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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

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NATURE OF THE PROCEEDINGS

This appeal concerns a petition by Linda A. Cook ("Petitioner") to nullify the certificate of cancellation filed by Reinz Wisconsin Gasket, LLC ("RWG"). During the proceedings below, the Court of Chancery established a logical and deliberative process for deciding whether nullification should be granted. It first appointed a receiver under 6 *Del. C.* § 18-805—chosen from candidates proposed by the Petitioner—to investigate Petitioner's allegation that RWG's cancellation violated 6 *Del. C.* § 18-804 because RWG supposedly possessed assets in the form of insurance policies and litigable claims that should have been set aside for asbestos bodily injury claims. The receiver was empowered with broad investigatory powers and retained a national law firm to assist in his work. The receiver was tasked with submitting a report to the Court of Chancery so that it could determine whether the preponderance of the evidence established that RWG had committed statutory violations under 6 *Del. C.* 18-804.

The Court of Chancery followed this process. It patiently awaited the completion of the receiver's investigation, which lasted for one and a half years. When the receiver submitted his final report, the Court of Chancery considered further briefing and held a hearing at which Petitioner presented arguments in an effort to prevail on her claims in light of the receiver's report.

The Court of Chancery thereafter issued a fifty-six-page Memorandum Opinion concluding that Petitioner had not proven her case. The Court painstakingly considered each and every one of the alleged assets, ultimately finding that Petitioner had "failed to carry her burden to prove by a preponderance of the evidence that RWG had assets it failed to set aside for claimants when it dissolved" and therefore "failed to prove the company violated the Limited Liability Company Act by filing a certificate of cancellation without setting assets aside for claimants."[1] After inviting input from all parties on the form of the judgment, the Court of Chancery entered its Final Order and Judgment.

On appeal, Petitioner does not challenge the merits of the trial court's meticulously detailed findings that Petitioner failed to prove that the alleged assets—including liability insurance issued by Continental Casualty Company ("Continental")—were available to RWG when it dissolved. Instead, Petitioner raises procedural arguments. Petitioner first argues that the Court of Chancery erred by requiring her to prove her nullification claim under the preponderance of the evidence standard. Petitioner contends that the Court of Chancery was required to nullify RWG's cancellation based merely on a preliminary showing under the lesser

[1] *In re Reinz Wis. Gasket, LLC*, 2026 WL 904110, at *1, *21 (Del. Ch. Apr. 2, 2026) (attached as Exhibit B to Dkt. 17) (the "Memorandum Opinion" or "Mem. Op.").

"reasonable likelihood" standard. Petitioner then argues that the Court of Chancery engaged in procedural irregularities. According to Petitioner, then-Vice Chancellor Zurn "handcuffed" and "hamstrung" the Petitioner and "imposed" a "regime" that included requirements that were "unanswerable by design."[2] Petitioner further accuses the trial court of abandoning the procedures it "committed to undertake."[3] Finally, based on these contentions, Petitioner argues that the Court of Chancery erred by entering judgment on Continental's counterclaim to the Petition.

Petitioner's arguments are without merit.

First, in requiring Petitioner to prove her claim by a preponderance of the evidence, the Court of Chancery followed well-established Delaware law. Allowing the revival of cancelled entities based solely on a lesser, preliminary showing (as Petitioner now seeks) is unsupported by the law and would create instability in Delaware's corporate processes.

Second, the Court of Chancery employed an adjudicative process that proceeded deliberatively and fairly. Petitioner had every opportunity to prove her case with the assistance of the receiver and his counsel, including through extensive briefing and oral argument. The receiver was given as long as he needed to investigate and, after 18 months, submitted a report that he declared to be final.

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[2] Dkt. 17 ("Opening Brief" or "OB") at 26, 30.

[3] *Id.* at 33.

Moreover, far from departing from the procedure established at the outset, the Court of Chancery followed the process and refused to depart from it, even when the receiver sought to do so.

Third, the Court of Chancery properly entered judgment on Continental's counterclaim to the Petition. The Court recognized that the counterclaim presented issues that had been thoroughly litigated in the proceeding and should be decided at the same time as Petitioner's claim.[4] Petitioner herself responded to Continental's counterclaim by stating that she "submits to the jurisdiction of the Court for a proper adjudication of the Counterclaim."[5] The counterclaim was properly before the Court and sought relief ("a declaration of the rights and obligations, if any, of the parties under any policy issued by Continental . . . that is alleged to be an asset of RWG")[6] that was fully addressed and decided in the Memorandum Opinion.

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[4] Mar. 5, 2025 Hearing Transcript, at B88 (12:7-14); Apr. 17, 2025 Minute Order, at A0067.

[5] Petitioner's Response to Intervenor Continental Casualty Company's Counterclaim for Declaratory Judgment, at A0705.

[6] Response to Verified Petition for Appointment of a Receiver in Dissolution Pursuant to 6 Del. C. § 18-805 and Verified Counterclaim for Declaratory Judgment, at B69.

SUMMARY OF ARGUMENT

1. Denied. The trial court properly denied the Petitioner's Motion to Nullify Cancellation of Reinz Wisconsin Gasket, LLC and Request to Expand Receiver's Authority (the "Motion to Nullify"). The Court of Chancery correctly determined that, in order to secure nullification, Petitioner was required to show a violation of Sections 18-203 and 18-804 of Delaware's Limited Liability Company Act by a preponderance of the evidence, and the Court of Chancery correctly determined that Petitioner failed to carry her evidentiary burden.

2. Denied. The trial court acted within its discretion in the procedures employed to adjudicate Petitioner's nullification claim, including its consideration of the receiver's Final Report. It followed a deliberative process—clearly set out in the early stages of this action—that gave Petitioner every opportunity to carry her burden to prove her claims of statutory violations.

3. Denied. The trial court properly granted judgment on Continental's counterclaim. The Court of Chancery correctly determined that Continental was entitled to a declaration concerning the insurance policies attributed to it consistent with the findings of the Memorandum Opinion.

STATEMENT OF FACTS

A. Petitioner Seeks Nullification

On September 23, 2022, Petitioner filed an action in the Court of Chancery concerning RWG, a Delaware limited liability company that was dissolved and cancelled in August 2022. Count I of the Petition sought nullification of RWG's certificate of cancellation. In support of that claim, Petitioner asserted that RWG's dissolution violated Sections 18-203 and 18-804 of Delaware's Limited Liability Company Act because RWG allegedly had assets that it failed to set aside to provide for claimants.[7] Count II sought appointment of a receiver pursuant to Section 18-805 of the LLC Act based on the same allegations.[8]

B. Court of Chancery Appoints a Receiver

On December 19, 2022, less than two months after the filing of the Petition, the Court of Chancery held trial on a paper record and issued a Memorandum Opinion on March 20, 2023. Based on the information presented at that early stage of the action, the Court stated as follows:

> I conclude Petitioner has demonstrated good cause to appoint a receiver because it is reasonably likely RWG violated the LLC Act by filing its notice of dissolution and cancellation while failing to set aside its assets to provide for the pending lawsuits to which it was a party. I defer my decision on whether to nullify

[7] The statute sets forth the process to provide for such claims to the extent there are "assets available therefor." *See* 8 *Del. C.* 18-804(b).

[8] Verified Petition for Appointment of a Receiver in Dissolution Pursuant to 6 *Del. C.* §18-805, at A0080-91.

> the Company's certificate of cancellation until the receiver submits a report: at that point I will consider 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.[9]

The Court emphasized that "[t]his opinion stops at the appointment of a receiver."[10] To adjudicate the remaining issues, it directed as follows:

> The receiver should investigate whether RWG had assets when it filed its notice of dissolution and cancellation. The receiver shall be empowered to investigate the existence of these assets, including both insurance policies and litigable claims. The receiver may also investigate how this litigation has been funded. The receiver should then submit a report in support of the receiver's determination, at which time I will revisit Count I. If the report and trial record supports a finding, by a preponderance of the evidence, that RWG violated Section 18-804, then its cancellation will be subject to nullification.[11]

On June 7, 2023, Petitioner submitted three proposed candidates to serve as receiver.[12] The Court of Chancery appointed one of these candidates, Peter D. Protopapas (the "Receiver"), on August 3, 2023, and charged him with conducting the investigation and preparing a report pursuant to its March 2023 Opinion.[13] The

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[9] *In re Reinz Wis. Gasket, LLC*, 2023 WL 2568326, at *3 (Del. Ch. Mar. 20, 2023) (attached as Exhibit D to OB) (the "March 2023 Opinion" or "March 2023 Op.").

[10] *Id.* at *13.

[11] *Id.*

[12] A0596-607.

[13] A0653-55.

Court of Chancery subsequently approved a compensation arrangement that had been negotiated between Petitioner and the Receiver, *i.e.*, that the Receiver would receive a contingency fee of 33.33% of any assets that were recovered.[14]

C. Continental Intervenes and Asserts a Counterclaim

Continental thereafter sought leave to intervene in the action. It did so because it had issued an Excess Third Party Liability Policy numbered RDX 914 85 06 for the period from November 22, 1977 to September 20, 1978 (the "1977 Continental Policy") to Wisconsin Gasket & Mfg. Company ("WG&M"), a Wisconsin corporation that pre-dated and was distinct from RWG. RWG did not yet exist during the period of the 1977 Continental Policy and was not a named insured thereunder. RWG's corporate predecessor was not created until several years later on October 8, 1980, when it was incorporated in Delaware under the name of Wisconsin Gasket & Manufacturing Company ("Wisconsin Gasket DE").

Nevertheless, even though RWG itself acknowledged that the 1977 Continental Policy did not apply to it, Petitioner contended that this policy (and another alleged Continental policy) should be considered assets of RWG for purposes of her nullification claim. The March 2023 Opinion held that Petitioner

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[14] Oct. 10, 2023 Minute Order, at A0031-32; Receiver Submission on Compensation and Applicability of Rules 164-167, at B44 (providing "the Receiver shall recover a contingency fee of 33.33% of any assets that may be recovered by the Receiver should the Court ultimately nullify the cancellation of RWG and appoint the Receiver to recover any assets of RWG").

made a sufficient showing to warrant appointment of a receiver for the limited purpose of investigating this alleged coverage.[15] Because the opinion made clear that the question of whether Continental's coverage applied to RWG was going to be decided due to Petitioner's claim that it was an asset of RWG, Continental filed a motion to intervene on December 15, 2023 to protect its interests.[16] As required by Court of Chancery Rule 24, Continental submitted with its motion a proposed response to the Petition, which included a counterclaim.

Petitioner did not object or otherwise respond to Continental's intervention motion. Although the Receiver admitted that the Court would be deciding an issue that "would trigger application of the Continental Policy," he nevertheless opposed Continental's participation.[17]

On April 24, 2024, the Court of Chancery granted Continental's motion to intervene. It stated that "[w]here the propriety of a company's dissolution is in question due to the presence or absence of insurance policies as assets, this Court has acknowledged the standing of insurers to participate."[18] It found that Continental had "demonstrated an interest in the existence and coverage of a relevant

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[15] March 2023 Op. at *13.

[16] A0656-0665.

[17] Receiver's Opposition to Continental Casualty Company's Motion to Intervene, at A0683.

[18] Apr. 24, 2024 Minute Order, at B47 (citations omitted).

insurance policy and whether the company or its predecessor was insured under it" and that the procedural posture of the case "does not affect the fact of the insurer's interest or the ripeness of its counterclaim."[19]

Continental accordingly filed its response and counterclaim to the Petition on May 6, 2024.[20] Its counterclaim asked for "a declaration of the rights and obligations, if any, of the parties under any policy issued by Continental . . . that is alleged to be an asset of RWG."[21] Petitioner filed a response stating as follows: "Petitioner reserves all of her rights and defenses and submits to the jurisdiction of the Court for a proper adjudication of the Counterclaim."[22]

D. Court of Chancery Denies Receiver's Request to Deviate from Its Procedure

Soon thereafter, the Receiver filed a motion seeking to depart from the procedure set by the March 2023 Opinion. This motion to "modify" asked for expanded authority so that the Receiver, without completing his investigation and report, could immediately start accepting service of tort lawsuits against RWG and initiate litigation aimed at "purs[u]ing the assets of RWG . . . ."[23] According to the

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[19] *Id.*

[20] B48-71.

[21] B69.

[22] A0705.

[23] Receiver's Motion to Modify Receivership Order, at A0714.

Receiver, this motion to modify the Court's procedure was prompted by a request from the attorney who represents Petitioner.[24]

The Court of Chancery denied the Receiver's motion. The Court recognized that from the perspective of the Receiver's fee arrangement, expanding his authority "would be more convenient and that way we can get paid," but determined that the progress of the action should be based on the proper doctrinal tests.[25] The Vice Chancellor stated that she would "stick with the path that I laid out in my March 2023 opinion" and "stay the course."[26] The Court further advised the Receiver's counsel "if you've got that report ready to go, then I'd love to see it . . . ."[27]

E. Receiver Submits Final Report

Approximately five months later, on April 1, 2025, the Receiver filed his "Final Report."[28] Section IV.A.2 of this report presented the Receiver's conclusions as to insurance policies that were allegedly assets of RWG at the time of its dissolution. The Receiver argued in Section IV.A.2.i that RWG had available

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[24] *Id.* at A0711 (discussing letter dated April 16, 2024 from Charles W. Branham from the Law Offices of Dean Omar Branham Shirley advising that he represented another plaintiff in a lawsuit against RWG and requesting that Receiver petition the Court of Chancery for expanded authority).

[25] Nov. 4, 2024 Hearing Transcript, at A0753 (27:7-12).

[26] *Id*. at A0730 (4:8-9), A0753 (27:16).

[27] *Id.* at A0753 (27:17-19).

[28] Final Report of Receiver for Reinz Wisconsin Gasket, LLC, A0762-A0838.

coverage under 22 insurance policies that were issued prior to 1981.[29] According to the Receiver, two of these policies were issued by Continental: (i) the 1977 Continental Policy; and (ii) an additional alleged policy with a purported policy period from September 20, 1978 to December 5, 1978 (the "Alleged 1978 Continental Policy").[30] The Receiver also argued that 11 policies issued in 1981 and later were assets of RWG. The Final Report was not limited to factual information; it included legal argument and advocacy in support of Petitioner's positions.

In two short paragraphs of his 52-page report, the Receiver asserted that his "investigation has revealed that RWG also has litigable claims for breach of fiduciary duty against its directors and officers and aiding and abetting claims against DCo and Enstar."[31] The Report stated that the Receiver was "available to discuss these claims *in camera* . . . should the Court believe they would impact the ultimate analysis as to whether RWG's certificate of cancellation should be nullified."[32]

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[29] *Id.* at A0795.

[30] *Id.* at A0833 (App. D).

[31] *Id.* at A0813.

[32] *Id.* at A0813-14.

F. Petitioner Files Motion to Nullify

Petitioner then filed her Motion to Nullify.[33] After extensive briefing, including two briefs by Petitioner and submissions by Continental and additional intervening parties, the Court of Chancery heard oral argument on October 23, 2025. Arguments were presented by counsel for Petitioner, Continental, and the other intervenors. The Receiver was represented by counsel at the hearing, but did not attend.[34]

G. Court of Chancery Issues Memorandum Opinion

The Court of Chancery issued its Memorandum Opinion on April 2, 2026. At the outset, the Memorandum Opinion reiterated that the preponderance of the evidence standard governed Petitioner's nullification claims. "To nullify RWG's certificate of cancellation," it stated, "Petitioner must prove RWG violated the LLC Act by a preponderance of the evidence."[35]

The Court of Chancery then turned to the ultimate question: whether RWG failed to set aside assets that were available to compensate plaintiffs in pending or likely claims when it dissolved. Because Petitioner relied on the Receiver's

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[33] A0839-67.

[34] Oct. 23, 2025 Hearing Transcript, at B95.

[35] Mem. Op. at *10-11. Three years earlier, the Court of Chancery had advised that this standard would be applied at this stage of the case. *See* March 2023 Opinion, at *13.

identification of unexhausted liability insurance as purportedly available assets, the Vice Chancellor followed this Court's teachings in *In re Krafft-Murphy Co.*, 82 A.3d 696 (Del. 2013). *Krafft-Murphy* discussed the circumstances under which such policies should be considered property, holding that "contingent contractual rights, such as unexhausted insurance policies, constitute 'property' of a dissolved corporation, ***so long as those rights are capable of vesting***."[36] It determined that if an entity were faced with claims such as asbestos liabilities that were covered by the unexhausted liability policies, those policies would "represent ***significant potential indemnification value***" to the entity and would "constitute 'property.'"[37]

Applying these principles, the Court of Chancery analyzed whether the insurance policies at issue were "capable of vesting" in RWG and represented "significant potential indemnification value" to RWG—and therefore constituted assets within the meaning of Section 18-804. The Vice Chancellor cogently observed that contingent rights such as insurance policies and litigable claims "would never vest if they do not belong to the dissolved company in the first place—i.e., if the dissolved company is not an insured under the policies at issue."[38] The Court further explained:

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[36] *In re Krafft-Murphy Co.*, 82 A.3d at 698 (emphasis added).

[37] *Id.* at 704 (emphasis added).

[38] Mem. Op. at *13.

> [C]ontingent rights should "represent significant potential indemnification value" to the company. There is no reason to revive a dissolved company if its purported assets offer no indemnification value—i.e., if they cannot reasonably provide compensation for pending or likely claims. If a policy offers no possibility of recovery because RWG is not an insured or because the policy does not cover the claim at issue, it does not constitute a contingent right capable of vesting that represents significant potential indemnification value.[39]

The Court of Chancery then addressed each and every one of the policies and litigable claims that the Receiver and Petitioner claimed were assets of RWG. These alleged assets (and the Court of Chancery's findings) fell into several categories.

1. Findings as to Policies Whose Existence Was Not Proven

As an initial matter, the Court of Chancery noted that Petitioner's burden of proving that coverage rights under the insurance policies were capable of vesting included "the burden of proving those policies exist."[40] It then determined that Petitioner failed to prove the existence of two policies that were included as purported assets in the Receiver's Final Report. One of these was the Alleged 1978 Continental Policy. The Court of Chancery found that the only evidence concerning the alleged existence of such a policy was an internal memo from 1982 and a series of letters between 1982 and 1990, all of which indicated that the policy's existence

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[39] *Id.* (footnote omitted).

[40] *Id.*

was unsubstantiated.[41] The Court further noted that the evidence showed that this alleged policy "remained unfound" when a policy search was conducted by Continental in response to a subpoena from the Receiver in late 2023.[42] Under these circumstances, the Court of Chancery found that Petitioner had not shown that the Alleged 1978 Continental Policy was an asset of RWG when it dissolved.[43]

2. Findings as to Policies Issued Prior to 1981

The Court of Chancery next examined 21 policies that were issued prior to 1981 to WG&M (a distinct entity that pre-dated RWG). These policies included the 1977 Continental Policy and multiple policies issued by Employers Mutual Liability Insurance Company of Wisconsin. The Court noted that it was "undisputed" that RWG "is not and has never been a named insured" on any of these policies.[44] It accordingly found that these policies could be assets of RWG only if the rights under these policies had been transferred from WG&M to RWG.

The Court of Chancery considered the Receiver's argument that the 1977 Continental Policy and others were "expressly transferred" by a Purchase Agreement

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[41] *Id.* at *14.

[42] *Id.* at *14 n.184 (citing Affidavit of Deirdre Woytek, which is included at B90-93).

[43] *Id.* at *13-14.

[44] *Id.* at *14.

dated May 12, 1981 (the "1981 Purchase Agreement").[45] The 1981 Purchase Agreement was part of a transaction between WG&M and Wisconsin Gasket DE. Ultimately, the Court of Chancery determined that even if it were to accept the interpretation of the agreement suggested by Petitioner and Receiver, nothing in the 1981 Purchase Agreement actually effectuated the transfer of any insurance and they had not identified any instrument transferring any policy. The Court of Chancery accordingly held that Petitioner had not shown that the 1977 Continental Policy and other policies constituted an asset of RWG within the purview of Section 18-804.

For the sake of completeness, the Court of Chancery noted that the Receiver's Report "vaguely suggest[ed]" that the pre-1981 policies had been transferred by operation of law.[46] Continental and other intervenors had responded to this suggestion in their briefs with authority rejecting this argument. The Court of Chancery found that because "Petitioner's briefing does not address a transfer by operation of law at all, or respond to the Intervenors," the "Petitioner waived any argument to that effect."[47]

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[45] Receiver's Final Report, at A0797; *see* A1169-1226.

[46] Mem. Op. at *16 n.211.

[47] *Id.*

3. Findings as to Policies Issued in 1981 and Later

The Court of Chancery examined ten policies that were issued after 1981 to Wisconsin Gasket DE. It found that eight of these were workers compensation policies. The Court concluded that the policies did not cover the pending claims against RWG (which were third-party asbestos-related claims) and Petitioner had said "nothing" about how the workers' compensation policies could otherwise offer RWG any potential indemnification value in view of pending or likely claims.[48] It therefore held that those policies were not assets within the meaning of Section 18-804.

The Court of Chancery also considered two umbrella policies issued by Travelers, with policy periods between 1982 and 1984. It reviewed the terms of the policies and the circumstances under which coverage thereunder would be afforded. It concluded that, because there was no evidence that the primary insurance coverage underlying the Travelers excess coverage had been exhausted by payment (as required to implicate the excess coverage), Petitioner had not shown that Travelers had any duty to indemnity or defend RWG at the time of its cancellation. Under these circumstances, the Memorandum Opinion concluded that Petitioner had not shown by a preponderance of the evidence that these policies constituted assets.

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[48] *Id.* at *17.

4. Findings as to Litigable Claims

As a final matter, the Memorandum Opinion addressed Petitioner's argument that RWG possessed contingent rights in the form of "litigable claims." The Court of Chancery emphasized that "[a] certificate of cancellation will not be nullified simply because one could conjure up a possible litigable claim."[49] Rather, "a litigable claim constitutes an asset of the Company insofar as it can reasonably provide for pending or likely claims" and "under *Krafft-Murphy*, contingent rights, including litigable claims, constitute assets insofar as they are 'capable of vesting' and 'represent significant potential [ ] value.'"[50]

As to purported litigable claims against Continental and other insurers relating to the alleged policies and coverages discussed in the Receiver's Final Report, the Court of Chancery held "none of the policies in question offer any value" for the reasons discussed earlier in its opinion.[51]

As to purported litigable claims for breach of fiduciary duty against its directors and officers and aiding and abetting claims against DCo and Enstar (not involving Continental or any other insurer), the Court of Chancery reviewed those

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[49] *Id.* at *19.

[50] *Id.*

[51] *Id.*

claims and concluded they too did not qualify as assets within the purview of Section 18-804.

H. Court of Chancery Enters Final Judgment

The Memorandum Opinion directed the parties to submit a proposed implementing order to "address[ ] the Motion [to Nullify], the Receiver's future service, and Continental's counterclaim consistent with this opinion."[52] After the parties submitted their proposals, the Court of Chancery entered a Final Judgment and Order on April 29, 2026 (the "Judgment"). The Judgment provided, *inter alia*, that: (1) Petitioner's Motion to Nullify was denied; (2) Judgment was entered "in favor of RWG and against Petitioner on Count I"; (3) Petitioner "did not meet her burden to nullify RWG's August 30, 2022 cancellation, or to prove RWG's cancellation violated Delaware law"; and (4) "Continental is entitled to a declaration consistent with the Opinion's finding that the insurance policies the Receiver attributed to Continental in his report are not assets of RWG because they do not afford RWG any coverage" and "[j]udgment is entered in Continental's favor on its Counterclaim consistent with the Opinion."[53]

Petitioner filed a Notice of Appeal on May 29, 2026.

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[52] *Id.* at *21.

[53] OB, Ex. A.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT PETITIONER FAILED TO SHOW A STATUTORY VIOLATION AND WAS NOT ENTITLED TO NULLIFICATION

A. Question Presented

Whether the Court of Chancery erred in concluding that Petitioner was required to show a violation of Sections 18-804 and 18-203 of the LLC Act by a preponderance of the evidence in order to nullify RWG's certificate of cancellation. This issue was not raised below as claimed by Petitioner's Opening Brief. *See infra* Section I.C.1.a.

B. Scope of Review

The Court of Chancery's determination that the preponderance of the evidence standard applied to Petitioner's claim for nullification is a legal conclusion to be reviewed *de novo*.[54]

C. Merits of Argument

1. The Court of Chancery Applied the Correct Evidentiary Standard

Section I.C.1 of the Opening Brief argues that the Court of Chancery erred in requiring Petitioner to show, by a preponderance of the evidence, that RWG violated 6 *Del. C.* 18-203 and 18-804. Petitioner contends that the Court's determination at

[54] *King v. VeriFone Holdings, Inc.*, 12 A.3d 1140, 1145 (Del. 2011).

an early stage of the case—under the lower "reasonable likelihood" standard—required it to immediately order nullification without any further inquiry or evidence.[55]

a. Petitioner Did Not Preserve This Argument as Claimed

As an initial matter, it should be noted that Petitioner did not challenge the preponderance of the evidence standard in the trial court on any of the three occasions claimed in her Opening Brief.

First, Petitioner claims she preserved this issue at a hearing held on November 4, 2024.[56] Petitioner cites only the title page of the transcript, rather than providing "a clear and exact reference to the pages of the appendix" as required by Supreme Court Rule 14. In addition, the transcript itself shows that neither Petitioner nor her counsel participated in this hearing.[57] Petitioner therefore could not have preserved any issue at that time.[58]

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[55] *See* OB at 22 ("The Post-Trial Findings Triggered Revival Under the LLC Act"), 24 (arguing that the "Court of Chancery's post-trial findings satisfied every predicate" required by Delaware law), 25 (arguing that Court of Chancery failed to "give the post-trial findings their statutory effect").

[56] *Id.* at 21.

[57] *See* A0728 (listing participants in hearing).

[58] To the extent Petitioner seeks to rely on comments at the hearing by counsel for the Receiver, this effort is unavailing because the Receiver's counsel also did not dispute the preponderance of the evidence standard. In fact, the Receiver's counsel asked the trial court's guidance on what would be needed to satisfy "the preponderance of the evidence standard." A0756 (30:9-14). Likewise, in his Final Report, the Receiver acknowledged that nullifying a certificate of cancellation

Second, Petitioner refers to her Opening Brief in Support of the Motion to Nullify.[59] Again, Petitioner cites only the title page of this brief. In any event, a full review of the brief shows that Petitioner did not take exception therein to application of the preponderance of the evidence standard to her nullification claim. Instead, Petitioner affirmatively asked the trial court for a ruling in her favor under that very standard.[60]

Third, Petitioner refers to her Reply Brief in Support of the Motion to Nullify.[61] Once again, only the title page is cited. This brief also did not challenge the preponderance of the evidence standard, instead asking the trial court for a favorable ruling under the standard that Petitioner now seeks to challenge on appeal.[62]

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requires a statutory violation "which must be proven by a preponderance of the evidence" and that "Receiver understands that it is Petitioner's burden to prove a statutory violation." A0815-16.

[59] OB at 21.

[60] A0853 (stating "this Court should determine that a preponderance of the evidence shows RWG's cancellation violated Section 18-804"), A0866 ("Petitioner Linda Cook respectfully requests the Court determine that a preponderance of the evidence shows that Reinz Wisconsin Gasket, LLC violated Section 18-804 of the LLC Act . . . .").

[61] OB at 21.

[62] A1046 (arguing that Receiver's report and other evidence provided "more than sufficient support for this Court to find that not only was it reasonably likely RWG had assets when it dissolved, but also that the preponderance of the evidence shows such assets existed").

Under these circumstances, the Court of Chancery believed that all parties were in agreement about the evidentiary standard to be applied to Petitioner's nullification claim. At the October 23, 2025 hearing on the Motion to Nullify, the Vice Chancellor stated "we've got the burden of proof as preponderance of the evidence. ***I think everybody agrees on that***."[63] Petitioner's counsel did not object to or disagree with the Court's statement. Allowing Petitioner to now raise an argument would be contrary to this Court's rules and its admonition against parties "taking the trial court to task for adopting the very analytical approach that they themselves used in presenting their position." *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 55 (Del. 2006).

b. The Preponderance Standard Is Established by Delaware Law

Petitioner's argument is also wrong on the merits. It is well established under Delaware law that an actual statutory violation is necessary to nullify a certificate of cancellation. *See, e.g., Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs., Inc.*, 854 A.2d 121, 139 (Del. Ch. 2004) (requiring complaint to plead facts supporting inference that cancelled entity was "wound up in contravention of the LLC Act" in order to support application to nullify certificate of cancellation); *Capone v. LDH Mgmt. Holdings LLC*, 2018 WL 1956282, at *7 (Del. Ch. Apr. 25,

[63] B108 (15:10-12) (emphasis added).

2018) (stating that court may nullify "[i]f an LLC is not wound up in accordance with the LLC Act"); *Matthew v. Laudamiel*, 2012 WL 605589, at *22 n.148 (Del. Ch. Feb. 21, 2012) (stating that "if the Court finds that an LLC's affairs were not wound up in compliance with the Delaware Limited Liability Company Act, it may nullify the certificate of cancellation").

It is equally well-established that a statutory violation must be proven by a preponderance of the evidence. *See, e.g.*, *Martin v. Med-Dev. Corp.*, 2015 WL 6472597, at *10 (Del. Ch. Oct. 27, 2015) ("Plaintiffs have the burden of proving each element . . . of each of their causes of action against each Defendant by a preponderance of the evidence"); *Riner v. Nat'l Cash Register*, 434 A.2d 375, 376-377 (Del. 1981). These fundamental principles were recently re-affirmed in *Epie v. Herakles Farms, LLC*, 2025 WL 2028228, at *5 (Del. Ch. July 21, 2025). There, the Court of Chancery stated that "[i]f an LLC is not wound up in accordance with the LLC Act, this Court 'may nullify the certificate of cancellation, which effectively revives the LLC and allows claims to be brought by and against it.'" It further stated that for a petitioner to prove that a limited liability company "actually violated the LLC Act during the course of its dissolution and cancellation, [the petitioner] must do so by a preponderance of the evidence." 2025 WL 2028228, at *5 (quoting March 2023 Opinion at *3).

Petitioner ignores this authority. She instead contends that, by requiring her to prove a statutory violation by a preponderance of the evidence, the Court of Chancery somehow violated *In re Krafft-Murphy Co.*, 82 A.3d 696 (Del. 2013). *Krafft-Murphy*, however, did not involve any claim seeking nullification of a certificate of cancellation. This Court therefore did not purport to address the evidentiary standard for deciding such claims. Petitioner claims that *Krafft-Murphy* dictated a "framework" for deciding claims alleging violations of Section 18-804,[64] but that is not true. Nullification is never mentioned in the decision and nothing therein can be interpeted to disagree with the consistent holding of the Delaware authorities discussed above—that nullification requires proof of a statutory violation by the preponderance of the evidence.

2. The Court Properly Considered "Coverage" in Deciding Petitioner's Claim for Nullification

In Section I.C.2 and elsewhere in the Opening Brief, Petitioner argues that the Court of Chancery was barred from considering "coverage" in its analysis.[65] This argument defies logic. When (as here) an insurance policy is alleged to have been an asset in a nullification action, how could the Court not consider whether the policy provided coverage to the cancelled entity? It is axiomatic that unless the policy

[64] OB at 22, 24, 26.

[65] *Id.* at 26-28.

provided coverage to the entity, it could not have been an asset of that entity. Coverage is therefore a legitmate and necessary inquiry.

Petitioner's illogical argument to the contrary is unsupported by Delaware law. Petitioner cites no purported authority aside from *In re Texas Eastern Overseas, Inc.*, 2009 WL 4270799 (Del. Ch. Nov. 30, 2009), which is plainly inapplicable. *Texas Eastern* did not involve any claim for nullification and does not govern the analysis in this case.[66]

Petitioner also claims to find support for her position in "[w]hat *Krafft-Murphy* did not do."[67] She argues that *Krafft-Murphy* "found the policies to be property without resolving whether any policy covered any claim."[68] This argument ignores the fact that, in *Krafft-Murphy*, it was undisputed that the dissolved corporation was an insured under the policies at issue.[69] *Krafft-Murphy* therefore

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[66] Page 28 of the Opening Brief mischaracterizes *Texas Eastern* by suggesting that the opinion stated "it is not the function of a court in a revival proceeding 'to resolve any insurance coverage dispute[s].'" The opinion made no such statement, as there was no claim for nullification in *Texas Eastern* and it was not a revival proceeding.

[67] OB at 23.

[68] *Id.*

[69] The *Krafft-Murphy* opinion specifically indicated that: (1) the company itself had obtained the policies while it was operational; (2) policy documents had been located and were in evidence; (3) the terms of the policies obligated the insurers to defend the corporation and to indemnify the corporation for covered claims; and (4) the coverage available under those insurance policies has not been exhausted. *In*

did not need to resolve that issue because (unlike in the present case) it was already established. *Krafft-Murphy* in no way held that unexhausted liability policies are assets of companies that are not insureds thereunder. Rather, after explaining that liability insurance policies were property "if and to the extent that they are capable of vesting" and represented "significant potential indemnification value," *Krafft-Murphy* considered whether the company could be held liable to third parties on covered claims.[70] *Krafft-Murphy* thus offers no support for Petitioner's argument and instead confirms that the approach of the Court of Chancery was correct.

As a final argument in the alternative, Section I.C.3 of the Opening Brief asserts that even "[a]ssuming that some inquiry into RWG's assets could precede revival, that inquiry ends at whether RWG owned policies capable of vesting."[71] This inquiry, Petitioner insists, must "end[ ] at ownership, not coverage."[72] Once again, Petitioner offers no relevant support for this overly restrictive view of her burden; Petitioner's contention in fact flies in the face of established Delaware law (discussed above) that a party seeking nullification must show that statutory violations have occurred. Furthermore, even assuming *arguendo* that the Court of

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re Krafft-Murphy Co., 82 A.3d at 698-99. The Court of Chancery recognized this aspect of *Krafft-Murphy*. Mem. Op. at *13 n.174.

[70] *In re Krafft-Murphy Co*., 82 A.3d at 703-04.

[71] OB at 28.

[72] *Id.*

Chancery's inquiry should have been restricted as Petitioner argues, it would not help Petitioner's claims with respect to Continental. The Court of Chancery found that Petitioner did not show that RWG "owned" the policies attributed to Continental and that they were "capable of vesting" in RWG.[73] Petitioner's alternative argument thus fails in any event.

3. Petitioner Has Waived Any Challenge to the Trial Court's Findings Under the Preponderance of the Evidence Standard

Section I of Petitioner's Opening Brief raises only the arguments discussed above, which contend that the Court of Chancery should not have required Petitioner to prove statutory violations by the pronderance of the evidence and should not have considered "coverage." The Opening Brief stops there. Neither Section I nor any other section of the Opening Brief argues that the Court of Chancery's findings were incorrect under the evidentiary standard applied by the Court. Any such arguments accordingly have been and are waived.[74]

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[73] Mem. Op. at *15-16.

[74] Del. Supr. Ct. R. 14(b)(vi)(A)(3) ("The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal."). Any argument raised for the first time in a reply brief is deemed waived. *See, e.g.*, *Monzo v. Nationwide Prop. & Cas. Ins. Co.*, 249 A.3d 106, 123 (Del. 2021); *Rogers v. Christina Sch. Dist.*, 73 A.3d 1, 8 (Del. 2013).

Because the Court of Chancery's Memorandum Opinion made highly detailed findings on many issues, the scope of Petitioner's waiver is broad. The findings not challenged by Petitioner include the following:

- The evidence presented by Petitioner and the Receiver's Final Report did not prove the existence of the Alleged 1978 Continental Policy;[75]
- The 1977 Continental Policy did not include RWG or its predecessor Wisconsin Gasket DE as a named insured;[76]
- The evidence presented by Petitioner and the Receiver's Final Report did not prove that the 1977 Continental Policy and the other Pre-Asset Sale Insurance Policies were transferred to Wisconsin Gasket DE;[77]
- The workers' compensation policies issued for policy periods between 1986 and 1990 do not cover the pending claims against RWG, which are third-party asbestos-related claims;[78]
- The evidence presented by Petitioner and the Receiver's Final Report did not prove that RWG had rights to indemnity and defense under any of the other Post-Asset Sale Insurance Policies; and[79]
- The evidence presented by Petitioner and the Receiver's Final Report did not prove that RWG had litigable claims concerning the policies attributed to Continental or the other policies at issue that constituted assets within the purview of Section 18-804.[80]

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[75] Mem. Op. at *14.

[76] *Id.* at *14-15.

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

[78] *Id.* at *17.

[79] *Id.* at *17-19.

[80] *Id.* at *19.

Petitioner's decision not to challenge the merits of these findings speaks volumes about the accuracy of the trial court's findings—and starkly shows the extreme nature of Petitioner's position. Even after a lengthy investigation by the Receiver did not identify evidence to establish any statutory violation by a preponderance of the evidence (a conclusion that Petitioner does not dispute on appeal), Petitioner argues that the Court of Chancery should nevertheless be instructed to nullify RWG's cancellation. Petitioner thus demands that RWG's cancellation be nullified even though she does not contend on appeal that statutory violations have been proven. Such an outcome—which would be contrary to Delaware law, common sense, and basic fairness—should be firmly rejected.

* * *

Under these circumstances, the only issues before this Court on appeal are Petitioner's arguments that the Court applied an incorrect evidentiary standard and improperly considered coverage. If the Court rejects these arguments, as it should for the multiple reasons discussed above, the Final Judgment on Petitioner's nullification claim must be affirmed.

II. THE TRIAL COURT DID NOT ERR PROCEDURALLY IN ITS CONSIDERATION OF THE RECEIVER'S FINAL REPORT

A. Question Presented

Whether the Court of Chancery erred by allegedly "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."[81] The Opening Brief fails to provide "a clear and exact reference to the pages of the appendix" showing that Petitioner directly presented this issue in the trial court. In reality, Petitioner did not make a request that the Court conduct an *in camera* review of unspecified information from the Receiver, and the issue was not preserved.

B. Scope of Review

Decisions concerning how to proceed for the "orderly adjudication of claims" are within the trial court's inherent power and are "reviewed under an abuse of discretion standard." *See*, *e.g.*, *Harris v. Harris*, 289 A.3d 310, 342 (Del. Ch. 2023); *Bell Sports, Inc. v. Yarusso*, 759 A.2d 582, 595 (Del. 2000); *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006) ("It is well settled that 'the trial court has discretion . . . to control its own docket.'").

[81] OB at 32.

C. Merits of Argument

1. The Court of Chancery Did Not Depart from Its Own Procedure

Section II of the Opening Brief accuses the Court of Chancery of "abandoning the procedure it set" and changing "the rules of that procedure after the fact."[82] Nothing could be further from the truth. The trial court consistently followed the procedure it established at the outset and resisted efforts to depart from this process.

The March 2023 Opinion, as discussed above, laid out the two-stage process that would apply to this action. The first stage concerned the appointment of a receiver pursuant to Section 18-805 under the preliminary "reasonable likelihood" standard. The Receiver was tasked with conducting an investigation and submitting a report so that the trial court could, at the second stage, decide Petitioner's claim for nullification under Section 18-804. At the second stage, the Court of Chancery stated that it would "consider 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."[83]

Subsequently, the Receiver (acting at the request of the attorney who represents Petitioner) asked the Court of Chancery to change the rules. The Receiver sought an immediate expansion of his authority before he had done the work required

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[82] *Id.* at 32, 33.

[83] March 2023 Opinion at *3.

by his appointment order. The Court denied this request, emphasizing that it would "stick with the path that I laid out in my March 2023 opinion."[84] The Vice Chancellor also took the opportunity to remind the parties that different standards would apply at the second stage of the proceedings. Referring to the March 2023 Opinion, the Court noted "[a]ll I found at that point" was a reasonable likelihood that Reinz had violated the LLC Act and accordingly granted limited receivership authority that was "tailored to deciding if there was an actual violation, which . . . requires satisfying the preponderance of the evidence standard."[85] The Vice Chancellor observed that the Receiver had been appointed under the less demanding "reasonable likelihood" test, with the Court being bound to view the issues "under a good cause standard through one particular lens."[86] A few months later, the Court of Chancery again reminded the parties that the burden of proof would lie with Petitioner to show actual statutory violations by a preponderance of the evidence.[87]

Petitioner nevertheless insists that the Vice Chancellor reneged on "commitments" to the effect that "the Receiver—not Petitioner" would be

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[84] A0730 (4:8-11); A0751-52 (25:22-26:21).

[85] A0752 (26:1-7).

[86] *Id.* (26:15-17).

[87] B87-88 (11:20-12:6) (stating "[t]he first [step] is the issue has been flagged about the nullification. ***I do maintain that is the petitioner's burden***. . . . I think that's something we all need to hash out or whoever wants to participate ***with the burden being on the petitioner***") (emphasis added).

responsible for satisfying the burden of proof at the second stage and that findings made at the first stage would be "law of the case" for the second stage.[88] These arguments are directly contrary to what the trial court told the parties on multiple occasions in 2023, 2024, and 2025 as discussed above. The Court of Chancery repeatedly stated that the burden would be on Petitioner to prove her claims. The Court was equally clear that a different evidentiary standard would govern the second stage and that conclusions at the first stage were made through "one particular lens"—the lower "reasonable likelihood" standard that would not apply when deciding Petitioner's nullification claim.[89]

Moreover, under Delaware law, the statements in the March 2023 Opinion were not law of the case for a host of reasons. The law of the case doctrine requires that the issue be "presented by facts which remain constant throughout the subsequent course of the same litigation." *Kenton v. Kenton*, 571 A.2d 778, 784 (Del. 1990). Here, the record during the second stage proceeding (which included the Receiver's Final Report, its many exhibits, and submissions from multiple parties in light of that information)[90] was different from the record during the first stage proceeding (which took place less than two months after the filing of the

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[88] OB at 34, 35.

[89] A0752 (26:15-17).

[90] *See, e.g.*, A0762-838.

action). The doctrine also does not preclude further inquiry when the standards are different. *See, e.g.*, *Drachman v. Cukier*, 2021 WL 5045265, at *8 n.87 (Del. Ch. Oct. 29, 2021) ("Though still the law of the case and relevant to this decision, the different standard applied to this decision requires further analysis."). Here, the first and second stages were conducted under different evidentiary standards: reasonable likelihood as opposed to preponderance of the evidence. Further, for the doctrine to apply, the issue must "have been 'fully briefed and squarely decided.'" *State v. Wright*, 131 A.3d 310, 321 (Del. 2016). Nullification was expressly not decided at all in the first stage proceeding. Finally, Petitioner ignores the interlocutory nature of the first stage ruling. As this Court has noted in the law-of-the-case context, "interlocutory rulings may be set aside or modified" and "remain[] within the control of the court." *Frank G.W. v. Carol M.W.*, 457 A.2d 715, 719 (Del. 1983).

Lastly, Petitioner points to her reply brief in support of the Motion to Nullify, which argued that the Court of Chancery should disregard the arguments of Continental and other intervenors because the Court supposedly had "already rejected Intervenors' arguments" on the purported 1981 transfer during the first stage.[91] Petitioner complains that the Court's Memorandum Opinion "did not meaningfully engage that objection."[92] Petitioner's accusation is simply not true.

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[91] A1039.

[92] OB at 36.

The Memorandum Order expressly took notice of the argument in Petitioner's reply brief – and rejected it. It stated: "***To be clear, contrary to Petitioner's position***, the Post-Trial Opinion did not 'already decide[] that RWG or its successors held certain [assets]' under a preponderance of the evidence standard. Pet'r's Reply Br. 7."[93]

2. The Court of Chancery Did Not Err in Its Consideration of the Receiver's Final Report

Section II of the Opening Brief also argues that the Court of Chancery erred by "neglecting" to conduct an *ex parte* review of certain unspecified information that the Receiver did not include in his Final Report.[94] This argument is purportedly based on portions of the Receiver's report relating to "litigable claims for breach of fiduciary duty against its directors and officers [ ] and aiding and abetting claims against DCo and [Enstar]."[95] Devoting just a few sentences to these claims, the Final Report stated that the Receiver was "available" to "discuss these claims *in camera* . . . should the Court believe they would impact the ultimate analysis . . . ."[96]

This argument has no application to Continental. As indicated above, the unspecified information related to the possibility of claims ***against DCo and Enstar*** for purported breach of fiduciary duty and claims for aiding and abetting — not to

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[93] Mem. Op. at *11 n.150 (emphasis added).

[94] OB at 32.

[95] Mem. Op. at *20.

[96] A0813-14.

any purported insurance assets. The Final Report never stated that there was any information about Continental's alleged insurance coverage (or any other insurer's policies) that the Receiver was withholding based on alleged privilege or work product concerns.[97] To the contrary, the Receiver fully presented his arguments and purported support concerning the alleged insurance assets. Those positions, adopted by Petitioner, were accordingly considered by the Court of Chancery and found wanting. Therefore, even if there were any merit to Petitioner's second assignment of error (which there is not), it would provide no basis for reversing the trial court's rulings with respect to Continental.

For the sake of completeness, Continental notes that Petitioner is incorrect in arguing that the trial court neglected this matter and failed to explain itself. The Court of Chancery provided a full explanation in its Memorandum Opinion, stating as follows as to the purported claims against DCo and Enstar:

> The Receiver did not detail these claims in the Report, instead noting he is "available to discuss these claims *in camera* due to privilege and work product concerns." Petitioner did not press these claims or seek any *in camera* review.[98]

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[97] The Opening Brief admits that the reference to *in camera* review related solely to putative claims against DCo and Enstar (US) Inc. ("EUSI" or "Enstar"). OB at 34 ("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.").

[98] Mem. Op. at *20.

The Court's statements were well founded. During the October 23, 2025 hearing on Petitioner's Motion to Nullify, Petitioner's counsel did not present any argument as to these purported claims. Petitioner's counsel also did not request (or otherwise refer to) an *in camera* review during the hearing. In addition, the Receiver did not attend the hearing.[99] Under these circumstances, the Court of Chancery was not obligated to conduct an *in camera* review.

Notably, the trial court's ruling did not rest solely on Petitioner's failure to pursue this aspect of her case. It went on to identify the deficiencies in the claims that would apply "[i]n any case . . . ."[100] The Court of Chancery discussed in detail additional reasons for its determination that Petitioner had not carried her burden to prove that any claims against DCo and Enstar could provide value to RWG. As to the purported breach of fiduciary claim, the trial court found that the terms of RWG's Operating Agreement largely exculpated any such claim and would yield value only in extreme circumstances. As to the purported claims for breach of the implied covenant of good faith and fair dealing and for aiding and abetting, the trial court found that these claims could offer RWG no value because, at the time of its

[99] Counsel for the Receiver appeared at the hearing, but likewise did not request an *in camera* review. *See* B95.

[100] Mem. Op. at *20.

dissolution, the entity "had been inoperative for over a decade" and therefore the "decision to dissolve RWG did not cause it any harm."[101]

Petitioner's Opening Brief did not dispute these findings of the Memorandum Opinion and any such argument has now been waived. Therefore, even if the Court of Chancery somehow abused its discretion by not conducting an *in camera* review of unspecified additional contentions by the Receiver, its ruling as to the purported litigable claims against DCo and Enstar would still stand in light of these unchallenged conclusions.

[101] *Id.* at *21.

III. THE TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT ON CONTINENTAL'S COUNTERCLAIM

A. Question Presented

Whether the Court of Chancery erred by entering judgment on Continental's counterclaim to the Petition requesting declaratory judgment on the same issue raised by Petitioner and decided by the Memorandum Opinion. Petitioner preserved her argument on this issue in the trial court at A1102.

B. Scope of Review

A trial court has discretion in determining whether to entertain a declaratory judgment action and this Court "reviews for abuse of discretion" the trial court's decision. *See Gannett Co. v. Bd. of Managers of the Del. Crim. Just. Info. Sys.*, 840 A.2d 1232, 1237 (Del. 2003). Questions of justiciability are reviewed *de novo*. *See Crescent/Mach I Partners, L.P. v. Dr Pepper Bottling Co. of Tex.,* 962 A.2d 205, 208 (Del. 2008).

C. Merits of Argument

Petitioner contends that the Court of Chancery erred by entering judgment on Continental's counterclaim to the Petition. The Opening Brief raises two arguments, neither of which has merit.

First, Petitioner argues that the trial court should not have entered judgment on Continental's counterclaim because it "sought to resovle [*sic*] an insurance

coverage dispute, which is outside the bounds of a Section 18-805 proceeding."[102] This argument recycles Petitioner's prior insistence that the trial court should not have addressed insurance coverage in this nullification action, where insurance policies were alleged to be assets. The Court of Chancery thoroughly considered and explicitly rejected this argument.[103] It recognized that Petitioner's claim required it to address RWG's coverage and expressly held "the insurance policies the receiver identified are not company assets for purposes of Section 18-804 ***because they do not afford the company any coverage***."[104] For these reasons and as discussed above in Section I.C.2 above, the Court of Chancery's approach was correct under Delaware law and the trial court necessarily resolved these insurance issues.

Second, Petitioner argues that Continental's counterclaim was not justiciable.[105] This argument is puzzling. For the last three years, Petitioner sought a ruling from the Court of Chancery about RWG's rights under Continental's policies: that the policies covered RWG for the claims at issue and were assets of RWG. Petitioner never suggested that those issues were not justiciable; to the

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[102] OB at 39.

[103] *See* Mem. Op. at *12-19.

[104] *Id.* at *1 (emphasis added).

[105] OB at 40; A1102.

contrary, Petitioner strenuously pursued a judgment that Continental's coverage was available to RWG. When Continental asserted its counterclaim concerning this same coverage, Petitioner responded by "submit[ting] to the jurisdiction of the Court for a proper adjudication of the Counterclaim."[106] Having sought judgment on her claims and submitted to adjudication of Continental's counterclaim, Petitioner cannot now object simply because the result was not to her liking.

Under Delaware law, a request for declaratory judgment presents a justiciable controversy when: (i) it involves "the rights or other legal relations of the party seeking declaratory relief"; (ii) the claim of right or other legal interest is "asserted against one who has an interest in contesting the claim"; (iii) the conflicting interests are "real and adverse"; and (iv) the issue is "ripe for judicial determination." *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973). These requirements were met here. The counterclaim relates to insurance policies that were attributed to Continental and in which Continental therefore had a direct legal interest. The counterclaim was asserted in response to the Petition, in which Petitioner sought nullification on the basis that Continental's policies afforded

[106] A0705.

coverage to RWG and Petitioner therefore had a strong interest in litigating the issue of Continental's coverage.[107]

In addition, the conflicting interests of Continental and Petitioner (and later the Receiver) were real and adverse. Petitioner put the Continental policies at issue and, at the preliminary stage of this action, the Court of Chancery appointed a receiver based in large part upon Petitioner's claims concerning Continental's coverage. The Receiver thereafter stated that his work and the trial court's decision "would trigger application of the Continental Policy."[108] At the nullification stage, the Receiver presented a Final Report that devoted over fifteen pages to arguing that Continental provided coverage to RWG. Further arguments about these policies were presented by Petitioner in the opening and reply briefs in support of her Motion to Nullify. These arguments were, in turn, opposed in extensive briefing by Continental and other intervenors. At the oral argument on October 23, 2025, Petitioner and all other parties once again presented opposing arguments on these issues. Unquestionably, these issues presented real and adverse interests that were fully litigated in an adversarial process. After three years of litigation and over 18 months of investigation by the Receiver, these issues were certainly ripe.

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[107] As discussed above, the trial court authorized Continental's counterclaim, confirmed its ripeness, and thereafter noted that the counterclaim presented issues that should be decided at the same time as Petitioner's claim. B88, 12:7-14; A0067.

[108] A0683.

As a final argument, Petitioner contends that the judgment on Continental's counterclaim was advisory because any question about RWG's contract rights had "become moot" as a result of the Memorandum Opinion.[109] Petitioner refers to *Crescent/Mach I Partners, L.P. v. Dr Pepper Bottling Co. of Texas*, where errors in an opinion were discovered after the parties had already executed a settlement agreement. *Crescent* held that the lower court erred by making additional, corrected findings ***after*** the settlement and changing its judgment ***after*** the settlement because the matter had become "moot by operation of a settlement."[110]

Crescent has no application to present action. The Court of Chancery entered judgment on Continental's counterclaim ***at the same time*** as its judgment on Petitioner's nullification claim. Moreover, the Judgment was not based on new findings after the Memorandum Opinion.[111] The Judgment stated that Continental was entitled to a declaration based on "***the Opinion's finding*** that the insurance policies the Receiver attributed to Continental in his report are not assets of RWG because they do not afford RWG any coverage."[112] It stated that "[j]udgment is

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[109] OB at 40.

[110] 962 A.2d at 207-08.

[111] The Memorandum Opinion expressly contemplated that there would be a further implementing order and directed the parties to submit a proposed order addressing, *inter alia*, Continental's counterclaim "consistent with this opinion." Mem. Op. at *21.

[112] OB, Ex. A, p.3 (emphasis added).

entered in Continental's favor on its Counterclaim consistent with ***the Opinion***."[113] Under these circumstances, the judgment was based on the issues that were thoroughly litigated by the parties at a time when they had real and adverse interests. Petitioner has failed to show that the Court of Chancery erred in any of its rulings and the entry of judgment on Continental's counterclaim should therefore be affirmed.

[113] *Id.* (emphasis added).

CONCLUSION

For the reasons set forth above, this Court should affirm the Court of Chancery's Judgment.

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