EFiled: Aug 13 2026 02:27PM EDT
Filing ID 80303534
Case Number 216,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE REINZ WISCONSIN GASKET, LLC, a cancelled Delaware limited liability company	)	No. 216,2026
	)	Court Below: Court of Chancery of the State of Delaware
	)	C.A. No. 2022-0859-MTZ

APPELLANT LINDA A. COOK, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF ROLAND COOK'S, CORRECTED OPENING BRIEF

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES iii

INTRODUCTION 1

NATURE AND STAGE OF PROCEEDINGS 4

SUMMARY OF ARGUMENT 7

STATEMENT OF FACTS 9

A. Mr. Cook's Death and the Massachusetts Action 9

B. RWG, Its Insurance, and Its Owners 9

C. The Aborted Investigation and the Six-Day Cancellation 12

D. The Post-Trial Findings and the Court's Two-Stage Proceedings 15

E. The Limited Investigatory Receivership and the Final Judgment 17

ARGUMENT 21

I. THE COURT OF CHANCERY ERRED BY CONDITIONING RWG'S REVIVAL ON SHOWING NOT JUST OWNERSHIP OF INSURANCE POLICIES BUT ACTUAL COVERAGE UNDER THE POLICIES, ESPECIALLY WHEN ITS OWN ORDERS LEFT NO PARTY ABLE TO LITIGATE COVERAGE ON BEHALF OF RWG 21

A. Question Presented 21

B. Standard and Scope of Review 21

C. Merits of Argument 22

1. The Post-Trial Findings Triggered Revival Under the LLC Act. 22

2. The Court of Chancery Erred by Instead

Conditioning Revival on a Showing the Court's Own Orders Made Impossible 25

3. Even If Some Merits Inquiry Could Precede Revival, It Ended at Ownership, Not Coverage. 28

II. ALTERNATIVELY, THE COURT OF CHANCERY ERRED BY ABANDONING THE PROCEDURE IT SET AND CHARGING THE RESULTING EVIDENTIARY GAP TO PETITIONER. 32

A. Question Presented 32

B. Standard and Scope of Review 32

C. Merits of Argument 33

III. THE COURT OF CHANCERY ERRED BY ENTERING JUDGMENT FOR CONTINENTAL ONCE THE COURT DECLINED TO REVIVE RWG. 39

A. Question Presented 39

B. Standard and Scope of Review 39

C. Merits of Argument 39

CONCLUSION 42

EXHIBITS:

A - Final Order and Judgment of the Court of Chancery by the Honorable Morgan T. Zurn, dated April 29, 2026

B - Memorandum Opinion of the Court of Chancery by the Honorable Morgan T. Zurn Denying Motion to Nullify Cancellation of Reinz Wisconsin Gasket, LLC and Request to Expand Receiver's Authority, dated April 2, 2026

C - Order of the Court of Chancery by the Honorable Morgan T. Zurn Appointing Receiver Over Reinz Wisconsin Gasket, LLC, dated August 3, 2023

D - Post-Trial Memorandum Opinion of the Court of Chancery by the Honorable Morgan T. Zurn, dated March 20, 2023, in Civil Action Number 2022-0859-MTZ

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Page(s)

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Bäcker v. Palisades Growth Cap. II, L.P.,
246 A.3d 81 (Del. 2021) 32, 33

Capone v. LDH Mgmt. Holdings LLC,
2018 WL 1956282 (Del. Ch. Apr. 25, 2018) 26, 28

CML V, LLC v. Bax,
28 A.3d 1037 (Del. 2011) 21

Coyne v. Fusion Healthworks, LLC,
2019 WL 1952990 (Del. Ch. Apr. 30, 2019) 23

Crescent/Mach I Partners, L.P. v. Dr Pepper Bottling Co. of Texas,
962 A.2d 205 (Del. 2008) 39, 41

Frederick-Conaway v. Baird,
159 A.3d 285 (Del. 2017) 32

Hudak v. Procek,
806 A.2d 140 (Del. 2002) 35

In re Krafft-Murphy Co.,
82 A.3d 696 (Del. 2013) ..... *passim*

Matthew v. Laudamiel,
2012 WL 605589 (Del. Ch. Feb. 21, 2012) 23, 26, 28

Mentor Graphics Corp. v. Shapiro,
818 A.2d 959 (Del. 2003) 41

Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC,
112 A.3d 878 (Del. 2015) 35

Ravindran v. GLAS Tr. Co.,
327 A.3d 1061 (Del. 2024) 32

In re Tex. E. Overseas, Inc.,
2009 WL 4270799 (Del. Ch. Nov. 30, 2009), *aff'd*, 998 A.2d 852
(Del. 2010) 25, 28, 39

Tyson Foods, Inc. v. Aetos Corp.,
809 A.2d 575 (Del. 2002) 40

Statutes

6 *Del. C.* § 18-203 .....22, 24

6 Del. C. § 18-804 .....*passim*

6 *Del. C.* § 18-805 .....*passim*

8 *Del. C.* § 279 .....23, 28

INTRODUCTION

Roland Cook died of mesothelioma, a cancer caused by the asbestos in the gaskets he cut and replaced as a working man. His widow, Petitioner Linda A. Cook ("Petitioner" or "Mrs. Cook"), sued the gasket maker, Reinz Wisconsin Gasket, LLC ("RWG"), among others. She asked one question in discovery: what assets and insurance does the company have to answer for this? RWG promised a witness, twice. Then, on the day of its witness was to appear, RWG dissolved and cancelled itself. With that cancellation, RWG left six lawsuits pending, left its insurance investigation abandoned mid-search because the investigator "seem[ed] the type to keep looking," and set nothing aside for anyone.[1]

The authors of the Delaware Limited Liability Company Act (the "LLC Act") anticipated this tactic. So, the LLC Act makes provision for pending claimants mandatory and gives the Court of Chancery the tools to revive a company that skips that duty. Below, the Court of Chancery found it reasonably likely that RWG had done exactly that. The court below appointed Peter D. Protopapas (the "Receiver"), an experienced receiver with nineteen asbestos receiverships behind him. But the court only gave him authority to investigate and write a report. When the Receiver identified thirty-three insurance policies and litigable claims against RWG's

[1] *In re Reinz Wis. Gasket, LLC*, 2026 WL 904110, at *8 (Del. Ch. Apr. 2, 2026) (attached as Exhibit B) [hereinafter 2026 Opinion]. *See* A1373 (JX 104 (2/14/22 Giannetta e-mail chain)); A1375 (JX 105 (2/18/22 Singerman e-mail chain)).

directors, officers, and the very parents who ordered the cancellation — *i.e.*, RWG's sole member, Intervenor DCo LLC ("DCo"), and Intervenor Enstar which wholly owns DCo ("Enstar") — and asked for the authority to pursue them, the court below said no. When the Receiver offered to present his privileged claims analysis *in camera*, through the channel the court had reserved for itself by written order, the court never took the opportunity. Instead, its final opinion faulted Petitioner for failing to produce the court-appointed Receiver's work product, even though she had no authority to see the material or to compel its introduction.

The Court of Chancery then went further. Having ruled that the cancelled RWG "cannot . . . make any decisions or take any action,"[2] having disqualified its purported counsel, having barred Petitioner and other parties from speaking for it, and having confined the Receiver to his report, the court entered a coverage judgment against RWG in favor of one of its insurers, Continental Casualty Company ("Continental").[3] RWG was too cancelled to defend itself, yet sufficiently extant to lose a case it could not litigate.

That result inverts the LLC Act's protections. The statute asks a straightforward question: did the company have assets it failed to set aside? Here, it

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[2] *In re Reinz Wis. Gasket, LLC*, 2023 WL 3300042, at *2 (Del. Ch. May 8, 2023) (included at A0589) [hereinafter Disqualification Opinion].

[3] *See* Trans. ID 79342577 (Final Order and Judgment, Apr. 29, 2026) (attached as Exhibit A) [hereinafter Final Order].

did, and revival should have followed. But the Court of Chancery improperly conditioned revival on insurance coverage disputes that the court wrongly interposed into the proceeding — disputes which no one was permitted to litigate on behalf of RWG.

This appeal asks the Court to correct that misapplication of the LLC Act and direct the Court of Chancery to nullify RWG's certificate of cancellation so that the Receiver can do his work for the benefit of RWG and its claimants and creditors.

NATURE AND STAGE OF PROCEEDINGS

This is an appeal from a final judgment of the Court of Chancery declining to nullify the certificate of cancellation of RWG, a Delaware limited liability company that dissolved and cancelled itself while defending six lawsuits, including Petitioner's.[4]

Petitioner filed her Verified Petition on September 23, 2022, seeking nullification of RWG's certificate of cancellation and appointment of a receiver under 6 *Del. C.* § 18-805.[5]

Following a trial on a paper record, the Court of Chancery found on March 20, 2023 that it was reasonably likely RWG had assets when it dissolved that it failed to set aside for pending claims, in violation of 6 *Del. C.* § 18-804(b).[6] The court below deferred ruling on nullification, ordering that a receiver first investigate RWG's assets and report, after which the court below would decide nullification on the report and the trial record.[7]

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[4] *See* 2026 Opinion, *8.

[5] Trans. ID 68153575. *See* A0001 *et seq*. (Court of Chancery Docket).

[6] *See In re Reinz Wis. Gasket, LLC*, 2023 WL 2568326, at *1 (Del. Ch. Mar. 20, 2023) (attached as Exhibit D) [hereinafter Trial Opinion].

[7] *See id*. at *13.

On May 8, 2023, the court below held that the cancelled RWG could not retain counsel or act at all, and ordered the withdrawal of its purported counsel.[8] The court below appointed the Receiver on August 3, 2023, for the limited purpose of investigating RWG's assets,[9] and by order dated June 14, 2024, confirmed that it "may, *and indeed will*, speak to the Receiver *ex parte*."[10]

Continental intervened and counterclaimed for a declaratory judgment concerning its policies.[11] On November 4, 2024, the court below denied the Receiver's motion to modify the receivership order, which sought authority to protect, pursue, and administer RWG's assets.[12] The Receiver filed his final report ("Report") on March 25, 2025, identifying thirty-three insurance policies and litigable claims as RWG assets.[13]

Petitioner then moved to nullify RWG's cancellation and expand the Receiver's authority.[14] DCo, Enstar, and Wausau intervened in opposition,[15] and by

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[8] Disqualification Opinion, *1-3, *5.

[9] 2026 Opinion, *10. *See* Trans. ID 70556982.

[10] A0707 (June 14, 2024 Order) (emphasis added).

[11] 2026 Opinion, *10-11.

[12] *Id. at* *11. See A0727 (11/4/24 Tr. at 26-30).

[13] 2026 Opinion, *11. *See* A0762 (Receiver's Final Report); Trans. ID 75978896.

[14] 2026 Opinion, *11. *See* A0839 (Petitioner's Opening Brief in Support of Motion to Nullify Cancellation) [hereinafter Nullification Op. Br.].

[15] 2026 Opinion, *11.

minute order dated April 17, 2025, the Court of Chancery ruled that Petitioner "cannot speak for Reinz to oppose Continental's motion."[16]

On April 2, 2026, the Court of Chancery issued the 2026 Opinion denying Petitioner's motion. It held the policies and claims the Receiver identified were not RWG assets because Petitioner failed to prove they provide coverage or value, declined to reach the Receiver's authority, and directed an implementing order resolving Continental's counterclaim consistent with the opinion.[17]

The Court of Chancery entered its Final Order on April 29, 2026, including judgment for Continental on its counterclaim.

Petitioner timely filed her notice of appeal on May 29, 2026. This is Petitioner's opening brief.

[16] *See* A0001 (Apr. 17, 2025 Minute Order).

[17] 2026 Opinion, *1, *13, *19-21.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred by refusing to nullify RWG's certificate of cancellation and empower the Receiver after finding it reasonably likely that RWG dissolved holding assets it never set aside for pending claimants, in violation of 6 Del. C. § 18-804(b). Under *In re Krafft-Murphy Co.*, 82 A.3d 696 (Del. 2013), contingent insurance rights are company property, and a company holding undistributed property has not completed its winding up. The finding below therefore triggered the statute's remedy: revival, and a receiver empowered under 6 *Del. C.* § 18-805 to enforce the company's rights and litigate its claims. The court below instead misread *Krafft-Murphy* to demand pre-revival proof that the company not only had policies but that the policies actually provide coverage. And the court improperly adjudicated that coverage under the summary action even as the court's own orders ensured that neither RWG, nor Petitioner, nor the Receiver could litigate the coverage issues on RWG's behalf.

2. The Court of Chancery also erred by abandoning the procedure it designed and charging the resulting evidentiary gap to Petitioner. The court below committed to weigh the Receiver's Report together with the trial record, reserved an *ex parte* channel for the Receiver's privileged conclusions, and made the Receiver (not Petitioner) the instrument for developing the asset record. The 2026 Opinion instead reversed the post-trial findings on the same evidence in favor of a theory

supplied by late-arriving intervenors, declined the Receiver's in camera offer without explanation despite Petitioner's written urging, and then faulted Petitioner for failing to produce the Receiver's privileged work product. Even assuming that the Court of Chancery set an order of operations permitted by the LLC Act, the court erred by failing to follow the process it laid out for the parties.

3. The Court of Chancery erred by entering a declaratory judgment for Continental against RWG. The court below held that the cancelled RWG could litigate "only through a receiver" but never gave the Receiver litigation authority. Once the court below declined to revive RWG, then it mooted Continental's counterclaim because no one held or could assert the contract rights Continental asked the court to extinguish. The coverage judgment against RWG cannot stand.

STATEMENT OF FACTS

A. Mr. Cook's Death and the Massachusetts Action

Mr. Cook worked on small engines in the 1970s and 1980s, cutting and replacing gaskets that contained asbestos.[18] Decades later, he was diagnosed with mesothelioma, a terminal cancer caused by asbestos exposure. He died on March 27, 2022.[19] Petitioner, individually and as executor of his estate, sued the companies whose products contributed to his death in the United States District Court for the District of Massachusetts (the "Massachusetts Action"), naming RWG as a defendant in December 2021.[20]

On July 27, 2022, Petitioner served RWG with a deposition notice in the Massachusetts Action. The topics included the assets and insurance available to RWG to satisfy any judgment.[21] RWG never answered that question under oath. What it did instead is the subject of this case.

B. RWG, Its Insurance, and Its Owners

RWG descends from Wisconsin Gasket & Manufacturing Co. ("WG&M"), a Wisconsin corporation founded in 1943 to supply gaskets to Milwaukee's war

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[18] 2026 Opinion, *2. A1323 (JX 93 (Massachusetts Action First Am. Compl.) ¶¶ 65-66).

[19] Trial Opinion, *1 n.3. *See* A1380 (JX 108 (Cook death certificate); A1652 (JX 121 (Holstein expert report)).

[20] 2026 Opinion, *9; A1323 (JX 93).

[21] 2026 Opinion, *9; A1714 (JX 123 (7/27/22 4th Am. Dep. Notice to Reinz)).

plants.[22] During its operating decades, WG&M and its successors carried comprehensive general liability, excess, and umbrella insurance from Wausau, Kemper (later Lumbermens), Continental, and Travelers, with WG&M as the named insured on the earliest policies.[23] In 1981, WG&M was sold to a Delaware subsidiary of a German gasket maker ("Wisconsin Gasket DE"), which continued the manufacturing business.[24] In 1982 and 1983, Wisconsin Gasket DE corresponded with CNA Insurance Companies about excess coverage and pending asbestos claims, and in 1990 it identified itself to CNA as "the successor" to Wisconsin Gasket & Manufacturing Company.[25] Wisconsin Gasket DE became Reinz Wisconsin Gasket Company in 1985, was acquired into the Dana Corporation family in 1993, and merged into RWG, a Delaware LLC, in 2006.[26]

The court below charted this history in a diagram in its Trial Opinion:[27]

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[22] 2026 Opinion, *2. *See* A1845 (JX 193 (RWG history)); A1161 (JX 1 (WG&M articles of incorporation)).

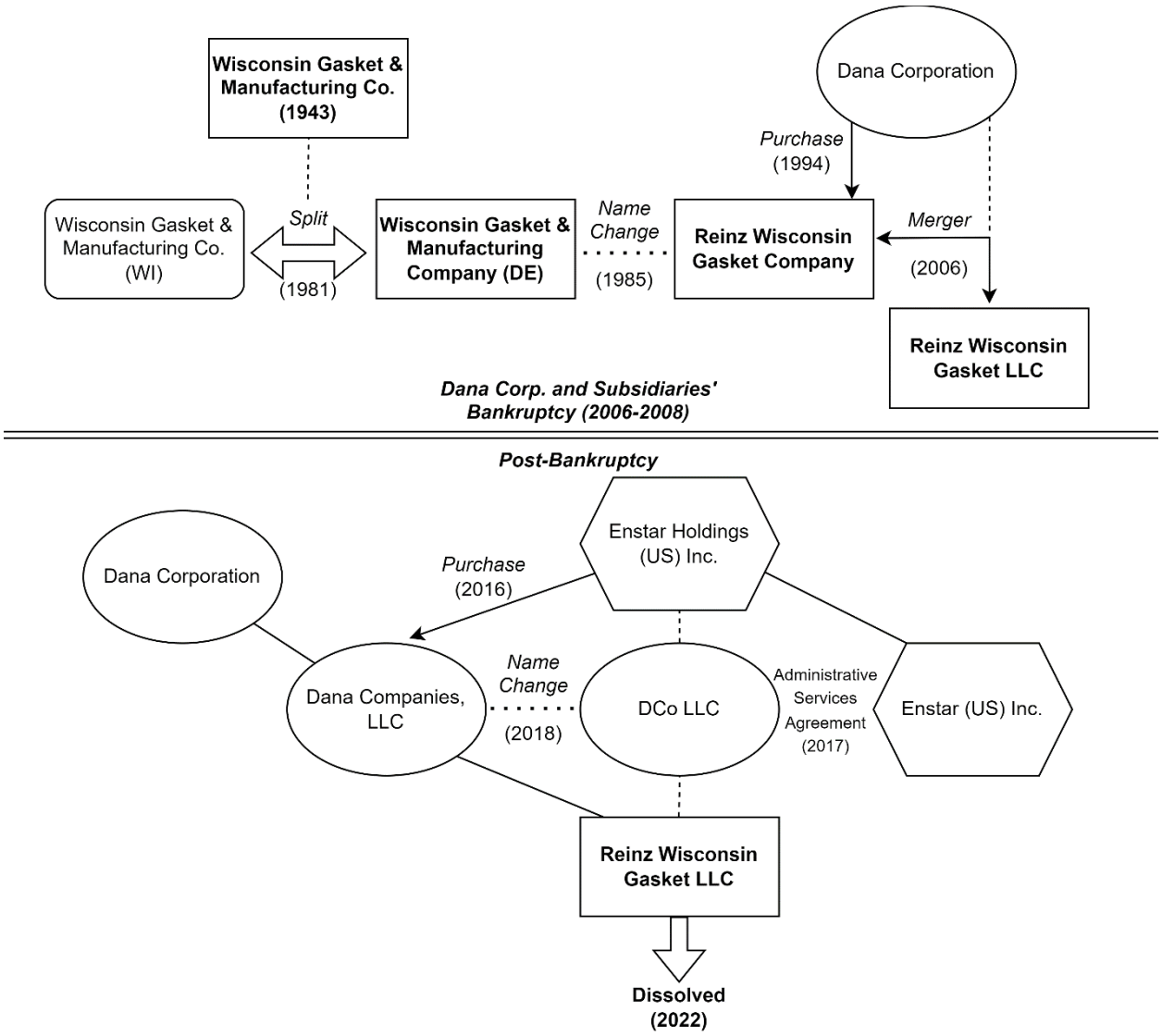
[23] 2026 Opinion, *2-3.

[24] *Id. at* *3-4. *See* A1169 (JX 7 (Purchase Agreement)).

[25] Trial Opinion, *7. *See* A1227 (JX 8 (2/23/82 letter to CNA); A1229 (JX 10 (4/21/82 CNA letter)); A1230 (JX 12 (4/15/83 CNA letter)); A1232 (JX 24 (10/22/90 letter to CNA)).

[26] 2026 Opinion, *4. *See* A1234 (JX 28 (RWG discovery responses, *Strand v. Rockwell*)).

[27] Trial Opinion, *6.



Dana Corp. and RWG entered Chapter 11 bankruptcy in 2006. Under the confirmed Reorganization Plan, RWG transferred its operating assets and real estate to a sister subsidiary, and the bankruptcy court recognized RWG would remain

"solvent . . . for the foreseeable future"[28] — pointing to insurance policies as assets.[29]

RWG never operated again. In 2016, Enstar, through Enstar Holdings (US) Inc., acquired RWG's parent, DCo. Enstar's business, in its own words, is to "acquire[] (re)insurance companies and legacy manufacturing companies with direct exposure to asbestos and environmental liabilities" and to profit from investing the acquired assets while liabilities run off.[30]

C. The Aborted Investigation and the Six-Day Cancellation

In 2020 and 2021, asbestos plaintiffs began naming RWG as a defendant, and RWG's officers went looking for its insurance.[31] In June 2021, while cleaning out an office, DCo's Vicki Stringham found "notice letters" to RWG's excess carrier "and potentially a policy number."[32] DCo asked internally for "the best way to track down potential" policies, and Enstar personnel represented they would send the carrier a letter.[33] The next month, DCo retained an insurance archivist to locate

[28] 2026 Opinion, *5.

[29] Trial Opinion, *8.

[30] 2026 Opinion, *5-6.

[31] *Id. at* *6.

[32] *Id. at* *6.

[33] *See* A1319 (JX 75 (7/14/21 Reinz e-mails re: CNA)).

RWG's historical coverage.[34] The archivist developed leads, including the Lumbermens liquidator produced archival policies from "the critical years of interest," each showing it was "subject to facultative reinsurance," and the archivist recommended pursuing the reinsurer, RWG's former broker, possible "excess coverage over and above the Lumbermens policies," and RWG's German affiliate.[35]

Those leads were never run down. On April 28, 2022, weeks after Mr. Cook's death, RWG's manager Mahsa Tippins initiated discussions about dissolving RWG "because Reinz Wisconsin is on Lanier and Dean Omar's radar and I need to develop a gameplan to stop the bleeding."[36] In February 2022, DCo had already asked whether Enstar had "called off" the archivist, observing that "[h]e seems the type to keep looking," and Enstar told the archivist to "please stand down with any other work."[37] No one contacted the excess carrier or its administrator, despite the internal correspondence recognizing that step.[38] In July 2022, a DCo email circulated legal research on cases in which dissolutions were nullified and the corporate veil pierced,

[34] 2026 Opinion, *6.

[35] *Id*. at *7-8. *See* A1371 (JX 94 (12/3/21 Singerman e-mail chain)).

[36] A1646 (JX 115 (4/28/22 Logan e-mail chain)).

[37] 2026 Opinion, *8. *See* A1373 (JX 104 (2/14/22 Giannetta e-mail chain)); A1375 (JX 105 (2/18/22 Singerman e-mail chain)).

[38] A1780 (JX 178 (11/17/22 Stringham deposition), at 134:19-135:7); A1830 (JX 182 (12/1/22 Wawrzyniak deposition), at 26:14-16, 45:11-17).

and an Enstar file referenced a memorandum on "Options for Reinz & Potential Alter Ego Claims against DCo."[39]

The end came quickly. On August 25, 2022, Enstar's counsel began a closing diligence process, and DCo called a special meeting to discuss RWG's dissolution.[40] The closing checklist was completed in five days, after a single response from a single Enstar representative.[41] The board presentation stated that RWG "lacks insurance," "has no assets," and "currently has 6 cases pending against it."[42] Meanwhile, on August 26 and again on August 30, RWG's counsel in the Massachusetts Action represented that RWG would produce the noticed corporate witness — naming Ms. Stringham as the designee.[43] On August 30, however, RWG filed its notice of dissolution and its certificate of cancellation.[44] It set aside nothing for any of the six pending suits or for future claimants.[45] Ms. Stringham, a director

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[39] *See* A1647 (JX 119 (7/19/22 Stringham e-mail chain)); A1749 (JX 159 (9/16/22 Enstar e-mail)).

[40] 2026 Opinion, *8.

[41] 2026 Opinion, *8. *See* A1721 (JX 132 (8/24/22 Kirkpatrick e-mail chain)); A1722 (JX 133 (8/24/22 Norrington e-mail chain)); A1746 (JX 157 (8/31/22 Kirkpatrick e-mail chain)).

[42] 2026 Opinion, *8. *See* A1729 (JX 144 (RWG wind-up presentation), at RESP0007443, RESP0007448).

[43] 2026 Opinion, *9; Trial Opinion, *1 & n.7.

[44] 2026 Opinion, *8-9.

[45] Trial Opinion, *2.

and officer of DCo and an officer of RWG, testified she was not aware any duty to claimants existed.[46]

D. The Post-Trial Findings and the Court's Two-Stage Proceedings

Petitioner came to Delaware on September 23, 2022, seeking nullification of RWG's certificate of cancellation and appointment of a receiver under 6 *Del. C.* § 18-805.[47] Attorneys entered an appearance for the cancelled RWG, paid by DCo, and opposed both requests. The matter was tried on a paper record of more than 600 exhibits on December 19, 2022.[48]

In its March 20, 2023 post-trial opinion, the court below found Petitioner had shown "it is reasonably likely that the company had assets when it dissolved, which it failed to set aside for the pending claims against it, and thus dissolved in violation of 6 *Del. C.* § 18-804(b)."[49] It found it reasonably likely RWG still held prepaid insurance and four Aetna policies at dissolution, and it found the 1982 and 1983 CNA correspondence "the best evidence that the Company's predecessor held the CNA Policies" in the 1981 transaction.[50] Rather than rule on nullification, the court

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[46] *See* A1780 (JX 178 (11/17/22 Stringham deposition), at 26:13-27:8, 42:6-12, 133:3-13); A1756 (JX 164 (DCo officers and directors)).

[47] 2026 Opinion, *9-10.

[48] *Id*. at *10; Trial Opinion, *3.

[49] Trial Opinion, *1; 2026 Opinion, *10 (quoting the Trial Opinion).

[50] Trial Opinion, *7-9; *see* 2026 Opinion, *10.

below embarked on a second phase. A receiver would investigate whether RWG had assets, and the court below would then consider whether "the report, together with the material provided at trial," proved a violation by a preponderance of the evidence.[51] It observed that "RWG's conduct, not Petitioner's, has led to the additive cost of appointing a receiver."[52]

The representation question came next. On May 8, 2023, the court below held that Richards Layton's purported representation of RWG was "not only puzzling, but impossible."[53] A cancelled entity "cannot otherwise make any decisions or take any action" and "may speak only through a receiver" "unless and until a receiver is appointed or its cancellation is nullified."[54] The court below ordered counsel's withdrawal, [55] and this Court refused the resulting interlocutory appeal. DCo then moved to intervene. The court below denied the motion as untimely, observing that DCo "sat on the bench and watched its team lose, even as I intimated DCo should perhaps suit up."[56]

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[51] Trial Opinion, *3; 2026 Opinion, *10.

[52] Trial Opinion, *14.

[53] Disqualification Opinion, *1.

[54] *Id*. at *2.

[55] *Id.* at *4-5.

[56] A0589 (*In re Reinz Wisconsin Gasket, LLC*, 2023 WL 4986411, at *3 (Del. Ch. Aug. 3, 2023) (denying DCo's first motion to intervene).

On August 3, 2023, the court below appointed the Receiver "for the limited purpose of investigating whether RWG had assets when it filed its notice of dissolution and cancellation."[57] On June 14, 2024, the court below entered an order confirming its charge: "While no order may be necessary for the Court to do so, this Order is entered to specify that the Court may, and indeed will, speak to the Receiver ex parte."[58]

E. The Limited Investigatory Receivership and the Final Judgment

The Receiver's investigation met resistance. DCo (the same entity that had funded RWG's purported defense) contested service, refused voluntary cooperation, and asserted its own privilege against RWG's Receiver. Continental moved to intervene in December 2023, was admitted in April 2024, and filed a counterclaim seeking a declaration of the parties' rights "under any policy issued by Continental . . . alleged to be an asset of RWG."[59]

In August 2024, the Receiver moved to modify his appointment, seeking authority to protect, pursue, and administer RWG's assets.[60] At the November 4, 2024 hearing, his counsel objected that the existing structure put the Receiver and RWG "between a rock and a hard place" because Continental was litigating against

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[57] 2026 Opinion, *10. *See* Ex. C ¶ 1.

[58] A0707.

[59] 2026 Opinion, *10-11.

[60] *Id. at* *11.

RWG while insisting no one could litigate for it.[61] The court denied the motion, but it described the path ahead. Once the report arrived, the court proposed to "talk about whether we should make Reinz go live again," and "then from there, . . . talk about who the right people are . . . to monetize whatever assets it may have, whether those be derivative claims or insurance policies."[62] It added that "if there are claims, they belong to Reinz," that who should bring them "needs to be teed up and answered according to the proper doctrinal tests[.]" And acknowledging the Receiver's "mechanical issues with presenting derivative claims as potential assets," the court promised to "talk more about that."[63]

The Receiver filed his final Report on March 25, 2025.[64] Across fifty-five pages and four appendices, it identified thirty-three insurance policies issued to RWG and its predecessors and concluded RWG held litigable claims: coverage claims against the carriers, breach of fiduciary duty claims against RWG's officers and directors, and aiding and abetting claims against DCo and Enstar.[65] Because those last claims ran against RWG's own former fiduciaries and parents, the Receiver did not publish his supporting analysis. He stated instead that he "is

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[61] A0727 (11/4/24 Tr. 5-6, 24-25).

[62] *Id.* at 27; *see* 2026 Opinion, *10.

[63] A0727 (11/4/24 Tr. 27, 29-30).

[64] 2026 Opinion, *10.

[65] *Id. at* *10; Report at 31-50.

'available to discuss these claims in camera'" in view of privilege and work-product concerns.[66]

Petitioner then moved to nullify RWG's cancellation and expand the Receiver's authority.[67] DCo, Enstar, and Wausau intervened to oppose, joining Continental.[68] In an April 17, 2025 minute order, the court below set the order of operations: Petitioner's motion would come first, with Continental "heard on whether its policy is a Reinz asset, which would seem to include coverage," and in the same order the court below ruled that "Petitioner cannot speak for Reinz to oppose Continental's motion."[69] In her reply, Petitioner defended the in camera channel under a section heading invoking the June 14, 2024 order, argued the exculpation clause in RWG's operating agreement did not bar the fiduciary claims, quoted the "best evidence" finding as already rejecting the Intervenors' transfer arguments, and pressed that the Intervenors had "utterly failed to show that no litigable claim exists."[70]

The court below issued its final opinion on April 2, 2026. It held the thirty-three policies were not assets "because they do not afford the company any

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[66] 2026 Opinion, *20 (quoting the Report).

[67] *Id. at* *11.

[68] *Id. at* *11.

[69] A0001 (Apr. 17, 2025 Minute Order).

[70] A1021 (Pet'r's Reply Br. at 10-13).

coverage."[71] In reaching that conclusion, it construed exhaustion and drop-down clauses, interpreted a duty-to-defend provision, and applied Wisconsin law to hold the 1981 Purchase Agreement[72] did not transfer the predecessor's policies absent separate closing instruments.[73] The court below also held the litigable claims were valueless, reasoning in part that Petitioner did not press these claims or seek in camera review of the Receiver's materials.[74]

Judgment was entered denying nullification, denying the expansion of the Receiver's authority as moot, and directing an implementing order resolving Continental's counterclaim "consistent with this opinion."[75] That Final Order was entered on April 29, 2026.

This appeal followed.

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[71] 2026 Opinion, *1, *13.

[72] A1169 (JX 7)

[73] *Id. at* *14-19.

[74] *Id. at* *19-20.

[75] *Id. at* *21.

ARGUMENT

I. THE COURT OF CHANCERY ERRED BY CONDITIONING RWG'S REVIVAL ON SHOWING NOT JUST OWNERSHIP OF INSURANCE POLICIES BUT ACTUAL COVERAGE UNDER THE POLICIES, ESPECIALLY WHEN ITS OWN ORDERS LEFT NO PARTY ABLE TO LITIGATE COVERAGE ON BEHALF OF RWG.

A. Question Presented

After finding it reasonably likely that RWG dissolved with assets it failed to set aside for pending claimants, in violation of Section 18-804(b) of the LLC Act, did the Court of Chancery err by refusing to nullify RWG's certificate of cancellation and empower the Receiver under Section 18-805 of the Act and by instead conditioning revival on Petitioner proving that RWG's insurance policies provide coverage?

This question was preserved below at several stages, including the November 2024 hearing, A0727, in Petitioner's Opening Brief, A0839, and Reply Brief, A1021, supporting her Motion to Nullify RWG's Certificate of Cancellation.

B. Standard and Scope of Review

This Court reviews the construction and interpretation of statutes, including the LLC Act, de novo.[76]

[76] *CML V, LLC v. Bax*, 28 A.3d 1037, 1040 (Del. 2011).

C. Merits of Argument

1. The Post-Trial Findings Triggered Revival Under the LLC Act.

No one disputes the baseline rule that a dissolving Delaware LLC must provide for its claimants before its winding up is complete. Specifically, Section 18-804(b)(2) commands that the company "[s]hall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim" in a pending action against it. And Section 18-804(b)(3) extends the same obligation to claims likely to arise within ten years.[77] Cancellation, in turn, is proper only once those steps of dissolution and winding up have been taken.[78] So, under the LLC Act, a company that files its certificate of cancellation while still holding assets it never set aside has not completed its winding up or complied with the Act.

This Court's decision in *In re Krafft-Murphy Co.* supplies the three-step framework for addressing that failure. First, contingent contractual rights, including unexhausted liability insurance policies, constitute property of a dissolved entity "if they possibly could vest at a future time."[79] Second, an entity holding undistributed property has unfinished business, and its winding up is therefore incomplete.[80]

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[77] 6 *Del. C.* § 18-804(b)(2)-(3).

[78] 6 *Del. C.* § 18-203.

[79] *In re Krafft-Murphy Co.*, 82 A.3d 696, 701-02 (Del. 2013).

[80] *Id.* at 703-05.

Third, the mechanism for completing that unfinished business is a receiver empowered to conduct it, "which may involve participating in litigation" to defend company claims or secure company assets.[81]

Section 18-805 defines the receiver's role in the same terms. It authorizes a receiver "to prosecute and defend, in the name of the limited liability company," all suits necessary to settle the company's unfinished business, and to "take charge" of and "collect" its debts and property.[82] Because the wording of Section 18-805 and its corporate analogue, 8 *Del. C.* § 279, are essentially identical, authorities interpreting Section 279, including *Krafft-Murphy* itself, are persuasive here.[83]

What *Krafft-Murphy* did not do is equally important. There, this Court observed that the policies there "represent[ed] significant potential indemnification value" because the dissolved corporation faced asbestos liabilities.[84] That was a description of why the case mattered, not a second element of the property test. The Court found the policies to be property without resolving whether any policy covered any claim. And the Court reversed the Court of Chancery in that case for accepting

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[81] *Id.* at 703.

[82] 6 *Del. C.* § 18-805.

[83] *See Matthew v. Laudamiel*, 2012 WL 605589, at *21 (Del. Ch. Feb. 21, 2012). *See also*, *Coyne v. Fusion Healthworks, LLC*, 2019 WL 1952990, at *9 (Del. Ch. Apr. 30, 2019).

[84] *Krafft-Murphy*, 82 A.3d at 70.

the "assurances of a non-existent, dissolved corporation's insurers" in the entity's stead, holding that a receiver is the "only means" by which such an entity "may become re-empowered to defend its interests in the litigation."[85] The lesson is a structural one. That is, courts do not resolve a defunct entity's rights through proxies or in its absence. Rather, they appoint someone with authority to speak for it, and the merits follow revival.

The Court of Chancery's post-trial findings satisfied every predicate that the *Krafft-Murphy* framework sets. After a trial on more than 600 exhibits, the court found Petitioner had shown "it is reasonably likely that the company had assets when it dissolved, which it failed to set aside for the pending claims against it, and thus dissolved in violation of 6 *Del. C.* § 18-804(b)."[86] It found it reasonably likely that RWG still held prepaid insurance and the Aetna policies at dissolution,[87] and found the 1982 and 1983 correspondence between RWG's predecessor and its excess carrier to be "the best evidence that the Company's predecessor held the CNA Policies" following the 1981 transaction.[88] The rushed manner of RWG's exit confirmed that winding up never occurred.[89] Under Section 18-203, a same-day

[85] *Id.* at 710.

[86] Trial Opinion, *1.

[87] *Id.* at *8-9.

[88] *Id.* at *7.

[89] *Id.* at *1-2.

dissolution and cancellation by a company that still held assets is the signature of a winding up that was avoided, not completed.

2. The Court of Chancery Erred by Instead Conditioning Revival on a Showing the Court's Own Orders Made Impossible

Rather than give the post-trial findings their statutory effect, the final opinion rewrote *Krafft-Murphy*'s test. It read *Krafft-Murphy* to impose two requirements on top of the LLC Act: contingent rights must be "capable of vesting," and they must "represent significant potential indemnification value."[90] It further interpreted that to mean that a policy is not an asset if the policy does not cover the claim at issue.[91] On that reading, the court below held the Receiver's thirty-three identified policies were not assets "because they do not afford the company any coverage," and the litigable claims he identified "offer no value."[92] *Krafft-Murphy*'s descriptive phrase became a merits element, and that merits element became a hurdle to revival. That transformation is a misreading of this Court's precedent.

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[90] 2026 Opinion, *13.

[91] *See id*. This supposition has its own policy consequences inconsistent with the statute. Under the court below's rationale, if the Receiver had found insurance covering thousands of claimants, but not Petitioner, then the outcome would still be to deny nullification and force a different claimant who might be covered to start the process anew. That reinforces why other decisions by the Court of Chancery have stopped at the question of whether the defunct entity owned a policy, rather than delving into coverage issues. *See, e.g*., *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *5 n.37 (Del. Ch. Nov. 30, 2009), *aff'd*, 998 A.2d 852 (Del. 2010).

[92] 2026 Opinion, *1.

Worse, the hurdle was one that no one could clear. When a company's affairs "were not wound up in compliance with the Delaware Limited Liability Company Act," the recognized remedy is to nullify the certificate of cancellation, "which effectively revives the LLC and allows claims to be brought by and against it."[93] Nullification is what gives effect to Section 18-804's "mandatory protection to creditors."[94] Nothing in the LLC Act provides the authority to demand, as a condition of revival, final adjudication of rights of a company that has not been revived.

Yet, that is the regime the court below imposed. It demanded not just a showing that RWG had insurance policies but also that they provide coverage in a manner the Court deemed sufficient. That wrongly converts a straightforward revival proceeding into a complex, multi-policy coverage dispute. It also subverts the *Krafft-Murphy* framework, which rightly left those merits battles to the post-revival phase.

And the Court of Chancery hamstrung the efforts to clear the hurdle it set. As the court below ruled, "Petitioner cannot speak for Reinz to oppose Continental's

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[93] *Matthew*, 2012 WL 605589, at *22 n.148; *accord Capone v. LDH Mgmt. Holdings LLC*, 2018 WL 1956282, at *7-8 (Del. Ch. Apr. 25, 2018).

[94] *See Capone*, 2018 WL 1956282, at *8 (quoting *Techmer Accel Holdings, LLC v. Amer*, 2010 WL 5564043, at *7 (Del. Ch. Dec. 29, 2010)).

motion."[95] The Receiver could not clear it either. When he moved for authority to protect, pursue, and administer the very assets he had identified, the court below denied the motion and confined him to investigating and reporting.[96] And the court below never considered the evidence behind the Receiver's report — evidence that he rightly withheld from parties who would be adverse to a revived RWG. In effect, the Court of Chancery inverted the statute it purported to apply by conditioning revival on proof that only the subject company could present once it was revived.

Earlier in the proceedings, the court below had, in fact, described the better order of operations from the bench. Denying the Receiver's motion, it explained that once the report arrived, the court would then make the assessment about whether to revive Reinz and who should be in charge of its assets and claims.[97] It recognized in the same ruling that "if there are claims, they belong to Reinz," and that who should bring them "needs to be teed up and answered according to the proper doctrinal tests."[98] That order matched *Krafft-Murphy* and tracked the statute — report, then revival, then the merits in the right hands.

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[95] A0001 (Apr. 17, 2025 Minute Order).

[96] A0727 (11/4/24 Tr. 26-30).

[97] *Id.* at 27.

[98] *Id.*

But the 2026 Opinion abandoned it by putting the merits before revival, before anyone could represent RWG in the process. *Capone* and *Matthew* confirm that the court may stage revival proceedings, but they do not license an order of operations that forecloses the protection the revival exists to deliver.

In short, the Court of Chancery erred by placing a coverage-merits condition on revival while at the same time preventing Petitioner from proving those merits and faulting Petitioner for not doing so. Nothing in the LLC Act's flexibility contemplates that pairing.

3. Even If Some Merits Inquiry Could Precede Revival, It Ended at Ownership, Not Coverage.

Assuming that some inquiry into RWG's assets could precede revival, that inquiry ends at whether RWG owned policies capable of vesting. It does not extend to whether those policies will ultimately pay, which is an issue for the revived entity to address with its insurers. After all, it is not the function of a court in a revival proceeding "to resolve any insurance coverage dispute[s]."[99] *Krafft-Murphy* is the model of this bifurcation. This Court held unexhausted policies were property of a dissolved asbestos manufacturer without resolving whether any policy covered any pending claim.[100]

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[99] *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *5 n.37 (discussing Section 279).

[100] 82 A.3d at 703-04.

In the Trial Opinion, the court below set out to apply *Texas Eastern*'s framework by name.[101] But the 2026 Opinion went a different way. Instead of limiting itself to the ownership question, the court below construed the Travelers umbrella policies' exhaustion clauses and held that coverage does not attach until $500,000 in underlying limits has been paid on each policy.[102] It also held those umbrella policies do not "drop down" upon the insolvency of Lumbermens, the underlying carrier.[103] And it construed the duty-to-defend provision in Section 2.3(a) of the Travelers policies and resolved what "covered" means within it.[104] It further applied Wisconsin insurance-transfer law to the 1981 Purchase Agreement, holding that Section 1.1 of the agreement did not effectuate a transfer of the predecessor's policies absent separate closing instruments.[105] Each of these is a holding native to complicated coverage litigation (e.g., which state's laws apply, the interpretation of exhaustion, drop-down, defense, and assignment provisions under a chosen state's insurance law) of the kind carriers and insureds litigate for years, with an advocate on each side.

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[101] Trial Opinion, *4-5.

[102] 2026 Opinion, *17-18.

[103] *Id.*

[104] *Id.* at *18-19.

[105] *Id.* at *15-16.

Here, however, there was an advocate on only one side. Continental, Travelers' interests, Wausau, DCo, and Enstar all briefed and argued why the policies fail, but the party whose rights were extinguished did not exist. And everyone who might have spoken for it was handcuffed. These questions belonged to the revived company or its empowered receiver, in a forum where someone could answer for RWG.[106]

In sum, the LLC Act does not permit a company to be sued, cancel itself mid-suit, and then hold its revival hostage to coverage litigation no one is permitted to conduct. Because the Court of Chancery's post-trial findings were sufficient to trigger revival, because the further condition the court below imposed rested on a misreading of *Krafft-Murphy* and was unanswerable by design, and because the court below delved deep into coverage disputes outside this proceeding's scope, this

[106] Nothing about this order of operations is novel to this case or the LLC Act. The Receiver, in his parallel South Carolina asbestos receiverships, recently filed a public report describing how such receiverships operate in practice. *See* A1120. This report was made to Justice Jeanine Toal (former Chief Justice of South Carolina's Supreme Court), who presides over South Carolian's asbestos docket, and attached to Justice Toal's report to the South Carolina Supreme Court. The model parallels the sequence the LLC Act contemplates: an empowered receiver marshals the defunct entity's policies, and coverage disputes are litigated afterward, "in ongoing insurance coverage litigation," with an advocate on both sides in the appropriate forum. It also answers any concern that an empowered receiver serves claimants alone. More claims against those receivership entities have been dismissed without payment than settled, through ordinary litigation, in which the receiver, the carriers, and defense counsel evaluate each claim together.

Court should reverse and remand. It should do so with instructions to nullify RWG's certificate of cancellation and to vest the Receiver with authority under Section 18-805 to prosecute, defend, and marshal RWG's assets. Reversal on this ground also requires vacatur of the declaratory judgment entered for Continental, which falls with the rulings that produced it.

II. ALTERNATIVELY, THE COURT OF CHANCERY ERRED BY ABANDONING THE PROCEDURE IT SET AND CHARGING THE RESULTING EVIDENTIARY GAP TO PETITIONER.

A. Question Presented

If the Court of Chancery could defer revival pending a receiver's investigation, then did it err by departing from its own procedure, neglecting to engage in *ex parte* review of the Receiver's privileged conclusions, and then faulting Petitioner for not producing the Receiver's work product?

This question was preserved below at several stages, including the November 2024 hearing, A0727, in Petitioner's Opening Brief, A0839, and Reply Brief, A1021, supporting her Motion to Nullify RWG's Certificate of Cancellation, and it was addressed in the 2026 Opinion at *20.

B. Standard and Scope of Review

As explained in Argument I, the Chancery Court's statutory interpretation is subject to *de novo* review. Likewise, the existence and application of an equitable remedy, like the proper scope of the Receiver's authority, were legal rulings subject to *de novo* review.[107] The application of the law of the case doctrine, and the allocation of a burden of proof, are questions of law reviewed de novo.[108] Factual

[107] *See Ravindran v. GLAS Tr. Co.*, 327 A.3d 1061, 1077 (Del. 2024); *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 95 (Del. 2021).

[108] *Frederick-Conaway v. Baird*, 159 A.3d 285, 297 (Del. 2017).

findings receive deference only when they are "sufficiently supported by the record and are the product of an orderly and logical deductive process."[109]

C. Merits of Argument

Assuming that the Court of Chancery could defer revival pending the Receiver's investigation, it could not change the rules of that procedure after the fact. Yet the 2026 Opinion reversed the post-trial findings on the same evidence, disregarded the *ex parte* review of the Receiver's privileged conclusions the court committed to undertake, and then faulted Petitioner for not producing the Receiver's work product that Petitioner had no right to possess. That was error.

In the Trial Opinion, the court below committed itself to considering whether "the report, together with the material provided at trial, demonstrates by a preponderance of the evidence that RWG had assets that it failed to set aside for pending claims."[110] A later order confirmed the channel through which the Receiver's sensitive conclusions could reach the court below: "While no order may be necessary for the Court to do so, this Order is entered to specify that the Court may, and indeed will, speak to the Receiver ex parte."[111] And the appointment order

[109] *Bäcker*, 246 A.3d at 95 (quotation and citation omitted).

[110] Trial Opinion, *3.

[111] A0707 (June 14, 2024 Order).

made the Receiver — not Petitioner — the designated instrument for developing the asset record.[112] Those commitments were the yardstick for everything that followed.

The Receiver did what those orders contemplated. He engaged an insurance archivist, took discovery from DCo (which DCo refused to ever fully answer), Enstar, and multiple carriers, and reconstructed RWG's corporate and insurance history across eight decades.[113] His fifty-five-page Report identified thirty-three insurance policies and concluded RWG held litigable claims — coverage claims against the carriers, breach of fiduciary duty claims against RWG's officers and directors, and aiding and abetting claims against DCo and Enstar.[114] For the claims running against DCo and Enstar, the Report did not publish the Receiver's supporting analysis because those entities were the Receiver's future litigation adversaries. And Continental — an insurer with its own counterclaim against RWG — had already intervened. Rather than print his litigation analysis for opposing parties to see, the Receiver invoked the channel the court below had reserved, stating that he was "available to discuss these claims in camera" in view of privilege and work-product concerns.[115]

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[112] A0653.

[113] A0762 (Report at 3, 14-45).

[114] *Id.* at 31-50.

[115] *Id.* at 49-50.

Instead of using the Receiver's knowledge, the Court of Chancery reversed the post-trial findings on essentially the same evidentiary record. In March 2023, the court below found the 1982 and 1983 correspondence between Wisconsin Gasket DE and its excess carrier to be "the best evidence that the Company's predecessor held the CNA Policies in that transaction."[116] The Purchase Agreement on which that finding rested was trial exhibit JX 7.[117] Three years later, the final opinion discarded the "best evidence" finding in favor of a different reading of the same agreement.[118] And it seemed to fault Petitioner or the Receiver for not finding bankruptcy records that RWG or its corporate parents lost.

In departing from prior rulings without strong reasons, the court erred. If facts remain constant through the course of the same litigation, then a trial court's prior rulings on those facts establish the law of the case. [119] Departure requires a recognized ground, such as clear error, injustice, or an important change in circumstances.[120]

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[116] Trial Opinion, *7.

[117] A1169 (JX 7).

[118] 2026 Opinion, *15-16.

[119] *See Hudak v. Procek*, 806 A.2d 140, 154 (Del. 2002); *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 895 & n.63 (Del. 2015).

[120] *See Hudak*, 806 A.2d at 154.

Here, though the court below identified none. What changed was the arrival of a new legal argument, supplied by intervenors who entered the case years after trial, and adopted with no one authorized to answer for RWG's side of its own contract. Petitioner raised the point below in writing, arguing that the court below "has already rejected Intervenors' arguments" on the 1981 transfer and quoting the "best evidence" finding to the court.[121] But the 2026 Opinion did not meaningfully engage that objection. Preliminary findings may of course yield, but they yield to new evidence weighed through an orderly process — not to a late-arriving theory tested against silence.

The Court of Chancery then held the Receiver's withheld analysis against Petitioner, a party who could neither access nor compel it. The 2026 Opinion disposed of the fiduciary and aiding-and-abetting claims in a paragraph, reasoning that "Petitioner did not press these claims or seek any in camera review," and that Petitioner therefore "has not carried her burden to prove that any alleged fiduciary duty claim could provide value."[122] That conclusion's premise was demonstrably wrong.

In briefing on the nullification issue, Petitioner devoted a titled section of her reply to the issue ("This Court ... Has Already Determined Ex Parte Communications

[121] *See* A1021 (Pet'r's Reply Br., at 12 (§ V)).

[122] 2026 Opinion, *20.

with the Receiver Are Appropriate") and invoked the June 14, 2024 order by name. Petitioner also defended the *in camera* review against the Intervenors' objection to it.[123] Petitioner pressed the claims in the same briefing, arguing the operating agreement's exculpation clause did not bar them, that the court below "need[ed] to determine ... whether RWG has good-faith litigable claims," and that the Intervenors had "utterly failed to show that no litigable claim exists."[124]

Nor did the review require anything more from Petitioner. The commitment to examine the in camera materials ran from the court below to its Receiver, with no further request or order necessary.[125] Petitioner could not have proffered the material herself in any event. It was the Receiver's privileged work product, and she had no right to it. — a disability the court below had reinforced by ruling she "cannot speak for Reinz" at all.[126]

The Court of Chancery took none of the paths open to it. It did not hear the Receiver, did not request a submission under seal, and did not explain the choice. It simply treated the resulting silence as Petitioner's failure of proof, even after Petitioner had urged, in writing, that the court below use the very channel it had

[123] A1021 (Pet'r's Reply Br. at 10).

[124] *Id.* at 10-12.

[125] A0707 (June 14, 2024 Order).

[126] A0001 (Apr. 17, 2025 Minute Order).

committed to using. Faulting a petitioner for not procuring her court-appointed receiver's privileged analysis inverts the receivership itself.

Moreover, the court below saw this presentation problem coming. At the November 4 hearing, the Receiver's counsel objected that the existing structure put the Receiver and RWG "between a rock and a hard place," with Continental litigating against Reinz while insisting no one could litigate for it.[127] The court acknowledged the complications of presenting proof of insurance asset, and it promised to discuss that issue further with the Receiver to avoid the case being hung up on "mechanical issues."[128] Yet, the Court of Chancery issued its 2026 Opinion without engaging in that step.

At minimum, this Court should reverse and remand with instructions to reanalyze nullification under the framework as set by the court below and to complete the record the Court of Chancery's own orders promised, beginning with the Receiver's presentation that has been on offer since March 2025.

[127] A0727 (11/4/24 Tr. 5-6, 24-25).

[128] *Id.* at 26, 29-30.

III. THE COURT OF CHANCERY ERRED BY ENTERING JUDGMENT FOR CONTINENTAL ONCE THE COURT DECLINED TO REVIVE RWG.

A. Question Presented

Did the Court of Chancery err by entering a declaratory judgment for Continental on its coverage counterclaim against RWG, after the court below had ruled that RWG would not be revived?

This question was preserved below in the April 27, 2026 joint letter from counsel containing Petitioner's position respecting the Final Order, A1101, and in Petitioner's Reply in Support of its Motion for Nullification, A1021.

B. Standard and Scope of Review

This Court "review[s] questions of justiciability *de novo*."[129]

C. Merits of Argument

Despite ruling that RWG would remain a defunct entity, the Court of Chancery went on to enter judgment against RWG, and for Continental, on Continental's coverage counterclaim against that Reinz. It did so notwithstanding that the counterclaim sought to resovle an insurance coverage dispute, which is outside the bounds of a Section 18-805 proceeding.[130] It did so notwithstanding the

[129] *Crescent/Mach I Partners, L.P. v. Dr Pepper Bottling Co. of Texas*, 962 A.2d 205, 208 (Del. 2008).

[130] *See In re Texas Eastern Overseas, Inc.*, 2009 WL 4270799, at *5 n.37. *See also supra*, Argument I(C)(3).

restrictions it put on the Receiver, preventing litigation of RWG's rights. And it did so notwithstanding its recognition that "Petitioner [could not] speak for Reinz to oppose Continental's motion."[131] Entry of judgment in Continental's favor was, thus, independent error.

Petitioner highlighted this defect before the Court of Chancery entered judgment. When the parties submitted competing orders, Petitioner contended that because the Court of Chancery declined to revive RWG at the request of Continental and the other Intervenors, any question about RWG's contract rights had become moot.[132] Simply put, if RWG could not pursue its contract rights, then a dispute about them would be moot and a judgment declaring them would be advisory. The Receiver, the one officer the capacity ruling contemplated speaking for RWG, took the same position.[133]

This accords with this Court's explanation of how mootness serves to prevent advisory rulings. For a court to enter judgment, "[t]he controversy 'must be between parties whose interests are real and adverse.'"[134] Further, Delaware "law requires

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[131] A0001 (Apr. 17, 2025 Minute Order).

[132] A1101 (April 27 letter, at 2).

[133] *Id*. at 2 n.1.

[134] *Tyson Foods, Inc. v. Aetos Corp*., 809 A.2d 575, 582 (Del. 2002) (quoting *Rollins Int'l, Inc. v. Int'l Hydronics Corp.,* 303 A.2d 660, 662–63 (Del. 1973)).

that a dispute not be moot and that it be ripe for adjudication to avoid wasting judicial resources on academic disputes."[135]

Below, RWG's incapacity governed at every point where it disadvantaged Petitioner, and vanished at the single point where it would have protected RWG. Continental's own counsel embraced the concept, telling the court below that naming the entity in a nullification proceeding "does not extend the existence of the entity for other purposes."[136] Yet, once the Court declined to revive RWG, Continental argued for just such an extension in its proposed final order — judgment for Continental and against RWG as a byproduct of the nullification ruling. One entity cannot be too cancelled to defend and yet sufficiently extant to lose.

Whatever else this Court decides, a coverage judgment entered against an entity the court below had itself held incapable of acting and not subject to revival should be vacated. This follows necessarily, if the Court reverses under the grounds stated in Petitioner's Arguments I or II, and independently, for the reasons in this Argument III.

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[135] *Crescent/Mach I Partners, L.P.,* 962 A.2d at 208. *See Mentor Graphics Corp. v. Shapiro*, 818 A.2d 959, 963 (Del. 2003) ("Mootness arises when controversy between the parties no longer exists such that a court can no longer grant relief in the matter.") (citing sources).

[136] A0721 (11/4/24 Tr. at 23).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court to reverse the Court of Chancery's Final Order and Judgment and remand this matter to the Court of Chancery with instructions to nullify RWG's cancellation and empower the Receiver to pursue, marshal and litigate RWG's assets for the benefit of all of RWG's claimants and creditors.

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Dated: August 13, 2026