

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Mendez, Gesmer, O'Neill Levy, Parker-Raso, JJ.

7362

JORDAN CHIRICO,
Plaintiff-Appellant,

Index No. 655179/24
Case No. 2025-04136

-against-

3|5|2 CAPITAL ABS FUND LLC, et al.,
Defendants-Respondents.

Barnes & Thornburg LLP, New York (Russell T. Gorkin of counsel), for appellant.

Herbert Smith Freehills Kramer (US) LLP, New York (Brandon Arnold and Daniel N. Lerman of the Bar of the District of Columbia, admitted pro hac vice, of counsel), for respondents.

Order, Supreme Court, New York County (Anar Rathod Patel, J.), entered April 10, 2025, which granted defendants' motion to dismiss the amended complaint, unanimously reversed, on the law, without costs, the motion denied and the complaint reinstated.

Plaintiff was employed by nonparty Leucadia Asset Management LLC (LAM), a subsidiary of Jefferies Financial Group Inc., as the portfolio manager for defendants 3|5|2 Capital ABS Fund LLC and 3|5|2 Capital ABS Master Fund LP (collectively the Funds). LAM served as the investment manager of the Funds pursuant to certain agreements (the Fund Agreements). These Fund Agreements contained an indemnity clause in section 10.2, providing LAM and its employees the right to advancement of reasonable expenses incurred as a party or witness in a proceeding involving their work with the Funds.

At this pleading stage, plaintiff has sufficiently alleged that he is entitled to advancement of legal fees incurred during the course of a Department of Justice investigation into a company whose bonds the Funds had purchased and in an action instituted against him by the Funds' general partner in federal court (*see Thompson Street Capital Partners, IV, L.P. v Sonova United States Hearing Instruments, LLC*, 340 A3d 1151, 1165 [Del 2025]). The Funds contended that plaintiff is not entitled to advancement because he is no longer employed by LAM. However, section 10.2(c) of the Fund Agreements plainly states that "[t]he indemnification provided by this Section 10.2 . . . shall continue as to an Indemnatee who has ceased to serve in such capacity" (*see Rhodes v bioMérieux, Inc.*, 2024 WL 669034, *12-13, 2024 Del Ch LEXIS 46, 31-34 [Del Ch, Feb. 19, 2024, CA No. 2023-1079-BWD]; *see e.g. Texas Pacific Land Corp. v Horizon Kinetics LLC*, 306 A3d 530, 548 [Del Ch 2023], *affd* 314 A3d 685 [Del 2024]). Moreover, plaintiff sufficiently alleged that the federal court action, which involves him as well as 66 defendants that are not associated with the Funds, is not an "internal dispute" that falls within an exception to the indemnity clause.

Finally, the employment agreement between plaintiff and LAM does not expressly preclude advancement of legal fees under the Fund Agreements, as the documentary evidence does not conclusively establish that the Funds are "affiliates" of

the “Jefferies Companies” (see *Barr v Liddle & Robinson, LLP*, 136 AD3d 421, 421 [1st Dept 2016])).]

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 27, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being more prominent.

Susanna Molina Rojas
Clerk of the Court