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THE BUSINESS COURT OF TEXAS
FIRST DIVISION

ZACHARY PEÑA and ETHAN SUMMERS,	§	
Plaintiffs,	§	
v.	§	Cause No. 26-BC01B-0066
FERMI INC. and TOBY NEUGEBAUER,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER GRANTING FERMI INC.'S MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS

INTRODUCTION

¶ 1. This case asks whether an arbitration clause in a limited liability company agreement survives the company's conversion into a corporation, at least as to disputes that arose before the conversion.

¶ 2. Fermi LLC was formed in early 2025 to build a large-scale data center in Texas. That April, the company admitted Plaintiffs Zachary Peña and Ethan

Summers as equity owners through Joinder Agreements that did two things. First, they granted membership units to each Plaintiff, subject to a clawback: if Fermi's Board of Managers determined that a member had engaged in misconduct harmful to the company, Fermi could reclaim his units at their original grant value. Second, they bound each Plaintiff to the LLC's company agreement (the "Company Agreement") "as though an original party thereto."[1] That agreement requires mediation and then binding arbitration of any dispute "arising out of or related to" it or "any transaction resulting hereunder."[2]

¶ 3. Fermi invoked the clawback provision in the summer of 2025. In July, it announced an investigation into Plaintiffs' conduct and, only two days later, paid them the original grant value of their units. The Board ratified the reclamation in August.[3] Six weeks after that, Fermi LLC converted into Fermi Inc. The Plan of Conversion declares that the Company Agreement "shall terminate and be of no further force or effect and shall be superseded in [its] entirety" by the corporation's governing documents.[4] One of those documents, the Certificate of Formation, names this Court as the exclusive forum for a broad range of disputes, unless the corporation consents in writing to another forum.

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[1] Peña Joinder Agreement (Fermi App. 085); Summers Joinder Agreement (Fermi App. 128).
[2] Am. & Restated Company Agreement ("Company Agreement") § 10.9 (Fermi App. 065).
[3] Unanimous Written Consent (Fermi App. 177); Peña Reclamation of Company Units (Fermi App. 181); Summers Reclamation of Company Units (Fermi App. 183).
[4] Plan of Conversion § 2(d) (Pls.' App. 253).

¶ 4. Plaintiffs later bought shares of Fermi Inc.'s publicly traded stock and then filed this suit. They contend the investigation into their conduct was a pretext and that Fermi wrongfully reclaimed their units.[5] They assert breach of contract against Fermi and conversion against both Fermi and its former chief executive, Toby Neugebauer. Fermi moves to compel arbitration and to stay this action. Plaintiffs respond that the Plan of Conversion extinguished the arbitration agreement and that the Certificate of Formation, which binds them as shareholders, requires the parties to litigate in this Court.

¶ 5. The question, then, is whether the conversion undid the parties' agreement to arbitrate. It did not. The Plan's termination language is broad, but it operates going forward. It releases no claims, says nothing about arbitration, and is paired with provisions that expressly preserve the company's existing rights and obligations. Read as a whole, the Plan changes the company's form without erasing its commitments. That includes its commitment to arbitrate disputes that had already arisen. Nor does the Certificate's forum clause require a different result. That clause decides which court hears a dispute, not whether a dispute belongs in court at all. And, by its own terms, it gives way whenever the corporation consents in writing to another forum. The arbitration agreement is that consent.

[5] Pls.' Pet. ¶¶ 56–62.

¶ 6. The Court therefore **GRANTS** the motion and directs Plaintiffs and Fermi to proceed to arbitration, where the arbitrator will decide whether Plaintiffs' claims fall within the agreement's scope. This action is **STAYED** in its entirety, including the claim against Neugebauer, subject to further order.

BACKGROUND FACTS

A. The Joinder Agreements and the Arbitration Clause

¶ 7. Fermi LLC was formed in January 2025 to develop a hyperscale data-center campus in Texas.[6] Plaintiffs, principals of Empirix Partners, helped Fermi procure specialized equipment for the project.[7] In April 2025, each signed a Joinder Agreement admitting him as a Class B Member of Fermi LLC, with Peña receiving 18,750 units and Summers receiving 6,250.[8]

¶ 8. Each Joinder Agreement made its signatory "a party to the Company Agreement" and "fully bound by . . . all of the covenants, terms, and conditions of the Company Agreement as though an original party thereto." Clause (iii) of each Joinder authorized Fermi to reclaim the Class B units at their original grant value upon a Board determination of "any breach of fiduciary duty, fraud, disparagement, or other conduct materially detrimental to the interests of the Company." It also

[6] *Id.* ¶¶ 2, 21.
[7] *Id.* ¶¶ 24, 28.
[8] Peña Joinder Agreement (Fermi App. 086); Summers Joinder Agreement (Fermi App. 129).

provided that this clawback right "shall survive the termination of the undersigned's membership."[9]

¶ 9. Section 10.9 of the Company Agreement is an arbitration clause. It governs "any controversy, dispute or claim between any of the parties arising out of or related to this Agreement or any transaction resulting hereunder."[10] It calls for negotiation, followed by mediation. If mediation fails, "the sole and exclusive remedy of the parties shall be to submit such Dispute to binding and final arbitration conducted in Dallas, Texas, before a single arbitrator from JAMS."[11] The provision contemplates entry of judgment on the award in court.[12] The Company Agreement was amended and restated twice—on July 17, 2025 and again on August 29, 2025—but the dispute resolution provisions are materially identical.[13] The Court therefore need not decide which version otherwise governs the parties' rights.

B. The Reclamation

¶ 10. According to Plaintiffs, the trouble began when Fermi's executives concluded that Plaintiffs' Class B units had become far more valuable than expected and pressed Plaintiffs to renegotiate.[14] When Plaintiffs refused, Fermi's outside

[9] Peña Joinder Agreement (Fermi App. 085); Summers Joinder Agreement (Fermi App. 128).
[10] Company Agreement § 10.9 (Fermi App. 065).
[11] *Id.* § 10.9(a)–(b) (Fermi App. 065).
[12] *Id.* § 10.9(b) (Fermi App. 065).
[13] Fermi Mot. 8 n.3; Blanes Decl. ¶¶ 4, 13–14 (Fermi App. 040–41, 044). *Compare* Company Agreement § 10.9 (Fermi App. 065), *with* Initial Company Agreement § 10.9 (Fermi App. 276), *and* 2d Am. & Restated Company Agreement § 10.9 (Fermi App. 307).
[14] Pls.' Pet. ¶¶ 38, 43, 49.

counsel sent each of them a letter, dated July 16, 2025, announcing an investigation into potential breaches of fiduciary duty and other misconduct and warning of "the potential clawback of founder shares."[15] Two days later, Fermi wired $18,750 to Peña and $6,250 to Summers—the original grant value of their units.[16]

¶ 11. On August 15, 2025, Fermi LLC's Board adopted a unanimous written consent, effective July 18, determining that each Plaintiff had engaged in misconduct and confirming the reclamation.[17] Plaintiffs contend the investigation was a pretext and that Fermi never identified the misconduct, asked for documents, or sought interviews.[18] The Court expresses no view on those allegations.

C. The Conversion and the New Governing Documents

¶ 12. Six weeks later, on September 30, 2025, Fermi LLC converted into Fermi Inc., a Texas corporation.[19] The Plan of Conversion does two things of import here. It replaces the LLC's governing documents, and it carries the company's existing rights and obligations over to the new corporation. The first appears in § 2(d), captioned "Organizational Documents," which provides:

> At the Effective Time, (i) the Converting Entity's certificate of formation and the LLC Agreement shall terminate and be of no further force or effect and shall be superseded in their entirety by the Certificate

[15] Peña Investigation Letter (Fermi App. 171); Summers Investigation Letter (Fermi App. 174).
[16] Peña Reclamation of Company Units (Fermi App. 181); Summers Reclamation of Company Units (Fermi App. 183).
[17] Unanimous Written Consent (Fermi App. 177); Peña Reclamation of Company Units (Fermi App. 181); Summers Reclamation of Company Units (Fermi App. 183); Blanes Decl. ¶ 9 (Fermi App. 042).
[18] Pls.' Pet. ¶¶ 56–62.
[19] Plan of Conversion, Background ¶ D, § 1 (Pls.' App. 252–53).

> of Formation and the Bylaws and (ii) no party shall have any further rights, duties or obligations pursuant to the Converting Entity's certificate of formation or the LLC Agreement.[20]

¶ 13. Section 4(a) addresses what continues after conversion. It provides that Fermi Inc. is "deemed to be the same entity as" Fermi LLC, that the LLC's "rights, privileges and powers" and "causes of action" remain vested in the corporation, and that the LLC's "debts, liabilities, duties and obligations" remain attached to the corporation.[21]

¶ 14. Two other provisions bear on how §§ 2(d) and 4(a) fit together. Section 10 provides that the Plan amends and supersedes the LLC Company Agreement "[t]o the extent that any provision of this Plan of Conversion conflicts with" it. Section 11 provides that the Plan confers no rights or remedies on anyone "other than the parties hereto and their respective successors and permitted assigns.[22]

¶ 15. The new Certificate of Formation addresses the forum for corporate disputes. Section 11.1 provides that, "[u]nless the Corporation consents in writing to the selection of an alternative forum," the Texas Business Court shall be "the sole and exclusive forum for" seven categories of disputes.[23] Anyone who buys, acquires, or holds Fermi Inc. stock is deemed to have consented to that provision.[24] Section

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[20] *Id.* § 2(d) (Pls.' App. 253).
[21] *Id.* § 4(a) (Pls.' App. 254); *see* TEX. BUS. ORGS. CODE § 10.106.
[22] Plan of Conversion §§ 10, 11 (Pls.' App. 255).
[23] Certificate of Formation § 11.1 (Pls.' App. 327).
[24] *Id.*

11.1 also provides that if the corporation agrees to resolve a dispute in another forum, it does not give up its right to insist on the Business Court for other disputes.[25]

¶ 16. Fermi did not issue corporate shares to Plaintiffs.[26] Instead, in late 2025, Plaintiffs acquired Fermi Inc.'s common stock through separate open market purchases. Each continues to hold those shares.[27]

D. This Action

¶ 17. After unsuccessfully mediating, Plaintiffs filed this action on July 27, 2026. They assert a breach-of-contract claim against Fermi and a conversion claim against Fermi and Neugebauer, both arising from the reclamation.[28] Fermi moved to compel arbitration and to stay these proceedings.[29] Plaintiffs oppose the motion.[30] Neugebauer is separately represented and has taken no position on whether arbitration is required.[31]

LEGAL STANDARD

¶ 18. A motion to compel arbitration ordinarily presents two questions: whether a valid arbitration agreement exists and whether the asserted claims fall

[25] *Id.* (Pls.' App. 327–28).
[26] Pls.' Resp. 9; Fermi Reply 13.
[27] The shares Plaintiffs purchased are separate from the Class B Units granted to them through the Joinder Agreements. Peña Decl. ¶ 2 (Pls.' App. 339); Summers Decl. ¶ 2 (Pls.' App. 341).
[28] Pls.' Pet. ¶¶ 70–92.
[29] Fermi Mot. 31.
[30] *See generally* Pls.' Resp.; Fermi Reply.
[31] Fermi Mot. 30.

within its scope.[32] The movant bears the burden on both.[33] The Court decides the first question under ordinary principles of contract law.[34] No presumption favoring arbitration applies until the existence of an agreement has been established.[35]

¶ 19. The Court routinely decides issues of scope as well, but the parties may clearly and unmistakably assign those questions to the arbitrator.[36] When they do, the Court's task is "to first determine if there is a binding arbitration agreement that delegates arbitrability to the arbitrator" and, if so, to "compel arbitration so the arbitrator may decide gateway issues the parties have agreed to arbitrate."[37] Either way, once the movant carries its burden, the Court "has no discretion but to compel arbitration and stay its own proceedings."[38]

¶ 20. Fermi moves principally under the Texas Arbitration Act.[39] Because that Act supports the relief requested, the Court need not decide whether the Federal Arbitration Act independently supplies a basis for the same relief.

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[32] *Cerna ex rel. R.W. v. Pearland Urban Air, LLC*, 714 S.W.3d 585, 588 (Tex. 2025); *Valerus Compression Servs., LP v. Austin*, 417 S.W.3d 202, 207–08 (Tex. App.—Houston [1st Dist.] 2013, no pet.).
[33] *In re Rubiola*, 334 S.W.3d 220, 223 (Tex. 2011) (orig. proceeding).
[34] *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 227–28 (Tex. 2003); *see Duarte v. Mayamax Rehab. Servs., L.L.P.*, 527 S.W.3d 249, 256 (Tex. App.—El Paso 2016, pet. denied).
[35] *See In re D. Wilson Constr. Co.*, 196 S.W.3d 774, 782–83 (Tex. 2006).
[36] *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 121 (Tex. 2018).
[37] *Id.* at 121; *Cerna*, 714 S.W.3d at 589–90.
[38] *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753–54 (Tex. 2001); *see* TEX. CIV. PRAC. & REM. CODE §§ 171.021, 171.025.
[39] Fermi Mot. 16.

ANALYSIS

¶ 21. Plaintiffs resist arbitration on two grounds: first, that the conversion documents extinguished the arbitration agreement altogether; and second, that even if the agreement survived, it does not reach claims arising under the separate Joinder Agreements. Only the first question is for the Court. If the arbitration agreement remains in force, the parties agreed that the arbitrator, not this Court, must decide which claims fall within its reach.

A. The Court decides whether the arbitration agreement survived the conversion.

¶ 22. Fermi argues that under the separability doctrine, the arbitrator must decide whether the Company Agreement remains enforceable.[40] The Court disagrees. Whether the parties made a "valid and presently enforceable agreement to arbitrate" remains a judicial question.[41] When a litigant claims a later agreement displaced an earlier arbitration clause, "a court, not an arbitrator, must decide whether the parties' first agreement was superseded by their second."[42] The Fifteenth Court of Appeals recently drew this same distinction between whether an arbitration clause still exists and what it covers.[43]

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[40] Fermi Reply 11 (citing *Baby Dolls Topless Saloons, Inc. v. Sotero*, 642 S.W.3d 583, 586 (Tex. 2022)).
[41] *Transcor Astra Grp. S.A. v. Petrobras Am. Inc.*, 650 S.W.3d 462, 480 (Tex. 2022) (quoting *G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 519 (Tex. 2015)).
[42] *Coinbase, Inc. v. Suski*, 602 U.S. 143, 152 (2024); *see also Cerna*, 714 S.W.3d at 589 (explaining that a later agreement may raise a question, for the court, whether the earlier arbitration agreement still exists).
[43] *Drusch v. Borchers*, No. 15-25-00224-CV, 2026 WL 2914872, at *5–6 (Tex. App.—15th Dist. Sept. 29, 2026, mand. pending). In a separate mandamus proceeding concerning a stay of trial-court proceedings pending an interlocutory arbitration appeal, the Supreme Court of Texas has set oral argument for December

¶ 23. In this regard, Fermi's reliance on *Baby Dolls* is misplaced. The plaintiffs there conceded that a valid contract had been formed and did not challenge the arbitration agreement's validity, arguing only that the contract had expired. On those facts, the Texas Supreme Court held that the contract's delegation clause committed the expiration question to the arbitrator.[44] Here, Plaintiffs raise a fundamentally different challenge. They contend the Plan of Conversion and § 11.1 completely replaced the agreement to arbitrate in § 10.9 with a requirement to litigate in court.[45] The Court must therefore decide whether § 10.9 survived before it can enforce any part of it. Otherwise, sending that question to the arbitrator would give continuing effect to the very provision Plaintiffs say was superseded.

¶ 24. This sequence of decision is important because § 10.9, if it survived, does delegate the next question. Section 10.9 calls for arbitration "before a single arbitrator from JAMS" but does not specify which JAMS rules apply.[46] When parties provide for JAMS arbitration without naming particular rules, JAMS's Comprehensive Arbitration Rules deem themselves incorporated into the parties' agreement for claims of this size.[47] Those rules, in turn, assign "arbitrability

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1, 2026. *See* Order, *In re Drusch*, No. 26-0107 (Tex. June 19, 2026) (setting mandamus petition for oral argument).

[44] *Baby Dolls*, 642 S.W.3d at 586–88.

[45] Pls' Resp. 11–16.

[46] Company Agreement § 10.9 (Fermi App. 065).

[47] JAMS Comprehensive Arbitration Rules & Procedures R. 1(a)–(b) (eff. June 1, 2021) (parties "shall be deemed to have made these Rules a part of their Arbitration Agreement" whenever they have provided "for Arbitration by JAMS without specifying any particular JAMS Rules" and the claims exceed $250,000).

disputes" to the arbitrator.[48] Section 10.9 therefore clearly and unmistakably delegates questions of scope to the arbitrator, just as the incorporated AAA rules did in *Drusch*.[49] The sequence, then, is this: the Court decides whether the agreement to arbitrate survived the conversion, and if it did, the arbitrator decides whether it covers Plaintiffs' claims.[50]

B. Plaintiffs agreed to arbitrate under § 10.9.

¶ 25. There is no real dispute that Plaintiffs agreed to arbitrate when they joined the company. Each signed a Joinder Agreement that made him "a party to the Company Agreement" and "fully bound by . . . all of the covenants, terms, and conditions of the Company Agreement as though an original party thereto."[51] Section 10.9 is one of those terms.[52]

¶ 26. Plaintiffs nonetheless raise two objections. The first is that the Joinder Agreements did not separately incorporate the arbitration clause.[53] That misses the point. The Joinders did more than refer generally to the Company Agreement; they made Plaintiffs parties to it. The authorities that Plaintiffs cite, which address whether a general reference to another contract is sufficient to incorporate that

[48] *Id.* at R. 11(b).
[49] *Drusch*, 2026 WL 2914872, at *5–6 (applying *TotalEnergies E&P USA, Inc. v. MP Gulf of Mex., LLC*, 667 S.W.3d 694, 711–12 (Tex. 2023), and AAA Commercial Rule 1(a)).
[50] *Id.*; *Cerna*, 714 S.W.3d at 589–91; *Coinbase*, 602 U.S. at 150–53.
[51] Peña Joinder Agreement (Fermi App. 085); Summers Joinder Agreement (Fermi App. 128).
[52] Company Agreement § 10.9 (Fermi App. 065).
[53] Pls.' Resp. 5–6, 17.

document's arbitration clause, therefore do not apply.[54] Nor does it matter that § 10.9 appears in the Company Agreement rather than in the text of the Joinders themselves. "[A]n arbitration agreement does not have to be included in each of the contract documents it purports to cover."[55]

¶ 27. The second objection draws on the clawback provision in Clause (iii) of the Joinder Agreements. That provision states that the clawback right "shall survive the termination of the undersigned's membership," and Plaintiffs note that the Joinder Agreements contain no comparable survival language for arbitration. That comparison proves less than Plaintiffs suggest. The survival sentence addresses a specific concern: it permits Fermi to reclaim a member's units even after that member leaves the company. It does not identify the clawback as the only surviving obligation, and it says nothing about where a dispute over the clawback must be resolved.[56] Its silence about arbitration therefore does not establish that the parties intended the arbitration agreement to end with Plaintiffs' membership.

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[54] *See id.* at 17 (citing *Ihde v. HME, Inc.*, No. 4:15-CV-00585-CAN, 2016 WL 11372445, at *4 (E.D. Tex. June 16, 2016)); *Ihde*, 2016 WL 11372445, at *4–5 (holding that a general reference in a purchase order did not incorporate a subcontract's arbitration clause).

[55] *TotalEnergies*, 667 S.W.3d at 720 (quoting *In re AdvancePCS Health L.P.*, 172 S.W.3d 603, 606 (Tex. 2005) (internal quotation marks omitted)).

[56] Peña Joinder Agreement (Fermi App. 085); Summers Joinder Agreement (Fermi App. 128).

¶ 28. Fermi, in short, has established that the parties formed an agreement to arbitrate. Whether the conversion documents later displaced that agreement is a separate question, to which the Court now turns.

C. The Plan of Conversion did not extinguish the agreement to arbitrate disputes that had already arisen.

¶ 29. Plaintiffs next argue that the agreement to arbitrate did not survive the conversion. They rely on § 2(d) of the Plan of Conversion, which provides that the Company Agreement terminates and is superseded in its entirety by the corporation's governing documents. In Plaintiffs' view, that language extinguished the arbitration agreement along with everything else in the Company Agreement.[57] Fermi disagrees. It reads the provision as replacing the company's governing rules going forward while leaving intact existing obligations, including the duty to arbitrate this dispute.[58] Between the two, Fermi has the better reading.

1. The governing rule.

¶ 30. Arbitration clauses are hardy. They routinely outlive the contracts that contain them and continue to govern disputes that arose before the contracts ended.[59] They are not indestructible, however. Parties remain free to replace an

[57] Pls.' Resp. 11–14.
[58] Fermi Mot. 20–27; Fermi Reply 7–11.
[59] *E.g., Cooper Indus., LLC v. Pepsi-Cola Metro. Bottling Co.*, 475 S.W.3d 436, 446–47 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *Cleveland Constr., Inc. v. Levco Constr., Inc.*, 359 S.W.3d 843, 854 (Tex. App.—Houston [1st Dist.] 2012, pet. dism'd).

arbitration agreement with a later contract,[60] but courts do not lightly conclude that they have. In making that determination, courts read the two instruments together and give effect to both if their terms can be reconciled.[61] Only when the later instrument is so inconsistent with the arbitration agreement that both cannot stand does the later instrument control.[62]

¶ 31. To supersede an arbitration agreement, a later instrument need not mention arbitration by name.[63] But its silence on the subject counts for something, as *Drusch* illustrates. The later agreement there contained a merger clause declaring it "the entire agreement" on its subject and providing that it would "amend and supersede" prior agreements on that subject. The court of appeals nonetheless held that the clause left an earlier arbitration agreement intact. Because the merger clause was "silent as to the arbitration provision," the court reasoned that "[t]he only reasonable interpretation is that the arbitration agreement does continue to exist."[64]

¶ 32. If a merger clause alone is not enough, *Transcor* shows what is. There, the Supreme Court of Texas found an intent to supersede not in any single provision

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[60] *Transcor*, 650 S.W.3d at 481–82; *AIG Specialty Ins. Co. v. ExxonMobil Oil Corp.*, No. 05-23-00719-CV, 2024 WL 1089475, at *5–7 (Tex. App.—Dallas Mar. 13, 2024, pet. denied).
[61] *AIG Specialty*, 2024 WL 1089475, at *5 (quoting *Sharpe v. AmeriPlan Corp.*, 769 F.3d 909, 915 (5th Cir. 2014)); *see Transcor*, 650 S.W.3d at 481.
[62] *AIG Specialty*, 2024 WL 1089475, at *5.
[63] *Id.* at *6–7; *see Transcor*, 650 S.W.3d at 481–82.
[64] *Drusch*, 2026 WL 2914872, at *6.

of a negotiated settlement agreement, but in three provisions working together: a merger clause superseding "all prior written or oral agreements"; a forum clause naming certain courts "the exclusive forums for any dispute"; and "the broadest type of general release," which expressly reached claims under the earlier agreement.[65] Collectively, those provisions left no room for the earlier arbitration agreement. Every other supersession decision Plaintiffs cite likewise involved a settlement or termination agreement that released prior claims, chose a different forum for them, or declared the earlier contract void.[66]

¶ 33. Without a release, even emphatic termination language leaves an arbitration agreement intact, as *Cooper Industries* illustrates. The termination agreement there provided that an earlier guaranty was "fully, finally and irrevocably terminated and of no further force or effect," and that no one "shall have any further obligation or liability under the [guaranty] from and after Closing."[67] It also sent disputes over the termination agreement exclusively to New York courts.[68] Broad as that language was, the court held that the duty to arbitrate disputes that arose before

[65] *Transcor*, 650 S.W.3d at 481–82.
[66] *TransCore Holdings Inc. v. Rayner*, 104 S.W.3d 317, 321–23 (Tex. App.—Dallas 2003, pet. denied); *Smith v. Al Ross Luxury Homes LLC*, 720 S.W.3d 149, 156–57 (Tex. App.—Houston [14th Dist.] 2025, no pet.); *Duarte*, 527 S.W.3d at 258–59; *AIG Specialty*, 2024 WL 1089475, at *5–7 (holding that a later settlement agreement's exclusive forum-selection and merger clauses superseded an earlier insurance-policy arbitration endorsement).
[67] *Cooper Indus.*, 475 S.W.3d at 446.
[68] *Id.*

termination survived. The agreement released nothing, the court emphasized, and the parties resisting arbitration had not signed it.[69]

¶ 34. What separates these cases is not how broadly the later instrument speaks, but what it actually does. An arbitration agreement gives way when the parties later agree to something that looks backwards, such as a release of prior claims or an express choice of a different forum for disputes that have already arisen. It survives when the later instrument merely ends the contract going forward, merges prior agreements, or says nothing about arbitration. The Plan of Conversion is the second kind of instrument.

2. Section 2(d) operates prospectively.

¶ 35. The text of § 2(d) bears this out. It operates beginning "[a]t the Effective Time," and from that point forward the LLC Agreement has "no further force or effect" and "no party shall have any further rights, duties or obligations" under it.[70] That is the language of a contract ending, not of claims being released. It closely tracks the termination agreement in *Cooper Industries*, which took effect "as of the Closing" and eliminated any "further obligation or liability . . . from and after Closing."[71]

[69] *Id.* at 446–47.
[70] Plan of Conversion § 2(d) (Pls.' App. 253).
[71] *Cooper Indus.*, 475 S.W.3d at 446.

¶ 36. Plaintiffs contend that § 2(d) is not forward-looking because, unlike the termination agreement in *Cooper Industries*, it omits the words "from and after."[72] But "[a]t the Effective Time" serves the same purpose, and § 2(d)(ii) eliminates only "further" rights, duties, and obligations, the same forward-looking formulation that left the duty to arbitrate intact in *Cooper Industries*. Plaintiffs also contend that "further" means "additional," not "later."[73] Although the Court disagrees—and reads the term as temporal in context—the definitional debate changes nothing. Either way, the right to arbitrate a dispute that had already arisen, been noticed, and been acted on is not an additional right created after September 30, 2025.[74]

¶ 37. Nor does this reading render "superseded in their entirety" surplusage.[75] The phrase serves a distinct purpose. It identifies what replaces the Company Agreement, namely the Certificate of Formation and the Bylaws, and ensures that no part of the Company Agreement continues to govern Fermi Inc.[76] But replacing a governing instrument going forward is not the same as releasing obligations that have already attached. Like the merger clause in *Drusch*, § 2(d) says

[72] Pls.' Resp. 13, 16.
[73] *Id.* at 13.
[74] *See* Peña Investigation Letter (Fermi App. 171–72); Summers Investigation Letter (Fermi App. 174–75); Unanimous Written Consent (Fermi App. 177–79); Peña Reclamation of Company Units (Fermi App. 181); Summers Reclamation of Company Units (Fermi App. 183); Plan of Conversion § 2(d) (Pls.' App. 253); *Cooper Indus.*, 475 S.W.3d at 446–47.
[75] *See* Pls.' Resp. 13.
[76] Plan of Conversion § 2(d) (Pls.' App. 253).

nothing about arbitration. And unlike the instruments in *Transcor*, *TransCore*, *Duarte*, and *Al Ross*, the Plan contains no release of any kind.[77]

3. The Plan as a whole preserves existing obligations.

¶ 38. Even if § 2(d) left room for doubt, the rest of the Plan resolves it. Section 4(a), the Plan's continuity provision, is emphatic. It provides that Fermi Inc. is "deemed to be the same entity" as Fermi LLC, that Fermi LLC's "causes of action . . . remain vested" in Fermi Inc., and that Fermi LLC's "debts, liabilities, duties and obligations . . . shall remain attached" to Fermi Inc. "as if [they] had originally been incurred or contracted by" it.[78] Section 10, meanwhile, confines the Plan's reach. It supersedes the LLC Agreement only "[t]o the extent that any provision of this Plan . . . conflicts with" it.[79]

¶ 39. Read together, these provisions describe a company that changed its form while keeping its commitments. The duty to arbitrate a dispute that had already arisen is one of those commitments. Plaintiffs would read § 2(d) to wipe out the agreed procedure for resolving the very claims and obligations that § 4(a) preserves, pitting one section of the Plan against another. The Court's task is the reverse: to harmonize the Plan's provisions wherever possible.[80] Here, that task is not difficult.

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[77] *Transcor*, 650 S.W.3d at 481–82; *TransCore*, 104 S.W.3d at 321–23; *Duarte*, 527 S.W.3d at 253–54; *Al Ross*, 720 S.W.3d at 152, 156–57.
[78] Plan of Conversion § 4(a) (Pls.' App. 254); *see* TEX. BUS. ORGS. CODE § 10.106.
[79] *Id.* § 10 (Pls.' App. 255).
[80] *See J.M. Davidson*, 128 S.W.3d at 229 (courts should harmonize provisions when possible, not find conflict).

¶ 40. Plaintiffs counter with the interpretive canon *expressio unius*: the expression of one thing implies the exclusion of others.[81] They reason that because § 3 expressly preserves Class B vesting restrictions, its silence about § 10.9 means the arbitration clause did not survive. That inference misreads § 3, which is not a survival clause at all but a set of mechanics for converting outstanding units into common stock.[82] It preserves vesting restrictions because those restrictions had to follow the units into the new shares, which would not issue until the restrictions were satisfied. A provision about converting outstanding units says nothing about where to resolve a dispute over units that were no longer outstanding. And Plaintiffs' units were no longer outstanding; Fermi had reclaimed them before the conversion.

¶ 41. Plaintiffs' reading also proves too much. Section 3 is equally silent about every other provision of the Company Agreement, so if silence meant extinction, the conversion would have erased every accrued right and obligation under that agreement. Members could no longer recover distributions they were owed, managers could escape liability for any pre-conversion breaches of fiduciary duty, and former members would be free to disclose the company's confidential information. Any company could shed its obligations to its members simply by changing its form. Yet Section 4(a) says just the opposite, as does the Business

[81] Pls.' Resp. 13–14 (citing *City of Houston v. Williams*, 353 S.W.3d 128, 145 (Tex. 2011)).
[82] Plan of Conversion § 3 (Pls.' App. 253).

Organizations Code.[83] Plaintiffs' own claims would not survive their reading either, because the Class B units they sue over were created and defined by the Company Agreement. Plaintiffs cannot have it both ways. The Company Agreement cannot be dead for purposes of arbitration yet alive for purposes of their claims.

4. Plaintiffs are not parties to the Plan.

¶ 42. Plaintiffs' argument faces one more obstacle: they were not parties to the Plan. Supersession is a question of intent. It asks whether the parties to arbitration agreement later agreed to replace it with something else. That is why every supersession case Plaintiffs cite involved a settlement or termination agreement that the parties to the arbitration clause negotiated and signed themselves.[84] The Plan is nothing of the kind. Plaintiffs did not sign it, had no part in adopting it, and are expressly excluded from its benefits, because § 11 confers rights and remedies only on "the parties hereto."[85] An instrument that Plaintiffs had no hand in making cannot reflect their intent to abandon a bargain they had already struck. *Cooper Industries* drew the same distinction, emphasizing that the parties resisting arbitration were not parties to the termination agreement.[86]

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[83] *Id.* § 4(a) (Pls.' App. 254); *see* TEX. BUS. ORGS. CODE § 10.106.
[84] *TransCore*, 104 S.W.3d at 321–23; *Duarte*, 527 S.W.3d at 258–59; *Al Ross*, 720 S.W.3d at 156–57; *AIG Specialty*, 2024 WL 1089475, at *5–7.
[85] Plan of Conversion §§ 1, 11 (Pls.' App. 252, 255).
[86] *Cooper Indus.*, 475 S.W.3d at 447.

¶ 43. Plaintiffs respond that the Plan did not require their assent because it operated by statute, binding the entity and its governance regime, rather than as a bilateral contract.[87] That is true as far as it goes, but it cuts against Plaintiffs. If the Plan is not an agreement between the parties, it cannot be the later agreement that supersession requires. A statutory conversion changes an entity's form. It does not, by its own force, rewrite the terms on which the entity and its counterparties have agreed to resolve their disputes. And the terms governing this dispute were settled long before the conversion. Fermi reclaimed and paid for Plaintiffs' units in July 2025, and its Board ratified the reclamation in August.[88] When Fermi LLC converted six weeks later, the dispute had already arisen and the Joinder Agreements had already committed it to arbitration. Nothing in the conversion suggests that either side meant to abandon that commitment.[89]

D. Section 11.1 does not displace the agreement to arbitrate.

¶ 44. Plaintiffs' fallback argument pivots from the Plan of Conversion to the Certificate of Formation. Section 11.1 of that Certificate names this Court the "sole and exclusive forum" for a broad range of disputes. Plaintiffs read that language to replace arbitration altogether, leaving two provisions that cannot both be enforced.[90]

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[87] Pls.' Resp. 14, 17.
[88] Unanimous Written Consent (Fermi App. 177–79); Peña Reclamation of Company Units (Fermi App. 181); Summers Reclamation of Company Units (Fermi App. 183).
[89] *See Cooper Indus.*, 475 S.W.3d at 447.
[90] Pls.' Resp. 14–15.

Because this question, too, goes to whether an agreement to arbitrate still exists, no presumption favoring arbitration applies.[91] Nor is one needed. Section 11.1 and § 10.9 answer different questions, and § 11.1 by its own terms yields to the arbitration agreement.

1. Section 11.1 and § 10.9 can be harmonized.

¶ 45. A forum clause decides *which* court hears a dispute. An arbitration clause decides *whether* a court hears it at all. Section 11.1 speaks only to the first question. It designates where an "action" may be brought, but does not require the parties to litigate in court a dispute that they agreed to arbitrate.[92] Courts routinely read exclusive-forum clauses this way. A clause conferring "exclusive jurisdiction" over "any suit or proceeding" sensibly reaches "only those disputes that are not subject to arbitration," such as a suit to compel arbitration or to enforce an award.[93] Stated otherwise, court proceedings "may be necessary before, during, or after arbitration, so there is nothing inconsistent about including both arbitration and venue clauses."[94] Section 10.9 anticipates exactly that kind of proceeding when it provides for entry of judgment on an award "in the trial courts located in Dallas,

[91] *Sharpe*, 769 F.3d at 914–15.
[92] Certificate of Formation § 11.1 (Pls.' App. 327–28).
[93] *Pers. Sec. & Safety Sys. Inc. v. Motorola Inc.*, 297 F.3d 388, 395–96 (5th Cir. 2002); *accord Valerus*, 417 S.W.3d at 210–11; *Drusch*, 2026 WL 2914872, at *7.
[94] *Drusch*, 2026 WL 2914872, at *7 (citing TEX. CIV. PRAC. & REM. CODE § 171.096).

Texas."[95] The two clauses thus work in sequence, not in conflict. Arbitration resolves the merits, and the courts handle whatever litigation the arbitration requires. This very motion is one example.

¶ 46. Even if the two clauses could not be reconciled this way, § 11.1 contains its own exception. By its terms, it applies "[u]nless the Corporation consents in writing to the selection of an alternative forum."[96] Section 10.9 is precisely that: a written selection of an alternative forum by the same entity that now operates as Fermi Inc. under § 4(a) of the Plan and § 10.106 of the Business Organizations Code. Section 11.1 confirms this point. It provides that "[t]he existence of any prior consent to, or selection of, an alternative forum by the Corporation shall not act as a waiver of the Corporation's ongoing consent right . . . with respect to any current or future actions or claims."[97] That sentence assumes that prior forum selections may remain in place, and it ensures only that they do not cost the corporation its right to insist on this Court for other disputes.

¶ 47. This carve-out also sets § 11.1 apart from the forum clauses in the cases on which Plaintiffs rely. The forum clause in *Transcor* had no carve-out, and it operated together with a merger clause and a sweeping general release, all negotiated

[95] Company Agreement § 10.9 (Fermi App. 065).
[96] Certificate of Formation § 11.1 (Pls.' App. 327).
[97] *Id.*

by the same parties who had earlier agreed to arbitrate.[98] *AIG Specialty* is also distinguishable, but for a different reason: the claims there arose under the later settlement agreement itself.[99] This case shares none of those features. Section 11.1 expressly yields to the corporation's written consent to another forum. Plaintiffs released nothing. And their claims arise under the Joinder Agreements, not the Certificate of Formation.[100]

2. Plaintiffs' shareholder status does not change the result.

¶ 48. Plaintiffs also argue that because they now own Fermi Inc. stock, § 11.1 binds both them and Fermi to litigate here.[101] That argument fails for two reasons. First, their shares have nothing to do with this dispute. Plaintiffs bought them on the open market after their claims had accrued, the shares are separate from the reclaimed units, and Plaintiffs do not sue as shareholders. They sue as former members, on the Joinder Agreements.[102]

¶ 49. Second, the consent that § 11.1 extracts from shareholders runs in one direction. A shareholder who acquires stock is deemed to accept this Court as the corporation's chosen forum. That consent binds the shareholder, not the corporation, which remains free to consent in writing to a different forum, as it did in § 10.9.

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[98] *Transcor*, 650 S.W.3d at 481–82.
[99] *AIG Specialty*, 2024 WL 1089475, at *4–7.
[100] Pls.' Pet. ¶¶ 70–92.
[101] Pls.' Resp. 9–11.
[102] *See* Pls.' Pet. ¶¶ 70–92; Pls.' Resp. 17; Peña Decl. (Pls.' App. 339); Summers Decl. (Pls.' App. 341).

Plaintiffs would turn that one-way commitment into a weapon against the corporation. On their reading, the price of escaping an arbitration agreement with Fermi would be one share of its stock. Nothing in § 11.1 supports that result, and a clause meant to give the corporation a choice of forum cannot reasonably be read to take that choice away.

3. Fermi's litigation of other disputes in this Court is immaterial.

¶ 50. Finally, Plaintiffs point to Fermi's other litigation in this Court, including its suit against Neugebauer, as evidence that Fermi treats the Business Court as its forum of choice. That is true enough, but irrelevant. Plaintiffs expressly disclaim any argument that Fermi waived arbitration,[103] which leaves the observation without any legal consequence. And because nothing suggests that any of Fermi's other cases is subject to an arbitration agreement, litigating them here says nothing about whether Fermi abandoned its agreement to arbitrate this one.[104]

E. The remaining questions of scope belong to the arbitrator.

¶ 51. One argument remains. Fermi's motion acknowledged that Plaintiffs' claims are "predicated entirely on their alleged rights under their Joinder Agreements." Plaintiffs call that a fatal concession. If their claims arise under the

[103] Pls.' Resp. 17–18.
[104] Plaintiffs do not argue that Fermi is estopped from invoking § 10.9. *See id.*

Joinder Agreements rather than the Company Agreement, Plaintiffs say, then § 10.9 cannot reach them.[105]

¶ 52. That argument goes to scope, not existence. Section 10.9 covers disputes "arising out of or related to this Agreement or any transaction resulting hereunder."[106] Whether claims under the Joinder Agreements fall within that language is a question of which disputes the parties agreed to arbitrate, not whether they agreed to arbitrate at all.[107] And because § 10.9 delegates arbitrability, that question belongs to the arbitrator, however obvious the answer may seem to a court.[108]

F. The action is stayed in its entirety.

¶ 53. Because Plaintiffs' claims against Fermi must be arbitrated, those claims must be stayed.[109] The conversion claim against Neugebauer presents a closer question, because he is not a party to the arbitration. Plaintiffs ask the Court to sever that claim and let it proceed.[110] The Court declines. Plaintiffs allege that Neugebauer directed the very reclamation that underlies their claims against Fermi, and they

[105] *Id.* at 17 (quoting Fermi Mot. 19).
[106] Company Agreement § 10.9 (Fermi App. 065).
[107] *Drusch*, 2026 WL 2914872, at *5–6; *see TotalEnergies*, 667 S.W.3d at 711, 720 (treating whether claims under a second contract fall within an arbitration clause in the first as a question of scope).
[108] *See Drusch*, 2026 WL 2914872, at *6 ("[W]hether the answer seems obvious to a court does not matter when the scope of arbitrability has been delegated to an arbitrator.").
[109] TEX. CIV. PRAC. & REM. CODE § 171.025(a).
[110] Pls.' Resp. 19.

seek to hold him jointly and severally liable.[111] The claim against him therefore cannot be resolved without deciding whether the reclamation was a proper exercise of Clause (iii), an issue the arbitrator will address in resolving Plaintiffs' claims against Fermi. When the same issue must be decided in both arbitration and litigation, "the latter must be stayed until the former is completed," so that the arbitration "is not rendered moot by deciding the same issues in court."[112]

¶ 54. The Texas Arbitration Act's severability provision does not change the result. It limits a stay to the arbitrable issue only "if that issue is severable from the remainder of the proceeding."[113] The delegation clause assigns the arbitrator questions about the scope of the agreement between Plaintiffs and Fermi. The Court separately decides whether the claim against non-signatory Neugebauer should be stayed. That claim is not severable; the propriety of the reclamation lies at the heart of both claims, and nothing in this record suggests that the claim against Neugebauer could be separated from the claims against Fermi.

CONCLUSION AND ORDER

¶ 55. **IT IS THEREFORE ORDERED** that Defendant Fermi Inc.'s Motion to Compel Arbitration and to Stay Proceedings is **GRANTED**. Plaintiffs shall arbitrate their claims against Fermi Inc. before a single arbitrator from JAMS in Dallas, Texas,

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[111] Pls.' Pet. ¶¶ 70–92; Unanimous Written Consent (Fermi App. 177–79).
[112] *In re Merrill Lynch Tr. Co. FSB*, 235 S.W.3d 185, 188–90, 195–96 (Tex. 2007).
[113] TEX. CIV. PRAC. & REM. CODE § 171.025(b).

in accordance with § 10.9 of the Company Agreement of Fermi LLC, as amended and restated.

¶ 56. **IT IS FURTHER ORDERED** that this action is **STAYED** in its entirety, including Plaintiffs' claim against Defendant Toby Neugebauer, pending completion of the arbitration. The parties shall file a joint status report every ninety (90) days while the arbitration is pending, and within fourteen (14) days after the arbitrator issues a final award.

¶ 57. This Memorandum Opinion and Order does not dispose of all claims and parties and is not a final judgment.

IT IS SO ORDERED.

HON. BRIAN STAGNER
Judge of the Texas Business Court,
Eighth Division, *sitting by assignment in the First Division*

SIGNED: November 12, 2026

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