

September 2026

Delaware Court Valuation/ Damages Case Summaries (July 2025 to June 2026)

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Introduction

The Court of Chancery for the State of Delaware (the “Court”) is one of the most followed courts for business leaders, corporate attorneys, litigators, and judges throughout the country. Known as the preeminent forum for corporate disputes in the United States, the Court issues many opinions covering valuation, fiduciary duty, and other damages-related disputes.

Coherent Economics, LLC (“Coherent”) is a team of professional financial consultants, economists, accountants, statisticians, and data analysts. Coherent is a leader in the financial consulting industry working on some of the largest litigations in the United States as well as globally on topics including valuation, antitrust, intellectual property, and economic damages. Coherent’s strengths include distilling complex problems to their essence and communicating clearly and persuasively. Guided by its values, Coherent applies academic rigor and professional attention to detail to its clients’ greatest challenges.

Below are 10 summaries of the Court’s valuation and/or damages-related decisions issued between July 2025 and June 2026. Additionally, there are two Delaware Supreme Court decisions regarding valuation and/or damages-related issues. The 12 decisions span topics including post-M&A disputes, trading of large blocks of stock, valuation issues, breaches of fiduciary duty, prejudgment interest, and other financial topics.[1]

[1] The case summaries are for general informational purposes only. Nothing in this document constitutes legal, financial, investment, accounting, tax, or other professional advice. The summaries are necessarily condensed and selective and the opinions may be unpublished, subject to revision, withdrawal, correction or otherwise modified after the date of preparation and may not reflect current law. Any views expressed are solely those of the authors and do not necessarily reflect the views of Coherent. Readers are advised to consult the full text of each opinion and their own legal counsel.

Summary of Decisions

Chancery Court Decisions

1. *Sorrento Therapeutics, Inc., et al. v. Anthony Mack, et al.*
Opinion Date: 7/31/2025
V.C. Fioravanti
Topic(s): Breach of Restrictive Covenants, Fiduciary Duty, Trade Secret Misappropriation.
2. *Arthur J. Gallagher & Co., et al. v. Joseph A. Agiato, Jr.*
Opinion Date: 7/31/2025
V.C. Will
Topic(s): Post M&A Dispute / Earnouts.
3. *David Abraham v. The Estate of Rockwell Wirtz, et al.*
Opinion Date: 12/15/2025
V.C. David
Topic(s): Appraisal / Quasi-Appraisal Rights.
4. *NEEM International CV, et al. v. Vadim Shulman, et al.*
Opinion Date: 12/31/2025
V.C. Will
Topic(s): Debt v. Equity Investment, Fairness of Asset Transfer.
5. *Arxada Holdings NA Inc. v. Michael Harvey, et al.*
Opinion Date: 1/28/2026
V.C. Laster
Topic(s): Breach of Restrictive Covenants, Trade Secret Misappropriation.
6. *Caring People Holdco, LLC, et al. v. Shalom (Steven) East and Jennifer Devine*
Opinion Date: 3/10/2026
Topic(s): Breach of Restrictive Covenants, Fiduciary Duty.
7. *Douglas M. Chertok, et al., v. OnSolve, LLC, et al.*
Opinion Date: 4/21/2026 (corrected)
V.C. Fioravanti
Topic(s): Post-M&A Dispute, Prejudgment Interest.
8. *Golden Rule Financial Corporation v. Shareholder Representative Services, LLC*
Opinion Date: 4/30/2026
V.C. Fioravanti
Topic(s): Post-M&A Dispute, ASC 606.
9. *OptimisCorp v. William Atkins, et al.*
Opinion Date: 5/11/2026
V.C. Zurn
Topic(s): Lost Profits, Breach Fiduciary Fiduciary Duty, Valuation.
10. *William J. Brown v. Matterport, Inc, and Matterport Operating, LLC*
Opinion Date: 6/1/2026
Topic(s): Prejudgment Interest.

Supreme Court Decisions

1. *Johnson & Johnson, et al. (Appellants) v. Fortis Advisors LLC (Appellee)*
Opinion Date: 1/12/2026
Chief Justice Seitz and Justices Valihura, Traynor, Legrow, and Griffiths
Topic(s): Post M&A Dispute/Earnouts.
2. *Patterson v. Cannon*
Opinion Date: 6/29/2026
Chief Justice Seitz and Justices Traynor, Griffith and Judge Wallace
Topic(s): Valuation of Warrants, Sale of a Large Block of Stock.

I. Chancery Court Decisions in Detail

1. *Sorrento Therapeutics, Inc., et al. v. Anthony Mack, et al.*

C.A No. 2021-0210-PAF (Del. Ch. July 31, 2025)

2025 Del. Ch. LEXIS 195

Vice Chancellor Fioravanti

Outcome: Court awarded injunctive relief and one-third of fees to Plaintiffs, but reduced net monetary recovery to zero.

In July 2025, the Court issued a decision determining the appropriate remedies against Anthony Mack (“Mack”) following a prior ruling that established his liability for breach of a restrictive covenant agreement (“RCA”), breach of fiduciary duties, and misappropriation of trade secrets. The litigation, brought by Sorrento Therapeutics, Inc. and Scilex Pharmaceuticals Inc. (collectively “Plaintiffs”), originally targeted both Mack, a co-founder and former President of Scilex, and his company, Virpax Pharmaceuticals, Inc. (“Virpax”). However, prior to this opinion, Plaintiffs settled with Virpax for \$6 million, a 6% royalty on net sales of its pipeline products, and the destruction of proprietary data, leaving Mack as the sole remaining defendant.

Regarding the RCA, the Plaintiffs sought lost profit damages, arguing that Mack’s development of Epoladerm, a competing pain relief product, caused quantifiable harm to Scilex’s profits. The Court rejected this theory, ruling that lost profits were inherently speculative because Epoladerm remained in a preclinical phase with no guarantee of FDA approval or commercial success. Furthermore, the Court found the Plaintiffs’ expert’s reliance on Mack’s own estimate of a “50% chance” of commercialization insufficient to establish damages with reasonable certainty. Consequently, the Court granted injunctive relief instead, enforcing the terms of the RCA to enjoin Mack from any activity, direct or indirect, that advances the development of Epoladerm for 18 months and 27 days.

“Proving money damages for an unproven technology is a ‘nearly impossible task.’”
***Id.* at *17 (quoting *Amaysing Techs. Corp v. Cyberair Commc’ns, Inc.* 2004 Del. Ch. LEXIS 72 (Del. Ch. May 28, 2004)).**

On the fiduciary duty claims, the Court found that Mack had usurped corporate opportunities and misappropriated resources while serving as Scilex’s President. To remedy this disloyalty, the Court ordered the disgorgement of Mack’s salary earned during the breach period of \$525,027 and reimbursement for improperly expensed travel of \$15,549, totaling \$540,576. However, under the Delaware Uniform Contribution Among Tortfeasors Act (“DUCATA”), the Court ruled that Mack

was entitled to a settlement credit equal to the \$6 million that Virpax paid to release its own liability. Because the settlement amount exceeded Mack's calculated liability, his monetary damages were reduced to zero.

The Court also addressed remedies for trade secret misappropriation under the California Uniform Trade Secrets Act ("CUTSA"). While the Court granted a permanent injunction against Mack's use of the five specific documents found to be trade secrets, it denied the Plaintiffs' request for a reasonable royalty. The Court noted that under the CUTSA, a reasonable royalty is a remedy of last resort, available only when actual damages and unjust enrichment are unprovable. The Plaintiffs failed to demonstrate that such damages were unprovable, and their expert's calculation was flawed because it relied on a "zone of potential agreement" derived from thousands of documents rather than the five specific secrets actually misappropriated.

Finally, despite the offset in monetary damages, the Court ordered partial fee-shifting due to Mack's "willful and malicious" conduct. The Court highlighted Mack's "egregious" behavior, including the active concealment of his competitive ventures and the spoliation of evidence—specifically, the deletion of hundreds of files after litigation commenced. Consequently, the Court awarded the Plaintiffs one-third of their reasonable attorneys' fees and expenses, a liability for which Mack is individually responsible and cannot offset against the Virpax settlement.

2. Arthur J. Gallagher & Co., et al. v. Joseph A. Agiato, Jr.

C.A. No. 2024-0494-LWW (Del. Ch. July 31, 2025)

2025 Del. Ch. LEXIS 192

Vice Chancellor Will

Outcome: The Court granted partial judgment on the pleadings for Agiato on two counts, awarding \$50 million plus prejudgment interest related to a disputed earnout.

In July 2025, the Court issued a memorandum opinion resolving a motion for partial judgment on the pleadings filed by Joseph A. Agiato, Jr. ("Agiato") against Arthur J. Gallagher & Co. ("Gallagher"). The dispute arose from Gallagher's acquisition of two companies founded by Agiato for a transaction consideration, which included a \$50 million payout plus potential earnout payments totaling \$150 million. The earnouts were contingent on the acquired division achieving Net Commissions and Fee Income ("NCFI") thresholds each year over a four-year period.

The Court's damages analysis for the "Year 1" earnout was driven by the strict application of the Asset Purchase Agreement's ("APA") formula, obviating any need for expert valuation. The APA established a "Base NCFI" of \$13 million for Year 1, with any income above that base subject to a 7.15x multiplier to calculate the payment. Gallagher stipulated that the division generated at least \$20 million in NCFI. Applying the formula to the ~\$7 million surplus resulted in a figure exceeding the

\$50 million annual cap, contractually entitling Agiato to the maximum payout of \$50 million for that year.

Gallagher attempted to withhold this payment by arguing that Agiato's alleged operational mismanagement and breach of employment duties served as a bar to recovery. The Court rejected this defense as a matter of law, holding that the APA created no "condition precedent" linking the earnout to Agiato's conduct or employment status. Crucially, the Court ruled that Gallagher could not use the earnout as a self-help mechanism to offset potential indemnity claims, which had to be pursued through a separate, defined process. Consequently, the Court awarded Agiato the full \$50 million, plus prejudgment interest at the legal rate, compounded quarterly.

The Court denied judgment, however, regarding the release of \$3.75 million in escrowed shares held as security for indemnification. The release turned on whether Gallagher had provided notice of a claim within 18 months. Gallagher sent notice via email at 6:50 p.m. on the final day, creating a factual dispute over whether this fell within the recipient's "normal business hours" as defined by the APA. Because this term was ambiguous and fact-specific, the Court could not resolve the issue based on the pleadings.

"...Delaware courts 'cannot rewrite contracts or supply omitted provisions.' The [Asset Purchase Agreement] places no conditions on payment of the earnout once the [Net Commissions and Fee Income] threshold is achieved." *Id.* at *15.

Finally, the Court declined to award attorneys' fees. Although the APA contained a fee-shifting provision for the prevailing party, the Court ruled that Agiato's victory was only partial given the unresolved escrow issues, making it premature to declare a prevailing party for fee allocation.

3. *David Abraham v. The Estate of Rockwell Wirtz, et al.*

C.A. No. 2023-0865-BWD (Del. Ch. December 15, 2025)

2025 Del. Ch. LEXIS 2059

Vice Chancellor David

Outcome: The Court ruled primarily for the Defendants finding the Notice adequate and that the Plaintiff failed to perfect his appraisal rights but denied dismissal of the claim that the merger was statutorily invalid, permitting targeted discovery as to AM-LLC's ownership share at the time of the merger.

American Mart Corporation (“AM”), which held ownership interests in a beverage wholesaler joint venture and a historic commercial building, was controlled by Wirtz Corporation (“Wirtz”). Wirtz indirectly owned 84 percent of AM’s common stock and directly owned an additional 13 percent of AM’s common stock, while retail investors, including David Abraham (“Abraham”), held the remaining 3 percent of AM’s common stock.

In November 2022, Wirtz created a new entity, American Mart Company LLC (“AM-LLC”), to acquire the minority interests in AM through a short-form merger at a price of \$357 per share. AM-LLC mailed a notice to stockholders (“Notice”) which, among other things, apprised the minority stockholders of their right to seek appraisal of their shares within 20 days. AM-LLC rejected Abraham’s subsequent appraisal demand for non-compliance with Section 262 of the Delaware General Corporation Law, given that Abraham’s demand failed to identify the record holder, provide an address, or certify that associated documentation was true and correct. Abraham later filed a complaint in which he alleged that the Notice omitted material information, with the Defendants then moving to dismiss the complaint.

The Court found that (i) the Notice adequately described the procedure for AM stockholders to assert their appraisal rights, (ii) Abraham failed to perfect his appraisal rights, and (iii) the Notice provided sufficient information material to AM stockholders’ decision-making. Notably, the Court emphasized the difference between the disclosure requirements of long-form mergers and short-form mergers, such as AM’s. With respect to long-form mergers, disclosures must provide stockholders with information that is material to their decision to vote for or against the contemplated merger, with such information including, for example, an explanation of management’s rationale for pursuing the merger. With respect to short-form mergers, disclosures need only to provide stockholders with information that is material to their decision to accept the merger price or seek appraisal. Given that background, the Court ruled that Abraham was not entitled to a quasi-appraisal remedy.

“A lack of disclosure did not prevent Plaintiff from pursuing appraisal—his failure to perfect his appraisal rights under the statute did.” *Id.* at *21.

Abraham also contended that the merger was invalid for two reasons. First, Abraham argued that the merger certificate failed to certify that the merger was authorized “in accordance with” Section 18-209 of the Delaware Limited Liability Company Act. The Court, however, found that the merger certificate adequately conveyed the merger’s “accordance with” Section 18-209 despite not explicitly using that phrase. Second, Abraham averred that AM-LLC did not own at least 90 percent of AM’s shares at the time of the merger, as it was Wirtz that indirectly and directly owned 97 percent of AM’s shares. The Court partially denied Defendants’ motion to dismiss on this basis, ruling that Abraham was entitled to targeted discovery concerning AM-LLC’s ownership of AM’s shares.

4. *NEEM International CV, et al. v. Vadim Shulman, et al.*

C.A. No. 2022-0187-LWW (Del. Ch. December 31, 2025)

2025 Del. Ch. LEXIS 2076

Vice Chancellor Will

Outcome: Shulman was found to have breached his duty of loyalty in a conflicted Article 9 sale built on unauthorized "debt," and the preferred plaintiffs were awarded \$1,849,437.93 (plus interest), though their derivative claims were dismissed for lack of standing.

NEEM International CV and ALJ Holdings Ltd., derivatively on behalf of Pathway Genomics Corporation ("Pathway") and individually on behalf of themselves (collectively the "Plaintiffs"), sued Vadim Shulman ("Shulman") and others regarding the transfer of Pathway's intellectual property and the subsequent sale of Pathway's operating assets.

Founded in 2008, Pathway provided genetic testing services to consumers. Shulman participated in a series of preferred funding rounds from 2012 through 2015, ultimately becoming Pathway's largest outside investor, Chairman, President, and CEO. Later, Pathway issued a series of convertible promissory notes to Shulman, and Shulman made certain advances to the company.

In 2019, amidst Pathway's waning financial performance, Shulman resigned his positions and demanded that Pathway repay \$9.25 million of promissory notes and \$16 million of additional advances, totaling more than \$25 million. Subsequently, Pathway conducted a Uniform Commercial Code Article 9 sale of Pathway's operating assets to an entity wholly owned by Shulman, which had made a credit bid of \$25 million.

The Court ruled that the Plaintiffs could not assert their derivative claims concerning breach of fiduciary duty, fraudulent conveyance, and unjust enrichment because Pathway had not paid franchise taxes to the State of Delaware for numerous years and was therefore a voided entity.

Plaintiffs' direct claims included that Shulman breached his fiduciary duty by (i) failing to hold a stockholder vote to approve the transfer of Pathway's intellectual property; (ii) violating anti-dilution provisions in Pathway's charter through the issuance of the convertible promissory notes; and (iii) impairing preferred shareholders' liquidation preference rights under Pathway's charter through the sale of Pathway's operating assets.

The Court ruled that the Plaintiffs' first direct claim failed because the transfer did not concern "all or substantially all" of Pathway's assets, and therefore a stockholder vote was not required under Section 271(a) of the Delaware General Corporation Law. The Court ruled that the Plaintiffs' second direct claim failed because Shulman's promissory notes were never converted into equity and

consequently preferred stockholders did not incur any dilution. With respect to the third direct claim, the Court ruled in the Plaintiffs' favor. While Shulman had ostensibly resigned from Pathway's board, he remained a de facto director and was also a de facto controlling shareholder, while on both sides of the asset sale. Despite this conflict of interest, there was no evidence that the sale was subject to the board's review, that a reasonable market check had been conducted, or that the terms of the sale were subject to arm's-length bargaining.

In determining equitable restitution, the Court found that the true character of Shulman's purported debt was equity, given that repayment was contingent on Pathway's fortunes and that the promissory notes had not been authorized by the board and were therefore unenforceable. As such, Shulman's claims were subordinate to the claims of the preferred shareholders.

The Court rejected the Plaintiffs' expert's valuation of Pathway's assets, which was based on outdated Section 409A valuation reports and management projections that the Court deemed unreliable. Instead, the Court adopted Shulman's credit bid of \$25 million as the "most concrete evidence" of the value of Pathway's distributable assets, stating that Shulman "is now stuck with that number." As the \$25 million valuation was less than preferred shareholders' liquidation preference, the Court awarded Plaintiffs their pro rata share of \$25 million, or \$1.8 million, as well as pre- and post-judgment interest.

5. Arxada Holdings NA Inc. v. Michael Harvey, et al.

C.A. No. 2024-0771-JTL (Del. Ch. January 28, 2026)

2026 Del. Ch. LEXIS 79

Vice Chancellor Laster

Outcome: The Court ruled for Arxada awarding damages in excess of \$25 million related to lost profits and avoided costs from misappropriated trade secrets. In addition, exemplary damages were awarded doubling the \$25 million award and other legal remedies to protect Arxada's trade secrets.

In December 2021, Arxada Holdings NA Inc. ("Arxada"), a specialty chemicals company, acquired Enviro Tech Chemical Services, Inc. ("Enviro"), a manufacturer of microbial control products, for \$450 million. Pursuant to the stock purchase agreement, Enviro's founder Michael Harvey ("Harvey") and two of his nephews would be employed by Arxada, with Harvey restricted from competing with Arxada or soliciting its customers or suppliers for a period of five years.

Following a series of disagreements over operational decisions, Arxada decided to terminate Harvey's employment in August 2022, at which time Harvey and his nephews allegedly absconded with

Arxada's chemical formulas and sales data, solicited certain of its customers, and started a competing business.

At trial, Arxada proved that Harvey and his nephews misappropriated trade secrets, breached or tortiously interfered with Harvey's restrictive covenants, and breached their fiduciary duties to Arxada.

In its post-trial opinion, the Court denied the nephews' motion to dismiss under Rule 12(b)(2). As California residents, the nephews challenged the Court's ability to exercise personal jurisdiction. Applying the conspiracy theory of jurisdiction, the Court found that the nephews satisfied the elements of the Istituto Bancario test.

The Court awarded Arxada compensatory damages of \$25.1 million, comprising (i) \$0.9 million of lost profits, as estimated by Defendants' expert, and (ii) \$24.2 million of costs that Defendants avoided by misappropriating the trade secrets, as estimated by Arxada's expert. The Court also considered an alternative measure of damages offered by Arxada's expert, which was based on the royalty that Defendants reasonably would have paid to license Arxada's trade secrets. The Court found that, while many of the expert's assumptions were conservative, they were nevertheless highly subjective, and there was no need to resort to the royalty method given the more reliable estimates of lost profits and avoided costs.

Additionally, the Court awarded Arxada exemplary damages of \$25.1 million, thereby doubling total damages; enjoined Harvey from working for or with Arxada competitors for five years; and enjoined Harvey's nephews from using any materials that they or Harvey had taken from Arxada for one year.

"A court can extend a restrictive covenant to replace the period during which a party was in breach." *Id.* at *567.

6. *Caring People Holdco, LLC, et al. v. Shalom (Steven) East and Jennifer Devine*

C.A. No. 2024-0125-SEM (Del. Ch. March 10, 2026)

2026 Del. Ch. LEXIS 126

Senior Magistrate Molina

Outcome: The Court ruled for the Plaintiffs finding that the Defendants had breached covenants not to compete / solicit employees but significantly reduced the amount of damages asserted while awarding 1/3 of attorneys' fees to the Plaintiffs. In addition, the Court gave a partial judgment to the Defendants regarding failed tax distributions.

The plaintiffs, Caring People Holdco, LLC and related entities (collectively “Caring People” or the “Plaintiffs”), filed suit against former CEO Steven East (“East”) and former sales representative Jennifer Devine (collectively the “Defendants”) for breach of contract and breach of fiduciary duties (among other claims) by forming a competing business and soliciting Caring People employees. East had various counterclaims relating to tax distributions and unpaid invoices from one of his entities. Plaintiffs’ expert asserted lost profit damages of \$12.4 million related to significant declines in revenue in both New Jersey and New York markets for Caring People. The Defendants did not offer a rebuttal expert.

“While on his way out the door, the founder built a new team and ramped that team up to compete with his prior business. Although one can appreciate his entrepreneurial spirit, the founder breached his contractual obligations and is, herein, held accountable.” *Id.* at *1-2.

After trial, the Court awarded damages based on the “sound” model of the Plaintiffs’ expert but significantly reduced damages to exclude the New Jersey market and shortened the damages period analyzed due to Plaintiffs’ failure to prove liability / causation at trial related to certain markets. The opinion awarded \$4.3 million in damages to Caring People, representing half of the New York lost profits. In addition, the Court ruled that 1/3 of attorneys’ fees and expenses incurred by Caring People to be paid by Defendants as well as prejudgment interest on a quarterly compounding basis. In addition, the Court reinstated certain restrictive covenants on the Defendants.

Regarding East’s counterclaims, the Court awarded damages of approximately \$355k related to tax distribution related damages but denied all other counterclaims.

7. *Douglas M. Chertok, et al., v. OnSolve, LLC, et al.*

C.A. No. 2020-0417-PAF (Del. Ch. April 21, 2026 - corrected)

2026 Del. Ch. LEXIS 182

Vice Chancellor Fioravanti

Outcome: The Court ruled the Defendant breached the certificate of incorporation by requiring additional agreements to receive the merger consideration. While the Court acknowledged the delays in the process caused by the Plaintiffs, prejudgment interest was awarded as a matter of right, with a lower/non-compounded rate selected.

SDTC Advisors LLC and Douglas Chertok (collectively, the “Plaintiffs”) were investors in SWN Communications Inc. (“SWN”) prior to SWN being acquired in 2017 for \$250 million in cash. The Plaintiffs perfected their appraisal rights but subsequently withdrew their appraisal demands. Plaintiffs did not receive the merger consideration in 2017 and did not contact the owners of SWN until 2020 when they demanded the consideration and unpaid dividends plus accrued interest. STDC was dismissed as a party for lack of standing, leaving Plaintiff Chertok.

After a one-day trial, the Court ruled that SWN’s requirement to execute joinder agreements to receive the merger consideration was a breach of the certificate of incorporation, ruling in favor of Chertok. The Court rejected Chertok’s argument that he was entitled to more than the Merger Consideration as such a ruling would have been incompatible with the merger deal structure and Delaware law.

“The Stockholder’s damages are no greater than his share of the merger consideration as calculated under the terms of the merger agreement.” *Id.* at *2.

Regarding prejudgment interest, Chertok argued for a rate of 8.625% compounded monthly from July 2017 (when the appraisal rights were withdrawn). The Defendant argued the Court should deny prejudgment interest under the premise that the delay in funds was due to the Plaintiff’s failure to perform “ordinary diligence.”

The Court determined that prejudgment interest is awarded as a matter of right and not by discretion as recently emphasized by the Delaware Supreme Court. Chertok prevailed on the breach of contract claim, and, therefore, was entitled to prejudgment interest. Given the delays caused by the Plaintiffs’ actions (or inactions), the Court awarded prejudgment interest at a rate of 6.75% on a simple interest basis.

8. *Golden Rule Financial Corporation v. Shareholder Representative Services, LLC*

C.A. No. 2022-0065-PAF (Del. Ch. April 30, 2026)

2026 Del. Ch. LEXIS 201

Vice Chancellor Fioravanti

Outcome: The Court ruled USHEALTH in breach of contract via its representations and warranties concerning application of ASC 606 and awarded damages of \$38.3 million, rejecting an argument that the buyers’ due diligence should have found the ASC 606 issue.

Golden Rule Financial Corporation (“Golden Rule” or the “Plaintiff”) was the buyer in a merger whereby it acquired, USHEALTH Group, Inc. (“USHEALTH”) for a base purchase price of \$750 million. Plaintiff alleged that Shareholder Representative Services LLC (“SRS” or the “Defendant”) breached its representations and warranties resulting in a \$38.3 million indemnifiable loss. SRS is the representative agent of the former stockholders and award holders of USHEALTH.

The dispute arose from the recognition of revenue under Accounting Standards Update No. 2014-09, which introduced Accounting Standards Codification Topic 606 – “Revenue from Contracts with Customers” (“ASC 606”) as promulgated by the Financial Accounting Standards Board (“FASB”) at an operating subsidiary of USHEALTH. During the due diligence process and up through the closing of the acquisition, Golden Rule developed an understanding that USHEALTH’s adoption of ASC 606 was immaterial based on documentation and representations made by USHEALTH or its employees.

The merger agreement contained a provision regarding the “Tangible Net Worth” that was driven in part by the adoption of ASC 606. Tangible Net Worth was “designed to capture or reflect the financial condition and tangible net assets of USHEALTH’s unregulated entities.” Based on the financials presented at closing, the Tangible Net Worth was \$48.7 million, which was below the contractually set \$52 million minimum. The sellers in the transaction represented it followed generally accepted accounting principles (GAAP).

Post-closing, the buyer discovered that USHEALTH had erred in its revenue recognition under ASC 606. When correctly applied, the Tangible Net Worth calculation changed materially resulting in a consideration adjustment of \$38.3 million to be paid by Golden Rule to the sellers.

After finding that the Plaintiff’s claims could legally proceed, the Court rejected the Defendant’s argument that Golden Rule’s due diligence should have caught the erroneous application of ASC 606, referring to the argument as “weak” and blurring “the line between deal-related financial due diligence and an audit.” In the end, the Court found that the Defendant breached the contract via its representations and warranties and awarded \$38.3 million in damages to Golden Rule related to the increased payment from the Tangible Net Worth calculation.

9. *OptimisCorp v. William Atkins, et al.*

C.A. No. 2020-0183-MTZ (Del. Ch. May 11, 2026)

2026 Del.Ch. LEXIS 215

Vice Chancellor Zurn

Outcome: The Court ruled Optimis failed to prove a sufficient and nonspeculative causal link between the actions of the Defendants and the alleged losses and awarded only nominal damages of \$1.00. However, the Court awarded costs incurred by the Plaintiff to be paid by the Defendants.

OptimisCorp (“Optimis” or the “Plaintiff”), for the relevant period, operated as a software developer and acquired, managed, and operated physical therapy clinics around the U.S., purchasing such businesses for issued stock (i.e., no cash). The Defendants in the matter were former directors and executives that had already been found liable for breaching their fiduciary duties via withholding a derivative arbitration award of \$6.8 million that belonged to Optimis. The opinion issued on May 11, 2026 related to damages from the breach.

Optimis claimed damages in excess of \$12 million related to the nine-month delay of receiving the arbitration award. Optimis’ expert relied on revenue multiples when he opined that the going-concern value of certain physical therapy clinics that closed in 2020 resulted in lost business value ranging from \$7.6 million to \$10.1 million. The underlying theory of the asserted damages was that the clinics would have remained open “but for” withholding the arbitration award. Optimis’ expert also asserted damages totaling \$2.3 million related to debt capital raises they argued were necessary as a result of the funds from the arbitration award being unavailable for a nine-month period.

The Defendants’ rebuttal expert argued that the closed clinics were operating at similar, if not better, metrics after the breach of fiduciary duty, indicating the delay in receipt of the arbitration award did not impact the operations at those facilities. Further, the Defendants’ expert argued that the debt-related damages were inappropriate as the amount borrowed by the company exceeded the indicated cash needs of the company during the relevant period.

“Optimis’s expert does not mention COVID-19 at all: a remarkable omission for businesses at the epicenter of North America’s COVID-19 outbreak that are reliant on in-person visitors, and that closed within weeks of cases being reported.” *Id.* at *31.

The Court ultimately ruled that Optimis failed to prove a sufficient and nonspeculative causal link between the actions of the Defendants and the alleged losses. In particular, the Court noted that the outbreak of the COVID-19 pandemic that occurred during the damages period was not even mentioned by the Plaintiff’s expert, which the Court deemed to be a “remarkable omission.” Given the Court’s opinion that Optimis failed to prove the causal link, the Court ruled for nominal damages of \$1.00 and awarded costs incurred by the Plaintiff to be paid by the Defendants.

10. *William J. Brown v. Matterport, Inc. and Matterport Operating, LLC*

C.A. No. 2021-0595-LWW (Del. Ch. June 1, 2026, Original Decision, May 28, 2024)

2026 Del. Ch. LEXIS 241

Vice Chancellor Will

Outcome: The Court, after remand from the Delaware Supreme Court, recalculated post-judgment interest based on a floating rate equal to 5% over the Federal Reserve discount rate.

In May 2024, Vice Chancellor Will issued an opinion awarding \$79 million in damages to the Plaintiff relating to a large block of stock in Matterport, Inc. (“Matterport”) that was inappropriately subjected to a lock-up period. In April 2025, the Delaware Supreme Court subsequently narrowly remanded the matter in terms of calculation of post-judgment interest tied to the July 1, 2024 order. In its order, the supreme court noted that the Delaware Court of Chancery was “free to exercise its discretion as to the rate of interest and whether and to what extent post-judgment interest is to be compounded.”

The Plaintiff argued for a 10.5% rate based on the Federal Discount Rate in effect on July 1, 2024 plus 5.0%. The Defendants argued for a 5.25% rate that was used for prejudgment interest in the prior decision.

The Court ruled that neither rate offered by the parties was appropriate. Instead, the Court concluded the appropriate post-judgment discount rate to be “a floating rate equal to 5% over the Federal Reserve discount rate, fluctuating therewith, compounded quarterly.”

II. Delaware Supreme Court Decisions In Detail

1. *Johnson & Johnson, et al. (Appellants) v. Fortis Advisors LLC (Appellee)*

Chancery Court Opinion Date: 9/4/2024

Supreme Court Opinion Date: 1/12/2026

2026 Del. LEXIS 10

Chief Justice Seitz and Justices Valihura, Traynor, Legrow, and Griffiths

Outcome: In reviewing the Court's 2024 opinion awarding damages of approximately \$1 billion, the Delaware Supreme Court remanded, in part, the Court's ruling regarding certain damages.

In April 2019, Johnson & Johnson ("J&J"), a global healthcare company, acquired Auris Health, Inc. ("Auris"), a medical robotics company. Pursuant to the merger agreement, Auris shareholders received \$3.4 billion of cash and up to \$2.35 billion of earnout payments that were contingent on the achievement of certain regulatory milestones for robotic-assisted surgical devices ("RASDs").

\$100 million of the earnout payments were contingent on Monarch, Auris's lung-robotics platform, obtaining 510(k) clearance from the FDA for robotically driven lung tissue ablation using J&J's NeuWave FLEX catheter. During the merger negotiations, J&J characterized this regulatory approval as being highly certain, without apprising Auris of the recent death of a participant in a clinical study concerning the catheter. Notably, Auris did not disclaim reliance on extra-contractual statements in the merger agreement.

With respect to all of the earnout payments, J&J agreed to use commercially reasonable efforts to achieve the associated regulatory milestones. In August 2019, the FDA informed J&J that RASDs such as Auris's iPlatform Surgical System ("iPlatform") would no longer be eligible for 510(k) clearance and would instead be subject to de novo classification, which requires more extensive data and a longer review period. In April 2020, J&J disclosed that it had completely written down the value of achieving the regulatory milestones, thereby allowing J&J to release reserves associated with the earnout payments and record a gain of \$984 million.

In October 2020, Fortis Advisors LLC ("Fortis"), acting as Auris shareholders' representative, filed suit in the Court of Chancery of the State of Delaware ("Chancery Court"), alleging that J&J had (i) breached the implied covenant of good faith and fair dealing in its response to the FDA's foreclosure of 510(k) clearance for iPlatform; (ii) breached the merger agreement by failing to use commercially reasonable efforts to achieve the regulatory milestones; and (iii) fraudulently induced Auris's sale by making false promises concerning Monarch during negotiations.

Following a trial in 2024, the Chancery Court largely ruled in Fortis's favor and awarded more than \$1 billion of damages, comprising \$900 million in contract damages, \$61 million in fraud damages, and \$42 million in pre-judgment interest. Contract damages were equal to the value of the missed iPlatform milestones multiplied by the parties' estimated probability of achieving those milestones at the time of the merger. Similarly, fraud damages were equal to the expected value of achieving the lung tissue ablation milestone.

In its appellate decision, the Supreme Court of the State of Delaware ("Supreme Court") held that "there is no genuine contractual gap in the Merger Agreement for the implied covenant to fill." Therefore, in the Supreme Court's view, the Chancery Court erred by effectively rewriting the merger agreement's earnout provisions to encompass FDA pathways ("Milestone 1") other than the 510(k) pathway that the parties expressly identified in the contract. Damages related to Milestone 1 included a \$400 million earnout payment before adjusting for the probability of success.

The Supreme Court affirmed the Chancery Court's rulings that J&J had failed to use commercially reasonable efforts to achieve subsequent regulatory milestones and that J&J fraudulently induced Auris's sale in relation to Monarch.

2. Patterson (Appellant) v. Cannon (Appellee)

Chancery Court Opinion Date: 10/7/2025

V.C. Fioravanti

Delaware Supreme Court Opinion Date: June 29, 2026

2026 Del. LEXIS 237

Chief Justice Seitz and Justices Traynor, Griffith and Judge Wallace

Topic(s): Valuation of Warrants, Sale of a Large Block of Stock

Outcome: The Supreme Court affirmed that a warrant was valid and enforceable for 1% of Romeo Systems stock at exercise but reversed the Court of Chancery's holding that no security interest attached, vacating an approximate \$27.4 million conversion judgment.

In February 2021, Lady Benjamin PD Cannon ("Cannon") initiated litigation against Romeo Systems, Inc. (the "Company"), Romeo Power, Inc., and Michael Patterson ("Patterson"), following Romeo Systems' December 2020 de-SPAC merger with RMG Acquisition Corp. Cannon claimed ownership of a warrant exercisable for 1% of the Company's fully-diluted equity at the time of exercise, alleging that Patterson wrongfully converted the warrant for his own benefit following a dispute over a personal loan.

In 2015, Patterson (the then CEO) and Cannon (a consultant), negotiated a settlement resolving a payment dispute over services provided to the Company by Cannon. As part of the settlement, Patterson signed a warrant agreement that Cannon had modified to represent 1% of shares at the time of exercise rather than the issuance, as described in the initial draft of the agreement. Patterson admitted that he did not review the agreement for any changes prior to signing.

Years later, Cannon pledged the warrant as collateral for a \$20,000 personal loan from Patterson, then defaulted on the loan. Patterson took possession of the warrant and exercised it for 1,000,000 shares. The Chancery Court held that the pledge agreement incorrectly identified the collateral as a fixed-share warrant rather than a percentage-based one and ruled that no security interest was attached to the actual warrant, rendering Patterson's seizure of it an act of conversion.

“Inaccuracies, even technical or typographic ones, do not defeat the sufficiency of a description when the description as a whole enables a third party to identify the collateral.” *Id.* at *24.

On appeal, the Delaware Supreme Court affirmed the warrant's validity. Per the Court, Patterson signed it twice, its 1%-at-exercise terms were plain on the face of the document, and his failure to read it was no defense. However, the Court reversed the lower court's security interest decision, holding instead that the description reasonably identified Cannon's only Romeo Systems warrant by type, quantity, issuer, holder, and underlying security, despite the share-count inaccuracy. “Although the description mischaracterized the warrant's exercise rights, that mischaracterization did not prevent reasonable identification or defeat the description's sufficiency under Section 9-108. Accordingly, we conclude that a security interest attached to the Warrant under Section 9-203(b).”