IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CARE ONE, LLC ADVANCEMENT LITIGATION	Consolidated C.A. No. 2025-1286-NAC

POST-TRIAL MEMORANDUM OPINION

Date Submitted: August 28, 2026
Date Decided: September 24, 2026

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COOK, V.C.

A lawyer worked for a manager-managed limited liability company for over twenty years, serving as its general counsel for more than a decade. Throughout his tenure, the general counsel exercised broad authority over legal matters at the company. The company's manager relied on the general counsel as his top in-house legal advisor.

The company's operating agreement provided advancement of legal fees and expenses to the company's officers. In 2010, the manager learned that a former officer being sued by the company had claimed advancement. The manager became enraged. He instructed the general counsel to eliminate the risk that anyone other than the manager would ever be able to demand advancement again.

Although the general counsel acted to amend the operating agreement's advancement provisions, he knew that only solved part of the problem: the vested advancement rights of existing officers could not be extinguished by amendment alone. And the general counsel knew this allowed him to retain *his* right to advancement, contrary to his client's instructions. But the general counsel did not disclose any of this to the manager. Nor did he advise the manager that there was a straightforward means of accomplishing the manager's instructions via waivers. Instead, the manager believed the risk of future advancement demands had been eliminated through the amendment to the operating agreement and no further action was needed.

Years later, the company terminated the general counsel and filed an action against him. The former general counsel then filed this action in Delaware, seeking advancement of legal fees and expenses. In doing so, he asks the Court to enforce the very right he was instructed by his client to eliminate more than a decade prior.

The Senior Magistrate ruled on summary judgment that the former general counsel was entitled to advancement. The company took exception as to two equitable defenses: equitable estoppel and unclean hands.

I granted the exceptions because they raised genuine disputes of material fact and held trial on the equitable defenses. Having considered the trial record, including witness testimony from both the former general counsel and manager, I conclude the company has proved the former general counsel's effort to obtain a Court order requiring payment of advancement is barred by unclean hands.

I. FACTUAL BACKGROUND

The facts are drawn from the post-trial record. Having evaluated the credibility of witnesses and weighed the evidence, the Court makes the following findings.[1]

A. Straus Forms Care One

Daniel E. Straus ("Straus") formed Care One, LLC ("Care One" or the "Company") in 1998 to operate nursing-home and assisted-living facilities across the northeastern U.S.[2] Following Care One's formation, Straus directed attorneys at

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[1] Citations in the form "Tr. ([Witness]) at __" refer to witness testimony from the trial transcript. Citations in the form "[Witness] Dep. at __" refer to witness testimony from a deposition transcript. Citations in the form "JX### at __" refer to joint trial exhibits. Citations in the form "PTO § __ ¶ __" refer to the pre-trial order. Citations in the form "Argument Tr. at __" refer to the post-trial argument.

[2] Tr. (Straus) at 5–6; PTO § II.A ¶ 2.

Paul, Weiss, Rifkind, Wharton & Garrison LLP to prepare an operating agreement for Care One providing that he be "protected under the law" to the extent possible given his status as "manager and the largest shareholder" of the company.[3]

Straus executed the initial Limited Liability Company Agreement of Care One on April 1, 1999 (the "1999 LLC Agreement").[4] The 1999 LLC Agreement appointed Straus as Manager and provided that "[t]he management, operation and control of the business and affairs of [Care One] . . . be vested exclusively in the Manager."[5] While Straus acknowledged this was the governing agreement for one of his "primary entities," he did not read it before or after execution because he relied on the "lawyers [he] trusted" at Paul, Weiss.[6] Straus is an attorney, but only practiced for a limited time after graduating from law school in 1981.[7]

The 1999 LLC Agreement also provided that Care One would indemnify and provide advancement of legal expenses for certain indemnitees, chiefly Care One's officers, the Manager, and certain affiliates.[8] In relevant part, the 1999 LLC

[3] Tr. (Straus) at 43.

[4] JX001; PTO § II.B ¶ 1.

[5] JX001 at 15 §§ 6.1, 6.3(a).

[6] Tr. (Straus) at 7–8, 71.

[7] Tr. (Straus) at 5.

[8] JX001 at 20–21 §§ 7.2(a)–(b). The 1999 LLC Agreement defines each of the following as an "Indemnitee" under the agreement: "each of the officers of [Care One] (including Members when acting in the capacity as an officer of [Care One]), the Manager (including Members when acting in the capacity as Manager), their Affiliates and their respective

Agreement included the following provision in Section 7.2(b): "The Company shall pay expenses reasonably incurred by any Indemnitee in defending any action, suit or proceeding . . . in advance of the final disposition of such action, suit or proceeding[.]"[9]

Section 7.2(c) provided that "[t]he rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Section 7.2 shall continue as to an Indemnitee who has ceased to be a Member, Manager or officer (or other person indemnified hereunder)[.]"[10] Section 7.2(d) provided the following:

> The provisions of this Section 7.2 shall be a contract between the Company, on the one hand, and each Indemnitee who served at any time while this Section 7.2 is in effect in any capacity entitling such Indemnitee to indemnification hereunder, on the other hand, pursuant to which the Company and each such Indemnitee intend to be legally bound. No repeal or modification of this Section 7.2 shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any proceeding theretofore or thereafter brought or threatened based in whole or in part upon such state of facts.[11]

B. Lugo Joins Care One

Androsky Lugo ("Lugo") joined Care One as Associate General Counsel in June 1999.[12] Lugo had "tremendous responsibility" over Care One's legal affairs from the

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officer, directors, employees, partners, members, shareholders, successors and assigns[.]" *Id.* § 7.2(a).

[9] *Id.* § 7.2(b).

[10] *Id.* § 7.2(c).

[11] *Id.* § 7.2(d).

[12] JX070 at 1 ¶ 4.

time of his hiring.[13] These responsibilities increased following the departure of Care One's previous General Counsel in 2003.[14] Although Care One did not name a replacement immediately, Lugo functionally assumed many of the General Counsel's responsibilities around this time.[15]

C. Straus Executes the Amended 2006 LLC Agreement

In 2006, Straus executed an amended and restated operating agreement (the "2006 LLC Agreement"), which replaced the 1999 LLC Agreement in full and served to increase Straus's indirect majority ownership in Care One, leaving him as the controlling member.[16] Lugo was not involved in this process—Straus retained Morris Bienenfeld, an outside lawyer, to prepare the 2006 LLC Agreement.[17] The indemnification and advancement provisions in the 2006 LLC Agreement were not materially different from those provisions in the 1999 LLC Agreement.[18]

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[13] Tr. (Lugo) at 190; JX070 at 1–2 ¶ 5.

[14] JX070 at 2–3 ¶¶ 7–8.

[15] Tr. (Lugo) at 190–93, 220.

[16] *Id.* at 76–77; JX064 at 3; *see* JX002 at 33.

[17] Tr. (Lugo) at 77–79.

[18] *See* JX002 at 13–14 § 7.2.

D. Lugo is Promoted to General Counsel

Straus formally promoted Lugo to General Counsel of Care One in 2009.[19] As General Counsel, Lugo had broad authority over legal affairs at Care One. To Straus, "Lugo was responsible for anything and everything related to legal matters at the company and its affiliates[,]" and Straus "relied entirely upon [Lugo]."[20] Lugo agreed that "during the entirety of the time that [he] had the title general counsel, [he] in fact had ultimate legal responsibility for the company's legal matters[.]"[21]

In being named General Counsel of Care One, Lugo became an officer and thus became entitled to indemnification and advancement under Section 7.2 of the 2006 LLC Agreement.[22]

E. Care One's 2009 Officer Investigation

Care One began investigating one of its senior executives in 2009.[23] The investigation, conducted by Lugo, involved allegations of financial impropriety.[24] Care One terminated the executive following the investigation.

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[19] PTO § II.A ¶ 1; Tr. (Straus) at 8. Around this time, Straus also gave Lugo the title of Executive Vice President because Straus wanted to "enhance [Lugo's] authority and elevate the position of general counsel" and because "Lugo was beginning to take on managerial and operational duties" at Care One. *Id.* at 9.

[20] Tr. (Straus) at 9.

[21] Tr. (Lugo) at 195.

[22] *See* Dkt. 46 ("Final Report") at 82. Care One did not take exception to this aspect of the Final Report. *See* Dkt. 40 at 23.

[23] Tr. (Straus) at 10.

[24] Tr. (Lugo) at 168–171.

In March 2009, on Lugo's recommendation, Care One brought an action against the former executive in the Superior Court of New Jersey.[25] Responsibility for oversight of the litigation—including in defense of counterclaims—fell to Lugo.[26] Lugo periodically provided Straus with "[v]ery high level" updates on the litigation.[27]

Early in 2010, in connection with the former executive's discovery request for documents including Care One's operating agreement, Lugo became aware that the former executive might seek advancement and indemnification under the Care One operating agreement.[28] Lugo provided an update to Straus on this possibility.[29] Lugo described the update as "informational[,]"[30] and Straus described the explanation as "high level" and said that Lugo "assured [him]" the advancement issue "would be taken care of."[31]

F. Initial Steps Toward an Amendment to the Operating Agreement

As the litigation progressed, Bienenfeld, Care One's outside transactional counsel, sent Straus an email on March 4, 2010.[32] Attached to the email was a draft

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[25] Lugo Dep. at 65; JX200.

[26] Tr. (Straus) at 11; Tr. (Lugo) at 174; Lugo Dep. at 81.

[27] Tr. (Straus) at 12.

[28] Lugo Dep. at 87–88.

[29] *Id.*

[30] *Id.*

[31] Tr. (Straus) at 19–20.

[32] JX011.

amendment to the Care One operating agreement, together with a marked copy showing changes from the 2006 LLC Agreement.[33] The proposed changes limited the indemnification and advancement provisions to cover the Manager of Care One only (*i.e.*, Straus) and gave the Manager sole discretion to indemnify others within the Company.[34] In his email to Straus, Bienenfeld asked Straus to call him to discuss "some issues" that Bienenfeld thought they should talk about.[35] Straus did not recall looking at the draft amendment or speaking to Bienenfeld about it.[36]

About two weeks later, Straus's executive assistant forwarded the same email from Bienenfeld with the draft amendment attachment to Straus again.[37] The following day, Straus forwarded that email to Lugo, asking Lugo to "[p]lease discuss this with [him]."[38] "Will do" was Lugo's response shortly thereafter.[39]

Straus did not recall speaking with Lugo about the email following this exchange.[40] In contrast, Lugo says the two spoke sometime in the following days. In

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[33] *Id.*

[34] *Id.* at 2–5.

[35] *Id.* at 1.

[36] Tr. (Straus) at 49. Straus did concede that he may have prompted Bienenfeld to prepare the initial draft amendment but does not recall details of that discussion. Tr. (Straus) at 46–49.

[37] JX012 at 1.

[38] *Id.*

[39] *Id.*

[40] Tr. (Straus) at 19.

Lugo's telling, Straus told Lugo that Bienenfeld had advised Straus that amending the operating agreement to eliminate the advancement provisions would not work to address the advancement demand because those interests had already vested.[41] Additionally, Lugo testified that Straus asked Lugo during this conversation to reach out to Bienenfeld to "confirm [Bienenfeld's] thoughts and analysis[]" as they pertained to the advancement litigation.[42]

The next week, Lugo emailed Bienenfeld directly to ask if he was preparing a draft of the amended operating agreement.[43] Bienenfeld replied with an attachment of the draft amended operating agreement that he had previously sent to Straus.[44] Lugo testified that he then spoke with Bienenfeld, and that Bienenfeld confirmed to him that once "these advancement rights vest and become a contract, they [could not] be unilaterally terminated or extinguished by amendment."[45] Lugo testified that he reported Bienenfeld's opinion back to Straus, and that an "upset" Straus suggested Lugo reach out to another Care One outside attorney, Andrew Frackman, at O'Melveny & Myers LLP.[46]

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[41] Tr. (Lugo) at 91.

[42] *Id.*

[43] JX014.

[44] *Id.*

[45] Tr. (Lugo) at 93.

[46] *Id.* at 100–01. For his part, sixteen years later Straus does not recall directing Lugo to contact Frackman. Straus Dep. at 21–22. Lugo suggested at trial that Lugo had not previously worked with Frackman. Tr. (Lugo) at 100. But, as with many aspects of Lugo's

Lugo emailed Frackman later that week.[47] Soon thereafter, Lugo spoke with Frackman to understand the "effect of amending [Care One's] operating agreement" on the former executive's claim for advancement.[48] Frackman also emailed Lugo potential arguments that Care One could make in response to an advancement claim by the former executive.[49] Lugo did not update Straus on the substance of his conversation with Frackman; Lugo also does not recall Straus speaking with Frackman.[50]

G. The Former Executive Demands Advancement

In late June 2010, Care One produced the 2006 LLC Agreement to the former executive in response to long-pending document requests in the New Jersey litigation.[51] Days later, on June 29, the former executive's counsel called Care One's

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testimony, this is dubious. For example, in a contemporaneous email to another outside lawyer, dated April 6, 2010, Lugo described Frackman as "our corporate attorney that is involved in a number of our matters." JX022 at 1; *see also* Straus. Dep. at 21.

[47] JX019.

[48] JX022; JX021; Tr. (Lugo) at 104.

[49] *See* JX018 at 1–2.

[50] Tr. (Lugo) at 221. The boundaries of Straus's understanding of the advancement issue in the spring of 2010 are fuzzy. But the record shows Lugo leading discussions with Bienenfeld and Frackman focused on dealing with the former executive's advancement rights and whether an amendment would work to extinguish them. To the extent Straus was aware of the substance of these discussions in the spring of 2010, the record suggests that awareness would have been limited to whether an amendment to the operating agreement would eliminate the former executive's advancement rights in the context of the pending lawsuit by Care One against the former executive.

[51] JX027 at 7 ¶ 26.

New Jersey outside counsel at Pashman Stein, P.C. to make an oral request for advancement.[52] The next day, the former executive filed a counterclaim in one of the pending New Jersey lawsuits for indemnification and advancement under the 2006 LLC Agreement.[53] On July 6, 2010, the former executive made a written demand for advancement, which Care One refused.[54] And on July 12, the former executive filed an advancement action in Delaware.[55]

Lugo informed Straus that the former executive had demanded advancement of his attorneys' fees from Care One. At trial, Straus said that upon hearing the news, he "went off[,]" "was crazed," and described it as "a five-alarm fire" for him.[56] Straus testified that he "couldn't believe" that a former executive could "[steal] from the company" and then "turn[] around and [] ask[] for his legal fees to be paid by the company despite his bad actor activities."[57] Lugo admitted that Straus was outraged by the former executive's ability to demand advancement, describing Straus as "angry[]" and "[o]ut of control[]" after he learned of the demand in July 2010.[58]

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[52] JX024.

[53] JX035 at 7–19 .

[54] JX024; JX027 at 7 ¶ 29.

[55] JX027.

[56] Tr. (Straus) at 21.

[57] *Id.*

[58] Lugo Dep. at 168–69. Lugo testified at his deposition that Straus became infuriated after the former executive demanded advancement. *Id.* At trial less than three weeks later, Lugo sought to change his story, claiming that Straus's angry reaction actually came months

H. Straus Directs Lugo to Eliminate Advancement

Responding to the news of the advancement demand, Straus gave Lugo instructions:

> I remember the conversation and I – I would say there were two action items. I gave him a very, very clear directive to take care of any of those claims regarding legal fees, because I didn't understand what they were in the context of the [] litigation. And then, separately, I said to him I want you to do whatever you need to do to make sure that this – "this" being anybody claiming against the company for legal fees, in particular when there's an instance of impropriety – and to make sure, like, it never happens again.[59]

At trial, Lugo confirmed his understanding that "Mr. Straus's request was to eliminate advancement and indemnification for everybody but [Straus], including existing officers[.]"[60] Lugo also knew at this time that he and six or seven other

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earlier when the former executive disclosed an intent to seek advancement through discovery responses. Tr. (Lugo) at 97. Ultimately, the timing does not matter—what matters is Lugo knew the importance of the issue to Straus. Yet, Lugo's repeated contortions as to his testimony over the course of this litigation did not enhance my view of his credibility.

[59] Tr. (Straus) at 22. In his post-trial brief, Lugo sought to blunt his own impeachment by pointing out that, at trial, Straus recalled some conversations from the relevant time but not others. *See* Plaintiff's Post-Trial Br. at 6–7. Yet, having observed both witnesses, I found Straus to be significantly more credible than Lugo. It is true that Straus did not recall mundane conversations from sixteen years prior. Instead, his recollection was generally limited to significant or emotionally charged conversations. *See* Tr. (Straus) at 24. But, frankly, recalling important, emotionally charged conversations over a decade later seems to comport more with the limitations of human memory than Lugo's testimony at trial that he recalled favorable details of mundane conversations too. Coupled with Care One's impressive impeachment of Lugo at trial and Lugo's ever-shifting fact testimony, I do not find Lugo's self-serving testimony about these details so many years later credible.

[60] Tr. (Lugo) at 223–24: *see id.* at 242.

existing Care One officers had vested advancement rights under the operating agreement.[61]

I. Lugo Works to Resolve the Advancement Litigation and Amend the Operating Agreement

Following Straus's directive, Lugo spent the summer of 2010 pursuing the related goals of handling the advancement litigation and amending the Care One operating agreement to limit indemnification and advancement.

On the advancement demand, Lugo circulated a draft settlement term sheet later in July.[62] At the end of a lengthy series of terms, the draft provided that the former executive "waives, disclaims and forever forfeits any rights, title or interest to indemnification, exculpation or advancement of fees, costs or expenses in any capacity whatsoever in Care One, LLC."[63]

Lugo also sent emails to lawyers at two different Delaware law firms, asking them both "[i]f indemnification is a contract (7.2d), do we have a lack of consideration argument" against the former executive.[64] Lugo engaged one of these firms, Prickett,

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[61] *Id.* at 224–26.

[62] JX033. At his deposition, Lugo testified that "legal terms" in the draft term sheet, such as the waiver provision, would have come from him rather than Straus. Lugo Dep. at 345. At trial, Lugo changed his story and instead asserted that Straus had "insisted" on the waiver language being in the document. Tr. (Lugo) at 121. Once again, I did not find Lugo's changing story credible.

[63] JX033 at 2.

[64] JX030; JX031.

Jones & Elliott, P.A., to represent Care One in the Delaware advancement action.[65] Prickett Jones lawyers "made it clear" to Lugo that "once the rights had vested for designated officers (directors or employees), Care One could not eliminate those rights absent an explicit waiver agreement."[66]

Meanwhile, Lugo also coordinated with outside counsel to amend both the 2006 LLC Agreement and operating agreements for various Care One subsidiaries. Throughout the summer and early fall, he emailed Bienenfeld, Bruce Jameson (one of the Prickett Jones lawyers), and a Paul, Weiss lawyer with requests to this effect. The specificity of Lugo's requests in these emails confirms that Lugo understood Straus's goal of eliminating any right to officer or Manager advancement beyond Straus individually.[67]

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[65] *See* JX034; Lugo Dep. at 191–194.

[66] JX070 at 6 ¶ 18 ("Care One's former Delaware counsel made it clear and Straus was aware that once the rights had vested for designated officers (directors or employees), Care One could not eliminate those rights absent an explicit waiver agreement."). As discussed below, although Lugo concedes Delaware counsel made the need for a waiver clear to Lugo, Lugo's further assertion that Straus was aware does not survive contact with the rest of the trial evidence.

[67] *See* JX028 (July email from Lugo asking Bienenfeld to "amend all other [Care One] Del op [*sic*] agreements" in Bienenfeld's "shop" to reserve indemnification and advancement for the Manager's sole discretion); JX029 at 2 (July email from Lugo to a Paul, Weiss lawyer suggesting "[i]f Daniel as the Manager is permitted to amend [the operating agreements] I would do so to remove advancement and indemnification except for Daniel and anyone else in Daniel's sole discretion"); JX036 (August email from Lugo asking Bienenfeld to "[p]lease specifically provide [for certain Care One subsidiary operating agreements] that in no event would an indemnitee be indemnified (or advancement available) when the company ensues an action against the indemnity or stated differently, the only covered claims are those brought by third parties, not by the company or any of its affiliates, subsidiaries or related companies"); JX037 (September email from Lugo to Jameson stating "[he]'d like to move quickly to revise the operating agreement to ensure that advancement/indemnification is at

Coordination of these activities with outside counsel ran through Lugo. Straus occasionally checked in with Lugo at a high level on the amendment process[68] but was not in touch with the details.[69]

Lugo's activity—haphazard as it was—during the summer of 2010 centered on amending the operating agreement. But as he knew, an amendment would not eliminate advancement rights for anyone who already had them—including himself.[70] It would do nothing to address Straus's concern about *existing* officers retaining these rights.

Lugo knew waiver agreements were the key to extinguishing advancement rights for existing officers.[71] Yet there is no evidence in the record suggesting Lugo drafted waiver documentation or even attempted to discuss a waiver with any of the six or seven other officers who retained vested advancement rights in 2010.

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the sole discretion of Daniel E. Straus"); JX040 (November email from Lugo to Jameson regarding draft operating agreement amendment).

[68] *See, e.g.*, JX038 at 2 (Email from Straus to Lugo asking Lugo to "[p]lease call Morris on Mon and amend the CO LLC operating agreement re indemnification and advancement.").

[69] *See, e.g.*, *id.* at 1 (Email reply from Lugo to Straus stating that Lugo had instead asked "Bruce Jameson to revise" the operating agreement, with Straus responding "[w]ho is Bruce Jamison [*sic*]?" and Lugo answering "Bruce is Delaware counsel that navigated us through the advancement issues and appeared before Judge Strine in Delaware" on behalf of Care One). By 2010, Care One controlled assisted living or other healthcare properties in nine states, with approximately 3,500 licensed beds in New Jersey alone. *See* JX027 at 200. That Straus was not focused on the details of a potential draft amendment to the operating agreement or the Delaware advancement action is frankly understandable.

[70] Tr. (Lugo) at 256–58.

[71] *See* JX070 at 6 ¶ 18.

J. Lugo Presents the 2010 Amendment to Straus

On November 13, Lugo sent a follow-up email to Bienenfeld regarding the amendment to the 2006 LLC Agreement: "I would like to have it finalized as soon as possible. Advancement truly should be reserved for Daniel."[72] Bienenfeld sent a draft of the operating agreement amendment to Lugo the next day.[73]

In mid-December, Lugo brought Straus a hard copy version of the amendment to sign (the "2010 Amendment"). Straus testified that he relied on Lugo's summary of the amendment before signing and did not read it, saying Lugo "assured [him]" the amendment would make certain that "there would never be a situation where anybody other than [Straus] would seek . . . advancement" from Care One again.[74] Straus also testified that Lugo failed to mention the "risk that the 2010 amendment would not eliminate advancement rights for existing officers[,]" including Lugo.[75]

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[72] JX041.

[73] *Id. See also* JX040 (Prickett Jones unable to turn to potential amendment on requested timeframe).

[74] Tr. (Straus) at 33–34. Given the passage of time, I have questions as to whether Lugo went so far as to say all this when he delivered the 2010 Amendment to Straus. Maybe he did, or some variation thereof. Regardless, the preponderance of evidence shows that Lugo knew the document did not achieve Straus's instructions, Lugo did not inform Straus of this very serious flaw, and Straus believed the instruction to eliminate advancement for all except himself had been achieved through the 2010 Amendment.

[75] *Id.* at 34.

Waiver agreements also never came up between Straus and Lugo around the signing of the 2010 Amendment.[76]

The final executed version of the 2010 Amendment provided that Care One would only indemnify and provide advancement to "Daniel E. Straus, in his capacity as the Manager."[77] It made advancement for anyone else subject to Straus's sole discretion.[78] But Lugo's vested advancement right survived, as Lugo acknowledges he knew at the time.[79]

In subsequent years, Lugo had occasion to revisit the topic of advancement twice. In 2012, while considering a complaint against another former Care One officer, Lugo discussed a possible advancement claim by that former officer with

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[76] Tr. (Lugo) at 266. Lugo testified that waiver agreements never came up between Straus and him because "[Straus] already understood that vested rights [can] not [be] unilaterally [] terminated through amendment." Tr. (Lugo) at 246. But the preponderance of the evidence shows that Straus was not aware that waiver agreements were needed to extinguish the vested advancement rights for Lugo and the other officers. Straus credibly testified at trial that, had he known, he would have been open to paying "extra money" to obtain waivers and, if necessary, would have "terminate[d] existing officers" to achieve his objective. Tr. (Straus) at 37–38. Having considered the evidence, including Straus's testimony on the importance to him of eliminating future advancement risk, the absence of emails from Straus about waivers—as opposed to the several emails about the amendment—confirms Straus was not aware waivers were necessary.

[77] JX008 at 1–2 §§ 7.2(a)–(b). After the December 2010 signing, Straus decided that he wanted his brother, Moshael—a minority owner of Care One—to sign the operating agreement as well, to manage "family relationships[.]" Tr. (Straus) at 35–36. Lugo handled the execution process with Moshael, with this final version of the 2010 Amendment being fully executed in early 2011. *See* JX047; JX049. This decision refers to the "2010 Amendment" for simplicity.

[78] JX008 at 2–3 §§ 7.3(a)–(b).

[79] Tr. (Lugo) at 253.

Delaware counsel.[80] And in 2015, Lugo oversaw a further amendment to the Care One operating agreement (the "2015 Amendment").[81] The impetus for this amendment was to remove certain Care One minority members—which it accomplished. But the 2015 Amendment also included revisions to the indemnification section that removed references to discretionary advancement.[82] The parties devoted exceedingly little airtime in briefing or at trial or oral argument to these events from 2012 and 2015. Regardless, the preponderance of the evidence shows that in neither instance did Lugo raise to Straus the fact that Lugo's vested contractual entitlement to advancement had survived or that a waiver agreement was the means to extinguish it.

[80] In 2012, Lugo was involved in considering a lawsuit against another Care One officer for unrelated conduct. *See* JX053. In considering whether to file the lawsuit, Lugo claimed he had "concerns" that the officer "might invoke his right to advancement," and he reached out to counsel over email to consider the issue. Tr. (Lugo) at 138; *see* JX052, JX053, JX054. Lugo claimed Straus shared the same concern but conceded that Straus was not on any of the emails to counsel on the issue. Ultimately, the contemplated complaint was never filed and the officer did not make a formal claim for advancement. Tr. (Lugo) at 249–50. Other than Lugo's testimony, there is nothing in the record suggesting Straus was aware of a risk that the former officer might claim advancement from Care One in 2012. If anything, the preponderance of the evidence continues to show that if Straus had understood the continuing right to advancement and that it could be eliminated through waivers, he would have required they be pursued, with the result being either an exchange of consideration with the officers for the waivers or termination of the officers.

[81] *See* JX057; Tr. (Straus) 39–40; Tr. (Lugo) 251–54.

[82] JX057 at 13 § 7.3. The text of the 2010 Amendment had permitted Straus to provide indemnification and advancement to individuals at his discretion. *See* JX008 at 3 §§ 7.3(a)–(b).

K. Lugo's Termination

The Westchester County District Attorney's Office charged Lugo with several unrelated felonies in August 2021.[83] Following Lugo's arrest, Care One discovered that Lugo and Straus's daughter, Elizabeth Straus, had been engaged in a long-term romantic relationship, and accused them of embezzling millions of dollars from Care One.[84] Care One terminated Lugo in December 2021.[85]

L. This Litigation

In July 2025, Care One sued Lugo and Elizabeth under the Racketeer Influenced and Corrupt Organizations Act in the District of New Jersey (the "RICO Action").[86] Lugo demanded advancement in October 2025.[87] The parties agreed to forgo formal discovery for voluntary productions.[88] They exchanged voluntary productions in December 2025.[89]

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[83] JX061; Lugo Dep. at 328–34.

[84] Lugo Dep. at 314–17, 319; JX067 at 12 ¶ 27.

[85] PTO § II.A ¶ 1.

[86] JX065. Care One filed an amended complaint a few months later, alleging that Lugo and Elizabeth embezzled more than $30 million from Care One and its subsidiaries between 2015 and 2021, including $3 million for Lugo's personal credit card payments between 2020 and 2021 alone. JX067 at 5 ¶ 5, 16 ¶ 5.

[87] JX066.

[88] Dkt 12.

[89] Dkt. 99, Exs. 3–4.

On February 11, 2026, Senior Magistrate Molina issued an oral final report (the "Final Report") recommending that the Court grant summary judgment to Lugo and Elizabeth on their claim that they were contractually entitled to advancement under Care One's 2006 LLC Agreement.[90] On February 16, 2026, Care One filed its Notice of Exceptions to the Final Report.[91] Care One took exceptions only to the Senior Magistrate's rejection of its equitable defenses of equitable estoppel and unclean hands as they related to Lugo's advancement demand.[92]

On April 1, 2026, following briefing, this Court concluded upon a *de novo* review that the available evidence, "viewed in the light most favorable to Care One, *could* allow a rational trier of fact to conclude that Care One carried its substantive evidentiary burden to prove unclean hands or equitable estoppel."[93] This Court overruled the portion of the Final Report granting summary judgment on Care One's equitable defenses.[94]

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[90] *See* Final Report; Dkt. 32; Dkt. 59.

[91] Dkt. 36.

[92] *See* Dkt. 40. Care One did not appeal the Senior Magistrate's ruling that Lugo and Elizabeth are contractually entitled to advancement concerning the underlying litigation. *Id.* Because Care One does not assert equitable defenses against Elizabeth, her entitlement to advancement is the subject of a *Fitracks* order entered by this Court. *See* Dkt. 101.

[93] Order Regarding Exceptions at 7 (emphasis in original).

[94] *Id.* at 8.

Following the Court's order on exceptions, the parties proceeded to engage in limited additional voluntary productions and depositions of both Straus and Lugo.[95] On June 2, 2026, trial was held to resolve whether Lugo's claim for advancement from Care One is barred by equitable estoppel or unclean hands.[96] Following post-trial briefing,[97] and a ruling denying Lugo's motion to reopen the trial record,[98] post-trial oral argument took place on August 20, 2026.[99]

II. LEGAL ANALYSIS

Care One argues that Lugo's claim to enforce his contractual right to advancement is barred by unclean hands and equitable estoppel. The Court concludes Lugo's right to advancement is barred by unclean hands. The Court therefore does not reach Care One's arguments as to equitable estoppel.

A. Lugo's Claim for Advancement is Barred by Unclean Hands

"The unclean hands doctrine is aimed at providing courts of equity with a shield from the potentially entangling misdeeds of the litigants in any given case."[100] "The doctrine . . . is based on the long-established rule that if a party who seeks relief

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[95] *See* Dkt. 85.

[96] *See* Dkt. 89; Dkt. 93.

[97] Dkt. 92; Dkt. 125; Dkt. 130.

[98] Dkt. 113.

[99] Dkt. 142.

[100] *Nakahara v. NS 1991 Am. Tr.*, 718 A.2d 518, 522 (Del. Ch. 1998) ("*Nakahara II*").

in a Court of Equity 'has violated conscience or good faith or other equitable principles in his conduct, then the doors of the Court of Equity should be shut against him.'"[101]

"The Court invokes the doctrine when faced with a litigant whose acts threaten to tarnish the Court's good name."[102] "[T]he decisional authority is almost universal in its acceptance that courts of equity have extraordinarily broad discretion in application of the doctrine."[103]

In deciding whether to apply the doctrine, "the Court must 'examine the particular transactions and circumstances involved . . . which are alleged to taint [the subject of the suit].'"[104] "The standard, as applied by the Court of Chancery, is that the inequitable conduct must have an 'immediate and necessary' relation to the claims under which relief is sought."[105] "Thus . . . the relevant inquiry is not whether the nonmovant's hands are dirty, but whether the nonmovant dirtied them in

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[101] *Universal Enter. Gp., LP v. Duncan Petroleum Corp.*, 2014 WL 1760023, at *7 (Del. Ch. Apr. 29, 2014) (quoting *Bodley v. Jones*, 59 A.2d 463, 469 (Del. 1947)), *aff'd*, 99 A.3d 228 (Del. 2014) (TABLE).

[102] *Nakahara II*, 718 A.2d at 522.

[103] *Id.*; *see also SmithKline Beecham Pharm. Co. v. Merck & Co., Inc.*, 766 A.2d 442, 448 (Del. 2000) ("The Court of Chancery has broad discretion in determining whether to apply the doctrine of unclean hands.").

[104] *Nakahara II*, 718 A.2d at 523–24 (quoting *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 388 (1944)).

[105] *Id.* at 523 (citing *Kousi v. Sugahara,* 1991 WL 248408 (Del. Ch. Nov. 21, 1991)).

acquiring the right that party now asserts, or whether the manner of dirtying renders inequitable the assertion of such rights against the movant."[106]

Despite Delaware's strong policy in favor of advancement,[107] Delaware case law recognizes the availability of unclean hands as a defense to advancement.[108] For unclean hands to preclude enforcement of a right to advancement, "the conduct that renders a plaintiff's hands 'unclean' must also relate directly to the matter in controversy."[109] The party invoking the defense of unclean hands "bear[s] the burden

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[106] *Am. Healthcare Admin. Servs., Inc. v. Aizen*, 285 A.3d 461, 494 (Del. Ch. 2022) (quoting 27A Am. Jur. 2d Equity § 25).

[107] *See, e.g., Riker v. Teucrium Trading, LLC*, 2023 WL 4411609, at *2 (Del. Ch. July 7, 2023) ("Delaware public policy favors advancement."); *In re Cent. Banking Sys., Inc.*, 1993 WL 183692, at *3 (Del. Ch. May 11, 1993) (citing *Essential Enters. Corp. v. Automatic Steel Prods., Inc.,* 164 A.2d 437, 441–42 (Del. Ch. 1960)) ("Mandatory advances, like indemnification, serve the salutary purpose of encouraging qualified persons to become or remain as directors of Delaware corporations, by assuring them, *ex ante,* that they may resist lawsuits that they consider meritless, free of the burden of financing (at least initially) their own legal defense.").

[108] *See, e.g.*, *Nakahara v. NS 1991 Am. Tr.*, 739 A.2d 770, 791 (Del. Ch. 1998) (Chandler, C.) ("*Nakahara I*") ("Although this Court finds that plaintiffs have satisfied all the contractual conditions prerequisite to obtaining advancement . . . I cannot in good conscience authorize these plaintiffs to receive such advancements. The reason: plaintiffs come to the Court with unclean hands."); *Tafeen v. Homestore, Inc.*, 2004 WL 556733, at *6–7 (Del. Ch. Mar. 22, 2004) (Chandler, C.), *aff'd*, 888 A.2d 204 (Del. 2005).

[109] *Nakahara I*, 739 A.2d at 792 (citing *Walter v. Walter*, 136 A.2d 202 (Del. 1957)).

of persuasion to establish unclean hands by a preponderance of the evidence[,]"[110] *i.e.*, "proof that something is more likely than not."[111]

Lugo was Care One's General Counsel. The role of general counsel is special. A general counsel "straddles the world of business and law, and thus occupies a status that is unique among both lawyers and business people."[112]

In Delaware, "[a] lawyer employed . . . by an organization represents the organization[.]"[113] As to attorneys generally, the Delaware Supreme Court has long held that "in Delaware [] an attorney is bound by a fiduciary duty in his dealings with his client. As a fiduciary, 'an attorney is bound to the highest degree of fidelity and good faith. Strict adherence to this rule of conduct is required by time honored, deeply rooted concepts of public policy.'"[114] New Jersey law is in accord.[115]

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[110] *Stone & Paper Invs., LLC v. Blanch*, 2021 WL 3240373, at *23 (Del. Ch. July 30, 2021).

[111] *Agilent Techs., Inc. v. Kirkland*, 2010 WL 610725, at *13 (Del. Ch. Feb. 18, 2010) (quoting *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002)).

[112] E. Norman Veasey & Christine T. Di Guglielmo, *Indispensable Counsel: The Chief Legal Officer in the New Reality* xxv (2012).

[113] Del. R. Prof. Conduct 1.13(a).

[114] *In re Kennedy*, 442 A.2d 79, 89 (Del. 1982) (quoting *Melson v. Michlin*, 223 A.2d 338, 344 (Del. 1966)).

[115] *See In re Loring*, 374 A.2d 466, 470 (N.J. 1977) ("The attorney-client relationship embodies the concept of the client's trust in his fiduciary, the attorney. . . . Inherent in that trust is the duty to advise the client fully, frankly, and truthfully of all material and significant information."). Care One is headquartered in New Jersey, and Lugo is a New Jersey attorney. *See* JX025 at 1 ¶ 1. Care One points out that Lugo, as a New Jersey attorney, was subject to the New Jersey Rules of Professional Conduct, including the responsibility to

Lugo acknowledges he was aware of the duties he owed Care One as its General Counsel.[116] Lugo took his instructions as to Care One from Straus, Care One's Manager.[117] Straus gave clear instructions to Lugo to eliminate advancement rights for everyone except Straus and to ensure that Care One would never again face the risk of an officer demanding advancement.[118]

Lugo understood the instructions.[119] Lugo understood the importance of those instructions. And Lugo understood that waiver agreements were the means to accomplish those instructions.[120] Yet Lugo knowingly failed to carry out the instructions.[121]

While Lugo did take some action, he knew that the 2010 Amendment he presented to Straus for execution did nothing to address the vested advancement

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"explain a matter to the extent reasonably necessary to permit [a] client to make informed decisions regarding [a] representation." JX073 at 7; Dkt. 92 ("Defendant's Post-Trial Opening Br.) at 57.

[116] Tr. (Lugo) at 155–57.

[117] Tr. (Lugo) at 201.

[118] *See* Tr. (Straus) at 22.

[119] Tr. (Lugo) at 223–24 (acknowledging that Straus told Lugo "that he wanted to eliminate everyone's advancement rights except [Straus's]"); *see also* JX037 (Lugo emailing Jameson in September 2010 asking to "revise the operating agreement to ensure that advancement/indemnification is at the sole discretion of Daniel E. Straus"); JX041 (Lugo emailing Bienenfeld in November 2010 stating "[a]dvancement truly should be reserved for Daniel[]").

[120] JX070 at 6 ¶ 18; Tr. (Lugo) at 259–60.

[121] Tr. (Lugo) at 253.

rights of existing officers. And Lugo took no steps to obtain, or attempt to obtain, waivers from any of the handful of officers he knew retained those vested advancement rights.

The preponderance of the evidence also shows that—whatever the reason—Lugo did not *inform* Straus that the advancement rights of Lugo and the other officers remained in place. Nor did Lugo inform Straus that such vested rights could be eliminated via a straightforward waiver agreement.

As Care One's General Counsel, Lugo knowingly failed to achieve his client's objective, to his own benefit, and never told his client of that failure or the straightforward solution. Lugo cannot now entangle the Court in enforcing an advancement right that, as Care One proved at trial, Lugo would not have but for his improper conduct as chief legal officer. Lugo's request that the Court enforce an advancement right he knows—or should know—he would not have if he had fulfilled his duties to his client as counsel is inequitable and plainly bears an "immediate and necessary" relation to his claim; indeed, it proceeds hand-in-glove with "making the advancement claim itself."[122]

To resist this, Lugo cites two decisions that he says show the facts here are not sufficiently "immediate and necessary" to Lugo's advancement claim: *Bouchard v.*

[122] *Tafeen,* 2004 WL 556733, at *6.

Braidy Industries, Inc.[123] and *Cianciulli v. Webinar.Net, Inc.*[124] Both are easily distinguished. *Bouchard*—which did not involve advancement—rejected an unclean hands defense as involving assertions of generalized "wrongful acts" by the plaintiff lacking a "close nexus" to the relief sought.[125] But Care One's "unclean hands argument is unique in that it is based not in [Lugo's] conduct related to the underlying claims [for which advancement is sought], as previous unclean hands arguments have been based, but in his conduct in making the advancement claim itself."[126] And in *Cianciulli*, the Magistrate declined to apply an unclean hands defense that was based on arguments over how the plaintiff became a director in the first place.[127] Although bearing "some relation" to the plaintiff's advancement rights, the Magistrate concluded the conduct in *Cianciulli* was too attenuated to serve as an unclean hands bar.[128] Here, the unclean hands defense goes precisely to the continued existence of the advancement right itself. There is no attenuation.

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[123] 2020 WL 2036601 (Del. Ch. Apr. 28, 2020).

[124] 2025 WL 2831336 (Del. Ch. Oct. 6, 2025).

[125] *Bouchard*, 2020 WL 2036601, at *13 (quoting *Claros Diagnostics, Inc. S'holders Rep. Comm. v. OPKO Health, Inc.*, 2020 WL 829361, at *13 (Del. Ch. Feb. 19, 2020)).

[126] *Tafeen*, 2004 WL 556733, at *6 (requiring trial on unclean hands defense to advancement).

[127] 2025 WL 2831336, at *6.

[128] *Id.*

B. Lugo's Other Counterarguments Fail

Lugo advances two other arguments to resist application of unclean hands. Neither is persuasive.

First, Lugo argues that Delaware law requires Straus to be "charged with the contents" of the operating agreements he signed, pointing out that "Straus's admitted failure to read the [operating] agreements cannot be converted into proof that Care One lacked knowledge . . . of rights expressly disclosed on the face of those agreements."[129] Lugo relies on *Pellaton v. Bank of New York* for the proposition that "a party's failure to read a contract" cannot "justify its avoidance."[130] However, critical facts were *missing* from the face of the 2010 Amendment, including that the amendment did not eliminate vested advancement rights for existing officers covering future conduct, and that waiver agreements were the mechanism to eliminate these vested rights for existing officers. Straus would not have learned these facts by reading the 2010 Amendment.[131] Accordingly, Lugo's argument about

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[129] Plaintiff's Post-Trial Br. at 6.

[130] 592 A.2d 473, 477 (Del. 1991) (quoting *Graham v. State Farm Mut. Auto. Ins. Co.*, 565 A.2d 908, 913 (Del. 1989)); Plaintiff's Post-Trial Br. at 4.

[131] Further, the evidence shows Straus relied on Lugo as General Counsel to implement Straus's instructions. It cannot be that a chief legal officer, tasked with revising a document, can knowingly act contrary to his client's instructions (to the lawyer's own personal benefit), knowingly fail to inform his client of necessary facts, and then avoid application of unclean hands by later blaming his client for not reading the document to ferret out counsel's misconduct (misconduct which is not apparent from the face of document anyway). If this was an available argument, at some point one might well wonder what is the point of having a chief legal officer?

what was purportedly "disclosed on the face" of the 2010 Amendment fails to alter the unclean hands conclusion.

Second, at oral argument, Lugo asserted that, even though he knew waiver agreements could accomplish Straus's instructions to eliminate all advancement rights, he was under no obligation to "self-sacrifice" his vested advancement right.[132] That is true, but also beside the point. Straus, as Care One's Manager, had instructed Lugo, as Care One's General Counsel, to eliminate all advancement rights beyond Straus's rights. Lugo knowingly failed to inform Straus that the operating agreement amendment did not eliminate key advancement rights, including Lugo's own, or that waivers would straightforwardly accomplish Straus's instructions.

Lugo was not obligated to "self-sacrifice" his right. But, as Care One's General Counsel, he could not knowingly leave his client in the dark about a right his client specifically instructed him to extinguish but that he nonetheless retained. Care One proved that, if Straus had known, then, given the importance Straus as Manager attached to eliminating any further risk of advancement, Lugo would either have agreed to a waiver or been fired. In other words, Lugo would either have waived any right to advancement or he would not have been employed by Care One by the time of the alleged conduct that is the subject of Lugo's advancement demand. Either way, this proceeding would not exist.[133]

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[132] Argument Tr. at 58–59.

[133] On August 26, 2026, nearly a week after post-trial briefing and argument, Lugo filed a Motion to Enforce the May 27, 2026 Pre-Trial Order and Reject Care One's Attempted

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Although "Delaware public policy favors advancement[,]"[134] this policy must be balanced against the "long-established rule that if a party who seeks relief in a Court of Equity 'has violated conscience or good faith or other equitable principles in his conduct, then the doors of the Court of Equity should be shut against him.'"[135]

It is worth repeating and emphasizing Delaware's strong policy in favor of advancement. But the facts here are unusual: the dispute concerns a rare one-off

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Expansion or, Alternatively, for Clarification and Leave to Submit Supplemental Memoranda. Dkt. 134 (the "Motion"). As Care One's opposition points out, this is not Lugo's first late motion to take improper second and third bites at the apple in this summary proceeding. Dkt. 139; *see* Dkt. 95, 115. In any event, as Care One correctly explains, the Motion is an improper attempt at a sur-reply following post-trial argument and, even if it is not, Care One's arguments are well within the sphere of the unclean hands defense rightly presented. Accordingly, the Motion is denied as a meritless attempt to "'narrow' the very equitable defenses [this Court] ordered tried." Dkt. 139 at 2.

On September 18, 2026—three weeks after the parties completed briefing on the Motion and four weeks after post-trial argument—Lugo filed a letter attaching 96 pages of subsequent authority and offered to file yet more briefing. Dkt. 146. Consistent with the scattershot approach Lugo has taken to this litigation, the four decisions Lugo submitted are distinguishable and do not change the holding here. One sentence in one of the cases, *Candor Compass LLC v. Identivisuals SRL*, 2026 WL 2620613 (Del. Ch. Sept. 4, 2026), is worth mentioning briefly, though it does not help Lugo.

In *Candor Compass*, the Court held that a defendant's unclean hands defense failed, and cited *Universal Enterprise Group, L.P. v. Duncan Petroleum Corporation* for the proposition that "[i]f unclean hands is the sole reason for refusing relief and the opposing party has not been harmed by the inequitable conduct, the Court of Chancery ordinarily will not apply the doctrine." 2014 WL 1760023, at *8 (Del. Ch. Apr. 29, 2014). I note that Lugo did not mention *Universal Enterprise Group* once in his post-trial brief or at post-trial argument. Even so, to the extent relevant, the proposition cited above does not help Lugo because Lugo's inequitable conduct here—bringing the advancement action itself—*has* harmed Care One in forcing Care One to defend it.

[134] *Riker*, 2023 WL 4411609, at *2.

[135] *Universal Enter. Gp., LP*, 2014 WL 1760023, at *7 .

involving the entity-client's instructions to its chief legal officer about the existence of the officer's advancement right itself. The instructions were given long before the acts that gave rise to the claimed need for the advancement of defense costs.

Given the facts and Lugo's position of trust, and notwithstanding Delaware's public policy in favor of advancement, the Court will not ratify Lugo's inequitable conduct by entering judgment in his favor and enforcing a right to advancement that the evidence adduced at trial shows Lugo would not, if he had acted consistent with his duties, have.

III. CONCLUSION

For the foregoing reasons, judgment will be entered in favor of Care One and Lugo will be denied advancement from Care One under the doctrine of unclean hands. The parties are instructed to confer and submit a joint form of implementing order consistent with this decision within five business days. The parties will also advise the Court if there are any outstanding issues that need to be decided.