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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

INTERVENORS-BELOW/APPELLEES DCO LLC AND ENSTAR (US) INC.'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

Reinz Wisconsin Gasket, LLC ("RWG"), a Delaware limited liability company, had no assets or operations when it dissolved and was canceled in August 2022.

But Petitioner saw an opportunity to obtain a monetary recovery. She first added RWG to the 29 other defendants in her Massachusetts asbestos action. She then filed suit in Delaware to appoint her hand-picked receiver for RWG and to nullify RWG's cancellation.

The proceedings below occurred in two phases clearly delineated by the trial court. "Phase One" addressed whether there was good cause to appoint a receiver for RWG under 6 *Del. C.* § 18-805. Petitioner won that round. In Phase One, following an expedited paper trial, the trial court appointed a receiver under the lenient "reasonable likelihood" standard, finding that "it was reasonably likely RWG still had unexhausted insurance policies." Op. Br. Ex. B ("Phase-Two Op.") *12. Petitioner is not appealing the trial court's decision to appoint a receiver in Phase One.

"Phase Two," at issue on this appeal, involved a different statute and a different standard. Phase Two addressed whether Petitioner could show—by a preponderance of the evidence—that RWG violated 6 *Del. C.* § 18-804 by filing a notice of cancellation without making reasonable provision for Petitioner's claims.

Petitioner had the benefit of the Receiver's 18-month investigation and all the evidence uncovered in that investigation. But the trial court ruled against Petitioner because Petitioner failed to show that RWG had any "assets available therefor" under Section 18-804 when it was canceled. Before dissolution and cancellation, RWG and its manager searched for assets and found none. The trial court agreed.

Petitioner complains about the procedure below, but she benefited from several unique advantages. At Petitioner's request, RWG was stripped of its counsel and an initial intervention attempt by RWG's former sole member was denied. Accordingly, Petitioner was permitted to prosecute some of the action *ex parte*. During that time, Petitioner was allowed free rein to choose her adversary's receiver, ask the Court to appoint (despite Court of Chancery Rule 150) a non-Delaware receiver, draft the proposed order governing the receiver's appointment, and craft the Receiver's compensation structure for maximum incentive. Petitioner then chose to seek nullification based on the results of the Receiver's 18-month investigation.

Petitioner now comes before this Court to argue that, despite granting her these procedural advantages, the trial court erred in (among other things) applying the standard for whether contingent rights, specifically insurance policies, constitute assets under Section 18-804 and finding that Petitioner failed to meet her preponderance burden. But Petitioner's positions are unsupported by the record and

Delaware law. The trial court's factual findings are undisputed; Petitioner also does not appeal the receiver's limited mandate or the application of the preponderance burden to Phase Two of the litigation below; and the trial court correctly applied *In re Krafft-Murphy Co.*, 82 A.3d 696 (Del. 2013), in determining that insurance policies that provide no coverage and no value to RWG are not "assets available therefor" under Section 18-804. The Court of Chancery correctly held that Petitioner failed to prove a Section 18-804 violation by a preponderance of the evidence, and its judgment should be affirmed.

SUMMARY OF ARGUMENT

1. Denied. The trial court correctly applied a different evidentiary standard (preponderance of the evidence) to Phase Two than it did in Phase One; the two different Phases involved different statutes, different inquiries, and different evidentiary standards. Petitioner did not appeal the burden applicable to Phase Two—she simply failed to meet it. Nor did Petitioner appeal the receiver's limited mandate. And the trial court interpreted *Krafft-Murphy* correctly in holding that insurance policies that do not provide coverage or value are not assets under Section 18-804. *See* Section I.

2. Denied. The trial court never "abandon[ed] the procedure it designed." Rather, it consistently made clear the different standards and showings applicable to Phase One and Phase Two. The "law of the case" doctrine does not help Petitioner for several reasons, including that Phase One and Phase Two involved different statutes, showings, and evidentiary standards. Petitioner did not appeal the receiver's limited mandate, and the trial court correctly held that Petitioner failed to meet her burden to show by a preponderance of the evidence that RWG violated Section 18-804. *See* Section II.

COUNTERSTATEMENT OF FACTS

A. Petitioner and RWG

RWG was a Delaware limited liability company; it was dissolved by Intervenor-Below/Appellee DCo LLC ("DCo"), its former sole member, and cancelled in August 2022. Phase-Two Op. *2, *5.

Petitioner alleges that her deceased husband worked with asbestos gaskets manufactured by a distant predecessor of RWG decades ago. Op. Br. Ex. D ("Phase-One Op.") *1; Phase-Two Op. *2.

B. RWG's history

1. Wisconsin Gasket & Manufacturing Co. incorporates in Wisconsin.

Wisconsin Gasket & Manufacturing Co. ("WG&M") was incorporated in Wisconsin in 1944. Phase-Two Op. *2; A1162; A1845. It was the named insured on four sets of insurance policies for asbestos-related personal injury liability:

(1) General liability policies issued by Employers Mutual Liability Insurance Company of Wisconsin, an affiliate of Intervenor-Below/Appellee Employers Insurance Company of Wausau ("Wausau"), with policy periods between 1944 and 1959. Phase-Two Op. *2; B704-813.

(2) General liability and umbrella policies issued by the Kemper Insurance Companies, which would later do business as Lumbermens Mutual Casualty Company and American Manufacturers Mutual Insurance Company (collectively,

"Lumbermens"). Phase-Two Op. *2; B167-82.[1] The Lumbermens policies comprised the underlying primary policies applicable to asbestos-related personal injury liability (with a $500,000 liability limit) and an umbrella policy (with a $1,000,000 liability limit). Phase-Two Op. *3.

(3) Umbrella policies issued by Aetna Casualty & Surety Company, later called Travelers Casualty & Surety Company ("Travelers"), which covered policy periods between December 1978 and December 1981. Phase-Two Op. *3; B820-61. The Travelers policies provided excess coverage that did not attach until the underlying $500,000 Lumbermens policy was exhausted. Phase-Two Op. *3; *see* B821; B835; B849.

(4) An excess policy issued by Intervenor-Below/Appellee Continental Casualty Company ("Continental"), formerly CNA Insurance Companies, with a policy period from November 22, 1977, through September 20, 1978. Phase-Two Op. *3; B814-19. The Continental policy provided $4,000,000 in excess coverage that did not attach until the underlying $1,500,000 of Lumbermens policies was exhausted. Phase-Two Op. *3; B819.

[1] The record below "does not contain copies" of the Lumbermens comprehensive general liability policies. Phase-Two Op. *2 n.9.

2. WG&M sells all of its assets and some of its liabilities.

In 1980, a different company with the same name as WG&M was incorporated in Delaware by German gasket maker Reinz Dichtungs GmbH: Wisconsin Gasket & Manufacturing Company ("Wisconsin Gasket DE"). Phase-Two Op. *3.

Petitioner states that "WG&M was sold to" Wisconsin Gasket DE. Op. Br. 10. That is incorrect.

In 1981, Wisconsin Gasket DE purchased WG&M's assets, pursuant to a Purchase Agreement with an effective date as of January 1, 1981 (the "Purchase Agreement"). Phase-Two Op. *3; A1175; A1176 § 1.1; A1179 § 1.3. The Purchase Agreement made clear that Wisconsin Gasket DE was not purchasing all WG&M's liabilities: Section 2.2 sets forth the "three narrowly defined categories of liabilities" assumed by Wisconsin Gasket DE. Phase-Two Op. *3; A1180 § 2.2.

Specifically, Section 2.2(b) provides that Wisconsin Gasket DE assumed only WG&M "liabilities incurred in the ordinary course of business *since December 31, 1980*." A1180 § 2.2(b) (emphasis added). That is, WG&M retained its pre-1981 liabilities. Because those pre-1981 liabilities did not transfer to Wisconsin Gasket DE, WG&M's pre-1981 insurance policies similarly did not transfer to Wisconsin Gasket DE, as the record demonstrates. Phase-Two Op. *14-16.

Section 6.1(g) of the Purchase Agreement specifies that not all insurance policies did transfer (or could have transferred)—only those listed in Exhibit G.

A1188-89 § 6.1(g) (providing that only the "policies of insurance described on Exhibit 'G' are transferrable" to Wisconsin Gasket DE). No party was able to locate Exhibit G, so it was not a part of the record below. Phase-Two Op. *3. But WG&M would have retained the pre-1981 insurance policies to cover the pre-1981 liabilities that it still held.

After selling its assets, WG&M survived for decades longer, under different corporate forms, until it dissolved in February 2019. Phase-Two Op. *3.

3. Wisconsin Gasket DE becomes RWG Co. and is acquired by Dana Corporation.

In 1985, Wisconsin Gasket DE changed its name to Reinz Wisconsin Gasket Company ("RWG Co."). Phase-Two Op. *4.

From 1981 through 1991, Wisconsin Gasket DE and RWG Co. held insurance coverage for asbestos-related personal injury liability under two sets of policies: (1) comprehensive general liability[2] and excess policies issued by Lumbermens, and (2) umbrella policies issued by Travelers that do not attach until the underlying $500,000 Lumbermens policy is exhausted. Phase-Two Op. *4 (citing B183-279; B280-362; B363-78; B384-401; B402-14; B415-23; B424-529; B379-83; B863; B878).

In 1994, Dana Corporation acquired RWG Co. Phase-Two Op. *4.

[2] The post-1986 general liability policies contain asbestos exclusions, so they would not provide Petitioner any recovery. *See* B375; B392; B403; B416; B502.

4. Following Dana Corporation's bankruptcy, RWG is left without operations.

In 2005, Dana Corporation formed RWG (the Delaware LLC that is the subject of the underlying litigation) and merged RWG Co. into it, leaving Dana Corporation as RWG's sole member. Phase-Two Op. *4.

The following year, Dana Corporation and certain of its subsidiaries (including RWG) filed for Chapter 11 bankruptcy. Phase-Two Op. *4. As part of the reorganization plan approved by the bankruptcy court, Dana Corporation merged into a new subsidiary named Dana Companies, LLC (now known as DCo and owned by a subsidiary of Enstar Group Limited). Phase-Two Op. *5.

Pursuant to the reorganization plan, RWG then transferred its real estate and operations-related assets to a subsidiary of Dana Incorporated, which was created in the reorganization. Phase-Two Op. *5; B557-58.

C. RWG's dissolution and cancellation

1. Petitioner's counsel sues RWG, which then seeks (and fails to find) insurance coverage.

Beginning in late 2020, RWG became Petitioner's counsel's "newest target." Phase-Two Op. *6 (quoting B703). In October 2020, RWG was one of 31 defendants named in a lawsuit brought by Melvin and Donna Welch (also represented by Petitioner's counsel). Phase-Two Op. *6. In December 2021, Petitioner added RWG to the 29 other defendants in her then-ongoing asbestos action in Massachusetts. Phase-Two Op. *6.

Lacking any cash or other assets to fund its defense, RWG searched for potential insurance coverage for the period of the plaintiffs' alleged exposure. Phase-Two Op. *6. For example, RWG's Vice President Vicki Stringham wrote to a Dana Incorporated director, asking for any policies that might have come from RWG's predecessor. Phase-Two Op. *6; B702-03. She also reached out to a specialty insurance and reinsurance consultancy firm, explaining that DCo was "never able to find anything to support th[e] theory" that RWG had insurance coverage when it was acquired by Dana Corporation. A1322.

2. DCo retains an insurance archivist to search for available policies, but he finds none.

DCo engaged an insurance archivist to trace RWG's historical insurance coverage and discover any applicable insurance policies. Phase-Two Op. *6. After several months of searching, the archivist reported that "all of the relevant general liability coverage" was issued by Lumbermens, which had entered liquidation in 2013. A1371. The deadline for filing claims in the Lumbermens liquidation proceedings had run in 2014, meaning that no funds were left under the Lumbermens policies and RWG had no coverage. Phase-Two Op. *7.

Petitioner suggests that the "archivist recommended pursuing" the following leads: reinsurance, RWG's former broker, possible excess coverage, and RWG's former German affiliate. Op. Br. 13. But the record contradicts this. First, the archivist did not believe pursuing reinsurance would be worthwhile. Phase-Two Op.

*7; A1371-72 ("[M]y sense is that it is much more likely than not that there was not direct privity or a third party beneficiary relationship with [the reinsurer]. . . . I doubt that [the reinsurer] would voluntarily search for and/or provide to us copies[.]"). Second, the archivist had already spoken with and pursued the resulting leads from RWG's former broker. Phase-Two Op. *7. Third, the "only other possibility" for excess coverage that the archivist could conjure was "inconsistent with the former broker's recollection." A1372. Fourth, the archivist was not "particularly optimistic" that RWG's former German affiliate would provide assistance. A1372.

As the archivist put it, RWG was at "a crossroads." A1371. "The goal was to determine what the historical insurance coverage looked like for Wisconsin Gasket & Manufacturing Co./Reinz Wisconsin during the 1980s.[3] We have done that. Unfortunately, it appears that all of the relevant general liability coverage would have been issued by Lumbermens [which had liquidated]." A1371. Far from recommending further pursuits, the archivist concluded that "we may be reaching the point where the likely return on investment starts to look less optimistic." A1371.

After months of searching—and at the sole expense of DCo, which voluntarily contributed capital to RWG for litigation expenses and the insurance archivist in the hopes that something would be found and DCo could be repaid—DCo concluded

[3] Because RWG did not assume WG&M's pre-1981 liabilities and thus did not assume pre-1981 policies (A1180 § 2.2(b)), the archivist's search necessarily focused on post-1981 policies.

that the archivist had "taken the investigation as far as he could." Phase-Two Op. *8 (cleaned up) (quoting A1373). Because RWG had no insurance coverage, DCo had to make the business judgment of whether to continue spending money to search for something that the insurance archivist believed would not be there. *See* A1646 ("I need to develop a gameplan to stop the bleeding now that we've learned [RWG] doesn't have any insurance. The business decision for DCo to front the bills in hopes of finding insurance no longer apply."). DCo was under no obligation to continue throwing good money after bad, merely to keep an asset- and operation-less shell on life support.

3. Unable to find any assets at RWG, DCo votes to dissolve.

Having failed to locate any insurance policies, DCo began due diligence to determine whether RWG held any assets of any kind. Phase-Two Op. *8. Following that process, it became clear that RWG held no assets at all, including no cash, real property, open bank accounts, regulatory licenses, intellectual property, or outstanding accounts receivable. Phase-Two Op. *8.

RWG's most recent Operating Agreement provides that RWG may be dissolved at DCo's election. Phase-Two Op. *5. Because RWG had no operations, insurance, or other assets of any kind (A1731; A1736), DCo called a special meeting and voted to dissolve RWG. Phase-Two Op. *8.

RWG had no assets that it could set aside to make any reasonable provision for contingent claims, so it filed a notice of dissolution and certificate of cancellation on August 30, 2022. Phase-Two Op. *8. It made no distributions before its cancellation. A928.

D. The underlying litigation

1. Petitioner files suit in Delaware.

On September 23, 2022, following RWG's cancellation, Petitioner filed her Verified Petition for Appointment of a Receiver in Dissolution Pursuant to 6 *Del. C.* § 18-805 (the "Petition"). A1; Phase-Two Op. *2. The Petition requested that the Court of Chancery appoint a receiver to determine if RWG holds any insurance policies or assets available to satisfy a damages award in Petitioner's Massachusetts action (Count II), find RWG's dissolution improper for failing to comply with Sections 18-203 and 18-804 of the LLC Act, and nullify RWG's certificate of cancellation (Count I). Phase-Two Op. *9.

DCo's counsel wrote Petitioner's counsel a detailed letter to demonstrate that RWG did not have assets when it was cancelled. A1757-78. Those efforts were to no avail; Petitioner demanded expedition.

2. The Court of Chancery resolves Phase One following an expedited paper trial, leaving nullification for Phase Two.

On October 31, 2022, the trial court ordered an expedited trial, which was held 49 days later. B1-4; Phase-Two Op. *10.

The expedited trial was to resolve only Phase One of the litigation: whether Petitioner could demonstrate good cause to appoint a receiver under 6 *Del. C.* § 18-805. Phase-Two Op. *10, *12. On March 20, 2023, the trial court ruled that Petitioner had satisfied this minimal evidentiary standard. Phase-Two Op. *10, *12.

The Phase One opinion explained that the "good cause" standard in Section 18-805 required Petitioner to show only "a reasonable likelihood" that RWG held undistributed assets and violated the LLC Act when it dissolved. Phase-One Op. *1-5. The trial court "determined it was reasonably likely RWG had assets in the form of unexhausted insurance policies when it dissolved." Phase-Two Op. *10. The trial court then appointed a receiver to "investigate whether RWG had assets when it filed its notice of dissolution and cancellation." Phase-One Op. *13.

Phase One "stopped at the appointment of a receiver" and did not reach the question of whether to nullify RWG's cancellation. Phase-Two Op. *10; Phase-One Op. *13. Indeed, the trial court expressly provided for Phase Two, making clear that, "[t]o nullify RWG's certificate of cancellation, Petitioner would have to prove that statutory violation not just under a reasonable likelihood standard, but *by a preponderance of the evidence*." Phase-One Op. *13 (emphasis added); *id.* *3 ("For

Petitioner to prove RWG actually violated the LLC Act during the course of its dissolution and cancellation, she must do so by a preponderance of the evidence."); *see also id.* *13 ("I need not yet reach whether RWG violated Section 18-203. . . . If the [receiver's] 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.").

3. Petitioner moves to deprive RWG of counsel and to proceed without an adversary.

Petitioner complains that "no one was permitted to litigate on behalf of RWG" (Op. Br. 3), but she obscures the fact that she procured that result.

After the trial court asked how RWG could retain counsel when it had been cancelled (Phase-One Op. *2 n.21), Petitioner filed a motion to prohibit RWG from "tak[ing] a position or retain[ing] counsel to represent it in this matter," allowing Petitioner to proceed and propose receivers for RWG on an *ex parte* basis. A537-49.

The trial court agreed with Petitioner and ruled that RWG could not have counsel or attorney-client privilege. A590. The trial court also concluded that it was "unwilling to delay the warranted appointment of a receiver . . . to indulge DCo or any other interested party in entering their appearance and participating in identifying a suitable receiver." A591. RWG sought an interlocutory appeal, which Petitioner opposed, and was denied. B5-42.

4. Petitioner's hand-picked receiver is appointed *ex parte* and investigates for 18 months.

After having successfully prevented any opposition, Petitioner *ex parte* proposed three receivers for RWG. A596-652. On August 3, 2023, the court below appointed Peter D. Protopapas as receiver of and for RWG (the "Receiver"). Phase-Two Op. *10. Petitioner's counsel had a deep connection with Mr. Protopapas, having requested him as a receiver in similar situations at least 20 separate times (A999-1000), but Petitioner successfully prevented any other party from making this point to the trial court. Similarly, Petitioner prevented any other party from arguing for compliance with Court of Chancery Rule 150; the Court therefore allowed an exception to Rule 150 and appointed a non-Delaware receiver. *See* Op. Br. Ex. C ¶ 2.

Petitioner provided the Receiver with a compensation structure designed to incentivize him to uncover any assets he could: the Receiver would be paid a 33.33% contingency fee on any assets that he recovered. B44.

Unsurprisingly, given his direct financial incentive, the Receiver's investigation was extensive and went far beyond the evidentiary record presented at the Phase One trial. The Receiver sought and received "all filings and documents from the trial in this matter, deposition transcripts, joint trial exhibits, pre-trial briefing, and post-trial briefing." A768. He sought and received the unredacted documents that RWG and Enstar produced during discovery in the proceedings

below, including additional documents from Ms. Stringham and DCo's former president. A769-71. The Receiver requested documents from multiple law firms and received "some copies of insurance policies and other joint exhibits from trial in this matter." A775. He requested "all relevant information regarding insurance policies/and or assets of RWG" from plaintiffs' counsel in other "lawsuits against RWG," and received "discovery" from such cases. A768-69; *see also* A776-77 (reviewing and consulting with counsel in other litigations and the Dana Corporation bankruptcy proceedings). The Receiver subpoenaed thirteen insurance companies and received documents from six. A771-72. He requested documents from the Lumbermens liquidator and the insurance archivist's employer. A772; A775-76. The Receiver also sought state filings and corporate records from Wisconsin. A777.

Petitioner states that the "Receiver's investigation met resistance" (Op. Br. 17), but that description is overblown. This supposed "resistance" includes DCo asking the Receiver to serve a subpoena properly (which the Receiver refused to do and then abandoned after receiving the documents he wanted from Enstar) (A770), and Continental intervening to assert counterclaims regarding insurance policies alleged to be an asset of RWG, which the Receiver oddly opposed (A672; Phase-Two Op. *10-11). The Receiver and Petitioner filed answers to Continental's counterclaim. A697-705.

5. The Receiver (likely at Petitioner's request) seeks to skip Phase Two, but the trial court refuses.

In August 2024, despite the clear ruling that Phase One "stop[ped] at the appointment of a receiver" (Phase-One Op. *13) and the trial court would consider RWG's revival in Phase Two *after* the Receiver's investigation, the Receiver sought to skip Phase Two altogether. He moved for permission to begin "administering" purported "assets" of RWG and pursuing claims on its behalf. A708-14.

The trial court denied the Receiver's motion but did not—as Petitioner mischaracterizes—abandon the approach it set forth in Phase One or "describe[] [a] better order of operations," Op. Br. 27. Rather, the trial court reiterated the phased approach: The receivership was warranted in Phase One because Petitioner satisfied the lower "good cause" standard by demonstrating it was "reasonably likely" that RWG held assets and may have violated the LLC Act. A735. Following the Receiver's investigation and a final report, the trial court would evaluate in Phase Two whether—under the higher "preponderance of the evidence" standard—a statutory violation occurred that would support nullifying RWG's cancellation. A735 (The trial court "explicitly said we're going to appoint this receiver to figure out if there was a statutory violation, and then if there was, we'll turn the lights back on."); A752 ("[E]xpanding the receiver's authority to full and plenary authority disregards [] the reason why the receiver was appointed and goes beyond the narrow evidentiary standard and showing on which the receiver was appointed."); A753

(similar). The trial court also noted that, upon revival and the restoration of RWG's management, "it's not clear to me why the receiver would necessarily be the entity with standing to pursue these claims and pursue these assets." A735-36. The trial court invited the Receiver to submit his report. A753.

The trial court reiterated these points—and Petitioner conceded them—six months later, on a March 2025 teleconference. B86-88. The Receiver acknowledged that Petitioner bore the burden of proving nullification by a preponderance. B82. The trial court agreed and confirmed that nullification "is the petitioner's burden." B87. Petitioner did not object. B87 ("[W]hatever Your Honor's pleasure is is fine with us.").

6. The Receiver submits his Final Report, and Petitioner moves to nullify RWG's cancellation without adding to the record.

Armed with hundreds of documents, the Receiver closed his investigation and filed his Final Report. A762. The Final Report contained several inaccuracies and misleading statements. *See, e.g.*, Phase-Two Op. *6 nn.63, 66.

The Final Report confirmed that RWG had no assets available to provide for Petitioner's claims. It identified certain insurance policies that could not provide coverage to RWG for Petitioner's underlying asbestos claims and purported potential litigable claims that the Receiver would only discuss "in camera." A793-813. Although he was entitled to do so (A707), the Receiver apparently made no *in camera* submissions to the trial court.

Petitioner filed her Motion to Nullify Cancellation of Reinz Wisconsin Gasket, LLC and Request to Expand Receiver's Authority based on the existing record and the Receiver's Final Report. A839. She did nothing else to supplement the record; nor did she seek any *in camera* submission by the Receiver. Indeed, Petitioner's supporting brief contained only seven pages of argument (citing fewer than 20 exhibits) dedicated to the nullification. A847-54.

In other words, despite the trial court's repeated warnings that proving nullification in Phase Two would require proof from Petitioner by a preponderance of the evidence (Phase-One Op. *3, *13; A752-55), Petitioner did almost nothing to meet that higher burden.

7. In Phase Two, the trial court denies nullification, finding that Petitioner did not meet her burden.

Following Petitioner's motion for nullification, a number of additional entities (including DCo) moved to intervene. Continental, Wausau, DCo, and Enstar separately opposed Petitioner's motion. A880-1020.

On April 2, 2026, the trial court issued its Phase Two opinion, concluding that Petitioner failed to meet her burden of proving RWG violated the LLC Act by a preponderance of the evidence. Phase-Two Op. *11. Specifically, Petitioner failed to prove that the insurance policies identified by the Receiver existed, were issued to RWG, or provided any coverage to RWG. Phase-Two Op. *13-19. Although Petitioner did not articulate any theory supporting potential litigable claims, the trial

court nonetheless explained why any such claim would not constitute an asset. Phase-Two Op. *19-21; *id.* *1 ("A certificate of cancellation will not be nullified based on hypothetical litigable claims that would yield no reasonable recovery."). Having found that Petitioner failed to satisfy her burden, the trial court denied Petitioner's motion for nullification and entered a corresponding Final Order and Judgment on April 29. Op. Br. Ex. A.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY REQUIRED PETITIONER TO PROVE THAT RWG VIOLATED 8 *DEL. C.* § 18-804 BY A PREPONDERANCE.

A. Question Presented

Whether the Court of Chancery correctly denied Petitioner's request to nullify RWG's certificate of cancellation because Petitioner failed to meet her burden to establish that RWG violated the LLC Act by a preponderance of the evidence. A934-44.

B. Scope of Review

Post-trial factual findings "are subject to the deferential 'clearly erroneous' standard of review." *CDX Hldgs., Inc. v. Fox*, 141 A.3d 1037, 1041 (Del. 2016). "This Court reviews the Court of Chancery's fashioning of remedies for abuse of discretion." *Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 817 A.2d 160, 175 (Del. 2002). "[S]tatutory construction issues [are reviewed] *de novo*[.]" *Snyder v. Andrews*, 708 A.2d 237, 241 (Del. 1998).

C. Merits of Argument

Petitioner overlooks the fact that she brought two separate claims, each governed by separate statutes, each subject to different evidentiary standards. That, coupled with Petitioner's failure to appeal a number of the trial court's rulings, dooms her challenge here.

1. Petitioner's argument ignores the differences between Section 18-805 and Section 18-804.

Petitioner appears to argue that, just because she won in Phase One, she was entitled to win in Phase Two as well. *See, e.g.*, Op. Br. 21 (arguing that the trial court erred "by refusing to nullify RWG's certificate of cancellation" after "finding it reasonably likely that RWG dissolved with assets it failed to set aside"), 22 ("The Post-Trial Findings [in Phase One] Triggered Revival under the LLC Act [in Phase Two]." (bold text omitted)), 25 (arguing that the trial court failed to "give the [Phase One] post-trial findings their statutory effect [in Phase Two]"). But she is wrong: two different statutes governed the two Phases, and each involved different evidentiary standards. Surmounting the easier standard in Phase One was no guarantee that Petitioner could meet her burden in Phase Two—and she did not, because she failed to make the necessary showing. Phase-Two Op. *1, *11, *13, *21.

Petitioner sought both a receiver under Section 18-805 (Count II of her Petition) and nullification of RWG's certificate of cancellation for failure to satisfy Section 18-804 (Count I of her Petition). *Cf. Matthew v. Laudamiel*, 2012 WL 605589, at *21 (Del. Ch. Feb. 21, 2012) (listing those two paths to enable a canceled Delaware LLC to prosecute claims in its own name: "[1] by a trustee or receiver appointed under 6 *Del. C.* § 18-805, or [2] directly by the LLC or derivatively by its members after reviving the LLC by obtaining revocation of its certificate of

cancellation"); *id.* at *22 (same). Petitioner's apparent surprise that the Court dealt with her two claims separately reveals a misunderstanding of the statutory scheme.

In Phase One, the trial court resolved Count II for appointment of a receiver under Section 18-805. Phase-One Op. *3; *see also* Phase-Two Op. *10, *12. The applicable statutory standard under Section 18-805 is "good cause." 6 *Del. C.* § 18-805. And the applicable evidentiary standard—akin to that for a preliminary injunction—was whether Petitioner could show "a reasonable likelihood" that RWG held undistributed assets and violated the LLC Act when it dissolved. Phase-One Op. *1-5. It is undisputed that the trial court found this lenient standard satisfied and appointed the Receiver with a limited mandate: to set up Phase Two by "investigat[ing] whether RWG had assets when it filed its notice of dissolution and cancellation." Phase-One Op. *13. Petitioner did not appeal the Receiver's appointment, thereby waiving any challenge to that limited mandate. Even if she had, the trial court's tailored appointment was within its discretion and consistent with Delaware law. *See, e.g.*, *In re MCR-BR Constance JV, LLC*, C.A. No. 2023-0301-MTZ, at 17-18 (Del. Ch. Oct. 6, 2023) (TRANSCRIPT) (holding that the terms of a receiver's appointment are within a court's discretion and appointing a receiver to investigate purported derivative claims before reviving the cancelled LLC).

By contrast, the court below made clear that Phase Two would involve a different statute and a different evidentiary standard. Petitioner's claim for

nullification would not involve Section 18-805; instead, it would require a finding that RWG violated Section 18-804. Phase-One Op. *1. The applicable evidentiary standard—akin to that for a permanent injunction—was whether Petitioner could show that RWG "actually violated the LLC Act" by "a preponderance of the evidence." Phase-One Op. *3; *see also id* *13 ("To nullify RWG's certificate of cancellation, Petitioner would have to prove that statutory violation not just under a reasonable likelihood standard, but by a preponderance of the evidence."). Petitioner did not challenge or appeal the application of the preponderance standard to her nullification claim. *See* B86-87.

The two-Phase approach taken by the court below comports with well-settled Delaware law, including the discussion in Petitioner's *Texas Eastern* case. In the Phase One receiver inquiry, "good cause depends upon a reasonable likelihood that there would be an asset available to the receiver that would benefit a creditor-claimant." *In re Tex. E. Overseas, Inc.*, 2009 WL 4270799, at *5 n.39 (Del. Ch. Nov. 30, 2009), *aff'd*, 998 A.2d 852 (Del. 2010) (TABLE). That is why a Phase One inquiry would not "resolve any insurance coverage dispute"; it is enough in Phase One that there "is a reasonable likelihood that there is available coverage." *Id.* at *5 n.37. In short, Phase One "is not an efficient venue for resolving whether a receiver has any definitive claim to the asset." *Id.* at *5 n.39. By contrast, a Phase Two nullification inquiry, employing "a standard akin to a preponderance of the

evidence," would require the Court to delve "deeply into the merits of [the] dispute." *Id.*; *Capone v. LDH Mgmt. Hldgs. LLC*, 2018 WL 1956282, at *14 (Del. Ch. Apr. 25, 2018) (nullifying certificates of cancellation on summary judgment, finding it "undisputed that the Defendants failed" to create a "reserve to cover the Plaintiffs' claims," as the LLC Act required, so the "LLCs were dissolved in violation of Section 18-804(b)(1)"); *cf. Matthew*, 2012 WL 605589, at *22 n.148 (noting that the appointment of a receiver "is not the only way in which former members may pursue an LLC's claims after a certificate of cancellation has been filed" because the Court of Chancery may "nullify the certificate of cancellation" if it "finds that an LLC's affairs were not wound up in compliance with the Delaware Limited Liability Company Act").

In short, the differences between the two Phases are stark:

	Phase One	**Phase Two**
Remedy sought	appointment of receiver	nullification of certificate of cancellation
Applicable statute	6 *Del. C.* § 18-805	6 *Del. C.* § 18-804
Relevant statutory language	"good cause"	"provision as will be reasonably likely to be sufficient" / "to the extent of assets available therefor"
Evidentiary standard	"reasonable likelihood"	"preponderance of the evidence"
Reference in Petition	Count II	Count I

Available evidentiary record	trial exhibits after expedited discovery	trial exhibits after expedited discovery, plus results of Receiver's 18-month investigation, including information from non-parties
Analogous standard	preliminary injunction standard	permanent injunction standard

As set forth below, these differences between Phase One and Phase Two—which Petitioner ignores—defeat Petitioner's argument.

2. Petitioner also ignores the differences between corporations and LLCs.

Petitioner argues that *Krafft-Murphy* "supplies the three-step framework for addressing" whether an LLC improperly filed its certificate of cancellation. Op. Br. 22. That argument confuses several concepts; dissolution is different for Delaware corporations and Delaware LLCs.

A corporation dissolves upon a filing with the Secretary of State. 8 *Del. C.* § 275(d). When a corporation dissolves, it continues as a body corporate for three years (or longer, if a pending suit by or against the corporation persists after that three-year period). 8 *Del. C.* § 278. A receiver may be appointed at any time following dissolution. *In re Krafft-Murphy Co.*, 82 A.3d 696, 703 (Del. 2013). But after the three years, a receiver is required for any action "necessary for the final settlement of the unfinished business of the corporation." 8 *Del. C.* § 279; *In re Dow Chem. Int'l Inc. of Del.*, 2008 WL 4603580, at *1 (Del. Ch. Oct. 14, 2008) ("The

power to appoint a receiver under § 279 is necessary because corporate officers have no power to act after the § 278 three-year period has expired."); *Krafft-Murphy*, 82 A.3d at 709-10 (similar).

An LLC operates differently. Dissolution may be a private event and require no filing. 6 *Del. C.* § 18-801(a). Following dissolution, an LLC may stay in winding-up indefinitely—the statute imposes no specific time limitation (of three years or otherwise). *See* 6 *Del. C.* § 18-803; *see also id.* § 18-804 (governing distribution of assets). Only after dissolution and winding-up have been completed does an LLC file a certificate of cancellation with the Secretary of State. 6 *Del. C.* § 18-203(a). "After the certificate of cancellation has been filed, suits generally may not be brought by or against an LLC." *Matthew*, 2012 WL 605589, at *21. Only after the certificate of cancellation has been filed may the Court appoint a receiver under Section 18-805. *Id.*; 6 *Del. C.* § 18-805.

For those reasons, the Phase One analysis under 6 *Del. C.* § 18-805 is analogous to the corporate analysis under 8 *Del. C.* § 279. *See* Phase-One Op. *4 n.44; *Matthew*, 2012 WL 605589, at *21 (noting that 6 *Del. C.* § 18-805 "is almost identical to 8 *Del. C.* § 279").

But for the same reasons, that is why *Krafft-Murphy*'s procedural "three-step framework" does not entirely control the procedure in Phase Two. *Krafft-Murphy* was a Section 279 case for the appointment of a receiver, akin to Phase One under

Section 18-805. 82 A.3d at 697. By contrast, Phase Two addressed the nullification of RWG's certificate of cancellation under Section 18-804. Because a corporation does not file a certificate of cancellation, the DGCL does not afford a direct analogy to an LLC nullification action.

Petitioner's three procedural arguments in Section I.C.1 of her opening brief should therefore be rejected. First, "the mechanism" for nullification under Section 18-804 is *not* "a receiver empowered to conduct it." Op. Br. 23. The receiver is the remedy under Section 18-805 in Phase One. Phase Two revives the LLC; it does not require a receiver. *Cf. Matthew*, 2012 WL 605589, at *21 (making clear that the two paths are separate and independent). Indeed, having revived the LLC, nullification defeats the point of a receiver. *See* 6 *Del. C.* § 18-805 (applying only to LLCs that have filed a certificate of cancellation). Second, Petitioner's references to Section 18-805 and 8 *Del. C.* § 279 (Op. Br. 23) are irrelevant to Phase Two. They applied in Phase One and had no purchase afterward. Third, Petitioner's suggestion that *Krafft-Murphy* holds a receiver to be the "'only means' by which such an entity 'may become re-empowered to defend its interests'" (Op. Br. 24) is incorrect in the LLC context. Again, unlike for a corporation, where a receiver is necessary after the three-year period ends, an LLC may be completely revived by nullifying its certificate of cancellation: a receiver is not required upon revival of an LLC. *See,*

e.g., A737 ("I don't know what you've found that would lead me to think that a receiver would be appropriate once [RWG] is live again.").

3. The trial court properly sequenced the proceedings and applied the correct evidentiary standard in Phase Two.

Petitioner conflates Phase One and Phase Two throughout her arguments. As described above, they are different; this difference defeats Petitioner's arguments.

First, as noted above, Petitioner argues that she should have won Phase Two because she satisfied the "reasonably likely" standard in Phase One. Op. Br. 24, 30. Just as a plaintiff who obtains a preliminary injunction can fail to obtain a permanent injunction on the higher standard of proof, Petitioner was not entitled to win Phase Two just because she won Phase One on a lower standard of proof. *See, e.g.*, Phase-Two Op. *12 ("Petitioner's current ask, to nullify a certificate of cancellation, triggers a more nuanced inquiry under a higher evidentiary standard.").

Second, Petitioner accuses the trial court of improperly adjudicating coverage disputes in Phase Two, arguing that the trial court was limited to the *Texas Eastern* framework it applied in Phase One. Op. Br. 29; Op. Br. 26 (arguing that the trial court "subverts the *Krafft-Murphy* framework, which rightly left those merits battles to the post-revival phase"); Op. Br. 28 (complaining that the trial court "put[] the merits before revival"). This argument also fails in light of the differences between Phase One and Phase Two.

Indeed, the court below explained in detail why *Texas Eastern*'s limited analysis only applied in Phase One and could not apply to Phase Two. Phase-Two Op. *12. *Texas Eastern* was a Section 279 case analyzing only (like Phase One) the narrow threshold inquiry into good cause to appoint a receiver. *Tex. E.*, 2009 WL 4270799, at *6; Phase-Two Op. *12. Accordingly, *Texas Eastern* and the court below in Phase One were only looking for "a reasonable likelihood that some positive outcome would result." Phase-Two Op. *12 (quoting *Tex. E.*, 2009 WL 4270799, at *5 n.39).

In Phase Two, the trial court had to decide whether (by a preponderance of the evidence) RWG actually violated Section 18-804, warranting nullification of its cancellation. Phase-Two Op. *12. *Texas Eastern* expressly recognized that a different analysis would be necessary beyond the appointment of a receiver, but it did not have to address the issue in detail because (as noted above) corporations do not face nullification actions. *See Tex. E.*, 2009 WL 4270799, at *5 n.39.

Because Petitioner alleged that RWG violated Section 18-804 by filing a certificate of cancellation while holding assets in the form of insurance policies (A850), the court below was required to determine whether those insurance policies constituted assets under Section 18-804. *See Matthew*, 2012 WL 605589, at *22 n.148 (holding that, only "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"). Moreover, several insurance companies intervened, one of which asserted counterclaims, and raised a coverage issue in opposing Petitioner's request for nullification. A868-1020. The trial court was obligated to weigh the evidence and analyze the issues that resulted. *See, e.g.*, *Epie v. Herakles Farms, LLC*, 2025 WL 2028228 (Del. Ch. July 21, 2025) (adjudicating whether a judgment was entered against the dissolved LLC before denying petition to nullify cancellation).

Third, Petitioner argues the trial court's staged sequencing imposed an impossible "hurdle" that "no one could clear." Op. Br. 26. (Petitioner also argues that the trial court should have followed the "order of operations [described] from the bench." Op. Br. 27. As noted above, in Fact Section D.5, the court below conducted Phase Two exactly as it described.)

The sequencing was appropriate under the different statutory standards, and the hurdle was not impossible—Petitioner just failed to clear it. Petitioner had ample opportunity to develop the evidentiary record beyond the Phase One trial, including through the Receiver's 18-month investigation. But she chose instead to rely entirely on the Receiver's Final Report, which confirmed the absence of viable insurance coverage. *See* Phase-Two Op. *13.

Indeed, of the 33 insurance policies purportedly identified by the Receiver, none of them provided coverage to RWG for Petitioner's claims:

- Two of the insurance policies did not exist. Phase-Two Op. *14 (citing an internal Continental memo stating "they have no record of [the policy]" and the fact that neither the Receiver nor Petitioner could identify a policy number, a copy of the policy, or "any explanation as to where this policy came from").
- Twenty-two of the policies were issued to WG&M and did not belong to RWG. Phase-Two Op. *15 (explaining that Petitioner has not identified any instruments properly transferring any policy from WG&M to Wisconsin Gasket DE).
- Eight of the policies are workers' compensation policies inapplicable to Petitioner's asbestos-related personal injury claim. Phase-Two Op. *17.
- The remaining policies are excess policies that depend on the exhaustion of the underlying primary Lumbermens policies, meaning they will never attach. Phase-Two Op. *17 (noting that Petitioner cites no evidence indicating the underlying primary policy limits have been exhausted, that RWG has any capital to exhaust those limits, or that some unidentified third party would step in).

Those were the facts as found by the trial court, those facts were correct, and Petitioner does not challenge them. Accordingly, they remain undisturbed on this appeal. The trial court did not err in finding that Petitioner failed to meet her burden.

Despite the trial court explaining many times to Petitioner that nullification would require meeting a higher burden, Petitioner simply failed to satisfy it. That is why she lost, and her appeal should be rejected. Her complaints that the Receiver did not submit anything beyond his Final Report (Op. Br. 30) and did not submit anything to the Court *in camera* (Op. Br. 27) cannot overcome her failure to make the necessary proof. And her complaint that the Receiver's authority was "confined

[] to investigating and reporting" (Op. Br. 27) should be disregarded because she did not appeal the terms of the Receiver's appointment.

4. Petitioner cannot challenge the trial court's interpretation of Section 18-804.

Petitioner laments (Op. Br. 29)—but does not actually appeal—the trial court's legal and factual determinations in Phase Two (except for the interpretation of *Krafft-Murphy*, addressed below in Section I.C.5).

Section 18-804(b) requires a dissolved LLC only to "make such provision as will be reasonably likely to be sufficient to provide compensation for any" pending claims, 6 *Del. C.* § 18-804(b)(2), and for foreseeable future claims "likely to arise or to become known to the limited liability company within 10 years after the date of dissolution," *id.* § 18-804(b)(3).[4] The LLC Act provides "flexibility to those tasked with making provision for a dissolved LLC's claims and obligations." Phase-Two Op. *11 (quoting *Capone*, 2018 WL 1956282, at *8). Section 18-804 "simply sets forth a reasonableness standard by which any provision for payment is to be evaluated." *Capone*, 2018 WL 1956282, at *8.

Moreover, Section 18-804 provides that, "[i]f there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority

[4] It is undisputed that RWG did not violate Section 18-804(a) because RWG made no distributions in connection with its dissolution, and Petitioner is not a creditor. Phase-One Op. *3-4; Phase-Two Op. *20 n.248.

and, among claims of equal priority, ratably *to the extent of assets available therefor*." 6 *Del. C.* § 18-804(b) (emphasis added). "Because the statute obligates dissolved LLCs to make provisions for claims only 'to the extent of assets [available] therefor,'" an LLC "can dissolve in compliance with the LLC Act without [making such provisions] if it had no assets." Phase-Two Op. *11 (citing 6 *Del. C.* § 18-804(b)); *see also* James P. Hughes, Jr., *A Model Memorandum for a Business Dissolution Under Delaware Law*, 64 No. 3 Prac. Law 19, 25 (June 2018) ("[I]f there are no assets whatsoever, then no provisions would, in theory, need to be made, as there can be no recovery for the contingent claims, even if they were to mature into ripe claims."). Accordingly, RWG was only required to make provision that would be "reasonably likely to be sufficient to provide compensation" to the extent it had assets available. 6 *Del. C.* § 18-804(b)(2)-(3).

As the trial court found, RWG had no assets available with which to make provision for pending or foreseeable future claims.[5] RWG therefore complied with Section 18-804 when it filed its certificate of cancellation.

RWG's compliance was not without effort. Before RWG's dissolution, DCo went through a closing checklist, confirming that RWG did not have any operations or assets. Phase-Two Op. *8 (confirming no assets, no outstanding accounts

[5] Nor was there a reasonable likelihood that RWG would ever need to compensate Petitioner. *See* A931-32.

receivable, no websites or domains, no intellectual property or regulatory licenses, no bank accounts or outstanding loans payable or receivable, and no real property or leases). RWG searched internally for potential insurance policies that could cover the claims against it, and externally by engaging an insurance archivist to conduct a months-long investigation into RWG's insurance coverage. Phase-Two Op. *6-8. The insurance archivist confirmed that no such coverage existed. Phase-Two Op. *8; A1371-73. Because RWG had no assets with which to make provision for Petitioner's asbestos-related personal injury claims, there was "nothing to be done beyond 'cancelling the company' and filing a Certificate of Cancellation with the Delaware Secretary of State." Hughes, *supra*, 64 No. 3 Prac. Law at 24. RWG was thus dissolved and cancelled consistent with Section 18-804.

5. The trial court properly interpreted and applied *Krafft-Murphy*.

The trial court found that insurance policies are not "assets available therefor" under Section 18-804 when they do not belong to, provide coverage for, or represent any value to, RWG. Phase-Two Op. *13-19. Petitioner argues that the trial court "rewrote" *Krafft-Murphy* in doing so. Op. Br. 25. In other words, Petitioner suggests that the trial court should have revived RWG even if its insurance policies provided *no* coverage—forcing it to default in all litigation brought by Petitioner (and Petitioner's counsel) for lack of any assets to fund or settle the litigation. That is not Delaware law.

In any event, the court below faithfully interpreted *Krafft-Murphy*, recognizing that *Krafft-Murphy*'s substantive analysis of when insurance policies constitute "property" under 8 *Del. C.* § 279 was informative to the Phase Two question of when insurance policies constitute "assets available therefor" under Section 18-804.

The court below ruled that, for contingent rights to be considered "assets available therefor" under Section 18-804, they must be "capable of vesting" and "represent significant potential indemnification value." Phase-Two Op. *13 (citing *Krafft-Murphy*, 82 A.3d at 703-05). That two-part test came directly from *Krafft-Murphy*.[6]

First, this Court was clear in *Krafft-Murphy* that "contingent contractual rights constitute 'property' . . . if they possibly could vest at a future time." 82 A.3d at 701. *Krafft-Murphy* did not involve a dispute that the dissolved corporation was an insured under the policies at issue; rather, the issue was whether the claims were time-barred such that the right to recover under the policies "would never vest." *Id.* at 701-02. Here, by contrast, the court below analyzed whether RWG was actually an insured under the policies and correctly concluded that Petitioner failed to meet

[6] The trial court applied the same two-part test from *Krafft-Murphy* to analyze the purported "litigable claims." Phase-Two Op. *19-21. Petitioner did not appeal that finding.

her preponderance burden. Phase-Two Op. *14-16. (Petitioner does not appeal that finding, but simply argues that the Court should not have made it. Op. Br. 28.)

Second, in analyzing whether insurance policies constituted property, *Krafft-Murphy* noted that the policies "represent[ed] significant potential indemnification value." Phase-Two Op. *13 (quoting *Krafft-Murphy*, 82 A.3d at 704). Petitioner argues that *Krafft-Murphy* "found the policies to be property without resolving whether any policy covered any claim." Op. Br. 23. But that mischaracterizes *Krafft-Murphy*'s ruling. The indemnification value of the insurance policies in *Krafft-Murphy* was undisputed; this Court did not need to further "resolv[e]" the issue. *See* 82 A.3d at 704 ("Here, the insurance policies obligate the Insurers to pay 'all sums which the insured shall become legally obligated to pay as damages' covered by the policies."); *id.* at 699 ("The applicable insurance policies obligate the Insurers to defend the Corporation in suits for damages covered by the policies, and also to indemnify the Corporation against covered third party claims. . . . All parties agree that the Corporation's only assets are its unexhausted insurance policies."); *see also In re Krafft-Murphy Co.*, 62 A.3d 94, 97 (Del. Ch. 2013) ("[T]hose [insurance] contracts obligated the Insurers to defend Krafft-Murphy from suits seeking damages that would be covered by those policies."), *rev'd*, 82 A.3d 696.

The Court of Chancery in *Krafft-Murphy* noted that Black's Law Dictionary defines "asset" as "an item that is owned and has *value*." *Krafft-Murphy*, 62 A.3d at

103. Insurance policies can "have value, and, thus, *be an asset*," the Court of Chancery concluded, only if those policies would actually be triggered. *Id.* (emphasis added). While this Court reversed the lower court's time-bar holding, it did not reverse the holding that insurance policies constitute property only to the extent they actually have value. *Krafft-Murphy*, 82 A.3d at 700 (noting that "[t]he Corporation's liability insurance policies would have value, and constitute 'property' under § 279, only if the Corporation could be potentially held liable to third parties, which would trigger coverage under the policies" (footnote omitted)). Quite the opposite, this Court expressly adopted the idea by noting that the "policies represent *significant potential indemnification value* to the Corporation." *Id.* at 704 (emphasis added).

This second element is also consistent with other aspects of Delaware law. *See, e.g.*, *Rsrvs. Mgmt. Corp. v. 30 Lots, LLC*, 2009 WL 4652991, at *6 (Del. Super. Nov. 30, 2009) (holding that property that was illegally transferred was encumbered by a lien greater than the value of the property and was thus not considered an asset "because the value of the 'asset' 'transferred' was zero"); 6 *Del. C.* § 1301(2) (similar); *Wells Fargo Bank, N.A. v. Est. of Malkin*, 278 A.3d 53, 65 (Del. 2022) (holding that, because a STOLI policy is a void nullity, it does not constitute a "financial asset").

* * *

The interpretation of the court below was faithful to the analysis in *Krafft-Murphy*. Nothing in *Krafft-Murphy* suggested that a cancelled LLC must be revived because of an "asset" that provides no actual value to the LLC (for example, an insurance policy that provides no coverage for any pending claims against the LLC). This Court should affirm the judgment below.

II. THE COURT OF CHANCERY WAS WITHIN ITS DISCRETION TO ORDER ITS PROCEEDINGS AND PROPERLY HELD THAT PETITIONER BORE THE BURDEN OF PROOF ON HER CLAIMS.

A. Question Presented

Whether the Court of Chancery correctly held that Petitioner bore the burden of proof for her claim to nullify RWG's certificate of cancellation. A928; A932; A936; A942-43.

B. Scope of Review

Post-trial factual findings "are subject to the deferential 'clearly erroneous' standard of review." *CDX Hldgs.*, 141 A.3d at 1041. "This Court reviews the Court of Chancery's fashioning of remedies for abuse of discretion." *Gotham P'rs*, 817 A.2d at 175.

C. Merits of Argument

Petitioner's second argument largely duplicates the flaws in her first argument: she ignores the procedural differences between Section 18-805 in Phase One and Section 18-804 in Phase Two—which the trial court clearly laid out—and she failed to appeal the limits of the Receiver's mandate.[7]

1. The trial court did not "depart[] from its own procedure."

Petitioner repeatedly accuses the trial court of changing the order of proceedings "after the fact." Op. Br. 33. This is untrue and unfair: the trial court

[7] Even if she had, the scope of the Receiver's duties are well within the trial court's discretion. Ct. Ch. R. 148.

repeatedly explained to Petitioner how it would sequence the proceedings, and it followed that sequence. *See supra* Facts §§ D.2, D.5; Arg. § I.C.3. Regardless, the trial court was well within its discretion to order its own proceedings and determine how to proceed for the "orderly adjudication of claims." *E.g.*, *Harris v. Harris*, 289 A.3d 310, 342 (Del. Ch. 2023); *see also 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.'").

The trial court consistently described the two-Phase manner in which the action would proceed. During Phase One in 2023, the trial court appointed a receiver and deferred its "decision on whether to nullify the Company's certificate of cancellation until the receiver submits a report." Phase-One Op. *3; *see also supra* Facts § D.2. It reiterated this two-Phase procedure in 2024; it did so again in 2025, and Petitioner conceded that the two-Phase procedure would apply. A751-52; B86-88; *see also supra* Facts § D.5. It then resolved Phase Two after the Receiver submitted his report and Petitioner moved for nullification. Phase-Two Op. *11 ("This memorandum opinion picks up where the [Phase One ruling] left off."); *see also supra* Facts § D.7.

The trial court was within its discretion to sequence the proceedings in this case. It repeatedly explained the procedures to Petitioner and followed those procedures throughout.

2. Petitioner's "law of the case" argument fails.

Petitioner multiple times suggests that the trial "reversed the post-trial findings on essentially the same evidentiary record." Op. Br. 35; Op. Br. 33. She argues that the trial court erred in "departing from prior rulings," which were supposedly "the law of the case." Op. Br. 35. That fails for several reasons.

First, 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). The Phase Two record was different from the Phase One record, including because it included the Receiver's Final Report and its many exhibits. *See, e.g.*, A762-838.

Second, Petitioner ignores the interlocutory nature of the Phase One 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).

Third, Petitioner ignores that Phase One and Phase Two involved different inquiries: receivership and nullification, respectively. *See supra* Arg. § I.C.1. To qualify for the law-of-the-case doctrine, the issue must "have been 'fully briefed and squarely decided.'" *State v. Wright*, 131 A.3d 310, 321 (Del. 2016). Nullification was not decided at all in Phase One. *See, e.g.*, Phase-One Op. *13. And the trial court did not revisit its receivership ruling in Phase Two.

Finally, Petitioner ignores that Phase One and Phase Two employed different legal standards: reasonable likelihood and preponderance, respectively. *See supra* Arg. § I.C.1. The law-of-the-case doctrine 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.").

3. The trial court had no obligation to gather information from the Receiver.

Petitioner criticizes the trial court for not reaching out to the Receiver. Op. Br. 34-37 (arguing that the court below had a "commitment to examine the in camera materials" and faulting the trial court for not "request[ing] a submission under seal"). She cites no basis in law for that position. Regardless, the Receiver never submitted any *in camera* materials to examine.

The trial court allowed *ex parte* discussions with the Receiver after the Receiver reached out.[8] A707. Those discussions likely happened, because the

[8] In fact, for much of the litigation below, Petitioner was allowed to litigate *ex parte*—without any adversary at all. *See supra* Facts § D.3-4. This should not have happened.

RWG should have been permitted to participate through counsel. The trial court recognized that, in Section 18-805 actions, the cancelled "entity must be named as a respondent," A589, A592 n.13, while ruling simultaneously that the entity cannot defend itself, A590.

As a result, absent some third party's intervention, every receivership petition in the Court of Chancery will result in an *ex parte* proceeding and default judgment. But this Court long ago rejected that notion. *Harned v. Beacon Hill Real Est. Co.*, 84 A.

Receiver afterward filed a report raising his motion to modify the Court's receiver order. B73. But it was not the trial court's obligation to reach out to the Receiver to do his job. If the Receiver had a valid analysis, he could have submitted it to the trial court *in camera* at any time. He chose not to. Similarly, if Petitioner wanted to rely on an *in camera* submission, she could have ensured it was submitted before making her motion. She chose not to. Nor did she speak up when the trial court invited discussion of the issue. B84 (inviting attendees to "talk about the presentation of the legal claims in camera"). It is not the trial court's fault that Petitioner failed to take the necessary steps to satisfy her burden.

4. The trial court properly held Petitioner to her burden.

Petitioner's remaining arguments are effectively about whether Petitioner met her burden. Op. Br. 35-38. In seeking nullification, Petitioner bore the burden of proof as to all elements of her claim. She conceded this. B86-88. She did not appeal the application of the preponderance standard (Phase-Two Op. *11 n.150, *13 n.177) or the trial court's rulings on the litigable-claims issue (Phase-Two Op. *19-21).

229, 234 (Del. 1912) (holding that "the Legislature did not intend that a receiver should be appointed, even for a dissolved corporation, in an ex parte proceeding"). Indeed, just because "a dissolved corporation is dead and cannot sue or be sued, it does not follow that . . . an appearance for it cannot be entered in that suit by a solicitor employed by [its former] officers." *Harned v. Beacon Hill Real Est. Co.*, 80 A. 805, 807 (Del. Ch. 1911), *aff'd*, 84 A. 229.

Petitioner was therefore not entitled to presumptions or gap-filling in her favor. *Gurney-Goldman v. Goldman*, 321 A.3d 559, 578 (Del. Ch. 2024), *aff'd*, 2026 WL 237221 (Del. Jan. 29, 2026) (ORDER); Phase-Two Op. *3 (noting that "Exhibit G is not part of the record"); *id.* *4 & n.48 (noting that "Exhibit B-9b" to the bankruptcy record "does not exist"); *Kotler v. Shipman Assocs., LLC.*, 2019 WL 4025634, at *2 (Del. Ch. Aug. 21, 2019) ("Trial outcomes are driven by burdens of proof and evidence as gathered and presented to the factfinder."). It was not the trial court's obligation to help Petitioner meet her burden. Petitioner chose to rush to court and move for nullification—without supplementing the record beyond the Receiver's Final Report—knowing full well that she bore the burden.

Petitioner was obligated to make the necessary showing (as to insurance, litigable claims, and any other disputed issue). Her failure was not the trial court's fault.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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