EFiled: Oct 05 2026 04:47PM EDT
Filing ID 80826034
Case Number 216,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

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

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Dated: October 5, 2026

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INTRODUCTION

Reinz Wisconsin Gasket, LLC ("RWG") dissolved and cancelled itself the day its twice-promised witness was to appear at a deposition to discuss RWG's insurance assets. In cancelling, RWG left six asbestos suits pending and set aside nothing for them. It did not even tender its insurance policies to the asbestos claimants.

One of the asbestos plaintiffs, Petitioner Linda A. Cook ("Petitioner" or "Mrs. Cook") sought to revive RWG so that its assets could be made available to claimants and creditors. After years of proceedings, the court below added a new pre-condition to revival: Mrs. Cook had to prove that RWG's policies would actually pay. That improperly injected coverage questions reserved for a revived company into the revival proceedings. When the court below decided Petitioner had failed to make that showing on behalf of RWG, the court denied the request to revive RWG. And the court went on to judgment on Continental Casualty Company's ("Continental") counterclaim against an entity no one could defend.

The answering briefs of Continental, Employers Insurance Company of Wausau ("Wausau"), DCo, LLC ("DCo"), and Enstar (US) Inc. ("Enstar") (together, "Appellees") do not defend that sequence so much as rewrite Mrs. Cook's appeal. Appellees devote their lead arguments to the preponderance standard, which Petitioner does not challenge. They characterize findings as unchallenged, even

though those flow directly from the coverage requirement Petitioner challenges. And Continental defends a judgment by pointing to adversity that existed only among parties barred from asserting RWG's rights.

The Court of Chancery erred three times over. It conditioned revival on proof of coverage rather than ownership of contingent rights. It faulted Petitioner for evidentiary gaps its own process created. And it entered judgment on a counterclaim that the denial of revival had mooted. This Court should reverse.

REPLY ARGUMENT

I. PETITIONER CHALLENGES WHAT SHE HAD TO PROVE, NOT THE BURDEN OF PROOF.

Appellees open by defending the preponderance standard, telling this Court that Petitioner agreed to it below and now attacks it on appeal.[1] Not so. Petitioner does not dispute that nullification requires proof of a statutory violation by a preponderance of the evidence, or that the burden was hers. The dispute is over what the court required her to prove.

Below, the October 23, 2025 hearing crystalized this dispute. The court below confirmed the burden was agreed: "we've got the burden of proof as preponderance of the evidence. I think everybody agrees on that."[2] The court then identified what was not agreed, or even settled in the law: "how do I decide what an asset is," "what amount of certainty of coverage must there be," and whether there is "some tether between coverage in general or coverage as to her."[3] On those questions, the court "could not find any answers in the law."[4] Petitioner's answer, in the same colloquy, is the same challenge Petitioner presses here. Namely, coverage certainty "is not the link," and "the question is, is the insurance policy an

[1] Continental Br. 22-24; DCo/Enstar Br. 30-33.

[2] B108 (10/23/25 Tr. 15:10-11).

[3] B108-09 (10/23/25 Tr. 15:14-16:2).

[4] *See* B108 (10/23/25 Tr. 16:2).

asset of the company, and only that."[5] From this, Appellees mistakenly conflate Petitioner's agreement about the burden of proof with the substance of what needed to be proven. Thus, Appellees' waiver arguments address a position that Petitioner has not advanced.[6]

Appellees also catalog findings Petitioner supposedly left unchallenged and argue those findings independently support the judgment. These include, according to Appellees, that two policies were not proven to exist, that the pre-1981 policies did not transfer, that the umbrella policies require exhaustion and do not drop down, and that the litigable claims lack value. But each finding on Appellees' list falls within the application of the proof-of-coverage requirement that Petitioner challenges.[7] Because these rulings derive from the Court of Chancery's errant analysis, they are fairly within the scope of Petitioner's appeal and would have to be revisited on remand.[8]

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[5] B109-10 (10/23/25 Tr. 17:8-11).

[6] *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 55 (Del. 2006); Continental Br. 22-24.

[7] Each was also a finding that RWG, as a non-participant, had no means to dispute.

[8] *See, e.g.*, *Cede & Co. v. Technicolor, Inc.*, 684 A.2d 289, 299 (Del. 1996).

II. UNDER *KRAFFT-MURPHY* AND SECTION 18-804, THE ASSET INQUIRY ENDS AT OWNERSHIP OF CONTINGENT RIGHTS CAPABLE OF VESTING.

A. *Krafft-Murphy* did not make coverage a necessary element of revival.

Krafft-Murphy resolves this appeal in Petitioner's favor. There, this Court held that "contingent contractual rights, such as unexhausted insurance policies, constitute 'property' of a dissolved corporation, so long as those rights are capable of vesting," and that rights are capable of vesting "if they possibly could vest at a future time."[9] The only vesting question presented in that case was whether Delaware's dissolution statutes time-barred third-party claims, which would have extinguished the corporation's potential liability and left nothing for the policies to answer.[10] This Court held they did not.[11] Vesting therefore turned on whether the company remained exposed to liability. Whether any policy covered any particular claim was neither presented nor decided.

In *Krafft-Murphy*, this Court wrote, "Because the Corporation is exposed to asbestos-related liabilities, those policies represent significant potential indemnification value to the Corporation."[12] Thus, at the nullification stage, the

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[9] *In re Krafft-Murphy Co.*, 82 A.3d 696, 698, 701 (Del. 2013).

[10] *Id.* at 701-02.

[11] *Id.* at 705-08.

[12] *Id.* at 704.

question is exposure, not coverage. The *Krafft-Murphy* Court did not examine policy language or adjudicate coverage before finding value. Rather, it reasoned that the existence of asbestos-related liabilities meant that insurance policies that might provide coverage were assets.

Here, RWG is in a similar position. It faced six pending lawsuits when it dissolved, and no one disputes that those suits assert asbestos-related claims of the kind its policies were written to cover.[13] Under *Krafft-Murphy*, the policies RWG held represented potential indemnification value.

The court below erred when it expanded the proceedings to address a secondary question — whether coverage existed. It collapsed two phrases from *Krafft-Murphy*, "capable of vesting" and "significant potential indemnification value," into a new requirement that there must be proof of coverage, not just exposure plus the potential for coverage.[14] In doing so, the court below erroneously created a new freestanding element, requiring Petitioner to prove exhaustion, drop-down, duty-to-defend, and contract-transfer disputes before revival. That deviates from both *Krafft-Murphy*'s language and also the limited focus of a summary proceeding.

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[13] *In re Reinz Wis. Gasket, LLC*, 2026 WL 904110, at *8 (Del. Ch. Apr. 2, 2026) (attached as Exhibit B to Petitioner's Opening Brief).

[14] *Id*. at *13.

Whether the policies offer value is a coverage dispute, involving complicated questions of exhaustion, drop-down, the duty to defend, and contract transfer. Those questions are for post-revival litigation between the carriers and the revived company, as insured. The court below not only imported them into the nullification analysis, but also it faulted Petitioner for failing to satisfy a certainty-of-coverage standard of the opinion's own creation.[15] And it imposed that standard even as it acknowledged it "could not find any answers in the law" to support doing so.[16]

B. Appellees' contrary reading rests on the Court of Chancery opinion that this Court reversed.

Appellees assert a coverage element in *Krafft-Murphy*, but their assertion misreads the case. DCo and Enstar point to the statement that the corporation's policies "would have value, and constitute 'property' under Section 279, only if the Corporation could be potentially held liable to third parties, which would trigger coverage under the policies."[17] From that language, they argue that this Court "did not reverse" the Court of Chancery's holding that policies are assets only if "actually [] triggered," and indeed "expressly adopted" that idea.[18]

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[15] 2026 Opinion, *13.

[16] B108-09 (10/23/25 Tr. 16:2).

[17] DCo/Enstar Br. 39 (quoting *Krafft-Murphy*, 82 A.3d at 700).

[18] *Id*.

The passage they quote is this Court's summary of the ruling under review. It appears in the opinion's recitation of the proceedings below, in a paragraph that begins: "The court concluded, however, that the Corporation held no existing property interests, reasoning as follows."[19] What follows is the Vice Chancellor's syllogism: value only if liability, liability extinguished by a ten-year bar, therefore no property. This Court rejected that syllogism and reversed.[20] The appellees attribute to this Court the very reasoning it vacated.

Even as wrongly framed by the appellees, the passage does not support turning a statutory proceeding under Section 18-804 into a series of coverage actions. The language they quote conditions value on whether the corporation "could be potentially held liable to third parties" and whether that exposure "would trigger coverage."[21] It was not based on an adjudication that coverage exists. Here, by contrast, RWG's exposure is undisputed because six lawsuits were pending when it dissolved.

Appellees concede that coverage and insured status were undisputed in *Krafft-Murphy*, which is why the Court had no occasion to separate ownership from

[19] *Krafft-Murphy*, 82 A.3d at 700.

[20] *Id.* at 701-02, 710-11.

[21] *Id.* at 700.

coverage.[22] That concession highlights Petitioner's point. In *Krafft-Murphy*, no coverage question was ever before this Court, so the court below's requirement that Petitioner prove coverage has no source in *Krafft-Murphy*.

C. The LLC Act does not supply the missing authority.

Appellees' statutory arguments assume the conclusion they are offered to support. DCo and Enstar lean on Section 18-804(b)'s phrase "to the extent of assets available therefor," reasoning that RWG had no available assets and therefore owed its claimants no provision.[23] But whether RWG had assets is the question presented. And under the correct formulation, the court below had already found it reasonably likely that RWG held unexhausted policies when it dissolved.[24]

The statutory phrase does not change what counts as an asset. It appears in the provision allocating payment when assets are insufficient (claims "shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor"), and it says nothing about adjudicating coverage before revival.[25]

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[22] Continental Br. 27-28; DCo/Enstar Br. 38.

[23] DCo/Enstar Br. 34-36.

[24] *In re Reinz Wis. Gasket, LLC*, 2023 WL 2568326, at *1, *8-9 (Del. Ch. Mar. 20, 2023 (attached as Exhibit D to Petitioner's Opening Brief) [hereinafter Trial Opinion].

[25] 6 *Del. C.* § 18-804(b).

DCo's record support fares no better. DCo points to purported pre-cancellation diligence, a closing checklist and an archivist's search, as proof the company had nothing to set aside.[26] But DCo ignores that the pre-cancellation search was the investigation RWG aborted because the archivist "seem[ed] the type to keep looking," and that the company dissolved and cancelled the same day.[27] On that record, the court below found it reasonably likely that RWG held assets it failed to set aside.[28] What remained was to complete the inquiry RWG cut short, not to excuse the company from it.

The distinction DCo and Enstar draw between Section 18-805 and Section 18-804 identifies no textual source for a coverage element either. DCo and Enstar observe that Krafft-Murphy construed the receiver statute while this phase proceeded under the winding-up statute. True enough. They never explain why the difference matters. Neither statute makes proven coverage an element of "asset."

None of the cases the appellees cite makes coverage an element of the asset inquiry under Section 18-804. *Capone v. LDH Management Holdings LLC* nullified certificates of cancellation where the entities dissolved and cancelled the same day

[26] DCo/Enstar Br. 35-36.

[27] 2026 Opinion, *8; A1373 (JX 104).

[28] Trial Opinion at *1, *8-9.

without reserves, and no coverage adjudication preceded the remedy.[29] *Techmer Accel Holdings, LLC v. Amer* measured the winding-up violation by what the entity held at cancellation.[30] *Matthew v. Laudamiel* endorses the remedy of nullification where an LLC's affairs "were not wound up in compliance" with the Act, with no coverage precondition.[31] *Metro Communication Corp. BVI v. Advanced Mobilecomm Techs., Inc.*[32] and *Epie v. Herakles Farms*[33] require that a violation be pled or proven, which are propositions no one disputes.

And in the two decisions where unexhausted policies were the claimed property, *In re Texas Eastern Overseas, Inc.*[34] and *Krafft-Murphy*,[35] the courts found property while leaving coverage unresolved. The court below even applied *Texas Eastern*'s framework by name at the trial phase of this case.[36] Appellees identify no case where a party in Petitioner's position had to prove coverage in the manner required by the court below.

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[29] 2018 WL 1956282, at *7-8 (Del. Ch. Apr. 25, 2018).

[30] 2010 WL 5564043, at *10-11 (Del. Ch. Dec. 29, 2010).

[31] 2012 WL 605589, at *22 n.148 (Del. Ch. Feb. 21, 2012).

[32] 854 A.2d 121, 139 (Del. Ch. 2004).

[33] 2025 WL 2028228, at *5 (Del. Ch. July 21, 2025).

[34] 2009 WL 4270799, at *5 & n.37 (Del. Ch. Nov. 30, 2009), *aff'd*, 998 A.2d 852 (Del. 2010).

[35] 82 A.3d at 703-04.

[36] Trial Opinion at *4-5.

Appellees' construction would subvert the entire nullification process. If cancellation is lawful whenever the company itself concludes it has no assets, and if cancellation simultaneously silences the company, disqualifies its counsel, and bars claimants from speaking for it, then the company's self-assessment becomes conclusive. Under that formulation, Section 18-804's "mandatory protection to creditors"[37] protects no one.

D. The Court of Chancery denied revival on coverage questions reserved for after revival.

Coverage disputes are litigated after revival, by the revived company or its empowered receiver, because only then does the revived company have an advocate. The court below wrongly inverted that order. It resolved the coverage questions first and denied revival because of the answers.

But at the time the court below decided coverage, RWG was not able to participate. The court had disqualified RWG's counsel.[38] It had confined the Receiver to investigating and reporting, denying his motion for authority to litigate.[39] And it had ruled that Petitioner "cannot speak for Reinz to oppose Continental's

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

[38] *In re Reinz Wis. Gasket, LLC*, 2023 WL 3300042, at *1-3, *5 (Del. Ch. May 8, 2023) (included at A0589) [hereinafter Disqualification Opinion].

[39] A0752-56 (11/4/24 Tr. 26:15-30:8).

motion" when Continental intervened.[40] The one-sided record below emphasizes the error of importing coverage decisions into nullification proceedings because coverage questions belong in a post-revival proceeding in which the revived company can answer them.

The remedy is the one *Krafft-Murphy* prescribes: reverse, nullify the certificate of cancellation, and empower the Receiver to litigate RWG's assets (including its insurance coverage) with an advocate on both sides.

[40] A0067 (Apr. 17, 2025 Minute Order).

III. THE COURT OF CHANCERY ABANDONED THE PROCESS IT LAID OUT AND FAULTED PETITIONER FOR THE CONSEQUENCES.

Below, the court set a process: trial first, then the Receiver's investigation, then a decision informed by both. The problem is that, in the 2026 Opinion, the court below changed the procedure after the fact. The court reversed the post-trial findings on the same evidence, without identifying any ground for the departure. It disregarded the *ex parte* review of the Receiver's privileged conclusions that it had committed to undertake. And it then ruled that Petitioner failed to carry her burden, in part because of the very gaps those changes of procedure created.

A. The challenged rulings are reviewed *de novo*.

Each of the rulings challenged here presents a question of law. This Court reviews the allocation of a burden of proof *de novo*,[41] the application of the law of the case doctrine *de novo*,[42] and the construction and legal effect of a trial court's own orders *de novo*.[43] Factual findings receive deference only when they are

[41] *State Farm Mut. Auto. Ins. Co. v. Spine Care Delaware, LLC*, 238 A.3d 850, 857 (Del. 2020) ("The proper allocation of the burden of proof is a question of law that we review de novo.").

[42] *Frederick-Conaway v. Baird*, 159 A.3d 285, 297 (Del. 2017); *Hudak v. Procek*, 806 A.2d 140, 154 (Del. 2002).

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

"sufficiently supported by the record and are the product of an orderly and logical deductive process."[44]

Appellees' arguments go to a question Petitioner does not raise. Continental and DCo invoke the trial court's "inherent power" over the "orderly adjudication of claims" and its discretion "to control its own docket."[45] Thereby, Appellees recast Petitioner's argument as an objection to case management. Petitioner never challenged the general proposition that courts control their docket, and she did not do so below.[46] The rulings she challenges are legal ones, and the standard of review flows from that, not Appellees' attempted recharacterization.

B. The Court of Chancery reversed its own findings with no new evidence and no stated reason.

The Trial Opinion's findings reflected the benefits of an adversarial process. After a trial on more than 600 exhibits, the court below found it reasonably likely that RWG held assets when it dissolved, and found the 1982 and 1983 correspondence between RWG's predecessor and its excess carrier to be "the best evidence that the Company's predecessor held the CNA Policies" following the

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

[45] Continental Br. 32 (citing *Harris v. Harris*, 289 A.3d 310, 342 (Del. Ch. 2023), and *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006)); DCo/Enstar Br. 41-42.

[46] B87-88 (3/5/25 Tr. 11:20-12:6).

1981 transaction.[47] The Purchase Agreement on which that finding rested was trial exhibit JX 7.[48]

Three years later, the 2026 Opinion discarded that finding in favor of a different reading of the same agreement.[49] No new evidence prompted the change. What arrived instead was a legal theory, built on *Pepsi-Cola*, supplied years later, when no one was authorized to answer for RWG's side of its own contract.[50] The 2026 Opinion likewise faulted Petitioner and the Receiver for not producing bankruptcy records that RWG and its corporate parents lost.[51] In both instances, the court below unwound the products of its own process and added the result to Petitioner's "burden."

Preliminary findings may yield to later evidence. But when facts remain constant through the course of the same litigation, then a trial court's prior rulings on those facts establish the law of the case. And in that scenario, departure requires a recognized ground, such as clear error, injustice, or an important change in

[47] Trial Opinion at *1, *7.

[48] A1169 (JX 7).

[49] 2026 Opinion, *15-16.

[50] Continental Br. 41-44; DCo/Enstar Br. 44-46.

[51] 2026 Opinion, *15-16.

circumstances.[52] The court below identified none.[53] The absence of any stated ground confirms Petitioner's point that the revision was driven not by new evidence weighed through an orderly process but by a subsequent theory pitted against RWG's silence.

Appellees' principal contention is that the Trial Opinion's findings were early and superseded by the later determination.[54] That contention mistakes what the findings are offered to show. Petitioner does not argue the preliminary findings bound the court forever. Instead, she asserts that revision required a process in which the revision could be tested. And like the court below, Appellees identify none. On the identical documents, the reading tested at trial, with advocates on both sides, came out one way. The reading adopted in 2026 came out the other. No standard of proof explains reading the same record two opposite ways.

Appellees also devote pages to defending the *Pepsi-Cola* theory on its merits.[55] But a new legal theory is not new evidence, and whether the 1981 Purchase

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

[53] The closes it got was footnote 150, which responded only to Petitioner's characterization of the standard by stating that the ultimate question had not previously been decided under a preponderance standard. 2026 Opinion, *11 n.150.

[54] Continental Br. 41-43; DCo/Enstar Br. 44-45.

[55] Continental Br. 43-44; DCo/Enstar Br. 45-46.

Agreement transferred the policies under Wisconsin law is a question for coverage litigation in which someone may answer for RWG.

The error here thus remains the one Petitioner has pressed from the start. The Court of Chancery abandoned the products of its own process and blamed Petitioner.

C. The court below faulted Petitioner for the absence of the Receiver's in camera assessment, which she had no power to supply.

The Receiver's assessment of RWG's affirmative claims was a matter between the court and its Receiver, and the court below repeatedly committed to reviewing it before rendering a decision. The June 14, 2024 Order was express: the court "may, and indeed will, speak to the Receiver *ex parte*."[56] At the November 4, 2024 hearing, after the Receiver's counsel objected that the existing structure put the Receiver and RWG "between a rock and a hard place," the court promised to discuss the presentation problem further with the Receiver so the case would not be hung up on "mechanical issues."[57] At the March 5, 2025 conference, the Receiver's counsel previewed the Final Report's structure and explained that the Receiver's assessment of the claims would be offered *in camera* because of privilege and work-product concerns. The court below tacitly approved the process, responding that "[n]othing

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

[57] A0731, A0756 (11/4/24 Tr.); OB at 30-31.

that you've said is particularly problematic to me."[58] The Receiver thus filed his Report on the understanding that the Court would conduct the review it had promised as part of its analysis.[59]

But the review never happened. Worse, the 2026 Opinion then charged that failure to Petitioner, ruling that the claims identified by the Receiver had no demonstrated value because "Petitioner did not press these claims or seek any *in camera* review," and holding on that basis that she "has not carried her burden."[60] Yet, Petitioner had no reason to question the court's prior commitments or to re-request a review that the court had already said it would conduct. Beyond that, the assessment was the Receiver's privileged work product, which Petitioner could neither access nor proffer.[61]

DCo and Enstar answer that the Receiver "could have submitted" his analysis "at any time," and that if Petitioner "wanted to rely on an *in camera* submission, she could have ensured it was submitted."[62] The first assertion proves Petitioner's point. The Receiver re-confirmed the offer in the Final Report that the court below was obliged to weigh. The second assertion describes a procedural power Petitioner did

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[58] B84-85, B88 (3/5/25 Tr. 5:8-6:12, 12:6-9).

[59] A0813-14 (Report).

[60] 2026 Opinion, *20.

[61] B85 (3/5/25 Tr. 6:6-12).

[62] DCo/Enstar Br. 45.

not have. No order gave her the ability to compel the Receiver's privileged analysis into the record. Either way, the court's decision — announced for the first time in the 2026 Opinion — not to review the evidence it committed to review was the court's choice, not Petitioner's forfeiture.

Appellees' fallback is that the review would have changed nothing because the claims are worthless.[63] The 2026 Opinion held the fiduciary claims "largely exculpated," with value "only in extreme circumstances," because RWG's operating agreement shields its managers except for "willful misconduct or a knowing violation of criminal law."[64] "Largely" is not entirely. And the exception frames a litigable question of whether a same-day dissolution and cancellation, executed just before RWG produced a deposition witness on its insurance, constitutes willful misconduct.[65] That is the question the Receiver's withheld assessment addressed. And because the Court of Chancery never factored that assessment into its decision, it is specious for the Appellees to argue it would not have changed the outcome.

Regardless, a litigable claim is an asset. And value is more appropriately determined after revival, with an advocate who can push the revived company's

[63] Continental Br. 30-31; DCo/Enstar Br. 45-46.

[64] 2026 Opinion, *19-20.

[65] A1373, A1375 (JX 104, 105); Trial Opinion at *1.

interests.[66] And the implied-covenant claim cannot be exculpated at all for bad-faith conduct.

The 2026 Opinion's remaining ground assumes the holding under review. It reasoned that RWG "had been inoperative for over a decade" and "had no assets," so its dissolution "did not cause it any harm."[67] The no-assets premise is the conclusion this appeal challenges. If the policies were assets, even ones of limited value, then cancelling while holding them and setting nothing aside is both the statutory violation and the harm.

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

[67] 2026 Opinion, *21.

IV. THE JUDGMENT ON CONTINENTAL'S COUNTERCLAIM MUST BE REVERSED.

Once the court below decided not to revive RWG, Continental's counterclaim was moot, and the court below should have dismissed it. To be justiciable, a declaratory judgment requires a live controversy between adverse parties. The decision denying revival of RWG eliminated not only the party that could contest Continental's claims, but also the claims themselves.

Among other requirements, a declaratory judgment "must address an actual controversy between parties with affected rights."[68] That means that "the controversy must be between parties whose interests are real and adverse."[69]

Those prerequisites must persist, or mootness is triggered. Mootness "is a justiciability doctrine that addresses cases that may have been justiciable when filed, but have lost their justiciability at some point during the litigation."[70] It "arises when controversy between the parties no longer exists such that a court can no longer grant relief in the matter."[71] As this Court has explained, claimants who file while

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[68] *In re COVID-Related Restrictions on Religious Servs.*, 326 A.3d 626, 642 (Del. 2024) (quotation omitted). *See Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973).

[69] *In re COVID-Related Restrictions*, 326 A.3d at 642-43 (quoting *Rollins*, 303 A.2d at 662-63). *See also Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 582 (Del. 2002) (quoting same), *aff'd*, 818 A.2d 145 (Del.2003).

[70] *In re COVID-Related Restrictions on Religious Servs.*, 302 A.3d 464, 497 (Del. Super. 2023), *aff'd*, 326 A.3d 626 (Del. 2024).

[71] *Mentor Graphics Corp. v. Shapiro*, 818 A.2d 959, 963 (Del. 2003).

a controversy is live hold their claims "subject to mootness considerations" if the dispute evaporates "during the course of the litigation."[72]

Here, Continental's counterclaim ran that course. The Court of Chancery identified the scope of Continental's interest when it let Continental into the case. The April 24, 2024 order granting intervention found the insurer "has demonstrated an interest in the existence and coverage of a relevant insurance policy and whether the company or its predecessor was insured under it," and held that Continental's interest supported intervention, notwithstanding that the case stood "between the stages of appointing a receiver and considering cancellation."[73] The court's reasoning implied that, if cancellation were nullified or a receiver further empowered, then a revived RWG might assert coverage, so Continental had a right to participate.[74]

Even assuming Continental's claim was ripe when filed, the controversy ended when the court below denied revival of RWG. The denial of revival gave Continental the relief it sought by intervening. RWG remained cancelled and incapable of acting, no receiver held litigation authority, and most importantly, no

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[72] *In re COVID-Related Restrictions on Religious Servs.*, 326 A.3d at 644-45.

[73] B46 (Apr. 24, 2024 Order Granting Intervention).

[74] Continental's own representations to the Court of Chancery implied the same. At the November 4, 2024 hearing, Continental's counsel confirmed that naming RWG in this proceeding "d[id] not extend the existence of the entity for other purposes." A0749 (11/4/24 Tr. at 23:14–15).

one existed who could assert coverage under the policies. Any adversity was over whether RWG should be revived, and the court resolved it in Continental's favor. No live controversy remained because a cancelled RWG could not assert contract rights against Continental. Thus, Continental's counterclaim should have been dismissed as moot.

Continental's consent argument does not bridge the gap. Continental argues that Petitioner "submit[ted] to the jurisdiction of the Court for a proper adjudication of the Counterclaim," reserving "all of her rights and defenses."[75] In the same answer Petitioner disclaimed interest in the Counterclaim. And regardless, Petitioner's participation did not supply the required adversity, not the least since the court below ruled Petitioner could not "speak for Reinz to oppose Continental's motion" to intervene.[76] Petitioner and the Receiver even re-raised the issue, as well as the apparent mootness, when Continental disputed their proposed form of Final Order.[77]

In sum, Continental's judgment cannot stand no matter how the Court rules on the other issues in this appeal. If the Court reverses the denial of revival, then Continental's judgment falls with the rulings it implements. If the Court affirms the

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[75] Continental Br. 10, 35-36 (discussing A0705 (Answer to Counterclaim)).

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

[77] A1101 (Apr. 27, 2026 letter regarding competing forms of Final Order, at 2 & n.1)

denial of revival, then judgment fails because the court should have dismissed it rather than adjudicate the rights of a defunct company with no one empowered to defend it. Either way, the judgment on Continental's counterclaim must be reversed.

CONCLUSION

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

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Dated: October 5, 2026