Did the Court of Chancery err by excluding facts from its own record as "matters outside the pleadings" without ever applying Delaware Rule of Evidence 201, and did the court then abuse its discretion by refusing, without any stated reason, PXP's pending alternative request to convert the cross-motions to summary judgment and permit the limited discovery that would have supplied those same timing facts?

Both questions are preserved in PXP's briefing regarding the cross-motions for judgment on the pleadings: judicial notice at A1993-A1995, A1997-A1999, A2075-A2082, and A2096-A2097, and conversion at A2012-A2013.

B. Standard and Scope of Review

This Court "review[s] questions of law, including a trial court's interpretations of rules of evidence or burdens of proof, *de novo*."[144] That review has extended to judicial-notice determinations.[145] A trial court's decision whether to convert a Rule

[144] *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1143 (Del. 2025).

[145] *See, e.g.*, *Lebanon Cnty.*, 311 A.3d at 798–802.

12(b)(6) or Rule 12(c) motion into one for summary judgment is reviewed for abuse of discretion.[146] "An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances or has ignored recognized rules of law or practice so as to produce injustice."[147]

C. Merits of Argument

1. Rule 201 Required the Court to Notice the Record Facts Because PXP Requested Notice, Supplied the Information, and No One Disputed the Facts.

The Rule 12(c) record comprises the pleadings, documents integral to them, and facts subject to judicial notice.[148] Although the court below acknowledged that on a Rule 12(c) motion, the court "may consider documents integral to the pleadings and facts subject to judicial notice[,]"[149] the court erred in nonetheless treating facts subject to mandatory judicial notice as matters outside the pleadings.

Delaware Rule of Evidence 201(c)(2) provides that the court "[m]ust take judicial notice if a party requests it and the court is supplied with the necessary

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[146] *See Appriva S'holder Litig. Co. v. EV3, Inc.*, 937 A.2d 1275, 1286 (Del. 2007).

[147] *Heartland Payment Sys., LLC v. Inteam Assocs., LLC*, 171 A.3d 544, 570 (Del. 2017) (cleaned up).

[148] *Jiménez v. Palacios*, 250 A.3d 814, 827 (Del. Ch. 2019), *aff'd*, 237 A.3d 68 (Del. 2020).

[149] 2026 Op. at *3.

information."[150] The facts eligible for notice are those "not subject to reasonable dispute" because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.[151] Court records are the classic example.[152] And the rule permits notice "at any stage of the proceeding," including on appeal.[153]

PXP satisfied both conditions the rule imposes. It requested notice, and it identified three categories of facts in the Court of Chancery's own docket, each specified by transaction number.[154]

The first category was the official transcript of the February 25, 2025 hearing, at which MEPUS's counsel confirmed that "the unanimous written consents to dissolve are dated February 2019, a month before dissolution[.]"[155] That statement

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[150] D.R.E. 201(c)(2).

[151] D.R.E. 201(b)(2).

[152] *Lagrone v. Am. Mortell Corp.*, 2008 WL 4152677, at *4 (Del. Super. Sept. 4, 2008); *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006).

[153] D.R.E. 201(d).

[154] A2012-A2013 (PXP Combined Br. § VI); A2076-A2079 (PXP Reply ISO Cross-Mot. at 5-8).

[155] A1908-A1909 (Hr'g Tr. Feb. 25, 2025, at 78-79); 2026 Op. at *3 n.25.

supplies the fact the court below found missing, because an LLC dissolves upon the members' written consent as a matter of law.[156]

The second was MitEnergy's distribution schedule, which MEPUS filed as an exhibit and supported with a notarized affidavit attesting to the schedule's accuracy on personal knowledge. The schedule shows MitEnergy holding $2.58 million entering its final period and distributing the last $580,000 in 2019.

The third was MEPUS's own signed filings, which placed that final distribution "prior to or upon the cancellation in 2019."[157]

Because the facts fell within the mandatory notice provision, they were inside the Rule 12(c) record.[158] "[M]atters of which the district court can take judicial notice" are "not considered matters outside the pleadings for purposes of conversion."[159] Federal courts of appeals roundly agree.[160]

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[156] 6 *Del. C.* § 18-801(a)(3).

[157] A1246 (MEPUS MTD Op. Br. at 10).

[158] *See Jiménez*, 250 A.3d at 827.

[159] 5 Wright & Miller, *Federal Practice & Procedure* § 1366 & n.33 (3d ed. 2004).

[160] *See, e.g.*, *Boateng v. InterAmerican Univ., Inc.*, 210 F.3d 56, 60 (1st Cir. 2000); *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 426 (2d Cir. 2008) (impliedly overruled on other grounds by Merck & Co. v. Reynolds, 559 U.S. 633 (2010)); *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993); *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015); *Basic Capital Mgmt., Inc. v. Dynex Capital, Inc.*, 976 F.3d 585, 589 (5th

The facts were also not subject to reasonable dispute. MEPUS never directly contested the transcript's noticeability at all. Its one developed objection addressed the distribution schedule, and it rested on a decision about reopening a completed trial record — not about the composition of a Rule 12(c) record.[161] MEPUS in fact urged the noticeability doctrine when it served its own purposes. In the same brief, MEPUS asked the court to take judicial notice of filings from the Energy XXI bankruptcy in support of its "reasonable provision" defense.[162]

For its part, the Court of Chancery never suggested that the transcript, the sworn schedule, or MEPUS's admissions failed Rule 201(b)(2). It simply declined to notice them on the mistaken conclusion that they were outside the record. They were not, and the Court of Chancery's contrary conclusion should be reversed.

Cir. 2020); *Burns v. United States*, 542 F. App'x 461, 464 (6th Cir. 2013); *Menominee Indian Tribe of Wis. v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998); *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017); *Thomas v. Walt Disney Co.*, 337 F. App'x 694, 695 (9th Cir. 2009); *Tal v. Hogan*, 453 F.3d 1244, 1265 n.24 (10th Cir. 2006); *Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 (11th Cir. 1998); *Langeman v. Garland*, 88 F.4th 289, 292 n.1 (D.C. Cir. 2023).

[161] A2047-A2048 (MEPUS Ans./Reply Br.) (citing *In re Rural Metro Corp. S'holders Litig.*, 2013 WL 6634009, at *7-9 (Del. Ch. Dec. 17, 2013)).

[162] A2059-A2066 (MEPUS Ans./Reply Br. § III.C).

2. The Court Below Wrongly Excluded the Facts Without Applying Rule 201 or Explaining the Choice, and With the Facts Noticed, the Complaint States a Claim.

The Court of Chancery's stated rationale was its discretion to exclude matters outside the pleadings under Rule 12(d).[163] But, as explained, facts subject to judicial notice are not outside the pleadings; they are part of the Rule 12(c) record. A court confronted with a Rule 201 request must therefore decide the Rule 201 question first. Only what survives that inquiry — material genuinely outside the record — presents the Rule 12(d) choice between exclusion and conversion. The court below improperly inverted the order, and that error led to its decision to dismiss PXP's Amended Complaint.

The court's observation that PXP never sought leave to amend does not repair the omission.[164] Rule 201 conditions mandatory notice on a party making the request and supplying necessary information. It does not condition notice on a plaintiff first exhausting amendment. That is why courts evaluating a complaint "must consider the complaint in its entirety, as well as . . . matters of which a court may take judicial

[163] 2026 Op. at *3.

[164] *Id*. *4.

notice."[165] And amendment was not a realistic alternative in any event: the same opinion characterized a further pleading as "a third bite at the apple."[166]

The Tenth Circuit's decision in *O'Toole* illustrates the error. That court construed the identically worded federal mandate, and its reasoning applies with equal force to D.R.E. 201(c)(2). A plaintiff there asked the district court, in a post-trial memorandum, to notice retirement-fund earnings rates posted on the defendant's own website. The district court refused. The Tenth Circuit reversed, holding that the request plus the supplied information made notice mandatory and that the refusal was an abuse of discretion.[167] Paralleling this case, the defendant never explained why its own information was unreliable or sought a hearing under Rule 201(e), and its "failure to dispute its own information[] contribute[d] to its indisputability."[168]

PXP presented stronger circumstances than *O'Toole*. The sources are an official hearing transcript, a notarized affidavit, and MEPUS's signed briefs — not

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[165] *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (construing analogous federal rule).

[166] 2026 Op. at *4.

[167] *O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224-25 (10th Cir. 2007) (applying the mandatory-notice provision then codified at Fed. R. Evid. 201(d), now Rule 201(c)(2), whose language D.R.E. 201(c)(2) mirrors).

[168] *Id.* at 1225.

a webpage. Each originates with MEPUS. MEPUS has never disputed the accuracy of any of them, and never requested a hearing on their indisputability. And PXP's request came at the pleading stage, not after trial.

Even as a matter of discretion, the exclusion cannot stand. The court excluded sworn, uncontested facts drawn from its own docket, and then entered a pleadings-stage judgment against PXP on the ground that those very facts were missing. It gave no reason for either choice.

The excluded facts supply the sequence the court below refused to infer, and they establish that MitEnergy improperly sent funds to members and affiliates during the dissolution and wind up before or upon its cancellation, provided nothing for known or likely claims, and then cancelled. Those facts make a statutory violation reasonably conceivable and show that the dismissal of PXP's Amended Complaint was error.

3. Having Excluded the Record Facts, the Court Erred by Refusing, Without Stating Any Reason, PXP's Pending Alternative Request to Convert the Motions and Permit the Limited Discovery That Would Have Supplied Them.

Separate from whether the record facts should have been noticed, PXP's alternative request to convert the parties' motions to summary judgment remained pending. The court denied that request without stating reasons, which is an independent error requiring reversal.

Court of Chancery Rule 12(d) expressly authorizes the conversion PXP alternatively requested. If a party "moves under Rule 12(b)(6) or 12(c) and presents matters outside the pleadings that are not excluded," then the court treats the motion "as one for summary judgment[.]"[169] The rule's purpose is fair notice and process, and that purpose is fully served where, as here, both parties had actual notice and had themselves relied upon materials outside the complaint.[170] The choice between exclusion and conversion is discretionary, but it is a discretion that "should be exercised with great caution and attention to the parties' procedural rights."[171]

The conversion that PXP requested reflects accepted practice in nullification cases. For instance, in *Capone*, the Court of Chancery denied dismissal of the nullification count, the parties conducted discovery on that count, and then presented the count for resolution on cross-motions for summary judgment upon a stipulated record.[172] *Techmer* was likewise decided on cross-motions for summary judgment after discovery.[173]

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[169] Ct. Ch. R. 12(d), 12(d)(1).

[170] *See In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 184 F.3d 280, 287 (3d Cir. 1999) (cited with approval in *Appriva*, 937 A.2d at 1286)).

[171] 2026 Op. at *3 n.31 (quoting 5C Wright & Miller § 1366); *see Appriva*, 937 A.2d at 1288.

[172] *Capone*, 2018 WL 1956282, at *6-7.

[173] *Techmer*, 2010 WL 5564043, at *3-4.

Here, once the court below concluded that the exact timing of dissolution was necessary to plead a violation of Sections 18-203 and 18-804, and once it declined to notice the record facts supplying that timing, then the question the court deemed dispositive became unresolvable on the pleadings. That is precisely the circumstance PXP's alternative request anticipated.[174]

But the court refused the request and never said why. The 2026 Opinion recited Rule 12(d)'s two paths and chose exclusion "[i]n my discretion," without further elaboration.[175] Nothing in either opinion addresses the pending conversion request, states a reason for declining it, or acknowledges that discovery certainly would have produced the facts that the court found missing.

The court's unexplained refusal is manifestly an abuse of discretion. "It is established law in this State that a judge must state the reasons for the decision."[176] At a minimum, the trial court must "make a record to show what factors were considered and the reasons for the decision."[177] "[P]arties are entitled to reasons for

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[174] A2012-A2013 (PXP Combined Br. § VI).

[175] 2026 Op. at *3-4.

[176] *Ball v. Div. of Child Support Enf't*, 780 A.2d 1101, 1104 (Del. 2001) (citation omitted).

[177] *Id.* (cleaned up). *See Storey v. Camper*, 401 A.2d 458, 466 (Del. 1979) ("[T]he duty to exercise discretion by a trial judge generally includes the duty to make a

a judicial decision; and this Court is unable to fulfill the appellate function properly, especially when the reasonableness of discretionary action is under review, unless reasons are given for the decision reached below."[178] It follows that "the failure to provide reasons for a judicial determination constitutes an abuse of discretion."[179] Accordingly, the court's failure to explain its decision warrants reversal.

Additionally, the court's refusal to convert the matter to summary judgment and to permit limited discovery cuts against the purpose of Rule 12. The court recognized that the rules exist to "encourage disputes to be resolved on their merits."[180] Yet, by refusing conversion on top of refusing notice, the court ensured that the central question of this litigation — whether MitEnergy paid or provided for its known claimants before cancelling — was never examined by any court, on the basis of a heightened pleading requirement that no Delaware authority imposes.

In sum, the Court of Chancery rested its judgment on the absence of facts contained in its own record. This Court should reverse the exclusion of those facts,

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record to show what factors the trial judge considered and the reasons for [the] decision.").

[178] *Gen. Motors Corp. v. Cox*, 304 A.2d 55, 57-58 (Del. 1973).

[179] *Ball*, 780 A.2d at 1104.

[180] 2026 Op. at *2 (quoting *Mack v. Rev Worldwide, Inc.*, 2020 WL 7774604, at *15 (Del. Ch. 2020)).

or take notice of those facts itself under Rule 201(d), and reinstate the Amended Complaint. In the alternative, this Court should vacate the judgment on the pleadings and remand with instructions to convert the motions under Rule 12(d), and permit discovery of the pertinent facts.

III. THE COURT OF CHANCERY ERRED BY ENDING ITS ANALYSIS AT WHAT SECTION 18-804 MAKES LEGALLY POSSIBLE, NEVER ADDRESSING WHETHER EQUITY PERMITS A COMPANY TO EXPLOIT THAT POSSIBILITY AGAINST ITS KNOWN CLAIMANTS.

A. Question Presented

Under the *Schnell* doctrine, which holds that inequitable action does not become permissible simply because it is legally possible, may a company deliberately upstream all of its assets to its members and affiliates, wait until it believes the money cannot be clawed back, and only then dissolve, defeating the LLC Act's mandatory protections for known claimants?

This question is preserved in PXP's briefing regarding the cross-motions for judgment on the pleadings at A2013-A2016 and A2083-A2084.

B. Standard and Scope of Review

As set forth in Argument I(B), legal conclusions and orders granting a motion to dismiss are subject to *de novo* review.

C. Merits of Argument

1. Since *Schnell*, Delaware Courts Have Refused to Let Parties Use Legal Machinery to Accomplish Manifestly Inequitable Ends, and Nothing in the LLC Act Displaces That Principle.

Since *Schnell v. Chris-Craft Industries, Inc.*, Delaware courts have refused to treat legal ability as its own justification. [181] For more than half a century, the rule has been that "inequitable action does not become permissible simply because it is legally possible."[182] This Court "has long recognized" the maxim, and it remains good law today.[183] Formal compliance with legal machinery does not immunize its use from equity's supervision. For example, in *Moran v. Household International, Inc.*, the Court of Chancery confirmed that "[t]he subversion of corporate democracy by manipulation of corporate machinery will not be countenanced under Delaware law."[184]

Nothing in the LLC Act displaces the principle, and subversion of the LLC Act by manipulation of its dissolution procedure should fare no better. Section 18-1104 directs that the rules of equity govern cases the chapter does not provide for.[185]

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[181] 285 A.2d 437, 439 (Del. 1971).

[182] *Id*.

[183] *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 96-97 (Del. 2021).

[184] 490 A.2d 1059, 1080 (Del. Ch. 1985), *aff'd*, 500 A.2d 1346 (Del. 1985).

[185] 6 *Del. C.* § 18-1104.

And Section 18-804 is among the LLC Act's few mandatory provisions, affording "mandatory protection to claimants" upon a company's dissolution and winding up.[186] That purpose has traditionally guided how the Court of Chancery applies Section 18-804 and its analogues.[187]

PXP raised these principles below, and the Court of Chancery erred by never considering them. The decisions below rest on a reading of Section 18-804, advanced by MEPUS and adopted by the court, under which a company that distributes its assets to its members and affiliates before its members privately consent to dissolve, owes its known claimants nothing. The 2026 Opinion held that, outside of dissolution, an LLC may distribute or dispose of its assets without providing for contingent liabilities, resting on its prior decision's observation that an LLC with no assets can dissolve without making provision for claimants.[188] In short, the court below asked only whether the LLC Act permitted the actions and, finding that it did, went no further.

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[186] *Techmer*, 2010 WL 5564043, at *8-9 (construing Section 18-804's DRULPA parallel).

[187] *See id.*; *Capone*, 2018 WL 1956282, at *8-12.

[188] 2026 Op. at *1-2. *See In re Reinz Wis. Gasket, LLC*, 2023 WL 2568326, at *3 (Del. Ch. 2023).

But PXP asked the court to consider the further question that *Schnell* demands: whether the machinery was used inequitably. A statute that exists to protect claimants and creditors cannot sensibly be interpreted as a mechanism for evading claims. And even if the statutory text, standing alone, could be interpreted that way, *Schnell* forbids misuse of the statute in the manner MitEnergy employed.

The court's refusal to consider the *Schnell* precepts, and its endorsement of an inequitable application of Section 18-804, constitutes reversible error.

2. The Complaint Alleges That MitEnergy Planned to Dissipate its Assets, Wait Until the Money Could Not Be Clawed Back, and Only Then Dissolve, Which Is the Misuse *Schnell* Condemns.

Had the Court of Chancery conducted the *Schnell* analysis, it would have shown the inequitable nature of MitEnergy's dissolution and cancellation.

As explained, the *Schnell* analysis asks whether a legal process was used to accomplish an inequitable end. Here, the Amended Complaint answered how that occurred.

First, PXP explained who controlled the process. Under the LLC Act, members choose when to consent to dissolve, how the company winds up, and when the certificate of cancellation is filed.[189] The decision is private; no filing or notice

[189] 6 *Del. C.* §§ 18-801(a)(3), 18-803, 18-203.

precedes cancellation. And because Section 18-804's duties attach only once dissolution occurs, the members control when claimants' protections take effect.

Second, PXP explained how MitEnergy misused that corporate process. The Amended Complaint alleges that the members first moved the assets beyond claimants' reach, waited, and then timed the dissolution to leave MitEnergy "with no means to honor its . . . obligations."[190]

Third, PXP explained who was hurt by the misuse of the corporate process — MitEnergy's claimants and creditors. MitEnergy's scheme defeated PXP, even though PXP had negotiated an assumption of the decommissioning liabilities and a trailing indemnity in its sale of the Leases to MitEnergy.[191] The scheme also defeated the claimants who never had a chance to bargain at all, including the United States and the joint-and-several co-lessees, because their recourse against MitEnergy arises by law rather than contract.[192]

Techmer warned more than fifteen years ago that a literal reading of Section 18-804's language provision "creates the potential for offensive behavior by those

[190] AC ¶¶61, 70, 74, 77.

[191] AC ¶¶11-12.

[192] AC ¶¶18-24, 38-39.

who control" the dissolving entity.[193] The judgment below endorses that behavior in a published decision. The decisions below never engage *Schnell*, *Bäcker*, or *Moran*. By adopting MEPUS's anti-claimant approach to Section 18-804 based solely on what the statute makes legally possible, the court did not just overlook MitEnergy's inequitable conduct, the court tacitly endorsed it. If the interpretation stands, then any company with long-tailed liabilities can follow the same road map from the court's own blueprint to defraud claimants and creditors: distribute everything, wait out the claw back period, and consent privately to dissolve. Then, cancel and leave contract claimants, regulators, and ultimately taxpayers to fund the company's obligations.

This Court should hold that Section 18-804's dissolution machinery cannot be manipulated to evade known claimants, and that a complaint pleading such manipulation states a claim regardless of whether the last distribution to its members occurred after MitEnergy's dissolution and before its cancellation. Under that holding, the pleading deficiency on which both Orders rest falls away, and the Amended Complaint should be reinstated in full.

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[193] *Techmer*, 2010 WL 5564043, at *8-9 (discussing equivalent language in the DRULPA).

CONCLUSION

For these reasons, Plaintiff Below/Appellant PXP Producing Company LLC respectfully requests that this Court reverse the Court of Chancery's June 23, 2026 and June 26, 2025 Opinions, reinstate the Amended Complaint, and remand for further proceedings.

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Dated: September 10, 2026