



IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE JOSEPH PENAR FAMILY §  
TRUST, by its Trustee Joseph §  
Penar; THE WALDER FAMILY §  
TRUST, by its Trustee, Cecile §  
Donnamarie Newkirk; ALLEN §  
COOPER, individually; SUE §  
COOPER, individually; and THE §  
ALLEN AND SUE COOPER §  
TRUST, by its Trustees, Allen and §  
Sue Cooper, §

Plaintiffs Below-Appellants, §

v. §

JASEN ADAMS, DAVID §  
HARTCORN, and BRIAN §  
TOLLEFSON, §

Defendants Below-Appellees, §

and §

PREMIUM OF AMERICA, LLC, §  
and PREMIUM HOLDING, LLC, §

Nominal Defendants Below- §  
Appellees. §

No. 250, 2016

Court Below: Court of Chancery  
of the State of Delaware

C.A. No. 10441

Submitted: November 2, 2016

Decided: November 16, 2016

Before **STRINE**, Chief Justice; **HOLLAND**, **VALIHURA**, **VAUGHN**, and  
**SEITZ**, Justices.

## ORDER

This 16<sup>th</sup> day of November, 2016, upon consideration of the parties' briefs and the record in this case, and following oral argument, it appears to the Court that:

(1) Appellants are members of a Delaware limited liability company formed by a bankruptcy court order to receive the assets of two affiliated companies in the viatical life insurance business. They claim on appeal that the Court of Chancery erred when it dismissed their direct and derivative claims against the defendants whom they allege misappropriated funds from the company and thereby shorted them when liquidating the company's assets.

(2) We affirm on the basis of the court's April 28, 2016 decision. After rightly expressing frustration with the appellant's failure exercise its statutory right to demand books and records before filing suit,<sup>1</sup> the Vice Chancellor carefully reviewed the pleading deficiencies in the amended complaint. He correctly determined that the appellants' failure to allege in a non-conclusory fashion the circumstances of the alleged misappropriation required dismissal of the amended complaint.

(3) We note that our decision today does not leave appellants without a future remedy. Court of Chancery Rule 15(aaa) and other rules of claim or issue

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<sup>1</sup> 6 *Del. C.* § 18-305.

preclusion will not bar appellants and other members from asserting claims for misappropriation or improper distribution of assets as part of the winding up of the limited liability company.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is hereby AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Justice