IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GLOBAL LINK LOGISTICS, INC., GOLDEN GATE LOGISTICS, INC., and GLL HOLDINGS, INC., Plaintiffs, v. OLYMPUS GROWTH FUND III, L.P., OLYMPUS EXECUTIVE FUND, L.P., KEITH HEFFERNAN, L. DAVID CARDENAS, LOUIS J. MISCHIANTI, CBW KEY EMPLOYEE CAPITAL II, LLC, GERALD BENJAMIN, EDWARD A. CASAS M.D., CJR WORLD ENTERPRISES, INC., and CHAD J. ROSENBERG, Defendants.	)	Civil Action No. 4444-VCP
OLYMPUS GROWTH FUND III, L.P., and OLYMPUS EXECUTIVE FUND, L.P., Cross-Claim Plaintiffs, v. CJR WORLD ENTERPRISES, INC. and CHAD J. ROSENBERG, Cross-Claim Defendants.	)	

MEMORANDUM OPINION

Submitted: October 6, 2009
Decided: January 29, 2010

James L. Holzman, Esquire, Gary F. Traynor, Esquire, Laina M. Herbert, Esquire, PRICKETT, JONES & ELLIOTT, P.A., Wilmington, Delaware; Jeffrey J. Bushofsky, Esquire, Amanda N. Raad, Esquire, ROPES & GRAY LLP, Chicago, Illinois; *Attorneys for Plaintiffs Global Link Logistics, Inc., Golden Gate Logistics, Inc., and GLL Holdings, Inc.*

Eric D. Selden, Esquire, ABRAMS & BAYLISS LLP, Wilmington, Delaware; Lewis R. Clayton, Esquire, Andrew G. Gordon, Esquire, Colin C. McNary, Esquire, Alexander J. Wilson, Esquire, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, New York, New York; *Attorneys for Defendants Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., David L. Cardenas, Keith Heffernan, and Louis J. Mischianti*

Sean J. Bellew, Esquire, David A. Felice, Esquire, BALLARD SPAHR LLP, Wilmington, Delaware; Benjamin I. Fink, Esquire, Neal F. Weinrich, Esquire, BERMAN FINK, VAN HORN, P.C., Atlanta, Georgia; *Attorneys for Defendants CJR World Enterprises, Inc. and Chad Rosenberg*

PARSONS, Vice Chancellor.

This case involves a dispute over how payment of an arbitration panel's $7 million damage award for fraud should be allocated among three parties who were found jointly and severally liable for those damages. In 2006, Plaintiffs[1] acquired Global Link Logistics, Inc. ("Global Link") pursuant to a Stock Purchase Agreement (the "SPA"). Plaintiffs later initiated an arbitration proceeding against Defendants,[2] including cross-claim plaintiffs, Olympus Growth Fund III, L.P. ("OGF") and Olympus Executive Fund, L.P. ("OEF," collectively, the "Olympus Parties"), and cross-claim defendants, CJR World Enterprises, Inc. ("CJR") and Chad J. Rosenberg (collectively, the "Rosenberg Parties"), claiming damages from alleged breaches of representations in the SPA and fraud in connection with the sale of Global Link. The arbitration panel found all Defendants liable for damages stemming from breaches of representations in the SPA and also found the Olympus Parties and CJR jointly and severally liable for damages based on the fraud claim.[3] Plaintiffs filed this action against Defendants seeking confirmation of the arbitration award. The Olympus Parties then filed the pending cross-claim seeking

---

1 The named Plaintiffs are Global Link Logistics, Inc., Golden Gate Logistics, Inc., and GLL Holdings, Inc.

2 The named Defendants in this action are Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Keith Heffernan, L. David Cardenas, Louis J. Mischianti, CBW Key Employee Capital II, LLC, Gerald Benjamin, Edward R. Casas, CJR World Enterprises, Inc., and Chad J. Rosenberg.

3 The award of damages against the Olympus Parties and CJR for fraud will be referred to herein as the "Joint Fraud Award."

contribution from the Rosenberg Parties for the damages owed under the Joint Fraud Award.

The Olympus Parties' cross-claim alleges that: (1) there is sufficient disproportion of fault between OGF, OEF, and CJR to justify contribution from CJR in an amount greater than its *pro rata* share of liability; (2) if the proportionate fault claim fails, the Olympus Parties are entitled to contribution from CJR in the amount of CJR's *pro rata* share of liability; and (3) Rosenberg is the alter ego of CJR such that the Olympus Parties can hold Rosenberg personally liable for any amounts owed by CJR. The Rosenberg Parties seek to dismiss the cross-claim in its entirety. For the reasons stated in this Memorandum Opinion, I dismiss with prejudice the portion of the Olympus Parties' cross-claim based on the theory of proportionate fault and dismiss without prejudice the *pro rata* contribution and alter ego aspects of their cross-claim.

I. BACKGROUND

A. The Parties

Cross-claim plaintiff OGF is a private equity investment fund organized as a Delaware limited partnership and has its principal place of business in Stamford, Connecticut. OGF is controlled by its general partner, OGP III, LLC, a Delaware limited liability company. When the SPA was entered into, OGF owned 74.9% of the shares of GLL Holdings, Inc. ("Holdings"), the parent company of Global Link. OGF sold these shares pursuant to the SPA.[4]

---

[4] Cross-cl. ¶ 10.

Cross-claim plaintiff OEF is also a private equity investment fund organized as a Delaware limited partnership with its principal place of business in Stamford, Connecticut. OEF is controlled by its general partner, OEF, L.P., a Delaware limited partnership. OEF owned a 0.49% interest in Holdings, which it sold pursuant to the SPA.[5]

Cross-claim defendant CJR is a Florida corporation. Immediately before the closing of the SPA, CJR owned 20.64% of Holdings' shares. CJR sold these shares pursuant to the SPA.[6]

Cross-claim defendant Rosenberg is a resident of Georgia. Rosenberg founded Global Link in 1997 and served as its CEO until its sale via the SPA in 2006.[7] Rosenberg is also the sole shareholder and an officer of CJR.[8]

Nominal plaintiff Global Link engages in the international shipping business as a non-vessel operating common carrier under licenses from the Federal Maritime Commission. Global Link acts as a middleman by purchasing transportation services from ocean carriers on behalf of its clients, which are primarily furniture companies.[9]

---

5 *Id.* ¶ 11.

6 *Id.* ¶ 9.

7 *Id.* ¶ 8.

8 Compl. Ex. B, Partial Final Award, 3.

9 Cross-cl. ¶¶ 20-21.

B. Facts and Procedural History

Pursuant to the SPA dated on or about May 20, 2006, Defendants sold Global Link to Plaintiffs. Defendants received net proceeds of over $108 million from this transaction, with the Olympus Parties receiving $83.1 million and CJR taking in $20.9 million.[10]

On July 16, 2006, Plaintiffs received an email from Eileen Cakmur, a Global Link customer account manager, advising them that Global Link engaged in an apparently illegal practice known as split-routing.[11] Split-routing occurs when a shipper causes a trucking company hired by an ocean carrier to deliver cargo from an ocean port or container yard to a destination that is different from the destination stated in the instructions provided to the ocean carrier.[12] Plaintiffs had no information regarding Global Link's use of split-routing before the sale and, believing they had overpaid for Global Link based on this new information, initiated an arbitration proceeding shortly after receiving the email.[13] Plaintiffs pursued two claims against Defendants in the arbitration. First, they asserted that Defendants breached certain representations in the SPA, thus entitling Plaintiffs to recover damages under the SPA's indemnification provision. Second, Plaintiffs alleged that certain Defendants committed fraud in

---

10 Partial Final Award 14.

11 *Id.*

12 Cross-cl. ¶ 22.

13 *Id.* ¶ 2. The arbitration complaint named the Olympus Parties and the Rosenberg Parties as respondents. Partial Final Award 1.

connection with the sale of Global Link by intentionally concealing the practice of split-routing.[14]

The arbitration panel held hearings on this matter for seven days. The evidence included live testimony from twelve witnesses and excerpts from fourteen depositions.[15] The arbitration panel issued its Partial Final Award on February 2, 2009 and its Final Award on March 16.[16] The arbitration panel found in favor of Plaintiffs on both of their claims, awarding a total of $12 million in damages, plus interest and costs. For breach of the SPA's representations, the panel awarded indemnification damages in the amount of $6,394,417 and held each Defendant responsible for paying an amount proportionate to their interest in Holdings at the time of the sale. On the fraud claim, the arbitration panel found OGF, OEF, and CJR jointly and severally liable for damages of $5,605,583,[17] which the panel increased to $7,267,819.07 after factoring in pre-judgment interest and costs.[18] To date, none of the parties have paid anything toward this Joint Fraud Award.[19]

---

14 Partial Final Award 4-5.

15 *Id.* 4.

16 Compl. Ex. C. The Final Award primarily determined the pre-judgment interest owed on the damages awarded in the Partial Final Award and allocated costs among the parties.

17 Partial Final Award 58-59.

18 Cross-cl. ¶ 4.

19 *Id.* ¶¶ 5, 18-19; Rosenberg Parties' Reply Br. 3.

On March 24, 2009, Plaintiffs filed the Complaint in this action to confirm the arbitration award. On April 27, the Olympus Parties filed their initial Answer. On May 18, the Olympus Parties filed an Amended Answer and the pending cross-claim against CJR and Rosenberg. The cross-claim seeks contribution from CJR, either for the entire amount of the Joint Fraud Award, based on CJR's disproportionate liability for the fraud, or for CJR's *pro rata* share of the Joint Fraud Award. The cross-claim also seeks to pierce CJR's corporate veil and hold Rosenberg liable for any amount CJR may owe pursuant to the contribution claim. In June 2009, CJR and Rosenberg separately moved to dismiss the cross-claim. On July 31, Plaintiffs moved for a summary judgment confirming the arbitration award. On October 6, 2009, I heard argument on all of those motions. At this hearing, I confirmed the arbitration award in favor of Plaintiffs, but reserved judgment on the motions to dismiss. This Memorandum Opinion reflects my ruling on the Rosenberg Parties' motions to dismiss.

C. Parties' Contentions

The Rosenberg Parties contend that 10 *Del. C.* § 6306(d) bars the Olympus Parties from pursuing any claim for contribution for an amount greater than CJR's *pro rata* share of the Joint Fraud Award.[20] The Olympus Parties dispute this contention, arguing that

---

[20] Section 6306(d) states: "As among joint tort-feasors against whom a judgment has been entered in a single action, subsection (d) of § 6302 of this title [which allows the bringing of contribution claims based on the joint-tortfeasors' relative degrees of fault] applies only if the issue of proportionate fault is litigated between them by cross-complaint in that action."

§ 6306(d) is inapplicable because only an arbitration award, and not a judgment, has been entered in this action.

The Rosenberg Parties also seek dismissal of the Olympus Parties' contribution claim on ripeness grounds because neither of the procedural bases for bringing a claim for contribution under 10 *Del. C.* § 6306(b) presently exists.[21] The Olympus Parties respond that they have met the requirements of § 6306(b)(1) by bringing the pending cross-claim against their co-party, CJR, before the entry of a judgment.

The Rosenberg Parties further contend that the Olympus Parties may not seek to pierce CJR's corporate veil in a confirmation proceeding. In response, the Olympus Parties assert that judicial economy requires the veil piercing claim to be heard at the same time as the contribution claim, rather than in a separate proceeding.

II. ANALYSIS

A. Legal Standard

A motion to dismiss under Court of Chancery Rule 12(b)(6) for failure to state a claim upon which relief can be granted will not be granted unless a court can determine with reasonable certainty that the nonmoving party could not prevail on any set of facts

---

[21] Under 10 *Del. C.* § 6306(b): "A pleader may either (1) state as a cross-claim against a coparty any claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (2) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tort-feasors one of whom has discharged the judgment by payment or has paid more than his or her pro rata share thereof. If relief can be obtained as provided in this subsection no independent action shall be maintained to enforce the claim for contribution."

reasonably inferable from the pleadings.[22] "The court must assume the truthfulness of the well-pleaded allegations and must afford the nonmoving party the benefit of all reasonable inferences."[23] Thus, the court will grant a cross-claim plaintiff all reasonable inferences that may be drawn from the cross-claim, but it is not "required to accept every strained interpretation of the allegations proposed by the [claimant]."[24] Accordingly, conclusory allegations not supported by facts in the cross-claim will not be accepted as true.[25]

B. The Operation of 10 *Del. C.* § 6306(d)

The Olympus Parties seek contribution against CJR for more than its *pro rata* share of the Joint Fraud Award under 10 *Del. C.* § 6302(d), which states: "When there is such a disproportion of fault among joint tort-feasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tort-feasors shall be considered in determining their pro rata shares." CJR seeks to dismiss this proportionate fault claim based on the operation of 10 *Del. C.* § 6306(d), which states: "As among joint tort-feasors against whom a judgment has been entered in a single action, subsection (d) of § 6302 of this title applies only if the issue of

---

22 *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005) (citing *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998)).

23 *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063, at *6 (Del. Ch. Dec. 23, 2008) (quoting *In re Primedia, Inc. Deriv. Litig.*, 910 A.2d 248, 256 (Del. Ch. 2006)) (internal quotations omitted).

24 *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

25 *Solomon v. Pathe Commc'n Corp.*, 672 A.2d 35, 38 (Del. 1996).

proportionate fault is litigated between them by cross-complaint in that action." Specifically, CJR argues that because the arbitration award constitutes a judgment and the Olympus Parties did not raise the issue of proportionate fault via cross-claim during the arbitration proceeding, they now are barred from litigating that issue in this case.

The Olympus Parties dispute CJR's assertion that the arbitration award is a judgment. They contend that the Delaware Uniform Arbitration Act ("DUAA")[26] only authorizes arbitration panels to issue "awards," which only ripen into judgments when confirmed by the Court of Chancery.[27] Based on the absence of any judgment when this action was filed, the Olympus Parties further argue that § 6306(d) is simply inapplicable and does not bar their proportionate fault claim. Thus, whether the Olympus Parties may pursue their proportionate fault claim turns on whether an arbitration award constitutes a judgment for purposes of § 6306(d).

Preliminarily, I note that there does not appear to be any Delaware caselaw addressing the interplay between the DUAA and the Delaware Uniform Contribution Among Tort-Feasors Law ("DUCATL").[28] None of the parties has directed the Court to any Delaware authority directly on point. The most closely apposite case, *Ikeda v. Molock*, holds that "10 *Del. C.* § 6306(d) requires the filing of a cross-claim between

---

[26] 10 *Del. C.* §§ 5701-5725.

[27] *See* 10 *Del. C.* §§ 5706 ("The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award."), 5709(a) ("The award shall be in writing and signed by the arbitrators joining in the award.").

[28] 10 *Del. C.* §§ 6301-6308.

parties to the litigation before a jury may prorate liability based upon proportionate fault."[29]

Having now considered the question, I conclude that an arbitration award should be deemed a judgment for purposes of the DUCATL at least in the circumstances of this case. In that regard, I note first that the very limited grounds on which a court may modify or vacate an arbitration award suggest that such awards have sufficient finality to warrant affording them the status of a judgment.[30]

In addition, in many respects, an arbitration panel and a jury perform analogous functions. Both the arbitration panel and the jury serve as the finders of fact, and, in each case, the ability of a court to modify their findings is strictly limited. Carrying the arbitration panel-jury analogy further, the holding in *Ikeda*, which involved a jury, suggests that any proportionate fault cross-claim should be presented to the arbitration panel, as fact finder, and any cross-claim filed after the arbitration panel has done its work would be barred by 10 *Del. C.* § 6306(d).

Furthermore, and perhaps most importantly, if I was to accept the Olympus Parties' argument, it would open the door to duplicative litigation and seriously undermine the judicial efficiency and cost and time savings offered by arbitration. These

---

29 603 A.2d 785, 787 (Del. 1992).

30 *See* 10 *Del. C.* §§ 5714-5715. I also note that Delaware courts give valid and final arbitration awards "the same effect as a court's judgment under the doctrine of *res judicata*." *Mehiel v. Solo Cup Co.*, 2007 WL 901637, at *5 (Del. Super. Mar. 26, 2007) (citing *Cooper v. Celente*, 1992 WL 240419, at *6 (Del. Super. Sept. 3, 1992)).

consequences would undermine the purposes of both § 6306(d) and the DUAA. Indeed, this case amply demonstrates this point. The hearings before the arbitration panel lasted seven days. Twelve witnesses testified in person at the hearings, and the parties entered another fourteen depositions into the record. The arbitration panel's Partial Final Award exceeded sixty pages in length. Allowing the Olympus Parties to pursue their proportionate fault claim in this confirmation proceeding would require this Court to spend countless hours reconstructing or, at least, reviewing this voluminous record. This Court also would have to consider some of the same legal claims and defenses presented to the arbitration panel. The resulting duplicative expenditure of judicial resources would be substantial, not to mention the concomitant delay in resolving the confirmation proceeding itself. In contrast, had the Olympus Parties filed their cross-claim during arbitration, which they were fully capable of doing, the arbitration panel could have decided the issue of proportionate fault at the same time it addressed the merits of the parties' other arguments as to the fraud claim.[31] This case, therefore, clearly exemplifies the type of duplicative litigation and inefficient use of judicial resources that § 6306(d) was designed to prevent.

In support of their position, the Olympus Parties proffer two hypotheticals to demonstrate that CJR's reading of § 6306(d) would lead to inequitable results. The

---

[31] The Rosenberg Parties assert that the arbitration panel already resolved some or all of the issues related to their allegedly disproportionate fault. *See* Rosenberg Parties' Reply Br. 4-5. The Olympus Parties disagree. Tr. 40-41. For purposes of the pending motions to dismiss, however, I need not resolve that issue.

Olympus Parties also emphasize that the jurisdiction of an arbitration panel is purely a creature of contract—it has no jurisdiction except that which is conferred upon it by the parties to the arbitration agreement.

The first hypothetical involves a situation where, unlike this and probably most other cases, an arbitration agreement forbids the bringing of cross-claims during arbitration. Under this scenario, if an arbitration award were considered a judgment under § 6306(d), a party with a proportionate fault claim under § 6302(d) might never have the opportunity to bring this claim. An arbitration agreement forbidding cross-claims would bar such a claim during arbitration, and § 6306(d) arguably would bar the claim after arbitration because it was not brought before entry of a judgment. Thus, a party with a proportionate fault claim might have no recourse for this claim.[32]

The second, admittedly more plausible,[33] hypothetical involves a situation where a defendant in an arbitration proceeding has proportionate fault claims against a person not bound by the arbitration agreement and, thus, not subject to the arbitration panel's jurisdiction. In arbitration, there generally is no corollary to Court of Chancery Rule 14, which allows defendants to implead third parties who may be liable to them for all or part of the plaintiff's claim.[34] Moreover, only parties who have contractually agreed to

---

32 *See* Tr. 36-37.

33 *Id.* 37.

34 *Compare* Ct. Ch. R. 14 *with* Am. Arb. Ass'n Commercial Arb. R. R-1 to R-54, L-1 to L-4.

arbitration can be brought into an arbitration. Under this hypothetical scenario, if an arbitration award is considered a judgment, the defendant would be precluded from bringing a proportionate fault cross-claim against the nonparty during the arbitration, and probably could not do so in an action to confirm the arbitration award. Instead, the defendant presumably would have to pursue that claim in an independent action.[35] Such a scenario, according to the Olympus Parties, raises a host of questions in terms of procedural inefficiencies and substantive complexity.

While these hypotheticals may highlight situations where the inclusion of arbitration awards within the meaning of "judgment" in § 6306(d) arguably would leave parties with no or less effective recourse for their proportionate fault claims, they fail to address the circumstances that exist in this case. Thus, the hypotheticals do not change my conclusion that the Olympus Parties' proportionate fault claim should be dismissed. Unlike the situation in the hypotheticals, CJR was a party to the arbitration, and the Olympus Parties were fully capable of asserting a cross-claim against it in that proceeding, but did not do so. Allowing the proportionate fault cross-claim to go forward in this confirmation proceeding would waste judicial resources by forcing this Court to preside over the re-litigation of a factually complex issue that could and should have been decided in the arbitration. In addition, it would open the door for this type of duplicative litigation to become widespread. My holding that a "judgment" under 10 *Del. C.* § 6306(d) includes the arbitration award at issue here, however, applies only to the

---

[35] *See* Tr. 37-38.

situation before me, namely, that in which the cross-claim defendant (here, CJR) in a later-filed proportionate fault cross-claim under 10 *Del. C.* § 6302(d) was a party to the arbitration and could have been named in a cross-claim by the cross-claim plaintiff in the arbitration proceeding.

In sum, because the arbitration award in this case constitutes a judgment under 10 *Del. C.* § 6306(d) and the Olympus Parties failed to litigate the issue of proportionate fault before the entry of that judgment, Section 6306(b) bars the Olympus Parties' cross-claim insofar as it seeks to hold CJR disproportionately liable for the Joint Fraud Award. Thus, I dismiss with prejudice the Olympus Parties' proportionate fault cross-claim against CJR.

C. Ripeness

CJR contends that the Olympus Parties' *pro rata* contribution claim is not ripe because the Olympus Parties do not meet either of the prerequisites for bringing a contribution claim under 10 *Del. C.* § 6306(b). This section states in pertinent part:

> A pleader may either (1) state as a cross-claim against a coparty any claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (2) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tort-feasors one of whom has discharged the judgment by payment or has paid more than his or her pro rata share thereof.

CJR asserts that § 6306(b)(2) is inapplicable because the Olympus Parties have not discharged or paid more than their *pro rata* share of the Joint Fraud Award. There is no allegation that the Olympus Parties have paid any portion of the Joint Fraud Award, let

alone more than their *pro rata* share.[36] Thus, CJR is correct that the Olympus Parties' cross-claim fails to meet the requirements of Section 6306(b)(2).

The Olympus Parties, instead, focus their arguments on § 6306(b)(1), claiming that this section entitles them to bring a cross-claim for contribution at any time before entry of a final judgment.[37] A plain reading of § 6306(b)(1), however, refutes this argument. The "final judgment" language upon which the Olympus Parties rely does not appear in 10 *Del. C.* § 6306(b). Section 6306(b)(1) permits a cross-claim based on a claim that a coparty may be liable to the cross-claimant for all or part of a "claim asserted in the action against the cross-claimant." Here, the action against the cross-claimants seeks only to confirm an arbitration award. Beyond that, there is no claim for which CJR could be liable to the Olympus Parties because there is no claim in this action that seeks damages against the Olympus Parties. The action in which CJR could have been liable to the Olympus Parties was the arbitration, but with the arbitration now complete, the Olympus Parties' window to bring a cross-claim under § 6306(b)(1) is closed.

Accordingly, the Olympus Parties cannot bring a cross-claim for contribution under either prong of 10 *Del. C.* § 6306(b), having filed this claim too late under § 6306(b)(1) and too early under § 6306(b)(2). Therefore, I grant CJR's motion to

---

[36] *See* Cross-cl. ¶¶ 19 ("The Olympus Funds have been damaged by Rosenberg's actions that have prevented them from recovering from CJR any of the common liability that the Olympus Funds *may pay*."), 48 ("*In the event that the Olympus Funds pay* any of the common liability, they will be entitled to contribution in that amount from CJR . . . .") (emphasis added).

[37] Olympus Parties' Answering Br. 7.

dismiss the Olympus Parties' *pro rata* contribution claim and dismiss that claim without prejudice as premature. The Olympus Parties may pursue such a claim in the future if they discharge or pay more than their *pro rata* share of the Joint Fraud Award.

D. Veil Piercing

The Rosenberg Parties also have moved to dismiss the portion of the Olympus Parties' cross-claim that seeks to pierce CJR's corporate veil, arguing that such a claim is not appropriate in an arbitration confirmation proceeding, which is summary in nature. In their briefs and at argument, the parties vigorously contested this point. Having determined to dismiss all aspects of the Olympus Parties' cross-claim for contribution, either with or without prejudice, however, I see no need to decide this last issue. The Olympus Parties' veil piercing claim is relevant only if they have a cognizable claim for contribution against CJR and a colorable basis for claiming that CJR would not satisfy a judgment for contribution. Thus, until the contribution claim is ripe, the veil piercing claim cannot be ripe either. Any decision on the merits of the veil piercing claim before the Olympus Parties properly state a claim for contribution would be purely hypothetical and amount to an impermissible advisory opinion,[38] not to mention a waste of judicial resources.[39]

---

[38] *eBay Domestic Hldgs., Inc. v. Newmark*, 2009 WL 3205674, at *2 (Del. Ch. Oct. 2, 2009) (citing *Chrysogelos v. London*, 1992 WL 58516, at *2, 4 (Del. Ch. Mar. 25, 1992)).

[39] *See Kuroda v. SPJS Hldgs., L.L.C.*, 971 A.2d 872, 884 (Del. Ch. 2009) (citing *Schick Inc. v. Amalgamated Clothing & Textile Workers Union*, 533 A.2d 1235, 1239 (Del. Ch. 1987)).

The Olympus Parties further argue that "[t]he interests of judicial economy [] are best served by resolving the veil piercing claim in a single action with the rest of Olympus Funds' cross-claim."[40] In time, that may be true. Because I have decided to dismiss the Olympus Parties' *pro rata* contribution claim without prejudice as not ripe, however, I likewise dismiss their veil piercing claim without prejudice for the same reason.

III. CONCLUSION

For the foregoing reasons, I grant the Rosenberg Parties' 12(b)(6) motion to dismiss the Olympus Parties' cross-claim in its entirety. I dismiss with prejudice the cross-claim to the extent it seeks to litigate the issue of proportionate fault against CJR as barred by the operation of 10 *Del. C.* § 6306(d). I dismiss without prejudice the aspects of the cross-claim that seek *pro rata* contribution from CJR and to pierce CJR's corporate veil because these claims are not ripe.

IT IS SO ORDERED.

---

[40] Olympus Parties' Answering Br. 9.