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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PXP PRODUCING COMPANY LLC, Plaintiff-Below, Appellant, v. MITENERGY UPSTREAM LLC, Defendant-Below, 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

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NATURE OF PROCEEDINGS

PXP Producing Company LLC ("**PXP**" or "**Plaintiff**")[1] seeks to reverse two opinions of the Court of Chancery in which the court dismissed claims seeking to revive and appoint a receiver over a terminated Delaware LLC, MitEnergy Upstream LLC ("**MitEnergy**").

MitEnergy is a long-defunct entity. After purchasing oil and gas leases from a predecessor of PXP in 2006 and agreeing to indemnify PXP's predecessor for certain decommissioning obligations, MitEnergy ceased operating and sold the leases to an unrelated non-party, Energy XXI, Inc., in 2009. Energy XXI, Inc. assumed MitEnergy's decommissioning obligations and agreed to indemnify MitEnergy for those obligations. Then, in 2019, MitEnergy filed its Certificate of Cancellation.

PXP filed this action five years later in a misguided attempt to force MitEnergy's former members to pay MitEnergy's asserted share of oil well decommissioning orders entered in 2024 and 2025. MitEnergy has no recoverable assets and, after MitEnergy's cancellation, Energy XXI liquidated in bankruptcy. The gravamen of PXP's Complaint is that a receiver should be appointed to

[1] Capitalized terms not defined shall have the same meaning as in PXP's Opening Brief ("**OB**").

investigate veil-piercing claims against MitEnergy's former members—claims that PXP concededly cannot plead.[2]

In its opinion dated June 26, 2025 (the "**2025 Opinion**"), the court granted Intervenor MEPUS Holdings LLC's ("**MEPUS**")[3] motion to dismiss Count II (for a receiver) on two independent grounds. First, it held that PXP failed to plead that MitEnergy violated Section 18-804 of the Delaware LLC Act (the "**DLLCA**") because the Complaint did not allege that MitEnergy made any distributions after it had "dissolved" or "upon [its] winding up," which is when Section 18-804 applies.[4] Accordingly, the court held that PXP failed to satisfy Rule 12(b)(6)'s "reasonable conceivability" standard. Second, the court held that PXP failed to plead "good cause" to appoint a receiver, which requires pleading a "reasonable likelihood" that the company has assets for a receiver to distribute.[5]

In a second opinion dated June 23, 2026 (the "**2026 Opinion**"), the court granted MEPUS's Motion for Judgment on the Pleadings on Count I (for nullification of MitEnergy's Certificate of Cancellation). The court held, as before,

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[2] A598–A1198 (PXP Am. Compl.) [hereinafter "**AC**"] ¶¶89, 92(4); *see also* Prayer for Relief ¶(c)(4); A1759 (PXP Opp. to MEPUS MTD).

[3] MEPUS intervened because MitEnergy is a terminated entity that cannot be represented by counsel. B103–B104 (Order Granting Mot. to Intervene).

[4] 2025 Op. at 415; 6 *Del. C.* § 18-804(a)-(b).

[5] 2025 Op. at 416, 420.

that PXP failed to adequately plead that MitEnergy violated Section 18-804 because PXP did not allege that MitEnergy made distributions after MitEnergy had "dissolved" or "upon [its] winding up."[6] PXP does not dispute the court's articulation of when Section 18-804 governs and the Complaint does not contain any well-pled allegation that MitEnergy made distributions during this period. The court also rejected PXP's attempt to introduce factual material outside of the pleadings (which do not supply the missing facts), noting that PXP had not sought leave to amend at any time.[7]

On appeal, PXP raises three arguments, but each fails. PXP argues the court (1) misapplied Rule 12(b)(6)'s pleading standard; (2) abused its discretion by refusing to consider unpled facts; and (3) improperly rejected PXP's pleas to equity.

The court did not err in applying these well-settled doctrines. PXP fundamentally misreads Delaware law on all three points. Even if the court erred in any respect (which it did not), this Court should nevertheless affirm, because the relief that PXP seeks is futile. PXP has conceded that it cannot claw back any of the distributions that MitEnergy made to its former members,[8] and PXP does not dispute

[6] 2026 Op. at *3; 6 *Del. C.* § 18-804(a)-(b).

[7] 2026 Op. at *3–4 (explaining that "settled principles of civil procedure" precluded its consideration of matters outside the pleadings).

[8] 2025 Op. at 415 n.77 (citing AC ¶¶88–89).

that it failed to present a facially plausible veil-piercing claim. There is accordingly no reasonable likelihood that a benefit would flow from appointing a receiver, and reviving MitEnergy would serve no purpose. This Court should affirm.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly dismissed PXP's claims because its Complaint fails to state a claim. First, PXP did not allege that MitEnergy made any distribution after it "dissolved" or "upon [its] winding up," which is when Section 18-804 applies. That is fatal to both Counts, as each was premised on an 18-804 violation. Second, Count II (receiver) fails for the independent reason that PXP failed to plead "good cause"—which PXP does not challenge on appeal. Even if the Complaint contained well-pled facts that MitEnergy's distributions violated Section 18-804 (which it does not), this Court should nevertheless affirm because PXP has not alleged that MitEnergy has any recoverable assets.

2. Denied. The Court of Chancery did not abuse its discretion in declining to take judicial notice and declining to convert the motion for judgment on the pleadings to summary judgment. First, the unpled assertions did not cure the pleading deficiency; they did not show that MitEnergy made distributions after it "dissolved" or "upon [its] winding up." Second, Delaware Rule of Evidence 201 ("**D.R.E. 201**") does not apply because the materials cited are not matters of "common knowledge." Third, the court did not abuse its discretion in declining to convert the motion to summary judgment given that (as the court explained) PXP failed to seek leave to amend and stood on allegations the court had already held deficient.

3. Denied. There is no equitable basis to sustain PXP's claims for a receiver and nullification. *Schnell* has no application here, and permitting PXP to sustain a claim against MitEnergy would rewrite Section 18-804 and MitEnergy's contract with PXP's predecessor.

STATEMENT OF FACTS[9]

I. In 2006, MitEnergy Buys Oil Leases From PXP's Predecessor, Pogo.

Plaintiff PXP is the successor-in-interest to Pogo Producing Company ("**Pogo**").[10] MitEnergy was formed as a Delaware LLC on April 12, 2006.[11] Pogo and MitEnergy entered into a Purchase and Sale Agreement (the "**Pogo PSA**") through which MitEnergy purchased a 50% share of leasehold interests in oil, gas, and mineral properties in the Gulf of Mexico (the "**Leases**").[12]

Under the Pogo PSA, MitEnergy assumed certain decommissioning liabilities for the Leases, and agreed to indemnify Pogo for the Assumed Liabilities (as defined in the Pogo PSA).[13] The Pogo PSA does not include a minimum liquidity covenant, letter of credit, lien, or other form of credit protection from MitEnergy. It does not require MitEnergy's parents or affiliates to backstop this indemnity. And it does not include any information rights regarding MitEnergy's future potential distributions, dissolution, winding up, or cancellation.

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[9] MEPUS takes the Complaint's allegations as true solely for purposes of this appeal, and reserves all rights.

[10] AC ¶2.

[11] AC ¶3.

[12] AC ¶8.

[13] A746, A768 (AC Ex. F §§ 2.06, 10.03(f)).

II. In 2009, MitEnergy Sells The Leases And Ceases Operations.

On November 20, 2009, MitEnergy sold substantially all of its assets to Energy XXI, Inc. for approximately $283 million (the "**2009 Asset Sale**").[14] Under the Purchase and Sale Agreement between MitEnergy and Energy XXI (the "**Energy XXI PSA**"), Energy XXI agreed to "assume, pay, and discharge" all decommissioning liabilities attributable to MitEnergy, "including all decommissioning obligations of [MitEnergy] under 30 C.F.R. § 250.1700, *et seq.*"[15] Following the 2009 Asset Sale, MitEnergy ceased operations and distributed the overwhelming majority of the sale proceeds to its members in 2010 and 2011.[16]

On April 14, 2016, seven years after MitEnergy sold its assets and liabilities to Energy XXI, Inc., the buyer and certain affiliates (collectively, the "**Energy XXI Debtors**") filed voluntary petitions for Chapter 11 bankruptcy.[17] By year-end, the Energy XXI Debtors emerged from bankruptcy reorganized. Under the Plan and Confirmation Order (the "**Confirmed Plan**"),[18] the reorganized Energy XXI

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[14] AC ¶¶26–28.

[15] A1306 (Energy XXI PSA § 2.06).

[16] AC ¶¶57–58.

[17] AC ¶29.

[18] A1489–A1670 (*In re Energy XXI Ltd*, No. 16-31928 (Bankr. S.D. Tex. Dec. 13, 2016), ECF No. 1809).

Debtors expressly assumed all interests and obligations in federal oil and gas leases, including the obligation to "decommission[] all facilities when due."[19] The Energy XXI PSA—including Energy XXI's indemnity of MitEnergy for all decommissioning obligations—survived the bankruptcy as an executory contract assumed by the reorganized debtors under their Confirmed Plan.[20]

In 2018, two years after the Energy XXI Debtors reorganized, Cox Operating LLC (**"Cox"**) acquired Energy XXI.[21] Energy XXI GOM, LLC remained the record title owner and operator of the Leases.[22]

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[19] A1565.

[20] The Energy XXI PSA was not discharged through Energy XXI's 2016 bankruptcy because it was an executory contract that the reorganized debtors assumed under their Confirmed Plan. *See* A2061–A2062 (MEPUS Opp. to Cross-MJOP).

PXP has claimed otherwise. *See* AC ¶¶31, 51, 77; A2097–A2101 (PXP Reply ISO Cross-MJOP); OB at 13–14, 27–29. PXP is wrong—including because it conceded the Energy XXI PSA was executory (A1869 (Hr'g Tr.) ("[I]t's our position, and it's alleged in the complaint, that, in fact, that PSA was an executory contract . . . .")). But addressing this disagreement is not essential to decide this appeal.

[21] AC ¶32.

[22] AC ¶15, n.1.

III. In 2019, MitEnergy Files Its Certificate Of Cancellation.

On March 8, 2019, a decade after MitEnergy ceased operating and sold its assets, MitEnergy filed a Certificate of Cancellation.[23] Energy XXI GOM, LLC remained the record title owner and operator of the Leases.[24]

IV. In 2023, The New Leaseholder Files For Chapter 11 Bankruptcy.

On May 14, 2023, four years after MitEnergy filed its Certificate of Cancellation, Cox, Energy XXI GOM, LLC and certain affiliates ("**Cox Debtors**") filed for bankruptcy.[25] They initially filed for a Chapter 11 reorganization.

V. BSEE Issues The First Of The Decommissioning Orders; The Cox Bankruptcy Converts To A Liquidation.

Three days later, on May 17, 2023—fourteen years after MitEnergy sold its assets and four years after it dissolved and canceled—the United States Bureau of Safety and Environmental Enforcement ("**BSEE**") issued a decommissioning order to Energy XXI GOM, LLC and predecessor owners of the relevant Lease, which included PXP, MitEnergy, Exxon Mobil Corporation, and JX Nippon Oil Exploration (U.S.A.) Limited.[26]

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[23] AC Ex. C.

[24] AC ¶15, n.1.

[25] AC ¶33.

[26] AC ¶34; A1247 (MEPUS MTD).

On February 5, 2024, Energy XXI GOM, LLC and the other Cox Debtors received authorization from the Bankruptcy Court to give BSEE notice of their inability to satisfy decommissioning obligations.[27] BSEE then issued decommissioning orders to the predecessor lessees (including PXP) in June 2024.[28]

On February 6, 2024, PXP, Exxon, and Nippon asked that MitEnergy assume a portion of the decommissioning liabilities.[29] Meanwhile, on February 28, 2024, the Cox Debtors' bankruptcy cases were converted to liquidations under Chapter 7 of the Bankruptcy Code. On April 29, 2024, Mitsui responded to PXP's demand, explaining that MitEnergy had divested substantially all its assets in 2009, dissolved in 2019, "is no longer in existence or able to conduct business," and "has no resources [] to participate in decommissioning."[30] On May 3, 2024, PXP purported to make a "contractual demand" upon MitEnergy for indemnification relating to "all [] lease interests acquired by MitEnergy [under] the PSA."[31]

[27] AC ¶35.

[28] AC ¶37.

[29] AC ¶42.

[30] AC ¶¶43, 45; A1196–A1197 (AC Ex. P).

[31] AC ¶41; *see also* AC Ex. O.

VI. Procedural History.

On June 20, 2024—five years after MitEnergy filed its Certificate of Cancellation, and fifteen years after it sold its assets—PXP filed a complaint against MitEnergy seeking to revive MitEnergy and appoint a receiver over it.[32]

On September 26, 2024, PXP filed a Motion for the Appointment of a Receiver (the "**Receiver Motion**"), which effectively sought final relief with respect to Count II.[33] MEPUS responded by filing a Motion to Intervene (because MitEnergy, as a terminated entity, cannot retain counsel or defend against PXP's claims)[34] and a Motion to Dismiss.[35]

PXP opposed MEPUS's Motion to Intervene and asked the court to hear its Receiver Motion.[36] The court rejected PXP's request to have the court rule on the Receiver Motion before the Motion to Intervene and ordered the parties to file a stipulated schedule.[37]

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[32] A22.

[33] A58.

[34] B38–B39.

[35] A6.

[36] B1–B37; A7–A8.

[37] A5, A10.

On October 29, 2024, PXP filed an amended complaint (the "**Complaint**") rather than file an Answering Brief. The Complaint contains two Counts: Count I seeks nullification of MitEnergy's Certificate of Cancellation under 6 *Del. C.* §§ 18-203 and 18-804,[38] and Count II seeks appointment of a receiver over MitEnergy under 6 *Del. C.* § 18-805.[39]

On October 29, 2024, MEPUS filed its opposition to PXP's Receiver Motion, arguing that PXP had not met its burden of demonstrating "good cause," and that its request was (at best) premature.[40] As part of its opposition to PXP's Receiver Motion, MEPUS attached an exhibit showing that MitEnergy distributed over 97% of its sale proceeds by March 2010, nine years before MitEnergy terminated.[41]

On December 5, 2024, MEPUS filed its operative Motion to Dismiss the Complaint. On February 24, 2025, the court granted MEPUS's Motion to Intervene.[42]

On June 26, 2025, the court issued its 2025 Opinion granting MEPUS's Motion to Dismiss Count II (receiver) and denying PXP's Receiver Motion. As

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[38] AC ¶¶78–84.

[39] AC ¶¶85–92.

[40] A1200–A1201.

[41] A1216.

[42] B103–B104.

explained further below, the court held that PXP failed to plead good cause to appoint a receiver because it did not allege that MitEnergy made any distributions following dissolution or upon winding up, failed to plead a facially plausible veil-piercing claim, and could not rely on unpled assertions.

On September 8, 2025**,** MEPUS filed a Motion for Judgment on the Pleadings on PXP's remaining claim for nullification under Section 18-804 because, in the 2025 Opinion, the court held that PXP failed to plead or show a reasonable likelihood that MitEnergy violated Section 18-804.[43] On September 19, 2025, PXP stood on its Complaint and cross-moved for judgment on the pleadings.[44] PXP did not seek leave to amend to attempt to cure the deficiencies the court had previously identified.

On June 23, 2026, the court granted MEPUS's Motion for Judgment on the Pleadings and denied PXP's Cross-Motion, again finding PXP's pleadings deficient. The court accepted MEPUS's "straightforward" argument that "the [c]ourt has already held Petitioner failed to plead a violation of Section 18-804."[45] The court held that the equities fell in MEPUS's favor, as "[i]t would be unfair to give Petitioner a third bite at the apple."[46]

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[43] A1964.

[44] A1973–A1976.

[45] 2026 Op. at *1.

[46] *Id.* at *4.

On July 22, 2026, PXP filed its notice of appeal.

ARGUMENT

I. The Court Of Chancery Correctly Held That PXP's Complaint Fails To State A Claim For A Receiver Or For Nullification.

A. Question Presented

Can a petitioner state a violation of Section 18-804, which governs an LLC's distribution of assets after it "has dissolved" and "upon [its] winding up," without alleging that the LLC made distributions after it dissolved or upon winding up?[47]

B. Standard And Scope Of Review

This Court reviews the grant of a motion to dismiss or of judgment on the pleadings *de novo*.[48]

C. Merits Of Argument

1. The Court Correctly Held That The Complaint Does Not Plead A Violation Of The Delaware LLC Act.

PXP rested both of its claims entirely on MitEnergy's purported violation of Section 18-804.[49] The court below correctly dismissed both claims because PXP failed to adequately plead that MitEnergy violated Section 18-804.[50]

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[47] 2025 Op. at 415–16. PXP has waived any appeal on Section 18-805. *See infra* at I.C.2.

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

[49] OB at 30.

[50] 2025 Op. at 415; 2026 Op. at *1–4.

Section 18-804, titled "Distribution of assets," specifies how LLC assets shall be distributed "upon the winding up of a limited liability company" and specifies what "provision" for liabilities an LLC shall make after it "has dissolved."[51] The court dismissed PXP's Complaint for failure to allege that MitEnergy made distributions after it "ha[d] dissolved" or "upon [its] winding up," which is the only time when Section 18-804 applies.[52]

PXP does not challenge the court's reading of Section 18-804. Instead, it challenges the application to its allegations. PXP's argument fails because it did not, in fact, allege that MitEnergy made distributions after it "dissolved" or "upon [its] winding up."

Under Section 18-804(b)(1), an LLC "which has dissolved" "[s]hall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company."[53] Section 18-804(b)(3) provides that an LLC "which has dissolved" "[s]hall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited

[51] 6 *Del. C.* § 18-804(a)-(b).

[52] 2025 Op. at 415–16.

[53] 6 *Del. C.* § 18-804(b)(1).

liability company, are likely to arise or to become known to the limited liability company within 10 years after the date of dissolution."[54]

Importantly, however, "[i]n the ordinary course outside of dissolution, an LLC may freely distribute or dispose of assets without reserving for contingent liabilities."[55] Outside of the Section 18-804 period, Section 18-607 governs distribution.[56] PXP does not claim a violation of Section 18-607.

The obligation to make "provision" is limited to the assets actually available after dissolution.[57] Section 18-804 makes this clear: "If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full," but "[i]f there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among

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[54] 6 *Del. C.* § 18-804(b)(3).

[55] 2025 Op. at 415 & n.79 (citing 6 *Del. C.* § 18-601 (providing that "a member is entitled to receive [interim distributions] before the [company's] dissolution and winding up thereof")); 6 *Del. C.* § 18-607 (setting forth limitations on distributions outside of the winding up process).

[56] *See* 1 Symonds & O'Toole on DE Limited Liability Cos. § 7.01[A][4][a] (2024); *see also id*. § 7.01[B][1] (noting that Section 18-607(a) restricts distributions "prior to its dissolution," and that Section 18-804 limits "distributions . . . by a dissolved Delaware limited liability company.").

[57] *See* 6 *Del. C.* § 18-804; *Epie v. Herakles Farms, LLC*, 2025 WL 2028228, at *4–5 (Del. Ch. July 21, 2025) (noting an LLC can terminate without making reasonable provision if it does not have any assets).

claims of equal priority, ratably to the extent of assets available therefor."[58] It goes on to provide that, following dissolution and provision, "any remaining assets shall be distributed as provided in" Chapter 18.[59]

Accordingly, to state a claim that an LLC violated Section 18-804, Delaware law provides that a plaintiff must allege "sufficient grounds for the [c]ourt to conclude that it is reasonably likely"[60] that the Delaware limited liability company "held assets ***at the time of dissolution*** but failed to reserve for claims as Section 18-804(b) requires."[61]

PXP argues that the court "erred by imposing [a] heightened pleading requirement."[62] According to PXP, the court supposedly "require[d] a plaintiff challenging a cancellation to allege the calendar date on which the members consented to dissolve an LLC."[63]

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[58] 6 *Del. C.* § 18-804(b); *see also Gurney-Goldman v. Goldman*, 321 A.3d 559, 583 n.69 (Del. Ch. 2024), *aff'd*, 360 A.3d 270 (Del. 2026) (explaining the dissolution, winding up, and cancellation process).

[59] 6 *Del. C.* § 18-804(b).

[60] *In re Reinz Wis. Gasket, LLC ("Reinz I")*, 2023 WL 2568326, at *4 (Del. Ch. Mar. 20, 2023) (quoting *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *4 (Del. Ch. Nov. 30, 2009), *aff'd*, 998 A.2d 852 (Del. 2010)) (citation modified).

[61] 2025 Op. at 414 (emphasis added).

[62] OB at 31.

[63] *Id*.

This misstates the Opinions. The court carefully analyzed the pleading requirements to state a claim for a receiver and for nullification. It observed the "minimal" pleading standards to satisfy Rule 12(b)(6).[64] It then assessed whether PXP had made well-pled factual allegations that stated a Section 18-804 violation and concluded that PXP had not, because PXP failed to "assert [] distributions occurred after the Company's dissolution or during its winding up—timing that is critical to allege a Section 18-804(b) violation."[65] The court further observed that PXP "speculates" that MitEnergy "may have dissolved before filing its certificate of cancellation" and "failed to make reasonable provision . . . at some undefined point."[66] But PXP did not "allege when dissolution occurred, nor that any distributions took place after that date."[67] "Without that foundational allegation, ***it is not reasonably conceivable*** [MitEnergy's] distributions violated Section 18-804."[68] In short, the court analyzed PXP's Complaint carefully, and concluded that

[64] 2025 Op. at 414 (citing *Cent. Mortg. Co.*, 27 A.3d at 536).

[65] 2025 Op. at 415.

[66] *Id.*

[67] *Id.* Furthermore, PXP concedes it is not seeking to claw back any distributions. *See* A1868 (Hr'g Tr.); 2025 Op. at 415 n.77.

[68] 2025 Op. at 416.

PXP's "[s]peculation cannot support a reasonable inference of a Section 18-804 violation."[69]

The court accurately described the Complaint as speculative and not well-pled. According to PXP, the Complaint "alleges that the assets were disposed of in connection with the dissolution and winding up"—but it does not.[70] PXP cites only two paragraphs of its Complaint, paragraphs 15 and 86, and neither pleads the foundational allegation.[71]

Paragraph 15 alleges only that "MitEnergy failed to pay or make reasonable provision to pay for its known contractual and known federal and state decommissioning obligations during its dissolution and wind up."[72] Notably, it does not allege—let alone sufficiently allege—that MitEnergy made distributions after it "dissolved" or "upon [its] winding up," nor even that MitEnergy had "sufficient assets" to make whatever provision PXP asserts was necessary.[73]

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[69] *Id.*; *see also* Ch. Ct. R. 9(f) ("An allegation of time or place is material when testing the sufficiency of a pleading").

[70] *See* OB at 29 n.117 (citing AC ¶¶15, 86).

[71] *Id.*

[72] AC ¶15; *see Orman v. Cullman*, 794 A.2d 5, 23 & n.44, 27 (Del. Ch. 2002) (holding that legal conclusions alleged without a "specific factual predicate" cannot survive a motion to dismiss).

[73] *See* 6 *Del. C.* § 18-804.

Paragraph 86 alleges vaguely that "all the assets of MitEnergy were transferred or distributed in advance of ***and/or*** in connection with its dissolution."[74] But assets transferred "in advance of" MitEnergy's dissolution are not subject to Section 18-804. And PXP does not allege that any particular distribution was made "in connection with its dissolution,"[75] let alone (as Section 18-804 requires) after MitEnergy "ha[d] dissolved."[76] PXP's general allegation that MitEnergy made distributions before "and/or" during its dissolution thus cannot state a claim.[77]

PXP's shifting allegations regarding MitEnergy's distributions underscore that its Complaint is based on speculation. Initially, PXP argued that MitEnergy distributed hundreds of millions of dollars in violation of Section 18-804.[78] Then, during briefing, PXP argued that MitEnergy wrongfully distributed "$2.58 million to its members" "in 2018 and 2019."[79] By the time it cross-moved for judgment on

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[74] AC ¶86.

[75] *Id*. PXP also cites a letter from Mitsui stating that MitEnergy "dissolved on March 8, 2019," but it does not describe any distributions made as part of MitEnergy's dissolution. OB at 19 (citing A1197 (AC Ex. P)).

[76] AC ¶86.

[77] PXP made similar arguments to the court below that its pleadings contained allegations that they did not contain. *See* 2026 Op. at *3 n.26.

[78] *See, e.g.*, AC ¶61 ("$283 million sale proceeds").

[79] A1724, A1726 (PXP Opp. to MEPUS MTD).

the pleadings, PXP challenged barely over half a million dollars, arguing that "MitEnergy distributed $580,000 after its dissolution and prior to or upon cancellation."[80] The court observed that PXP can "only guess" that MitEnergy "may have been winding up when distributions were made," because PXP "offer[s] no facts to inform that guess or support an inference it is correct."[81]

Because PXP did not make the "foundational allegation" that MitEnergy distributed assets after it dissolved,[82] PXP next argues that other cases imply that a petitioner can state a claim without pleading a statutory violation. But its cases are

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[80] A1998 (internal emphasis omitted).

[81] 2025 Op. at 415. For this reason, the court did not need to reach PXP's argument that MitEnergy could not have made "reasonable provision" by relying on the Energy XXI PSA. PXP had not pled that any distribution was wrongfully made during the dissolution process, and so the court did not need to reach the legal question of whether MitEnergy could have reasonably relied on the Energy XXI indemnification provision.

In any event, as MEPUS previewed, Energy XXI's assumption of the decommissioning liabilities and obligation to indemnify MitEnergy for those liabilities *was* a reasonable provision. When MitEnergy canceled, those obligations were held by an entity that had successfully emerged from bankruptcy. *See* A2059–A2064 (MEPUS Opp. to Cross-MJOP) (explaining that the Energy XXI PSA "rode through the 2016 bankruptcy unaltered," leaving Energy XXI, "an active and solvent entity in 2019," "obligated to assume, pay, and discharge" MitEnergy's decommissioning obligations). Energy XXI's obligations were akin to insurance, which LLCs routinely rely on in winding down. *See In re Reinz Wis. Gasket, LLC*, 2026 WL 904110, at *12–13 (Del. Ch. Apr. 2, 2026) ("*Reinz III*") (contingent rights such as insurance policies matter under Section 18-804 when they are "capable of vesting" and carry "significant potential indemnification value").

[82] 2025 Op. at 416.

inapposite. None of them involved disputes over the threshold question of whether distributions were subject to Section 18-804.

In *Capone*, the LLCs were dissolved and canceled as part of a sale.[83] The plaintiffs pled that the defendants distributed assets to avoid a breach of contract claim arising from undervalued redemptions made a year before the LLCs terminated.[84] There was therefore a tight causal and temporal nexus between alleged distributions and wind up.[85] There was no dispute that the distributions were made post-dissolution and as part of cancellation—the defendants contested only whether they knew of the plaintiffs' claims and whether those claims had merit.[86] PXP's pleading is nothing like that: it alleges that MitEnergy made distributions in connection with the 2009 sale proceeds and, in conclusory fashion, claims those same distributions were made "in advance of and/or in connection with" MitEnergy's dissolution a decade later in 2019.[87]

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[83] *Capone v. LDH Mgmt. Holdings LLC*, 2018 WL 1956282, at *5 (Del. Ch. Apr. 25, 2018) (noting "cancellations were part of the restructuring necessary to consummate the acquisition").

[84] *Id*. at *5.

[85] *Id.* at *1–2, 5; Am. Compl. ¶92, *Capone v. LDH Mgmt. Holdings LLC*, 2016 WL 3655052 (Del. Ch. July 5, 2016).

[86] *Capone*, 2018 WL 1956282, at *10 n.140, *12 nn.151, 156, *13.

[87] AC ¶¶28, 57–58, 86.

In *Techmer*, the court observed that a canceled limited partnership retained $59,892, and concluded that by doing so, the entity "failed to make a final settlement of its unfinished business."[88] That bears no similarity to this case, in which PXP acknowledges that MitEnergy has no assets.[89] That omission is fatal to pleading both the "good cause" required to appoint a receiver under Section 18-805 and the "foundational" violation of Section 18-804.[90]

Thor Merritt also clearly involved distributions of assets governed by Section 18-804. In *Thor Merritt*, a defendant LLC agreed to pay to bring a JCPenney store into compliance with the fire code in March 2005, but terminated in December 2006 without doing so.[91] The defendant allegedly knew that an escrow it previously provided was insufficient.[92] That bears no similarity to this action, because there was no dispute that distributions were subject to Section 18-804, and also because PXP first asserted its indemnification claim against MitEnergy five years after it terminated.

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[88] *Techmer Accel Holdings, LLC v. Amer*, 2010 WL 5564043, at *11 (Del. Ch. Dec. 29, 2010).

[89] AC ¶¶26, 59, 86.

[90] *See* 2025 Op. at 415–16, 420.

[91] *Thor Merritt Square, LLC v. Bayview Malls LLC*, 2010 WL 972776, at *1–2, *5 & n.2 (Del. Ch. Mar. 5, 2010).

[92] *Id.* at *5.

At bottom, PXP's Complaint refers generally to distributions made by MitEnergy over the course of a decade, but PXP does not allege that any of the distributions were made ***after*** MitEnergy "dissolved" or "upon [its] winding up"—which is when Section 18-804 applies. As a result, the court correctly dismissed PXP's claims.

2. The Court Correctly Held That The Complaint Failed To Plead "Good Cause," Which PXP Has Not Appealed.

Delaware law requires a party seeking the appointment of a receiver to allege "good cause."[93] This requires a plaintiff to "plead facts that, if true, make it reasonably conceivable that the dissolved [company] is reasonably likely to have undistributed property."[94] A plaintiff must do "more than simply allege the existence of" potential claims available to a receiver, and any "claim to be satisfied . . . through the receiver's efforts must be facially plausible."[95] "There must be a ***purpose*** for appointment of a receiver," and a showing that "appointment of a receiver is likely to be—in a broader sense—worth the effort."[96] "If there are no undistributed assets and no other need is identified for a receiver to do what may be necessary for the

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[93] 6 *Del. C.* § 18-805; *Reinz I*, 2023 WL 2568326, at *3; 2025 Op. at 413–14 (citing the same).

[94] *In re ADM Trade Res., Inc.*, 2023 WL 6854462, at *5 (Del. Ch. Oct. 18, 2023).

[95] *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *4, *5 n.39.

[96] *Id*. at *5 n.39 (emphasis added).

final settlement of the unfinished business of the corporation, there is no basis to appoint a receiver."[97] If the alleged assets are litigation claims, the plaintiff must do "more than simply allege the existence of" potential claims available to a receiver; it must allege claims that are "facially plausible."[98]

In the 2025 Opinion, the court considered whether PXP had alleged facts making it "reasonably likely" that MitEnergy had "undistributed property" for a receiver to distribute.[99] The court considered and rejected the three arguments for "undistributed property" that PXP raised: that a receiver could (1) investigate cash distributed after the 2009 Asset Sale,[100] (2) investigate veil-piercing claims,[101] and (3) seek to recover the $2.58 million in cash on hand that PXP speculates (but did not plead) MitEnergy held when it dissolved.[102]

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[97] *ADM Trade.*, 2023 WL 6854462, at *4 (citing 3 Robert S. Saunders, et al., Folk on the Delaware Corporation Law § 279.02[c] (7th ed. 2021)).

[98] *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *4, *5 n.39.

[99] 2025 Op. at 414–15.

[100] *Id*. at 415–16.

[101] *Id.* at 416.

[102] *Id.* at 420.

As a threshold matter, PXP has not appealed the court's holding that PXP failed to plead "good cause" to appoint a receiver under Section 18-805.[103] PXP's brief does not mention Section 18-805 or "good cause" anywhere. PXP has thus waived any appeal on that point, which provides an independent and sufficient basis to affirm the court's ruling dismissing Count II (receiver).[104] As explained below, the reasons for the court's ruling that PXP failed to plead "good cause" also provide an independent and sufficient basis to dismiss Count I (nullification). But even if PXP had appealed the conclusion that PXP failed to adequately plead "good cause," the court's bases for that conclusion are sound.

First, a receiver could not recover distributions of the 2009 Asset Sale proceeds, because—even under PXP's allegations—clawback claims would be time-barred. For both distributions made during winding up and distributions made

[103] *See, e.g.*, 2025 Op. at 416 ("Petitioner has not pled or shown good cause to appoint a receiver"); *id*. ("Petitioner has failed to plead veil-piercing is facially plausible, as required to support good cause under Section 18-805."); 2026 Op. at *1 ("Petitioner had failed to show good cause for the appointment of a receiver").

[104] *Isaac v. Politico LLC*, 346 A.3d 103, 121 (Del. 2025) (affirming where "two independent grounds" for dismissal went unchallenged); *Gibson v. State*, 2025 WL 1514413, at *17 (Del. May 28, 2025) (finding waiver where appellant "failed to challenge" the trial court's "alternate grounds"); *Crown Bank v. BCD Assocs., LLC*, 2023 WL 1977573, at *2 (Del. 2023) (affirming unchallenged dismissal of claim); *Scott v. State*, 2026 WL 2413624, at *1 n.7 (Del. Aug. 18, 2026) ("The failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that claim on appeal." (citing *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993))).

outside of winding up, there is a statutory three-year limitation period.[105] PXP conceded that it is not seeking to claw back any distributions.[106] The court "t[ook] Petitioner at its word" and "d[id] not consider a clawback theory as a basis for appointing a receiver or stating a claim."[107]

Second, the court rejected PXP's theory that a receiver could be appointed to "investigate potential veil-piercing claims."[108] To adequately plead that there is "good cause" to appoint a receiver to pursue a claim, the petition must plead a "facially plausible" claim.[109] As the court explained at length, PXP failed to do so.[110] PXP does not challenge any of these conclusions on appeal.

Third, although PXP speculated in briefing that MitEnergy had $2.58 million (or, alternatively, $580,000) when it filed its Certificate of Cancellation, the Complaint does not so allege.[111] In any event, PXP asserted below that MitEnergy

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[105] 2025 Op. at 415 n.77; 6 *Del. C.* § 18-804(d) (distributions upon winding up); 6 *Del. C.* § 18-607(d) (distributions outside of winding up).

[106] A1868, A1895 (Hr'g Tr.).

[107] 2025 Op. at 415 n.77.

[108] *Id.* at 416.

[109] *Id.* at 413–14 (internal citation omitted).

[110] *Id.* at 413–16.

[111] *Id.* at 420.

has no assets now,[112] conceded that MitEnergy's distributions could not be clawed back,[113] and identified no potential means of recovery other than speculation that maybe a receiver would be able to pierce the corporate veil even though PXP could not articulate a facially plausible basis for doing so.[114]

In short, appointing a receiver would not be "worth the effort."[115]

The same reasons provide an independent basis to affirm the dismissal of Count I, PXP's nullification claim.[116] The burden of proof for nullification is even higher than the burden of proof for appointment of a receiver. To succeed on a claim for nullification, a petitioner must ultimately prove a statutory violation "not just under a reasonable likelihood standard, but by a preponderance of the evidence."[117] The "preponderance of the evidence" standard is higher than the "reasonable

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[112] AC ¶¶26–27.

[113] 2025 Op. at 415 n.77.

[114] *Id.* at 420.

[115] *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *4, *5 n.39.

[116] This Court may affirm dismissal on additional grounds, even if the court below did not reach them. *See Tiger v. Boast Apparel, Inc.*, 214 A.3d 933, 937 (Del. 2019); *In re Peierls Charitable Lead Unitrust*, 77 A.3d 232, 237–38 (Del. 2013).

[117] *Reinz I*, 2023 WL 2568326, at *13; *see also Epie*, 2025 WL 2028228, at *5.

likelihood" standard governing receiver claims under Section 18-805.[118] The court held that PXP failed to plead facts making it reasonably conceivable that it could satisfy even the lower Section 18-805 standard.[119] A complaint that cannot clear that lower bar cannot state a claim for relief requiring proof under the higher one. Nullification typically happens *after* appointing a receiver.[120] Because PXP has not pled a basis for a receiver, there is no basis to proceed to nullification.

Even if the Court nullified MitEnergy's Certificate of Cancellation, there would be no assets to distribute. PXP's nullification claim is also time-barred.[121] Delaware law will not revive a terminated entity that has no assets and no value in the form of insurance coverage, distributions, or facially plausible claims.[122]

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[118] *See In re Reinz Wis. Gasket, LLC*, No. 2022-0859-MTZ (Del. Ch. Dec. 19, 2022), Trial Tr. at 95 (the court agreed that "the 18-805 inquiry is easier to satisfy than the 18-804 [inquiry]").

[119] 2025 Op. at 415.

[120] *See Reinz I*, 2023 WL 2568326, at *3 (deferring "decision on whether to nullify the Company's certificate of cancellation until the receiver submits a report"); *Reinz III*, 2026 WL 904110, at *10 (Del. Ch. Apr. 2, 2026) (noting that the court "stop[ped] at the appointment of a receiver" before considering the issue of nullification) (internal citations omitted).

[121] Although the court held that MEPUS, as an intervenor, lacked standing to raise a limitations period defense, 2025 Op. at 407, this Court may affirm on that basis, including because a receiver could assert the defense on behalf of MitEnergy against PXP. *See* A1255–A1264 (MEPUS MTD); A1786–A1788 (MEPUS Reply ISO MTD).

[122] *See Reinz III*, 2026 WL 904110, at *12–13; *Soroof Trading Dev. Co. v. GE Fuel Cell Sys., LLC*, 842 F. Supp. 2d 502, 520–22 (S.D.N.Y. 2012) (applying Delaware

Nullification would be pointless, which is an independent basis to affirm the dismissal of Count I.

law); *Anthony Wayne Corp. v. Elco Fastening Sys., LLC*, 2016 WL 687887, at *3 (N.D. Ind. Feb. 19, 2016) (same).

II. The Court Of Chancery Correctly Declined To Notice Unpled Facts And Declined To Convert The Cross-Motions To Summary Judgment.

A. Question Presented

Did the Court of Chancery abuse its discretion in (a) declining to take judicial notice of unpled facts that were not judicially noticeable and, in any event, did not cure the pleading deficiency and (b) declining to convert the cross-motions for judgment on the pleadings to summary judgment, where PXP did not seek leave to amend and instead stood on allegations that the court had already held insufficient at the motion to dismiss stage?[123]

B. Standard And Scope Of Review

Abuse of discretion is the standard of review for PXP's appeal with respect to both judicial notice and conversion to summary judgment. "An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice to produce injustice."[124] Finding an abuse of discretion requires "a showing that the trial court acted in an arbitrary and capricious manner."[125]

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[123] 2026 Op. at *2–4.

[124] *Parker v. State*, 85 A.3d 682, 684 (Del. 2014) (citation modified); *Heartland Payment Sys., LLC v. Inteam Assocs.*, *LLC*, 171 A.3d 544, 570 (Del. 2017) (citation modified).

[125] *Spencer v. Wal-Mart Stores E., LP*, 930 A.2d 881, 887 (Del. 2007).

PXP's appeal of the denial of its request for judicial notice should be reviewed for abuse of discretion. PXP asked the court to take judicial notice of certain unpled facts under D.R.E. 201.[126] Evidentiary rulings are reviewed for abuse of discretion.[127] Similar decisions under other Delaware Rules of Evidence are reviewed for abuse of discretion.[128]

PXP cites *Lebanon County* for the proposition that the Court reviews judicial notice determinations *de novo*, but *Lebanon County* does not so hold.[129] Instead, *Lebanon County* applied *de novo* review to *dismissal* of a complaint under Rule 23.1.[130] This Court reached judicial notice because the trial court took judicial notice of another court's factual findings and assumed them true at the pleading stage, but this Court never identified, much less adopted, a standard of review for judicial

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[126] A1994–A1995 (PXP Opp. to MEPUS MJOP); A2075–A2083 (PXP Reply ISO Cross-MJOP); OB at 22–23, 38–45.

[127] *See Swanson v. Davis*, 2013 WL 3155827, at *4 (Del. June 20, 2013) ("The standard for review of a trial court's evidentiary rulings is abuse of discretion"); *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206, 226 (Del. 2005).

[128] *See, e.g.*, *Gregg v. State*, 2019 WL 6048089, at *2 (Del. Nov. 15, 2019); *Stickel v. State*, 975 A.2d 780, 782 (Del. 2009); *Fuller v. State*, 860 A.2d 324, 329 (Del. 2004).

[129] OB at 38; *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773 (Del. 2023).

[130] *Lebanon Cnty.*, 311 A.3d at 794–95 (citation omitted).

notice determinations under D.R.E. 201.[131] Regardless of the standard of review this Court applies, PXP's judicial notice argument fails for the reasons discussed below.

The decision to refrain from converting cross-motions for judgment on the pleadings to summary judgment is reviewed for abuse of discretion.[132] PXP agrees.[133]

C. Merits Of Argument

1. The Court Of Chancery Correctly Rejected PXP's Attempt To Introduce Unpled Facts.

The court did not abuse its discretion in declining to take judicial notice of unpled facts. First, the unpled facts would not have cured PXP's pleading deficiency. Second, the information that PXP asked the court to consider was not judicially noticeable. Third, in ruling on the prior motion to dismiss, the court had already declined to consider PXP's unpled factual assertions based on MEPUS's distribution schedule, and yet PXP deliberately chose (again) to stand on its Complaint and rely on that same distribution schedule (and two more extrinsic sources) rather than replead.

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[131] *See id.* at 797–802 (analyzing judicial notice under D.R.E. 201 and 202 without stating a standard of review).

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

[133] OB at 38–39.

The court observed in its 2026 Opinion that entry of judgment on the pleadings in MEPUS's favor was appropriate for a "straightforward" reason: in the 2025 Opinion, the court had already "concluded [PXP] had failed to show good cause for the appointment of a receiver, as [PXP] had failed to plead a Section 18-804 violation under both Section 18-805's 'reasonable likelihood' standard and Court of Chancery Rule 12(b)(6)'s 'reasonable conceivability' standard."[134]

In cross-moving for judgment on the pleadings and asserting that the court should reach a different result than in its prior decision, PXP argued that certain matters outside of the pleadings saved its Complaint.[135] Specifically, PXP asked the court to consider: (1) a statement made by MEPUS's counsel at oral argument that the "unanimous written consents to dissolve are dated February 2019"; (2) MEPUS's distribution schedule attached to its opposition to PXP's Receiver Motion; and (3) a statement in MEPUS's Motion to Dismiss that MitEnergy "distributed its remaining assets prior to or upon the cancellation in 2019."[136]

The court did not err as a matter of law—let alone abuse its discretion—in rejecting PXP's judicial notice argument.

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[134] 2026 Op. at *1.

[135] A1977.

[136] 2026 Op. at *3–4 & nn. 25–26; A2079.

First, and most fundamentally, even if the court had taken judicial notice, it would not have changed the result. The material cited does not show that MitEnergy made distributions after it dissolved or upon winding up, as required to plead a Section 18-804 violation. PXP claims that MitEnergy held $2.58 million the year before it terminated and $580,000 at the start of the year it terminated, but the Complaint does not allege that either amount (or any amount) was distributed after MitEnergy dissolved, as required to state a claim. If unpled facts would not change the trial court's decision, the appellate court should affirm dismissal.[137]

Second, judicial notice does not apply to the extrinsic sources that PXP cited. D.R.E. 201(b) permits judicial notice of facts that are "not subject to reasonable dispute" because they are "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."[138] This Court has explained that judicial notice "should be used with caution,"[139] and is an "adjudicative device that substitutes the acceptance of a ***universal truth*** for the conventional method of

[137] *See, e.g.*, *King Const., Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145, 155 (Del. 2009).

[138] D.R.E. 201(b).

[139] *Fawcett v. State*, 697 A.2d 385, 388 (Del. 1997).

introducing evidence."[140] The Court has further explained that judicial notice has no application "[i]f there is any doubt whatever, either as to the fact itself ***or*** as to its being a matter of common knowledge."[141] That is because the "effect of taking judicial notice under [D.R.E. 201] is ***to preclude a party from introducing contrary evidence***."[142]

D.R.E. 201 does not apply to the materials cited by PXP. They do not establish an "indisputable fact" that MitEnergy made any distribution subject to Section 18-804. They are not matters "generally known within the trial court's territorial jurisdiction," and cannot be "accurately and readily determined" from "sources whose accuracy cannot reasonably be questioned."[143] They are not "matter[s] of common knowledge."[144] Applying judicial notice as PXP urges would have also been improper because it would have had the effect of precluding

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[140] *Lebanon Cnty.*, 311 A.3d at 797 (emphasis added) (citing *Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1081 (7th Cir. 1997)).

[141] *Fawcett*, 697 A.2d at 388 (citation omitted) (emphasis added); *see also Lebanon Cnty.*, 311 A.3d at 798–99; *In re Rural Metro Corp. S'holders Litig.*, 2013 WL 6634009, at *7 (Del. Ch. Dec. 17, 2013).

[142] *Lebanon Cnty.*, 311 A.3d at 799 (emphasis added) (quoting *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994)).

[143] D.R.E. 201.

[144] *Fawcett*, 697 A.2d at 388 (citation omitted).

MitEnergy from arguing that (unspecified) distributions were not subject to Section 18-804.[145] PXP did not allege as much, let alone prove as much.

PXP argues that court records are the "classic example" of documents which are subject to judicial notice, but the rule is not so broad. This Court has instructed repeatedly that court filings may be subject to judicial notice for their existence and their legal effect, but not to establish the "truth of [their contents]."[146] MEPUS's citations to filings in the Energy XXI bankruptcy are not comparable. Setting aside that PXP incorporated the Energy XXI bankruptcy filings into its own pleading,[147] MEPUS was relying on the bankruptcy filings for their existence and legal effects, not as a replacement for "the conventional method of introducing evidence."[148]

PXP has not cited a single case in which any court has taken judicial notice of facts under these circumstances. PXP's reliance on *Lebanon County* is unavailing because there, this Court ***reversed*** because the court below improperly took judicial

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[145] *Lebanon Cnty.*, 311 A.3d at 799 (discussing *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994)); *see also* 2026 Op. at *3 (declining to resolve PXP's "unpled assertions and resultant factual dispute").

[146] *See, e.g.*, *In re Rural Metro Corp. S'holders Litig.*, 2013 WL 6634009, at *7–8; *see also Marshall Family Props., LLC v. Fusco*, 2026 WL 221459, at *7 (Del. Ch. Jan. 28, 2026) (magistrate recommendation); *In re Gardner Denver, Inc.*, 2014 WL 715705, at *10 (Del. Ch. Feb. 21, 2014).

[147] *See* AC ¶¶29, 31 n.3, 31 n.4, 33.

[148] *Lebanon Cnty.*, 311 A.3d at 797.

notice of another court's factual findings.[149] *Lagrone v. Am. Mortell Corp.* is an indemnification case in which the indemnitee alleged facts in his complaint that were "at odds with the official record" of the case, so the court noted that contradictory allegations could not be regarded as "well plead."[150] In *In re Gen. Motors (Hughes) S'holder Litig.*, the Court took judicial notice of a Form 10-Q regarding a stockholder vote, a publicly available fact that was "not subject to reasonable dispute."[151]

PXP cites federal cases for the general proposition that judicially noticed facts are not considered outside the pleadings on conversion.[152] But most of those cases do not apply the judicial notice doctrine,[153] including because in some cases, the documents were integral to the complaint.[154] The few cited cases that actually reach

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[149] *Lebanon Cnty.*, 311 A.3d at 797 (Del. 2023).

[150] 2008 WL 4152677, at *4 (Del. Super. Ct. Sept. 4, 2008). The rule set forth in *Lagrone* is similar to the rule that a "claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law." *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

[151] 897 A.2d 162, 170–71 (Del. 2006).

[152] OB at 41 n.160.

[153] *See, e.g.*, *Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 (11th Cir. 1998); *Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006); *Boateng v. InterAmerican Univ., Inc.*, 210 F.3d 56, 60 (1st Cir. 2000); *Burns v. United States*, 542 F. App'x 461, 466–67 (6th Cir. 2013).

[154] *See, e.g.*, *Langeman v. Garland*, 88 F.4th 289, 294 (D.C. Cir. 2023) (noticed documents were referenced in and integral to the complaint); *Zean v. Fairview*

judicial notice do not support PXP's position because they either declined to take judicial notice or took notice only of certain publicly filed documents.[155]

Third, in ruling on the prior motion to dismiss, the court had already told PXP that it would not take judicial notice of information extrinsic to the Complaint—and yet, rather than replead, PXP chose to cross-move based on the same distribution schedule that the court had previously declined to consider along with two other extrinsic sources.

In opposing MEPUS's Motion to Dismiss, PXP cited a distribution schedule that MEPUS had previously filed showing that MitEnergy distributed 97% of the

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Health Servs., 858 F.3d 520, 526–27 (8th Cir. 2017) (considering documents "necessarily embraced by the complaint," when they were "documents whose contents [were] alleged in a complaint"); *Thomas v. Walt Disney Co.*, 337 F. App'x 694, 695 (9th Cir. 2009) (finding district court properly considered materials alleged in complaint); *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (considering an "undisputedly authentic document" on which the plaintiff's claims were based).

[155] In *Zak v. Chelsea Therapeutics Int'l, Ltd.*, the appellate court held that the court below had erred by taking judicial notice of SEC filings that "were not explicitly referenced in, or an integral part of, the plaintiffs' complaint." 780 F.3d 597, 607 (4th Cir. 2015). *Staehr v. Hartford Fin. Servs. Grp., Inc.* is also inapposite, because the court permitted judicial notice of the ***existence*** of "media reports, state court complaints, and regulatory filings" to determine whether such disclosures triggered inquiry notice. 547 F.3d 406, 424–25 (2d Cir. 2008). *Basic Capital Mgmt., Inc. v. Dynex Capital, Inc.* is inapposite for the same reason—the court permitted judicial notice for a Form 10-K and a prior state court record, both of which were publicly available government filings. 976 F.3d 585, 588–89 (5th Cir. 2020). In *Menominee Indian Tribe of Wis. v. Thompson*, the court took judicial notice of historical documents. 161 F.3d 449, 456 (7th Cir. 1998).

sale proceeds by March 2010 (nine years before it dissolved), and asked the court to note that "in 2018 and 2019, MitEnergy distributed [] $2.58 million."[156] In its 2025 Opinion, the court declined to do so, explaining that PXP's assertions "were made only in [PXP's] answering brief opposing dismissal, not in the Amended Complaint."[157] The court also explained that PXP "[did] not allege when dissolution occurred, nor that any distributions took place after that date."[158] In other words, even taking judicial notice of the schedule would not fix PXP's pleading deficiency.

PXP did not seek leave to amend. Instead, MEPUS moved for judgment on the pleadings, and PXP ***again*** asked for judicial notice of the same distribution schedule, plus statements that MEPUS's counsel made at a hearing and in a brief.[159] Yet again, none of those statements showed that MitEnergy made distributions after it "dissolved" or "upon [its] winding up."

The court found that the same "settled principles of civil procedure [that] preclude[d] [the court] from addressing [] unpled assertions" on MEPUS's motion to dismiss "remain[ed] true" on PXP's motion for judgment on the pleadings.[160] This

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[156] A1756 (PXP Opp. to MEPUS MTD).

[157] 2025 Op. at 420.

[158] *Id.* at 415–16.

[159] A2075–A2079 (PXP Reply ISO Cross-MJOP).

[160] 2026 Op. at *3.

is because the court "may consider documents integral to the pleadings and facts subject to judicial notice[,] [b]ut if a party presents matters outside the pleadings, the [c]ourt may exclude them."[161] As the court noted, PXP "chose not to seek leave to amend after the [c]ourt ruled [PXP] had not pled those facts," and instead chose to stand on the Complaint and extrinsic information that the court had already rejected.[162]

In short, the court did not "ignore[] recognized rules of law or practice to produce injustice"—on the contrary, its ruling was fully consistent with established civil procedure.[163]

2. The Court's Basis For Declining To Convert To Summary Judgment Was Not An Abuse Of Discretion.

Finally, PXP argues that the court abused its discretion in declining to convert the cross-motions for judgment on the pleadings to motions for summary judgment. Again, PXP's arguments miss the mark. First, PXP errs in suggesting that a trial court's discretion to decline to convert a Rule 12(b)(6) or 12(c) motion to summary judgment is limited. Courts have "complete discretion to determine whether to

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[161] *Id.*

[162] *Id.* at *4.

[163] *Parker v. State*, 85 A.3d at 684 (internal quotation omitted); *Heartland Payment Sys., LLC v. Inteam Assocs.*, *LLC*, 171 A.3d 544, 570 (Del. 2017) (internal quotation omitted).

accept the submission of any material beyond the pleadings" and when such material "is scanty, incomplete, or inconclusive, the [trial] court probably will reject it."[164]

Second, as discussed *supra* at II.C.1, the materials outside the Complaint that PXP cited would not have cured PXP's pleading deficiency anyway. They did not fix the problem that the court articulated. They did not show that MitEnergy made distributions after it had "dissolved" or "upon [its] winding up."

Third, and most fundamentally, PXP mischaracterizes what the court did. PXP argues that the court erred because it did not explain its decision to deny the conversion request. But the court ***did*** explain: "In my discretion, I conclude [PXP's] unpled assertions about the timing of [MitEnergy's] dissolution and its cash on hand at that time shall be excluded here as they were on [MEPUS]'s motion to dismiss. [PXP] chose not to seek leave to amend after the [c]ourt ruled [PXP] had not pled those facts."[165]

In short, the court did not abuse its broad discretion to reject materials outside of the Complaint and decline to convert to summary judgment. Instead, the court properly exercised its discretion and explained its reasoning. And in any event, this

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[164] 5C Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1366 (3d ed.); *see also* 2026 Op. at *3 n.31 (quoting same).

[165] 2026 Op. at *4.

Court has multiple reasons to affirm, including because the cited materials do not cure PXP's pleading deficiency.

III. PXP's Equitable Argument For Judicial Nullification Fails.

A. Question Presented

Did the Court of Chancery err by applying the DLLCA as written, rejecting PXP's atextual argument that it is entitled to proceed with its claims for equitable reasons?[166]

B. Standard And Scope Of Review

PXP's argument presents a question of law reviewed *de novo*.[167]

C. Merits Of Argument

PXP's final point of appeal asks this Court to disregard the plain language of the DLLCA and to invent a cause of action that the statute does not provide. According to PXP, the court erred because it "asked only whether the LLC Act permitted the actions and, finding that it did, went no further."[168]

The court did not err by applying the DLLCA as written. Indeed, the court's ruling was fully consistent with the text and purpose of the DLLCA's provisions governing the dissolution and wind up of a Delaware LLC.

The DLLCA's provisions governing dissolution and winding up, like their analogous provisions in the DGCL, establish procedures pursuant to which an LLC

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[166] 2026 Op. at *4.

[167] *Cent. Mortg. Co.*, 27 A.3d at 535 (Del. 2011).

[168] OB at 52.

can terminate, and pursuant to which its members are provided repose against inchoate claims. Those procedures represent a balance between the "competing public policy interests of ensuring that claimants" have a time period to assert claims and ensuring that an entity's owners and principals may have "repose from claims regarding the dissolved" entity.[169] That "latter concern is not a trivial one," because "Delaware has an interest in fostering capital investments," and granting repose to equity holders after termination facilitates such investments.[170] Because the Delaware General Assembly has carefully drafted the procedures, "many . . . courts who have addressed this issue" concluded that "the legislature's enactments preclude the room for judicial intervention" where a party argues that there is an "open-ended obligation on the part of stockholders of dissolved corporations to return distributions they had received from the dissolved corporation whenever a

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[169] *Territory of U.S. Virgin Islands v. Goldman, Sachs & Co.*, 937 A.2d 760, 789 (Del. Ch. 2007), *aff'd*, 956 A.2d 32 (Del. 2008); *see also In re Krafft-Murphy Co., Inc.*, 2011 WL 5420808, at *6 (Del. Ch. Nov. 9, 2011) ("[Section] 278 seeks to strike a balance between the harsh nature of the common law rule and the need for finality for the corporation and its directors, officers, and shareholders"); *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *5 (discussing the same balance).

In addressing LLC dissolutions, courts consider authorities addressing corporate dissolutions. *See Matthew v. Laudamiel*, 2012 WL 605589, at *21 n.144 (Del. Ch. Feb. 21, 2012) (citing *Travelcenters of Am., LLC v. Brog*, 2008 WL 868107, at *2 n.2 (Del. Ch. Mar. 26, 2008)).

[170] *Territory of U.S. Virgin Islands*, 937 A.2d at 789–90.

post-dissolution claimant can prove that the corporation owed it funds based on its pre-dissolution activities."[171]

That is the case here. The court correctly found that PXP had not stated a claim that MitEnergy violated Section 18-804.[172] Section 18-804 does not govern distributions made prior to dissolution, and PXP did not plead distributions made after dissolution. Beyond PXP's failure to state a claim, PXP has not pled any fact suggesting that MitEnergy has assets or facially plausible claims against its former members. If PXP had wanted to pursue claims against other entities, it should have bargained to have MitEnergy's parents or affiliates backstop its indemnity under the Pogo PSA—but it did not.

PXP resorts to inflammatory accusations and asks this Court to impose the "open-ended obligation[s]" that courts have repeatedly rejected. Its arguments are baseless. PXP's Complaint acknowledges that MitEnergy publicly sold its assets in 2009.[173] The same year, as PXP also alleges, Mitsui publicly announced that it would be "reinvest[ing] the sale proceeds."[174] MitEnergy did not terminate until a full decade later, when another solvent entity held the decommissioning liabilities.

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[171] *Id.* at 789.

[172] 2026 Op. at *1; 2025 Op. at 415–16, 420–21.

[173] AC ¶¶26–28.

[174] AC ¶28.

The decommissioning orders that are the subject of PXP's claims, and the bankruptcy through which MitEnergy's indemnitor liquidated, came four years *after* MitEnergy terminated.[175] In that regard, PXP asserts that it was a "known claimant" when MitEnergy terminated,[176] but that is untrue—it did not make any claim against MitEnergy until 2024. PXP's allegations do not show inequitable conduct.

PXP cites no authorities for the "open-ended" rule it urges. *Schnell*, *Bäcker*, and *Moran* are inapposite. *Schnell* concerned manipulation of the date of an annual stockholder meeting.[177] *Bäcker* concerned claims that directors "affirmatively deceived" a fellow director.[178] *Moran* concerned allegations that directors used a form of "poison pill" to entrench themselves.[179] What is common to those three cases, and different from ours, is that they concern directors' legal and equitable duties to stockholders. They do not concern a dissolving LLC's obligations under Section 18-804 of the DLLCA, write elements out of a statute, rewrite a statute to excuse a party from its failure to contract, or upend the legislative choices that the

[175] AC ¶34.

[176] OB at 50–55.

[177] *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971).

[178] *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 85 (Del. 2021).

[179] *Moran v. Household Int'l, Inc.*, 490 A.2d 1059, 1067 (Del. Ch. 1985).

Delaware General Assembly made in enacting a detailed regime governing an LLC's distributions, dissolution, and cancellation.[180] On the contrary, the court below recognized that Delaware law required PXP to allege facts essential to its statutory claim, as well as "good cause,"[181] and that PXP had not met that burden. This Court should affirm.

[180] *Cf. Ravenswood Inv. Co., L.P. v. Estate of Winmill*, 2018 WL 1410860, at *2 (Del. Ch. Mar. 21, 2018) ("Equity is not a license to make stuff up").

[181] 2025 Op. at 413–15.

CONCLUSION

For the foregoing reasons, MEPUS respectfully requests that this Court affirm the Court of Chancery's Opinions.

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CERTIFICATE OF SERVICE

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