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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/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-KHL **PUBLIC VERSION** **FILED NOVEMBER 9, 2026**

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

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INTRODUCTION[1]

MEPUS's Answering Brief does not seriously defend MitEnergy's conduct under the LLC Act. Instead, MEPUS argues none of its conduct matters and endorses the decision to end this case before that conduct can be examined. According to MEPUS, PXP should have pleaded a dissolution date the LLC Act let MitEnergy keep private, and the Court of Chancery correctly ignored facts in its own record. And MEPUS pushes this Court to affirm on alternate grounds, which are actually fact questions the court below declined to reach.

Section 18-804 says a dissolving company must pay or provide for its claims before it cancels. Affirmance would turn the statute into a map for avoiding those claims: distribute, wait, dissolve in private, cancel. Section 18-1104 and the *Schnell* doctrine exist to stop that. Between the policy implications, and the legal errors, including imposing heightened pleading and refusing to take mandatory judicial notice, this Court should reverse the Opinions below.

[1] Capitalized terms have the same meaning as in the Opening Brief.

REPLY ARGUMENT

I. THE AMENDED COMPLAINT PLEADS EVERY ELEMENT OF A VIOLATION OF SECTIONS 18-804 AND 18-203.

Section 18-804 requires a dissolving company to pay or provide for claims against it. PXP alleged that MitEnergy did neither. MitEnergy knew it owed decommissioning and indemnity obligations, distributed hundreds of millions to its members or parents, and then cancelled without providing for known or contingent claims. The Court of Chancery nonetheless held that PXP failed to state a claim because it did not also plead the date of a distribution.

That element appears nowhere in the statute or the case law. Even if it were required, PXP's pleaded facts supply it by reasonable inference. Both Opinions should be reversed.

A. The Statute Defines the Violation as the Failure to Pay or Provide, Which the Complaint Pleads

Under Section 18-804(b) a dissolving company must "pay or make reasonable provision to pay" all known claims, including "contingent, conditional or unmatured contractual claims," and the company must provide for claims likely to arise within ten years of dissolution.[2] Section 18-203 completes the structure by conditioning cancellation on the completion of winding up, which includes making provision for

[2] 6 *Del. C.* § 18-804(b)(1), (b)(3).

claims.[3] The elements of a Section 18-804 claim are, therefore, knowledge, assets, and the failure to pay or provide for claims before cancellation. The timing of distributions is not among them.

The Amended Complaint pleads each element. First, MitEnergy knew its indemnity obligations under the PSA would survive "indefinitely," and it bore joint-and-several decommissioning liability as a predecessor lessee.[4] Second, MitEnergy had $283 million in sale proceeds and years of lease cash flow, routed to MitEnergy's members and affiliates.[5] Third, MitEnergy failed to provide for claims and nonetheless cancelled March 8, 2019 (which under Section 18-203 represented that winding up was complete).[6] The Complaint thus alleges the violation in the statute's own terms.

Epie v. Herakles Farms, LLC does not suggest otherwise.[7] There, after trial, the plaintiff failed to prove he was a creditor at all, and the company received no funds from the challenged transfers and held nothing at cancellation. The principle MEPUS draws from it — that a company may forgo a reserve "only if it had no

[3] 6 *Del. C.* § 18-203.

[4] AC ¶¶10-12, 18-24; OB 27-28.

[5] AC ¶¶26-28, 57-58.

[6] AC ¶¶3, 45, 58, 61 & Ex. C.

[7] 2025 WL 2028228 (Del. Ch. July 21, 2025).

assets" — presupposes that a company with assets must provide for claims.[8] PXP alleges the opposite: MitEnergy held $283 million and distributed it to its members without providing for claimants.[9] MEPUS's reading would let any company create the no-assets condition through the distribution itself. A statute enacted for claimants' protection cannot be satisfied by an act that defeats them.

Even if timing were an element, PXP satisfies it. Paragraph 15 alleges that the failure occurred "during its dissolution and wind up before filing its Certificate of Cancellation[,]"[10] and paragraph 86 alleges in the alternative that the assets moved "in connection with its dissolution, wind up, and cancellation[.]"[11] Those fall within the period that Section 18-804 governs. Sufficiency is measured against the complaint as a whole, together with every reasonable inference.[12] PXP met that standard.

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[8] *Id.* at *4 (quoting *In re Reinz Wis. Gasket, LLC*, 2023 WL 2568326, at *3 (Del. Ch. Mar. 20, 2023)).

[9] OB 36-37.

[10] AC ¶15.

[11] AC ¶86.

[12] *See Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535-36 (Del. 2011). And Rule 9(f), on which MEPUS relies, provides that an allegation of time is material when a pleading is tested; it does not transform time into a required element.

B. The Authorities MEPUS Attempts to Distinguish Measured Compliance at Cancellation

In attempting to distinguish various authorities, MEPUS highlights PXP's point: None of the Court of Chancery's prior cases conditioned relief on pleading the specifics of a post-dissolution distribution.

In *Thor Merritt*, the plaintiffs pleaded neither a dissolution date nor a post-dissolution distribution.[13] Nonetheless, the nullification claim survived dismissal because the complaint alleged known obligations, an inadequate provision, and cancellation.[14] And the court never asked whether the distributions were subject to Section 18-804 because the statute does not make that question an element.

Capone is similar. There, the companies were dissolved and cancelled on a single day, and the court nullified the certificates because no reserve had been made for a known claim.[15] MEPUS characterizes *Capone* as resting on a "tight causal and temporal nexus between alleged distributions and wind up,"[16] but *Capone* did not

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[13] *Thor Merritt Square, LLC v. Bayview Malls LLC*, 2010 WL 972776, at **2-3 (Del. Ch. Mar. 5, 2010).

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

[15] *Capone v. LDH Mgmt. Hldgs. LLC*, 2018 WL 1956282, at **12-14 (Del. Ch. Apr. 25, 2018).

[16] AB 24.

say that. It asked what the companies had paid or provided when their existence ended, not the timing of any distribution.

Techmer held that the parallel DRULPA obligations attach upon dissolution and that compliance is measured against the entity's assets at that moment.[17] That is a holding about when the statute operates, not about what a complaint must allege. Moreover, *Techmer* was a summary judgment case, and even on a full record, the court could not determine whether the principal distribution fell inside the dissolution period.[18] The court still found noncompliance.[19] It fixed the dissolution by inference from the certificate of cancellation under Section 18-203.[20] The court below claimed to draw its rule from *Techmer*, but demanded of PXP's pleadings the very fact that the *Techmer* court supplied for itself at summary judgment.

C. Even If Timing Had to Be Pleaded, the Pleaded Facts Support the Inference

If PXP had to place the distributions inside the dissolution period, the Amended Complaint does so by inference. Section 18-203 permits a certificate of

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[17] *Techmer Accel Hldgs., LLC v. Amer*, 2010 WL 5564043, at **8-9 (Del. Ch. Dec. 29, 2010).

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

[19] *Id.* at *11.

[20] *Id.* at *10.

cancellation to be filed only upon dissolution and the completion of winding up.[21] The March 8, 2019 certificate therefore establishes that MitEnergy dissolved, wound up, and concluded that process on or before that date. The *Techmer* court performed this same derivation itself, from the same statute.[22]

The pleaded facts support the inference that the dispositions fell within that window. PXP alleges that all of MitEnergy's assets moved "in advance of and/or in connection with its dissolution, wind up, and cancellation," and that the purpose was to leave MitEnergy "with no means to honor its contractual, legal and regulatory obligations[.]"[23] A plaintiff is entitled to every reasonable inference that logically flows from its well-pleaded facts,[24] but the plaintiff need not plead the inference itself.[25] The court below, however, erroneously demanded that the sequence appear on the face of the Complaint and dismissed when it did not.

The court's rule also fails as policy. A company may dissolve by private written consent, so no notice reaches claimants, and the dissolution date stays hidden

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[21] 6 *Del. C.* § 18-203.

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

[23] AC ¶¶61, 86.

[24] *Cent. Mortg. Co.*, 27 A.3d at 536.

[25] *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773, 804-05 (Del. 2023).

until the company discloses it. A heightened pleading rule that turns on facts known only to the defendant rewards nondisclosure.

MEPUS's fallback — that Energy XXI's assumption and indemnity "*was* a reasonable provision"[26] — fails for two reasons. First, adequacy is a fact issue, which was disputed and undecided below; it is an issue for remand. Second, the argument assumes that Section 18-804(b) applied, which contradicts MEPUS's lead position that it did not.

[26] AB 23 n.81.

II. THE GOOD-CAUSE RULING RESTS, AND FALLS, ENTIRELY ON THE SECTION 18-804 HOLDING.

Count II of PXP's Amended Complaint sought a receiver under Section 18-805, which requires good cause. The Court of Chancery framed the good cause inquiry as resting on "a Section 18-804(b) violation in connection with the Company's cancellation[]"[27] and concluded that PXP "ha[d] not pled or shown a reasonable likelihood that the Company had dissolved—or was winding up—when it made the distributions[]" and as a result, "it [wa]s not reasonably conceivable the distributions violated Section 18-804, so Petitioner has not pled or shown good cause to appoint a receiver."[28] So, the Court of Chancery's "good cause" analysis was the Section 18-804 analysis: Once the nullification claim is stated, good cause to appoint a receiver follows. If PXP's Section 18-804 argument prevails, then the good-cause ruling falls, too.

MEPUS's Answering Brief describes the ruling in Section 18-804 terms. It quotes the 2026 Opinion's statement that, in the 2025 Opinion, the court "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

[27] 2025 Op. 413-14.

[28] *Id*. 415-16.

conceivability' standard."[29] Thus, on MEPUS's own premises, the two standards converge in a single question, so a complaint that pleads the Section 18-804 violation satisfies both.

Nonetheless, MEPUS asserts that PXP "has not appealed the court's holding that PXP failed to plead 'good cause'" because the Opening Brief "does not mention Section 18-805 or 'good cause' anywhere."[30] That ignores PXP's briefing, which attacked the Section 18-804 analysis and with it, the good-cause conclusion.[31] MEPUS's theory also assumes a freestanding good-cause ruling that the 2025 Opinion does not support.

MEPUS's waiver authorities involved grounds that stood on their own. In *Isaac v. Politico LLC*, the trial court dismissed on "three separate and independent grounds," and the appellant challenged only one.[32] In *Gibson v. State*, the appellant challenged only one evidentiary ruling, but not the alternate.[33] In each case, the unchallenged ground could independently sustain the trial court's judgment. Here,

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[29] AB 36 (quoting 2026 Op. at *1).

[30] AB 28.

[31] OB 24, 25-37. And in PXP's Opening Brief, Argument I's heading, its Question Presented, and conclusion seeking reversal of both Opinions, all reach Count II.

[32] 346 A.3d 103, 120-21 (Del. 2025).

[33] 2025 WL 1514413, at *17 (Del. May 28, 2025).

however, reversal of the Section 18-804 holding leaves the good-cause ruling nothing to stand on.[34]

The 2025 Opinion's remaining discussion does not independently sustain Count II's dismissal. The cash-on-hand assertions were merely an additional theory of good cause.[35] Likewise, veil-piercing was an alternative theory, not a separate basis for dismissal. If the Section 18-804 holding is reversed, then that violation establishes good cause on its own, and the veil-piercing ruling no longer matters.

MEPUS's remaining argument — that a receiver would find nothing to recover —is an alternative ground the trial court never reached, [36] and Section V addresses it. Regardless, whether there is anything to recover is the question a receiver is appointed to answer, not a question to resolve at the pleadings stage, much less for the first time on appeal.

Because the Section 18-804 holding rested on reversible error, so does the good-cause ruling. Therefore, Count II should be reinstated with Count I.

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[34] 2025 Op. 416.

[35] *Id*. 420.

[36] AB 30-32.

III. RULE 201 REQUIRED NOTICE OF THE RECORD FACTS, AND WITH THOSE FACTS NOTICED, THE COMPLAINT STATES A CLAIM.

Below, PXP asked the court to take judicial notice of three categories of facts that MEPUS placed in the Court's record. The first was the official transcript of the February 25, 2025 hearing, at which MEPUS's counsel asserted that "the unanimous written consents to dissolve are dated February 2019[.]"[37] The second was MitEnergy's distribution schedule, filed by MEPUS and supported by a notarized affidavit attesting to its accuracy on personal knowledge.[38] The third was MEPUS's signed dismissal brief, which placed MitEnergy's final distribution "prior to or upon the cancellation in 2019."[39] Every one of these facts originated with MEPUS, and no one disputed their accuracy. Yet, the court excluded all three as "matters outside the pleadings" under Rule 12(d), without applying Rule 201, and entered judgment on the pleadings.[40] That was reversible error.

Seeking a different result, MEPUS makes several arguments. It contends that review is deferential, that the materials were not judicially noticeable, that noticing

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[37] A1908-A1909.

[38] A1216-A1218.

[39] A1246.

[40] 2026 Op. at *3-4.

them would have changed nothing, and that the court sufficiently explained its choices.[41]

A. The Exclusion Is Reviewed *De Novo*, and It Fails Under Any Standard.

This Court reviews a judgment on the pleadings *de novo*, and that standard of review reaches every legal determination on which the judgment rests.[42] Because the Court of Chancery's judicial notice ruling determined what the Rule 12(c) record contained, and because the judgment was entered on that record, that determination is subject to de novo review.

That is exactly the analysis that this Court conducted in *Lebanon County*.[43] There, the Court of Chancery dismissed a derivative complaint after taking judicial notice, under Rule 202, of another court's findings that no wrongdoing had occurred.[44] This Court concluded that the trial court's "taxonomic choice" of Rule 202 was "inconsistent with how the Rules operate."[45] The Court then applied Rule 201's reasonable-dispute test,[46] and reversed because the trial court had "erred by

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[41] AB 33-44.

[42] *Cent. Mortg. Co.*, 27 A.3d at 535.

[43] 311 A.3d 773 (Del. 2023).

[44] *Id*. at 797.

[45] *Id.* at 798.

[46] *Id.* at 798-800.

vitiating the plaintiffs' standing in deference to the factual findings" it noticed.[47] At no step did this Court defer to the trial court's notice ruling.

MEPUS answers that *Lebanon County* "never identified, much less adopted, a standard of review for judicial notice determinations under D.R.E. 201."[48] That elevates label over function. On its substance, this Court conducted plenary review of the Rule 202 ruling within the *de novo* review applied to the motion to dismiss decision.[49]

In any event, what Rule 201 requires is a question of law. This Court "review[s] questions of law, including a trial court's interpretations of rules of evidence or burdens of proof, *de novo*."[50] Whether the court below applied the correct legal test under Rule 201, and indeed whether it applied Rule 201 at all, is such a question.

MEPUS's contrary authorities review trial evidentiary rulings for abuse of discretion.[51] But this was not a trial-stage ruling, and different presumptions apply.

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[47] *Id.* at 801-02.

[48] AB 34-35.

[49] *Lebanon Cnty.*, 311 A.3d at 798-802.

[50] *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1143 (Del. 2025); *see also Kahn v. Kolberg Kravis Roberts & Co.*, 23 A.3d 831, 836, 840-42 (Del. 2011) (reviewing legal conclusions de novo and reversing a ruling reviewed for abuse of discretion because it may have rested on an incorrect legal holding).

[51] AB 34.

Moreover, the reasoning for awarding deference to trial-stage evidentiary rulings does not apply to a ruling that fixes the record for a decision at the pleading stage.

Even under abuse-of-discretion review, the Court of Chancery erred. Rule 201(c)(2) provides that a court "[m]ust take judicial notice if a party requests it and the court is supplied with the necessary information."[52] PXP made the request, identified the materials by transaction number, and directed the court to them.[53] No one disputed their accuracy, and MEPUS never sought a hearing on their indisputability under Rule 201(e). A court has no discretion to refuse what the rule makes mandatory. The rule does not condition notice on amendment, so MEPUS's suggestion that PXP should have repled rather than request notice answers nothing.[54] And federal courts, construing the identically worded federal provision, have held that a refusal to notice requested and supplied information was an abuse of discretion.[55]

MEPUS's own definition of abuse of discretion completes the analysis. A court abuses its discretion, MEPUS writes, when it has "so ignored recognized rules

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

[53] A1994-A1998; A2076-A2079.

[54] AB 41.

[55] *See, e.g., O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224-25 (10th Cir. 2007).

of law or practice to produce injustice."[56] That definition certainly applies to a court's unexplained decision not to apply a mandatory rule. Thus, the court below's failure to take mandatory judicial notice requires reversal under either de novo review or abuse of discretion review.

B. Rule 201(b) Reaches Court Records, Not Only Common Knowledge.

Under Rule 201(b), a fact qualifies for notice if it is "not subject to reasonable dispute" because it either is "generally known within the trial court's territorial jurisdiction" or "[c]an be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."[57] Thus, the rule describes two separate categories, joined by "or."

MEPUS's Answering Brief collapses those two categories into one. Drawing on a criminal case applying the generally-known category pathway, MEPUS argues that judicial notice "should be used with caution" and 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."[58] At best, "common knowledge" paraphrases Rule 201's first category,

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[56] AB 33.

[57] D.R.E. 201(b)(1) & (b)(2).

[58] AB 37-38 (quoting *Fawcett v. State*, 697 A.2d 385, 388 (Del. 1997) (emphasis omitted)).

yet MEPUS declares PXP's materials ineligible for notice under either category.[59] That reading wrongly replaces the rule's "or" with "and."

Fawcett does not support that atextual construction. The *Fawcett* passage that MEPUS quotes conditions notice on the absence of doubt "as to the fact itself or as to its being a matter of common knowledge," a formulation addressed entirely to the "generally known" category.[60] Nothing MEPUS quotes from *Fawcett* speaks to the "readily determined" category, to sources "whose accuracy cannot reasonably be questioned," or to court records. And *Fawcett* is a 1997 criminal decision. This Court has not adopted its "common knowledge" phrasing in the three decades since it was issued. Rather, the phrase survives mainly in trial court decisions applying the first pathway in criminal cases.

MEPUS's argument also ignores that this Court has permitted notice of records that no one would call common knowledge. In *In re Gen. Motors (Hughes) Shareholder Litigation*, the Court noticed an SEC filing reflecting a stockholder vote.[61] A Form 10-Q is not common knowledge within any jurisdiction. And in

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[59] AB 38.

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

[61] *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 170-71 (Del. 2006). MEPUS's own description of the case concedes the governing test, calling the noticed filing "a publicly available fact that was 'not subject to reasonable dispute.'" AB 40.

Tigani v. C.I.P. Associates, LLC, this Court confirmed that a trial court deciding a motion to dismiss "could take judicial notice of the 'records . . . of any other court of this State' and facts not subject to reasonable dispute."[62] Neither decision mentions common knowledge.

The governing question under either pathway is whether the fact is subject to reasonable dispute, and MEPUS cannot reasonably dispute its own submissions. The transcript records what MEPUS's counsel told the court, the signed briefs say what MEPUS wrote, and the distribution schedule is sworn on personal knowledge by MEPUS's own affiant. MEPUS did not contest the accuracy of any of them below, and it does not contest their accuracy now.

MEPUS warns that notice would have "the effect of precluding MitEnergy from arguing that (unspecified) distributions were not subject to Section 18-804."[63] Not so. Whether the facts subject to judicial notice place a distribution inside the dissolution window, and what Section 18-804 then requires, remain questions on which MitEnergy may argue whatever the law supports. Nothing in the record

[62] *Tigani v. C.I.P. Assocs., LLC*, 2020 WL 2037241, at *2 (Del. Apr. 27, 2020) (quoting D.R.E. 202(d)(1)(C) and citing D.R.E. 201(b)).

[63] AB 38-39.

disputes the noticed facts themselves, and which event marks dissolution as a matter of law under Section 18-801(a)(3) is a legal question, not a factual one.[64]

MEPUS itself invoked doctrine. In the same briefing, MEPUS asked the court to notice Energy XXI's bankruptcy in support of its reasonable-provision defense.[65] MEPUS now says that it relied on those filings "for their existence and their legal effects," not for their truth.[66]

That concedes PXP's point. Two of PXP's three categories fit that frame exactly. The transcript and the briefs are noticed for the existence and content of MEPUS's own statements, admissions whose making no one disputes. The third, the schedule, is sworn on personal knowledge by MEPUS's own affiant and has never been questioned. The rule MEPUS draws from *In re Rural Metro Corp. Shareholders Litigation*, does not apply here.[67] *Rural Metro* cautioned that a filing may not be noticed for the truth of contested contents, which protects a party from having another's assertions treated as true against it.[68] *Rural Metro* does not insulate MEPUS from its own sworn, uncontested submissions.

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[64] *See* 6 *Del. C.* § 18-801(a)(3).

[65] A2059-A2066.

[66] AB 39.

[67] AB 39 (citing *In re Rural Metro Corp. S'holders Litig.*, 2013 WL 6634009, at **7-8 (Del. Ch. Dec. 17, 2013)).

[68] 2013 WL 6634009, at **7-8 (Del. Ch. Dec. 17, 2013).

C. The Record Supplies the Timing Facts the Court Found Missing.

Read together, the three facts for which PXP requested notice establish dissolution followed by distribution.

MEPUS told the court below that "the unanimous written consents to dissolve are dated February 2019."[69] Under Section 18-801(a)(3), an LLC is dissolved upon the vote or consent of its members, so the consents fix the dissolution in February 2019.[70] MEPUS's dismissal brief states that MitEnergy "distributed its remaining assets prior to or upon the cancellation in 2019," and its sworn schedule shows the final $580,000 leaving the company in 2019.[71] The Certificate of Cancellation was filed March 8, 2019.[72] On MEPUS's own representations, MitEnergy dissolved in February 2019 and made its final distribution between that dissolution and the March 8 cancellation. Thus, the Court of Chancery's record contained facts from which the court could conclude that a distribution followed dissolution.

MEPUS's only way around this is to read the documents individually, never together. It discusses the cash MitEnergy held the year before cancellation, but it never connects that to the consents. Nor does MEPUS engage its own representation

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[69] A1908-A1909.

[70] 6 *Del. C.* § 18-801(a)(3).

[71] A1246; A1216.

[72] AC ¶3 & Ex. C.

that MitEnergy distributed its assets "prior to or upon the cancellation." PXP requested notice of all three facts, and the sequence emerges only when they are read together, which is how PXP presented them.[73]

MEPUS's reliance on what "the Complaint does not allege" mistakes the consequence of notice. A noticed fact is part of the Rule 12(c) record.[74] Measuring harmlessness by what the Complaint alone alleges assumes away the notice that PXP requested, as well as the error that PXP challenges. And *King Construction*, MEPUS's authority, states a rule for facts that would not change the trial court's decision.[75] Here, though, these facts supply the precise element the court below held dispositive and called "foundational."[76]

Regardless, at the pleadings stage, PXP did not have to prove that the February consents mark the dissolution or that the final distribution followed it. PXP needed only a record on which that sequence is reasonably conceivable, and MEPUS's own submissions to the Court of Chancery supplied it. It was error for the court below not to take notice of those submissions.

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[73] A2076-A2079.

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

[75] AB 37 (citing *King Const., Inc. v. Plaza Four Realty, LLC*, 976 A.2d 145, 155 (Del. 2009)).

[76] 2025 Op. 416.

D. The Court of Chancery's Unexplained Refusal to Convert to Summary Judgment and Permit Discovery Independently Requires Reversal.

As an alternative, PXP asked the Court of Chancery to convert the cross-motions into motions for summary judgment and permit targeted discovery if the timing of MitEnergy's dissolution and distributions presented fact issues and if the court declined to take judicial notice of the facts PXP identified.[77] But the court below did not meaningfully address that request or even explain a reason for denying it. That was error.

MEPUS responds that "the court did explain" its decision not to convert to summary judgment.[78] In support, MEPUS quotes the 2026 Opinion:

> In my discretion, I conclude Petitioner's unpled assertions about the timing of the Company's dissolution and its cash on hand at that time shall be excluded here as they were on Intervenor's motion to dismiss. Petitioner chose not to seek leave to amend after the Court ruled Petitioner had not pled those facts.[79]

But those sentences explain only the decision not to take judicial notice, not the conversion request.

The omission matters because of what the court below said about this case. The 2026 Opinion recounted that the case presented "a complex factual dispute

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[77] A2012-A2013.

[78] AB 44.

[79] 2026 Op. at *4.

about whether the Company fairly believed its decommissioning obligations would be handled by its buyer's buyer[,]" that "Petitioner concedes there are 'many unresolved factual issues' concerning whether adequate provision was made for the Company's decommissioning obligations[,]" and that the court "could not resolve that factual dispute at the pleading stage."[80] Rule 12(d)'s conversion path exists for exactly that circumstance. Indeed, summary judgment was the course followed in the other nullification cases.[81] Yet the court below did not take that path or explain its decision.

MEPUS's remaining defense is that courts have "complete discretion to determine whether to accept the submission of any material beyond the pleadings," and that material which is "scanty, incomplete, or inconclusive" will probably be rejected.[82] But discretion, however complete, must be exercised for stated reasons, and "the failure to provide reasons for a judicial determination constitutes an abuse of discretion."[83]

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[80] *Id*. at *1 (quoting 2025 Op. 420).

[81] *See, e.g.*, *Capone*, 2018 WL 1956282, at **6-7; *Techmer*, 2010 WL 5564043, at **3-4.

[82] AB 43-44 (quoting 5C Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1366 (3d ed.)).

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

IV. SECTION 18-1104 PRESERVES EQUITY, AND *SCHNELL* REACHES STATUTORY MACHINERY USED FOR INEQUITABLE ENDS.

Rather than ask both questions *Schnell* requires, the court below stopped at the first — MitEnergy's conduct was legally possible under the LLC Act.[84] But "[i]nequitable action does not become permissible simply because it is legally possible."[85] The Amended Complaint alleges that MitEnergy misused the Act's procedures for dissolution and cancellation to defeat known claims. That allegation states a claim in equity, the court below never considered it, and its judgments should be reversed for that reason as well.

The LLC Act's structure emphasizes why *Schnell* matters. The Act permits a company to dissolve without notice to its creditors, but correspondingly requires the company to pay or provide for known or contingent claims under Section 18-804(b).[86] MitEnergy disregarded that duty, and that made MitEnergy's use of the LLC Act inequitable.

MEPUS argues *Schnell*, *Bäcker*, and *Moran* do not apply because each "concern[s] directors' legal and equitable duties to stockholders."[87] But the unifying

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[84] 2026 Op. at *4.

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

[86] 6 *Del. C.* § 18-804(b).

[87] AB 49.

principle those cases apply is broader than their facts. And that principle condemns the use of legal machinery for an inequitable end, no matter the actor or statute involved.

MEPUS also argues that PXP asks this Court to "upend the legislative choices" of the General Assembly.[88] But MEPUS ignores Section 18-1104, which provides that the rules of law and equity govern any perceived gaps in the LLC Act.[89] PXP merely asks the Court to apply a rule the General Assembly preserved and the doctrine this Court announced more than half a century ago. That enforces the statutory scheme.

MEPUS relies heavily on *Territory*,[90] but that case protects dissolutions that comply with the LLC Act. There, the dissolving company funded a $6 million liquidating trust for contingent liabilities and accounted for every claim.[91] And the court expressly reserved the case of fiduciaries who "disregard[ed] the corporation's likely obligations to some specific contingent creditor[.]"[92]

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[88] AB 49-50.

[89] 6 *Del. C.* § 18-1104.

[90] *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); AB 47-48.

[91] *Id*. at 766, 794 n.155.

[92] *Id.* at 799-800.

That is this case. *Territory* reserved claims when "those winding-up the corporation's affairs were seeking to evade claims that were extant or feared."[93] Equity exists to address that "interstitial abuse of the dissolution process[,]" including funneling funds to owners rather than creditors.[94] PXP alleges exactly that pattern and alleges that MitEnergy never paid or provided for its known and contingent liabilities. A company that skipped the process is not entitled to repose.

And MEPUS misreads *Territory*'s limiting principle. *Territory* held that "the legislature's enactments preclude the room for judicial *invention*."[95] MEPUS misquotes the passage as precluding "judicial *intervention*."[96] The *Territory* Court declined to invent a common-law trust-fund claim against innocent stockholders. It did not limit a court's authority to act within the statutory framework that provides for judicial action after cancellation.

Finally, MEPUS challenges the timing of PXP's claim.[97] But Section 18-804(b)(1) reaches "contingent, conditional or unmatured contractual claims" known

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[93] *Id.* at 791-92.

[94] *Id.* at 792-93.

[95] 937 A.2d at 789 (emphasis added).

[96] AB 47 (emphasis added).

[97] AB 49.

to the company.[98] MitEnergy's obligations to PXP sat in MitEnergy's own contract (with a promise to "survive indefinitely"), and PXP also alleges that MitEnergy knew years before cancellation that Energy XXI's purported coverage had failed.[99] So, MEPUS had notice, demand or no demand. The wind-up protections PXP invokes now come from the statute, not just the parties' agreement, so arguing PXP should have bargained for more rings hollow when MitEnergy did not even honor the bargain it had.

Affirmance here would publish a road map for any company with long-tailed liabilities: distribute everything, wait out the clawback period, consent to dissolve in private, and cancel. *Schnell* and Section 18-1104 exist to foreclose that misuse of the statute. Because the court below failed to conduct that analysis, its judgment should be reversed.

[98] 6 *Del. C.* § 18-804(b)(1).

[99] AC ¶¶11, 31, 51.

V. THE COURT SHOULD NOT AFFIRM ON GROUNDS THE TRIAL COURT NEVER REACHED.

MEPUS also asks this Court to affirm on three grounds the trial court never reached: that a receiver would find nothing to recover, that the Energy XXI indemnity was an adequate provision, and that the nullification claim is time-barred.[100] None is persuasive.

Although this Court may affirm on a different rationale, that is only an appropriate path "'if the issue was fairly presented to the trial court.'"[101] And none of MEPUS's cases affirmed a judgment on the pleadings on a fact-dependent ground that the trial court never resolved. *Tiger* affirmed a post-trial order on the text of the order the trial court entered.[102] In *Peierls Charitable Lead UniTrust*, arose on an *ex parte* trust petition opposed only by an amicus appointed on appeal.[103]

Each of MEPUS's grounds turns on facts never found and disputed on this record. Whether the company had recoverable assets is for a receiver to investigate, not for resolution on appeal of a pleadings-stage judgment. Likewise, whether MitEnergy made reasonable provision is a disputed issue, and no basis for affirming

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[100] *See* AB 3-4, 30-32; AB 23 n.81; AB 31 n.121.

[101] *Tiger v. Boast Apparel, Inc.*, 214 A.3d 933, 937 (Del. 2019) (citation omitted).

[102] *Id.* at 940.

[103] 77 A.3d 232, 233-34 (Del. 2013).

a pleadings-stage dismissal. MEPUS itself concedes that "addressing this disagreement is not essential to decide this appeal."[104]

Finally, the limitations ground was decided below, against MEPUS, and MEPUS did not cross-appeal.[105] It cannot support affirmance either.

[104] AB 9 n.20.

[105] *Mann v. Oppenheimer & Co.*, 517 A.2d 1056, 1060 (Del. 1986) ("[A]bsent a cross-appeal, the appellee may not attack the judgment of the court below with a view to enlarging its own rights or lessening the rights of its adversary.").

CONCLUSION

For these reasons, and those stated in the Opening Brief, 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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