

**SUPREME JUDICIAL COURT OF MASSACHUSETTS**  
**No. SJC-\_\_\_\_\_**

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**JOHN J. JORDAN AND BRIDGET JORDAN,**  
**PLAINTIFFS,**

**v.**

**CEA GROUP, INC.; CEA SOUTHCOAST, LLC; CALLAHAN, INC.; AND**  
**PRELLWITZ CHILINSKI ASSOCIATES, INC.,**  
**DEFENDANTS.**

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**APPLICATION FOR FURTHER APPELLATE REVIEW OF**  
**APPELLANTS, CEA GROUP, INC. AND CEA SOUTHCOAST, LLC**

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**ON FURTHER APPELLATE REVIEW FROM THE APPEALS COURT OF**  
**MASSACHUSETTS**  
**No. 2025-P-0675**

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April 23, 2026

## **I. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW**

Pursuant to Massachusetts Rule of Appellate Procedure 27.1, Appellants, CEA Group, Inc. and CEA SouthCoast, LLC (collectively, “CEA”), respectfully request further appellate review of the Appeals Court of Massachusetts’ Memorandum and Order dated April 2, 2026, affirming the Bristol County Superior Court’s March 17, 2025 entry of judgment pursuant to Massachusetts Rule of Civil Procedure 54(b) in favor of Appellee, Prellwitz Chilinski Associates, Inc. (“PCA”), that resulted in the dismissal of CEA’s Third-Party Complaint and claims for indemnification and breach of contract against PCA. *See* Appeals Court of Massachusetts’ April 2, 2026 Memorandum and Order, attached as *Exhibit A*; Bristol County Superior Court’s March 17, 2025 Decision and Order, attached as *Exhibit B*.

Further appellate review is warranted because the Appeals Court decided an acknowledged question of first impression concerning the interaction of Massachusetts Rules of Civil Procedure 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), and 15 (Amended and Supplemental Pleadings) and, in doing so, announced a new procedural rule:

that after a plaintiff files an amended complaint asserting direct claims against a third-party defendant, the claims asserted in a properly filed and answered third-party complaint cease to be operative and are waived if not re-pled by the third-party plaintiff via a cross-claim in its answer to the amended complaint.

No Massachusetts rule or decision had previously imposed such a requirement. The issue is important, recurring, and consequential to multi-party litigation throughout the Commonwealth, warranting further appeal to, and decision by, the Supreme Judicial Court. Thus, this is a matter that both affects the public interest, particularly of litigants in the Commonwealth, and is in the interests of justice. See Mass. R. App. P. 27.1(a).

## **II. STATEMENT OF PRIOR PROCEEDINGS IN THE CASE**

Plaintiffs, John J. Jordan and Bridget Jordan (collectively, “Plaintiffs”), commenced this civil tort action in the Bristol County Superior Court on November 14, 2019, arising from an accident in which John J. Jordan fell from a newly-constructed loading dock while making a delivery at a retail shopping center owned by CEA. After Plaintiffs filed their First Amended Complaint on December 10, 2019, CEA filed a Third-Party Complaint against PCA and Defendant, Callahan, Inc. (“Callahan”), on April 7, 2020. CEA’s Third-Party Complaint asserted, among others, claims against PCA for breach of contract, indemnification, and contribution. PCA answered CEA’s Third-Party Complaint on June 30, 2020.

On August 18, 2020, Plaintiffs were allowed to file a Second Amended Complaint, which asserted direct claims against PCA and Callahan for negligence and liability under M.G.L. Ch. 143, § 51. CEA then filed an Answer to Plaintiffs’ Second Amended Complaint on September 18, 2020, which included cross-claims

against PCA and Callahan for contribution on September 18, 2020. The cross-claim against PCA did not restate CEA's claims for breach of contract and indemnification, which were fully pled in the Third-Party Complaint.

On February 19, 2025, after PCA and Plaintiffs reached a settlement, PCA and Plaintiffs filed a Joint Petition seeking approval of the settlement and entry of separate and final judgment in PCA's favor pursuant to Massachusetts Rule of Civil Procedure 54(b) (the "Joint Petition"). PCA primarily argued that the entry of judgment under Rule 54(b) was warranted based on the merits of CEA's indemnification and breach of contract claims. However, PCA also included in the Joint Petition a cursory argument, initially unsupported by any authority, that CEA had abandoned its breach of contract and indemnification claims by not re-asserting them via cross-claim. Essentially, PCA argued that the Plaintiffs' Second Amended Complaint superseded and supplanted CEA's Third-Party Complaint.

CEA pointed out that this argument was unsupported. After PCA finally cited purported authority in its Reply, CEA noted that the cited authority only established that a properly filed and answered pleading could be superseded and supplanted only by a pleading of the same type, *e.g.*, an amended complaint supersedes the original complaint, and an answer to an amended complaint superseded the answer to the original complaint. The Superior Court accepted PCA's argument, approved the settlement, and entered judgment dismissing all claims against PCA, including those

set forth in CEA's Third-Party Complaint, on March 17, 2025. *See Exhibit B.* The Superior Court Clerk issued separate judgments on March 24, 2025.

CEA appealed on April 4, 2025. On April 2, 2026, the Appeals Court affirmed in a memorandum and order pursuant to Massachusetts Appeals Court Rule 23. The Appeals Court held that, once Plaintiffs filed their Second Amended Complaint, CEA was required to re-assert the claims contained in its Third-Party Complaint to preserve them, and that by failing to include the breach of contract and indemnification claims in its Answer to Plaintiffs' Second Amended Complaint, CEA waived or abandoned them.

No party is seeking reconsideration or modification in the Appeals Court.

### **III. SHORT STATEMENT OF FACTS RELEVANT TO THE APPEAL**

Because the Appeals Court's opinion correctly summarizes the basic accident allegations and procedural posture, CEA states only the additional facts necessary to frame the questions presented.

CEA's Third-Party Complaint was a separate pleading filed under Rule 14. As against PCA, it asserted three claims: breach of contract, indemnification, and contribution. PCA answered that pleading, thereby joining issue on those claims.

CEA never amended its Third-Party Complaint, never withdrew it, and never stipulated as to its dismissal. Nor did PCA ever move to dismiss CEA's Third-Party

Complaint, either in whole or in part, after answering it. Instead, the case proceeded for nearly five years with CEA's Third-Party Complaint on file and unchallenged.

When Plaintiffs later added PCA as a direct defendant, CEA filed an Answer to Plaintiffs' Second Amended Complaint and asserted a cross-claim for contribution against PCA. The cross-claim did not purport to amend, replace, or withdraw the previously filed and perfected Third-Party Complaint. The Superior Court's dispositive ruling rested entirely on the conclusion that, notwithstanding the continued existence of CEA's answered Third-Party Complaint on the docket, the failure to restate its breach of contract and indemnity counts in its later cross-claim extinguished them as a matter of law. CEA appealed this ruling because PCA's argument, as accepted by the Superior Court, was unsupported by Massachusetts precedent or corresponding federal precedent.

CEA is also pursuing a related appeal in the Appeals Court regarding the Superior Court's July 16, 2025 entry of judgment pursuant to Rule 54(b) in Callahan's favor based on the same rationale underpinning the entry of judgment in PCA's favor. That appeal was docketed on April 7, 2026. *See* Appeals Court Docket No. 2026-P-0465.

#### **IV. STATEMENT OF THE POINTS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW IS SOUGHT**

- A. Whether a third-party complaint properly filed under Rule 14 and answered by the third-party defendant ceases to be operative upon the filing of an amended complaint that asserts direct claims**

**against the third-party defendant unless the third-party plaintiff re-pleads those claims in a subsequent responsive pleading.**

- B. Whether the omission of claims from a permissive cross-claim under Rule 13 constitutes waiver or abandonment of previously pleaded third-party claims, absent amendment, dismissal under Massachusetts Rule of Civil Procedure 41, or adjudication on the merits.**

**V. BRIEF STATEMENT INDICATING WHY FURTHER APPELLATE REVIEW IS APPROPRIATE**

This Court should grant further appellate review because the Appeals Court resolved an acknowledged question of first impression by adopting a new procedural rule unsupported by the Massachusetts Rules of Civil Procedure or existing precedent, and because that rule threatens to unsettle multi-party practice in Massachusetts.

This case presents a pure question of law that no Massachusetts or federal court has previously addressed: whether, to remain operative, the claims set forth in a third-party complaint must be re-pleaded after an amended complaint asserts direct claims against the third-party defendant. At oral argument, the Appeals Court itself recognized the absence of authority on this issue. During his questioning of CEA's counsel, Justice Robert A. Brennan acknowledged this lack of precedential or even persuasive authority:

Is it fair to say there is no case that you could find, state or federal, that's on point? *With my D- research skills, I couldn't find one. And my clerk with her A+ still couldn't find one.*

*See* recording of oral argument before Appeals Court starting at timestamp 1:38 of 31:09. Notwithstanding the complete absence of authority that would have signaled to CEA the need to re-plead its third-party claims in its Answer to Plaintiffs' Second Amended Complaint, the Appeals Court adopted a rule that extinguishes third-party claims unless they are re-asserted in a subsequent amended complaint where the plaintiff elects to assert direct claims against the third-party defendant. This effectively grants plaintiffs the unilateral ability to invalidate valid and answered third-party claims merely by amending their complaint. The lack of any authority, coupled with the resultant grant to plaintiffs of unprecedented authority to unilaterally void properly pled and answered third-party claims, strongly warrants further appellate review.

The Appeals Court held that when Plaintiffs filed their Second Amended Complaint, CEA was required to re-assert the claims contained in its previously filed and answered Third-Party Complaint "to preserve them," and that, by not re-pleading the breach of contract and indemnification counts in its Answer to Plaintiffs' Second Amended Complaint, CEA "waived or abandoned" those claims. *See* Exhibit A, pp. 3, 5. That holding is consequential. It means that a third-party complaint, even after being properly filed and answered, can silently cease to exist without amendment, dismissal, or adjudication merely because a plaintiff later amends the complaint to assert direct claims against the third-party defendant. No

Massachusetts rule says that. No Massachusetts decision had previously so held. Nor, as Justice Brennan agreed, has any federal court so held. The issue, therefore, warrants review by the Commonwealth's highest court.

The decision below materially extends the doctrine of supersession beyond its accepted limits. The Appeals Court relied on the uncontroversial proposition that a complete amended complaint supersedes an earlier complaint. *See Nat'l Constr. Co. v. Nat'l Grange Mut. Ins. Co.*, 10 Mass. App. Ct. 38, 40 (1980). But *National Construction* does not hold that one type of pleading supersedes a different type of pleading. To the contrary, it rejects the premise that the filing of an amended complaint "automatically extinguishes the original one for all purposes." *See id.* It describes two recognized methods of amending a pleading of the same type and explains that, when a self-contained amended complaint is used, "matters which are not restated in the amended complaint are deemed waived or abandoned." *See id.* That is a same-pleading rule. It says nothing about the effect of an amended complaint on a separate third-party complaint already on file and already answered. Consequently, it does not place defendants on notice that their third-party complaint is rendered a legal nullity, and the claims asserted therein automatically waived, where the plaintiff files an amended complaint asserting direct claims against the third-party defendant.

The same is true of *Bank of Am., N.A. v. Raetz*, 2014 Mass. App. Unpub. LEXIS 483 (Apr. 9, 2014). There, the Appeals Court applied the familiar rule that counterclaims omitted from an answer to an amended complaint were waived because counterclaims are part of the answer itself. *See id.* at \*3. That decision involved successive versions of the same pleading. It did not involve, and did not purport to decide, whether a Rule 14 third-party complaint is extinguished by a later amended complaint requiring the defendant to assert a Rule 13 cross-claim to preserve its well-pled and answered third-party claims. The Appeals Court nevertheless extrapolated from or considered these same-pleading authorities and created a cross-pleading extinguishment rule. That doctrinal step warrants review.

The Appeals Court's new rule also conflicts with the text and structure of Rules 13 and 14. Rule 14 authorizes a defendant, as third-party plaintiff, to join to the case a person "who is or may be liable to him for all or part of the plaintiff's claim against him." *See* Mass. R. Civ. P. 14(a). Once filed, served, and answered, the third-party complaint is a distinct pleading in the case. *See* Mass. R. Civ. P. 7(a). Rule 14 contains no requirement that the third-party plaintiff re-plead those claims every time the plaintiff amends the complaint. Rule 13, meanwhile, provides that a party "may state as a cross-claim any claim by one party against a co-party." *See* Mass. R. Civ. P. 13(g). Rule 13(g) is permissive, not mandatory. Its reporter's notes underscore that "[f]ailure to assert a cross-claim will never forfeit the right to

commence an independent action.” *See* Reporter’s Notes to Mass. R. Civ. P. 13. That premise is irreconcilable with the rule announced below, which converts a permissive cross-claim into a mandatory claim-preservation device and imposes forfeiture for omission.

The Appeals Court’s rationale rests heavily on the derivative nature of Rule 14 claims. But derivative liability does not mean dependent existence. Of course, a third-party claim under Rule 14 derives from the plaintiff’s claim in the sense that the third-party defendant’s liability is to the defendant for all or part of that claim. But Rule 14 treats the third-party complaint as its own pleading, filed by its own claimant, answered by its own defendant, and subject to disposition by the ordinary mechanisms of amendment, dismissal, and adjudication. Here, CEA’s Third-Party Complaint against PCA was filed, answered, and litigated for years. It was never amended. It was never withdrawn. It was never dismissed under Rule 41. It was never adjudicated via a motion for summary judgment under Massachusetts Rule of Civil Procedure 56. Nor did any party ever assert that CEA had abandoned its third-party claims until after PCA’s settlement, as it searched for months for a mechanism to achieve a complete dismissal from the case. Yet the decisions below permitted those claims to disappear anyway. That is precisely why further review is necessary.

The practical implications are substantial. Amended complaints are routine in multi-party litigation. If the decision stands, defendants throughout the

Commonwealth may be asked to duplicate existing third-party claims in later responsive pleadings or risk forfeiture of claims that have already been properly asserted and joined. Litigants may have to guess which pleadings remain operative. Courts may be drawn into technical disputes over unintended omissions. And substantive claims may be lost, not because they lack merit, but because they were not recopied into a later pleading of a different type. The Massachusetts Rules of Civil Procedure are designed to simplify litigation, not create traps that result in the inadvertent waiver of well-pled and valid claims. Because this matter clearly affects the public interest, further appellate review is warranted per Mass. R. App. P. 27.1.

This case also squarely implicates the interests of justice. See Mass. R. App. P. 27.1(a). CEA's breach of contract and indemnity claims against PCA were not hypothetical. They were pleaded in detail on April 7, 2020. PCA answered them on June 30, 2020. The parties litigated those claims in the case for almost five years. Only after the settlement did PCA argue that they had ceased to exist years earlier. The result was dismissal with prejudice of fully pleaded, answered, and litigated claims without any merits determination on March 17, 2025. Additionally, the same result was reached with respect to Defendant/Third-Party Defendant Callahan, a month later, when it reached a settlement with Plaintiffs. That issue is also currently on appeal with the Appeals Court, although briefing is not yet due. *See Appeals Court Docket No. 2026-P-0465*. A party should not lose substantive rights, without notice

of the potential consequences, through a novel procedural interpretation that even the Appeals Court acknowledged lacked on-point authority. Thus, the prejudice against CEA was manifest.

Finally, this case is an ideal vehicle for review. The issue is purely legal. The relevant pleadings are in the record. The Appeals Court expressly decided the question. There are no factual disputes that complicate the questions presented. As the “final arbiter of what procedural rules mean and permit,” authoritative guidance from this Honorable Court on the continued viability of third-party claims after amendment of the underlying complaint and on the proper relationship between Rules 13, 14, and 15 is needed not only to clarify the matter for the parties involved in this case, but also for the benefit of all Massachusetts litigants. *Commonwealth v. Frith*, 458 Mass. 433, 442 (2010) (citing *Commonwealth v. Durham*, 446 Mass. 212, 221 (2006), *cert. denied*, 549 U.S. 855 (2006)). Therefore, because this matter involves substantial reasons affecting the public interest and is in the interests of justice, further appellate review should be granted pursuant to Mass. R. App. P. 27.1.

## **VI. CONCLUSION**

For the foregoing reasons, CEA respectfully requests that this Court grant further appellate review.

Respectfully submitted,

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April 23, 2026

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## **CERTIFICATE OF COMPLIANCE**

I, Andrew M. Schneiderman, hereby certify that the foregoing Application for Further Appellate Review complies with the rules of court that pertain to the filing of such applications, including Massachusetts Rules of Appellate Procedure 27.1, 20(a), and 16(k). The brief statement indicating why further appellate review is appropriate (1,559 words) does not exceed 2,000 words. Compliance with the word limit was ascertained using the word-count feature of Microsoft Word. This application was prepared in a proportional font, Times New Roman, 14-point.

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April 23, 2026

## **CERTIFICATE OF SERVICE**

I, Andrew M. Schneiderman, hereby certify that on this 23rd day of April 2026, a copy of the foregoing Application for Further Appellate Review, attached Exhibit A (Appeals Court of Massachusetts' April 2, 2026 Memorandum and Order), and attached Exhibit B (Bristol County Superior Court's March 17, 2025 Decision and Order) was served by electronic mail on the following counsel of record:

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