

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action 1:18-CV-01897-DDD-SKC

PHT Holding I LLC,
on behalf of itself and all others similarly
situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER
INSURANCE COMPANY,

Defendant.

**CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT
OF LITIGATION EXPENSES**

INTRODUCTION

Susman Godfrey’s (“SG” or “Class Counsel”) years of tenacious work culminated, on the eve of trial, in an extraordinary Settlement. The Settlement provides \$30 million in cash. No funds revert to Defendant Security Life of Denver (“SLD”). Class members need not fill out claim forms – checks will be mailed directly to them. The cash component of the Settlement alone represents, even if the Class prevailed on liability, 50% of the Class’s maximum damages and 87% of an alternative model that the Class planned to present at trial. The Settlement also includes \$5.74 million in non-monetary benefits, as valued by an expert, including a prohibition on SLD increasing the COI rate scale on Class Members before March 2028, notwithstanding a worldwide pandemic that some insurance companies claim caused their costs to skyrocket. Those non-monetary benefits would not even have been achievable had the Class prevailed at trial. This superb result strongly supports SG’s request for an attorneys’ fee award of \$10 million, which equals 28% of the Settlement’s value and a lodestar multiplier of just 1.3x.

The Settlement was achieved due to rigorous and creative prosecution of the case. The case centered on SLD’s increase of COI rates. In its letter announcing the increase, SLD stated that it was “applying this increase to all policies that are the same version as the policy you purchased.” Given SLD’s representation, no one had reason to suspect that the increase potentially violated the policies’ “uniformity” provision. But SG investigated the uniformity issue and conducted fact and expert discovery about it, which was the sole theory of breach for trial.

Obtaining class certification was equally challenging. The Court initially denied certification because there remained a “question” regarding whether “differences in state contract law defeat the predominance element” of Rule 23(b)(3). In response, SG developed over 50 pages of comprehensive surveys marshaling the law on state rules of contract interpretation and synthesized that law into a two-stage grouping approach. Concluding that SG had “done its

homework,” the Court certified the class. Just six days before trial, SLD moved to decertify the class, which SG defeated.

For trial, SG conducted a mock trial, exchanged deposition designations and exhibit lists, briefed nine motions *in limine*, and prepared for opening arguments and trial examinations with both fact and expert witnesses. SG also fought off a dangerous bid by SLD to exclude Plaintiff’s damages model entirely. SG prevailed on key jury instruction disputes days prior to trial, which led to this outstanding settlement just 36 hours before trial began.

This is not a case where a prior governmental investigation, criminal conviction, whistleblower, or news exposé paved the way. SG performed the initial factual and legal investigation before filing this lawsuit, worked thousands of hours thereafter, and spent over a million dollars in expert fees and other expenses, all with no assurance that it would receive payment for its services. SG invested over 9,000 hours of work in the case. All told, SG’s investment totaled about \$8.8 million, all of which could have been wiped out at various points in the litigation.

SG thus respectfully moves this Court for an award of attorneys’ fees of \$10 million, which represents approximately 28% of the Settlement’s total gross benefits of \$35.74 million (or, using a more conservative method, one-third of the cash component alone). That request is well within the range approved by courts in this Circuit. “The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class.” *Voulgaris v. Array Biopharma Inc.*, 2021 WL 6331178, at *12 (D. Colo. Dec. 3, 2021), *aff’d*, 60 F.4th 1259 (10th Cir. 2023). A lodestar cross-check confirms a reasonable lodestar multiplier of just 1.3x, well below the 2.8x multiplier that the Tenth Circuit recently confirmed was “consistent with the typical range of multipliers routinely approved by courts in this District

and the Tenth Circuit.” *Voulgaris*, 60 F.4th at 1266. Class Counsel also respectfully requests reimbursement of \$1,151,527.29 for expenses.

The requested award is warranted by the outstanding results achieved for the Class through the efforts of SG, and the enormous risks taken and overcome in litigation that lasted for years brought entirely on a contingency fee basis.

BACKGROUND

Plaintiff filed this lawsuit in July 2018.¹ During discovery, SG:

- Obtained and analyzed over 80,000 pages of documents, including over 1,000 spreadsheets and many technical actuarial tables and memoranda;
- Worked with liability and damages experts;
- Issued 13 third-party subpoenas to SLD’s reinsurers and actuarial advisors; and
- Took and defended 18 depositions, including three expert depositions.

See Declaration of Steven G. Sklaver (“Sklaver Decl.”) ¶¶ 6–9.

Plaintiff moved for class certification in August 2019. Dkt. 57. The Court denied that motion without prejudice and invited additional briefing. Dkt. 81. In response, SG developed over 50 pages of comprehensive state law surveys and synthesized that law into a manageable, two-stage grouping approach for trial. Dkt. 87. The Court concluded that, SG had “done its homework” and certified the class. Dkt. 141 at 19.

The Court set a trial date of February 13, 2023. Dkt. 161. The parties prepared intensely for trial, including readying trial examinations, deposition designations, exhibit lists, witness lists, stipulations, jury instructions, and verdict forms. Sklaver Decl. ¶ 13; Dkt. 161. SG conducted a mock trial, and each party also filed a trial brief and briefed nine motions *in limine*, including one

¹ Advance Trust filed the action and the Court later substituted PHT as Plaintiff and Class Representative. Dkt. 205.

SLD filed to exclude Plaintiff's damages model. Dkts. 168, 170, 183, 186, 187, 193; Sklaver Decl. ¶¶ 13–14.

Following the pretrial conference, the Court ordered supplemental briefing on jury instructions. Dkt. 199. Within days, SG filed 56 pages of briefing on the issue. Dkts. 203, 206. SLD then moved to decertify the class. Dkt. 208. The following day, the Court requested briefing on another issue and response briefs were due the following morning. Dkt. 211. Plaintiff filed a 15-page response. Dkt. 212. Later that day, the Court denied SLD's motions to decertify and exclude Plaintiff's damages model, and issued its rulings on jury instructions that largely adopted SG's framework. Sklaver Decl. ¶ 16; Dkt. 219-2 at 18-19. During that conference, the Court directed counsel to make one more settlement attempt. Sklaver Decl. ¶ 17.

With trial less than 36 hours away, the parties reached an agreement and executed a term sheet. Sklaver Decl. ¶ 18. The parties then negotiated a long-form settlement, which the Court preliminarily approved. *Id.*

The settlement provides the following benefits:

- **CASH:** A \$30 million non-reversionary cash payment. This is not a claims-made settlement. Checks are mailed directly to class members.
- **COI RATE SCHEDULE INCREASE FREEZE:** A prohibition on any new COI scale increase for five years.
- **VALIDITY STIPULATION AND STOLI WAIVER:** An agreement by SLD not to challenge the validity of policies on the grounds of lack of an insurable interest or misrepresentation.

Sklaver Decl. ¶ 21. A highly qualified expert with extensive insurance experience has opined that the non-monetary relief is worth an additional \$5,740,057 to the Class. *See* Declaration of Keith McNally ("McNally Decl.") ¶ 11.

ARGUMENT

I. Class Counsel's Fee Request Is Reasonable

A. SG Is Entitled to Fees from the Common Fund

The Supreme Court has long recognized that “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1263 (10th Cir. 2023) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The doctrine avoids the “unjust enrichment” that would result if the “named class plaintiffs [were to] shoulder the costs of suit” while “the remainder of the class reap[ed] the benefits of their labor.” *In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1191 (10th Cir. 2023).

B. The Requested Fee of 28% of the Overall Settlement Benefit is Reasonable

1. The Court Should Apply the Percentage Method

The percentage method “awards class counsel a share of the benefit achieved for the class.” *Voulgaris*, 60 F.4th at 1263. The Tenth Circuit has expressed a “preference” for the percentage method. *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994). The percentage method best “account[s] for the productive quality of an attorney’s labor, that is, whether an attorney’s time meaningfully contributed to benefits conferred on the class.” *Syngenta AG*, 61 F.4th at 1192. The lodestar approach, by contrast, “encourages significant elements of inefficiency because the method incentivizes attorneys to spend as many hours as possible.” *Id.* The “percentage of the common fund [method] is less subjective than the lodestar plus multiplier approach [and] matches the marketplace most closely.” *Breckenridge Brewery of Colo., LLC v. Xcel Energy, Inc.*, 2021 WL 4060386, at *3 (D. Colo. July 23, 2021).

The Tenth Circuit held in *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 461-62 (10th Cir. 2017) that, in diversity-based common-fund cases, state

law governs the method of fee calculation. Under Colorado’s “most significant relationship” test, Colorado law governs here because the award is based on SG’s successful representation of the Class, and creation of benefits from which the Class benefited, in the District of Colorado. *Barnett v. Surefire Med., Inc.*, 342 F. Supp. 3d 1167, 1173 (D. Colo. 2018) (applying most significant relationship test to unjust enrichment claim); Restatement (Second) of Conflict of Laws § 221 *cmt.* d. (explaining that “[t]he place where a relationship between the parties was centered . . . is given the greatest weight in determining the state of the applicable law” and that “[n]ormally, the act [conferring the benefit or enrichment] will have been done in the state where the benefit or enrichment was received”). Colorado, like the Tenth Circuit, prefers the percentage method. *See Brody v. Hellman*, 167 P.3d 192, 201 (Colo. App. 2007); *see also Breckenridge*, 2021 WL 4060386, at *3-4 (applying percentage method in diversity-based class action). Plaintiff’s request is proper under any method.

2. The Requested Fee Is Reasonable Under the Percentage Method

Under Tenth Circuit and Colorado law, courts consider the twelve factors the Fifth Circuit identified in *Johnson v. Georgia Housing Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) to assess the reasonableness of a fee under the percentage method. *See Gottlieb*, 43 F.3d at 483; *Brody*, 167 P.3d at 200. The *Johnson* factors are:

(1) the time and labor required; (2) the novelty and difficulty of the case; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee for similar work; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Breckenridge, 2021 WL 4060386, at *4 (citing *Gottlieb*, 43 F.3d at 483). “[I]n evaluating the reasonableness of a fee award, a court need not specifically address each *Johnson* factor.” *In*

re Crocs, Inc. Sec. Litig., 2014 WL 4670886, at *2 (D. Colo. Sept. 18, 2014) (citing *Gudenkauf v. Stauffer Commc'ns, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998)).

The requested fee is 28% of the total settlement benefits, or 1/3 of the cash component alone. *See Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges* 35 (3d ed. 2010) (percentage method “is based on a percentage of the actual value to the class of any settlement fund *plus the actual value of any nonmonetary relief*” (emphasis added)). Under the relevant *Johnson* factors, SG’s fee request is reasonable.

1. Time and Labor Required (Factor 1), Preclusion of Other Employment (Factor 4), and Time Limitations Imposed (Factor 7)

Factors 1, 4, and 7 strongly support approval of the requested fee. SG spent over 9,000 hours prosecuting this case, over a period of almost five years, to the brink of trial. SG:

- Issued discovery requests, yielding over 80,000 pages of documents;
- Issued 13 third-party subpoenas, yielding additional documents not produced by SLD;
- Produced expert reports from actuarial expert Howard Zail and damages expert Robert Mills;
- Took and defended 15 highly technical fact depositions and 3 expert depositions;
- Developed the “uniformity” theory of breach;
- Filed a successful class certification motion;
- Defeated SLD’s motion for summary judgment concerning the “uniformity” theory;
- Prepared for trial, including preparation of deposition designations, exhibit lists, witness lists, stipulations, proposed jury instructions, a proposed verdict form, and a trial brief;
- Briefed nine motions *in limine*, including defeating SLD’s motion to exclude the Class’s damages model;
- Produced a supplemental damages report from Mills and successfully opposed SLD’s motion to strike portions of that report the week before trial;
- Defeated SLD’s motions to decertify the class and exclude Plaintiff’s damages model;

- Negotiated the settlement and executed a term sheet about 36 hours before jury selection was to begin.

See Sklaver Decl. ¶¶ 6–19. The extensive work and time commitment described above precluded SG from pursuing other opportunities. See *Whittington v. Taco Bell of Am., Inc.*, 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013). SG will expend additional time and labor to prepare for final approval proceedings and administer the Settlement.

2. Novelty and Difficulty of the Case (Factor 2)

Factor 2, which addresses the “novelty and difficulty of the case,” also supports approval of the requested fee. Simply getting the case to trial as a certified class was challenging. The “uniformity” claim, which SG developed in discovery, was the theory of breach to be tried.

Prevailing at trial would have been difficult too. The liability issues turned on technical actuarial disputes, presented by competing experts, that the jury could have decided either way. See, e.g., *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *6 (S.D.N.Y. Sept. 9, 2015) (“*Phoenix COI*”) (“The litigation was indisputably complex. The complaint alleged the breach of an insurance contract, the resolution of which would require conflicting testimony by experts as to actuarial standards.”). On damages, SLD would have argued to the jury that damages would be, at most, “the delta between what COI rates were and what they would have been had the rate increase been spread uniformly.” Dkt. 170 at 4. If the jury accepted that argument, it would have wiped out virtually all the Class’s damages even if the Class prevailed on liability.

3. Skill Required and Experience of Class Counsel (Factor 3) & Experience, Reputation, and Ability of the Attorneys (Factor 9)

SG’s skill is “reflected in the substantial recovery obtained, which exceeds awards in similar cases.” *Voulgaris*, 60 F.4th at 1259. As discussed more fully below, the recovery obtained for the Class is excellent. See *infra*, at 11–12.

The recovery is consistent with SG's skill and experience in litigating COI class actions. Sklaver Decl. ¶ 3. The firm has been appointed class counsel in COI cases, and the results obtained have been lauded by federal judges as "quite extraordinary," and this Settlement recovers an even *larger* percentage of overcharges. *Id.* ¶ 4; *see also 37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019) ("*Hancock COI* Fairness Hearing Transcript").

4. The Customary Fee (Factor 5) & Awards in Similar Cases (Factor 12)

SG seeks a fee equal to 28% of the gross settlement benefits, or 1/3rd of the cash fund viewed in isolation. That request is customary and reasonable. "The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class." *Voulgaris*, 2021 WL 6331178, at *12; *see also Voulgaris*, 60 F.4th at 1264 (affirming fee award and noting that "33% falls within the range of fee percentages awarded in securities class actions and other comparable complex class actions in this Circuit"); *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 2022 WL 2252614, at *14 (W.D. Okla. June 22, 2022) (approving fee equal to one-third of \$52 million settlement); *Cook v. Rockwell Int'l Corp.*, 2017 WL 5076498, at *1 & n.1 (D. Colo. Apr. 28, 2017) (approving \$150 million award, equal to 40% of settlement fund, and collecting cases "within this Circuit" that "have acknowledged that a forty percent fee falls within an acceptable range of fee awards").

The requested fee is also comparable to fees awarded in other COI class action cases. *See, e.g., Brighton Trustees, LLC v. Genworth Life and Annuity Ins. Co.*, 3:20-cv-00240-DJN, Dkt. 147 (E.D. Va. Oct. 25, 2022) (approving fee equal to 33.33% of \$25 million cash fund; *Phoenix COI*, 2015 WL 10847814, at *11 (approving fee equal to 33.33% of \$40.5 million cash fund).

The requested fee is also reasonable because it is less than what SG could obtain on the open market. Indeed, one reason why the Tenth Circuit prefers the common fund approach is that

it “matches the marketplace most closely, and is [thus] the better suited approach when class counsel [litigated the case] on a contingent fee basis.” *Breckenridge*, 2021 WL 4060386, at *3. Under SG’s standard contingency fee arrangement for cases (like this one) where it advances expenses and settles right before trial, its fee would equal 45% of the gross sum recovered—significantly higher than here. Sklaver Decl. ¶ 26.

5. Contingent Nature of the Fee (Factor 6) and Undesirability of the Case (Factor 10)

SG performed its work on a fully contingent fee basis, advancing over \$1 million with no guarantee of reimbursement. This type of contingent risk is an important factor in evaluating the reasonableness of a fee. *See, e.g., Voulgaris*, 2021 WL 6331178, at *13. The contingent risk is also the primary factor bearing on the “undesirability” of the case. *See Voulgaris*, 2021 WL 6331178, at *13. Because SG spent almost five years litigating this case, there was a substantial “delay in payment,” which courts have found to be a “significant factor” supporting the reasonableness of a one-third award. *In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20. That risk was “heightened when Class Counsel opt[ed] to fight up to the eve of trial, in order to achieve the very best result for the class, rather than reaching a less attractive settlement early in the litigation.” *Phoenix COI*, 2015 WL 10847814, at *21.

6. Amount Involved and the Results Obtained (Factor 8)

“The result achieved for the class is extremely important in determining an appropriate fee award.” *Voulgaris*, 2021 WL 6331178, at *13; *see also Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) (“[T]he amount involved and the results obtained [] may be given greater weight when . . . the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.”).

The \$30 million cash component of the Settlement alone represents an exceptional result. A finding of liability was not a sure thing. And even if liability were found, the \$30 million cash fund that Class Counsel secured equals 50% of the Class’s maximum possible damages, and approximately 87% of the Class’s alternative damages model.

The non-monetary benefits make the result even more exceptional. The COI freeze gives class members certainty on what their COI obligations will be through March 2028. Thus, the class is protected from further COI rate scale increases. Sklaver Decl. ¶ 24. SLD also gives up its right to challenge the validity of policies, thereby helping ensure that the death benefits will be paid. *Id.* Combined, those two provisions are worth an additional \$5.74 million. McNally Decl. ¶ 11.

When awarding a 33.33% fee, the *Voulgaris* court explained that the settlement—which provided the class between 25% and 35% of total recoverable damages—“dwarf[ed] the median class action settlement for similar cases in the Tenth Circuit.” 2021 WL 6331178, at *6. The median percentage for securities class actions with damages between \$25 million and \$74 million, the court recounted, was 7.6%, *id.* See also *Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *2, *12 (C.D. Cal. Sept. 18, 2020) (concluding that settlement for “approximately 29% of Plaintiffs’ claimed damages” was “an exceptional result,” awarding 33% fee).

C. The Lodestar Multiplier of 1.3x Confirms the Reasonableness of the Requested Fee

To confirm the reasonableness of a fee, courts may “cross-check” the proposed fee against counsel’s lodestar, which accounts for time and hourly rates. See *In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1141 (10th Cir. 2023); *Brody*, 167 P.3d at 201–02. When lodestar is “used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.” *Voulgaris*, 60 F.4th at 1267.

A lodestar cross-check confirms the reasonableness of the requested fee: SG spent over 9,000 hours litigating this entirely contingent action, representing a lodestar of \$7,688,948.50. Sklaver Decl. ¶¶ 28–29. SG’s requested fee thus yields a multiplier of 1.3x.

That is well below multipliers routinely approved. *See Voulgaris*, 60 F.4th at 1266 (“[A] multiplier of 2.8x’ is “consistent with the typical range of multipliers routinely approved by courts in this District and the Tenth Circuit.”). The 1.3x multiplier does not account for future hours that SG must work administering the Settlement, which will lower the multiplier further. *Tennille v. W. Union Co.*, 2013 WL 6920449, at *13-14 (D. Colo. Dec. 31, 2013) (considering future settlement administration efforts in lodestar cross-check)

Class Counsel’s rates are reasonable. Those rates range from \$275 for staff to \$1,300 per hour for the most senior partner, which is comparable to rates charged by peer firms litigating cases of similar magnitude. Sklaver Decl. ¶ 30.² In a survey of AmLaw 50 law firms performed by PwC Product Sales issued in October 2021, the median billing rate per hour was \$1,253 for equity partners and \$819 for associates. *Id.* ¶ 31. Here, all but one of the partners who worked on this case had rates below the 2021 median. *Id.* All associates working on the matter billed below the median. *Id.* Courts regularly find SG’s rates reasonable. *See, e.g., Meta Platforms, Inc. v. Social Data Trading Ltd.*, 2022 WL 18806267, at *5 (N.D. Cal. Nov. 11, 2022); *Hancock COI Fairness Hearing Transcript* at 19:6–13.

II. Class Counsel’s Request for Reimbursement of Expenses Is Reasonable

SG also requests reimbursement of \$1,151,527.29 for expenses reasonably incurred in connection with the prosecution of this action. Sklaver Decl. ¶ 33. “[A]n attorney who creates or

² The lodestar is calculated using 2023 hourly rates. *See Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing “an appropriate adjustment for delay in payment” by applying “current” rate); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 2006 WL 8429707, at *2 (D. Colo. Sept. 29, 2006) (calculating lodestar using current rates).

preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred.” *Voulgaris*, 2021 WL 6331178, at *14. Expenses are reasonable if they are “of the type normally billed to clients.” *In re Crocs, Inc.*, 2014 WL 4670886, at *5.

SG’s expenses are reasonable and meet this standard. They are the types of expenses regularly awarded, and for which a paying client would normally be charged, such as filing fees, deposition costs, expert fees, document storage and travel costs. Sklaver Decl. ¶ 33; *Voulgaris*, 2021 WL 6331178, at *14. That SG expended its own money on these expenses when reimbursement depended on the success of this litigation, is perhaps the best indicator that the expenses were reasonable.

CONCLUSION

SG respectfully requests that this Court award attorneys’ fees in the amount of \$10,000,000, plus a *pro rata* share of the interest earned on the Settlement Fund, and reimbursement of \$1,151,527.29 in litigation expenses.

Dated: June 16, 2023

/s/ Steven G. Sklaver

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

/s/ Zachary B. Savage

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2023, a true and correct copy of the foregoing document was served on all parties of record via the Court's CM-ECF system.

/s/ Zachary B. Savage

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action 1:18-CV-01897-DDD-SKC

PHT Holding I LLC,
on behalf of itself and all others similarly
situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER
INSURANCE COMPANY,

Defendant.

**DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION
EXPENSES**

I, Steven G. Sklaver, declare as follows:

1. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

2. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Plaintiff and the Court-appointed Class Counsel (referred to herein as "Class Counsel") in the above-captioned matter. I am a member in good standing of the bar of this Court. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey has significant experience with insurance litigation and class

actions, including cost of insurance (“COI”) class actions and settlements thereof. Susman Godfrey has been appointed sole Class Counsel in numerous cases seeking recovery of COI overcharges against insurers, including cases involving Phoenix Life Insurance Company, AXA Equitable Life Insurance Company, Genworth Life Insurance & Annuity Company, Voya Retirement Insurance and Annuity Company, Lincoln Life & Annuity Company of New York, ReliaStar Life Insurance Company, John Hancock Life Insurance Company (U.S.A.), North American Company for Life and Health Insurance, and PHL Variable Insurance Company.¹ A copy of the firm’s profile in such cases, and the profiles of myself and my fellow Class Counsel, was filed at Dkt. 224-2.

4. My firm’s results in such cases have been lauded by federal judges as “superb.” *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (S.D.N.Y. Sep. 24, 2015), Dkt. 319 at 3:9-11, “the best settlement pound for pound for the class I’ve ever seen,” *id.*, and “quite extraordinary,” *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Mar. 18, 2019). I also closely follow other class actions involving life insurance, particularly COI class actions. I am thus intimately familiar with the terms of settlement in these types of cases, how to evaluate the relative strengths and weaknesses in such

¹ The following is a non-exhaustive list of COI cases in which Susman Godfrey has been found to be “adequate” class counsel: *Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *12 (S.D.N.Y. July 12, 2013); *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of N.Y.*, 2022 WL 986071, at *5 (S.D.N.Y. Mar. 31, 2022); *In re AXA Equitable Life Ins. Co. COI Litig.*, 2020 WL 4694172, at *16 (S.D.N.Y. Aug. 13, 2020); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 387 (S.D.N.Y. 2019); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *11 (D. Minn. Mar. 29, 2022); *Advance Tr. & Life Escrow Servs., LTA v. N. Am. Co. for Life & Health Ins.*, 592 F.Supp. 3d 790, 809-10 (S.D. Iowa 2022); and *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15 Civ. 9924 (S.D.N.Y. Nov. 1, 2018), Dkt. 139 ¶¶ 7-8.

cases, and what a successful result looks like.

5. The Court preliminarily approved the settlement in this action on April 18, 2023. Dkt. 225.

6. This case was originally filed against Defendant Security Life of Denver (“SLD” or “Security Life”) on July 26, 2018. Fact discovery lasted until August 30, 2019, with supplemental discovery obligations under Federal Rule of Civil Procedure 26(e) continuing thereafter. Plaintiff and its experts analyzed over 80,000 pages of documents, which included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class Members’ policies, and over one thousand spreadsheets. Plaintiff issued numerous requests for production, interrogatories, and requests for admissions, and engaged in multiple rounds of meet and confers with respect to these discovery requests, including extended negotiations over search terms, custodians, and other issues.

7. Plaintiff also issued thirteen subpoenas to relevant third parties, including SLD’s reinsurers and actuarial and financial advisors. Plaintiff obtained thousands of pages of valuable documents from these subpoenas, much of which had not already been produced by SLD.

8. Plaintiff took and defended 15 highly technical fact depositions (some of which took place over two days).

9. Expert discovery lasted until June 17, 2020. Plaintiff designated two experts and produced expert reports from: actuarial expert Howard Zail and damages expert Robert Mills. Plaintiff produced opening expert reports from Zail and Mills on January 22, 2020. In rebuttal, Security Life designated actuarial expert Timothy Pfeifer. All three experts were deposed. Mr.

Mills also supplemented his expert report on February 6, 2023 in accordance with the parties' agreement. Security Life then moved to strike portions of that expert report in the week leading up to trial, a motion that Plaintiff responded to within 48 hours. Collectively, the parties produced four expert reports that totaled 148 pages, with over 3,503 pages of exhibits and appendices. Class Counsel also retained several consulting experts, who provided invaluable assistance to Plaintiff and the Class.

10. The Court initially denied Plaintiff's motion for class certification without prejudice, concluding that although "factual issues predominate[d]," there remained a "question" regarding whether "differences in state contract law defeat the predomination element" of the Rule 23(b)(3) inquiry. Dkt. 81 at 7, 15. The Court asked whether different state rules regarding the "role of extrinsic evidence in interpreting" form contracts "would be manageable," and invited additional briefing on that issue. *Id.* at 15-16.

11. In response, Plaintiff filed a renewed motion that provided over 50 pages of comprehensive surveys marshaling the law across the nearly nationwide class on state rules of contract interpretation and synthesized that law into a manageable approach for trial. *See* Dkt. 87. Concluding that Plaintiff had "done its homework," Dkt. 141 at 19, the Court certified the following class: "All owners of Strategic Accumulator Universal Life ('SAUL') . . . policies subjected to Security Life of Denver's ('SLD') cost of insurance ('COI') rate increase announced in September 2015, excluding owners whose policies issued in Alaska, Arkansas, New Mexico, Virginia, and Washington, and SLD, its officers and directors, members of their immediate families, and their heirs, successors, or assigns." The Court also appointed Susman Godfrey as Class Counsel, finding that "Susman Godfrey will adequately and fairly represent

the class,” and that it had “demonstrated that it will expend significant resources in representing the class.” Dkt. 141 at 22. Simultaneously, the Court granted in part and denied in part SLD’s motion for summary judgment, dismissing two of Plaintiff’s three theories of breach but holding that triable issues remained with respect to the “uniformity” theory. Dkt. 141.

12. The alleged “uniformity” breach was not apparent from any publicly-available documents. The COI increase notice sent to Class Members stated that “We are applying this increase to all policies that are the same version as the policy you purchased.” Plaintiff and other Class Members had no way of knowing that there were other SAUL policies with the same “premium class and whose policies have been in effect for the same length of time” that did not receive any COI increase. It was only through Class Counsel’s efforts in discovery, including specific document requests, interrogatories, and deposition questions, that this theory of breach was even unveiled. Indeed, Security Life even argued that class certification could not be granted on the uniformity claim because it was not adequately pled in the Complaint.

13. The Court then set a trial date for February 13, 2023, and the parties began trial preparation. In the lead-up to the final pretrial conference, which took place on January 25, 2023, the parties exchanged and submitted deposition designations, exhibit lists, witness lists, stipulations, proposed jury instructions, and proposed verdict forms. Each party filed a trial brief, and the parties also briefed nine motions *in limine*, including a motion *in limine* filed by Defendant to exclude Plaintiff’s damages model altogether. Dkts. 168, 170, 183, 186, 187, 193.

14. Class Counsel also conducted a professionally-administered mock trial in Denver on October 12, 2022, with over two dozen mock jurors from the local community.

15. Following the pretrial conference, the Court ordered supplemental briefing on whether and how the jury should be instructed regarding the *contra proferentem* rule of contract interpretation, which construes ambiguous contracts against the drafter. Simultaneous opening briefs were due six days later, on January 31, and responses were due three days after that, on February 3. Dkt. 199. After Plaintiff had filed 56 pages of supplemental briefing on the *contra proferentem* issue, on February 7, with trial six days away, SLD filed a motion to decertify the class. Dkt. 208. The Court ordered Plaintiff to respond to the motion to decertify by the following day, Dkt. 209, and then, on the day that Plaintiff's response was due, the Court asked for briefing on another question related to class certification and extended the deadline by a day, to February 9. Dkt. 211. Plaintiff filed a 15-page response. Dkt. 212.

16. At the February 9 conference, the Court announced that it would deny SLD's motion to decertify, deny SLD's motion to exclude Plaintiff's damages model, and largely adopt Plaintiff's proposed jury instruction on *contra proferentem*. See Dkt. 224-5 at 3:10, 3:25-4:3, 5:3-5. The following evening, the Court emailed the parties its proposed jury instructions, which included a *contra proferentem* instruction mirroring Plaintiff's proposed structure, and which instructed the jury that, for certain states in the class, the jury "must adopt [Plaintiff's] interpretation of the contract." Dkt. 219-2 at 18-19; see also Dkt. 221 at 18-19. Thus, virtually all pre-trial issues had been resolved, and Class Counsel was fully prepared to pick a jury and try this case starting on February 13.

17. At the February 9 conference, the Court also directed the parties to make one

final good faith effort to settle the case. Those efforts were successful, and a term sheet was executed early on February 12, approximately 36 hours before jury selection was set to begin.

18. The Settlement Agreement is the result of extended discussions between the parties with a trial that was less than 36 hours away. Following the February 9, 2023 trial preparation conference, at which the Court directed counsel to make one more good faith attempt to resolve the case, counsel for both sides engaged in extensive discussions over the next 48 hours, including an in-person meeting between me and Security Life's lead lawyer, Clark Johnson, on the morning of February 11. By the end of that night, a term sheet had been agreed upon that resolved all material terms except for one (the length of the COI increase moratorium). The parties resolved that one remaining issue, and appeared in Court on February 13—the day the trial was set to begin—to report on the settlement and answer any questions the Court had. A long-form settlement agreement was negotiated and agreed to over the course of the following six weeks, and fully executed on March 29, 2023. The Court preliminarily approved that settlement on April 18, 2023. Dkt. 225.

19. Throughout the life of the case, the parties exchanged numerous settlement offers and counteroffers and engaged in a good faith, though ultimately unsuccessful, mediation with Retired Chief U.S. Magistrate Judge Arthur Boylan, which was held before the Court ruled on the then-pending renewed motion for class certification and motion for summary judgment. The parties' sharply different views about virtually all issues, including class certification, merits, damages, and what could be argued to the jury, however, made it extremely difficult to reach any agreement, or even come close to one. More than two years later, by February 11, 2023, however, the Court had resolved virtually all pre-trial issues, and

the Court's comments at the final trial preparation conference helped encourage the parties to continue their ongoing settlement discussions.

20. The certified Class consisted of 293 policies. Plaintiff had several alternative damage models, and there also remained the risk that the jury, even if it found breach, would not award any damages, or only minimal damages. Plaintiff's top-end damage model was for \$59,420,913.14, which was the sum all the incremental COI charges on all Class Policies through December 30, 2022. Plaintiff's secondary damages model was for \$34,441,535.58.

21. The principal terms of the settlement, which was attached to Plaintiff's motion for preliminary approval of the settlement, Dkt. 224-3, are as follows:

- **CASH:** A \$30 million cash payment. This is not a claims-made settlement. Checks will be mailed directly to class members and settlement funds do not revert to SLD.
- **COI RATE SCHEDULE INCREASE FREEZE:** A prohibition on any new cost of insurance scale increase until March 31, 2028.
- **VALIDITY STIPULATION AND STOLI WAIVER:** An agreement by SLD not to challenge the validity and enforceability of class members' policies on the grounds of lack of an insurable interest, stranger originated life insurance ("STOLI"), or misrepresentation.

22. The cash portion of the Settlement alone is, in my view, exceptional: It represents over 50% of Plaintiff's maximum damages model, and approximately 87% of the alternative damages model that Plaintiff intended to present at trial. The average amount attributable to each Class Policy, before deducting fees, expenses, and any incentive award, is \$102,389.078.

23. The cash portion is particularly noteworthy given that the Court permitted SLD to argue to the jury that there were essentially no damages. Dkt. 224-5 at 5:3-14. And, of

course, a finding of breach was far from a given: this case turned on conflicting expert testimony on technical actuarial issues, such as the interpretation of Actuarial Standard of Practice No. 2. *See* Dkt. 141 at 15-17 (discussing ASOP 2 § 3.4 and holding that factual disputes as to its meaning and application “renders summary judgment inappropriate on this theory of breach”).

24. The non-monetary benefits provide additional, real value to the Class. The COI Rate Schedule Increase Freeze ensures that the Class is protected against any new rate action until March 31, 2028 at the earliest (almost 13 years after the last increase), at a time when other insurers continue to impose new COI increases.² The Validity Stipulation and STOLI Waiver prevent Security Life from nullifying the benefits provided in this settlement by challenging the validity of any Class Policy. As described in the Report On the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with Security Life of Denver Insurance Company, a reasonable estimate of the value of the COI Rate Schedule Increase Freeze is \$4,806,861 and a reasonable estimate of the value of the Validity Stipulation and STOLI Waiver is \$933,196. These non-monetary guarantees provide substantial benefits to the Class that could not have been obtained even if the litigation had been successful.

25. In Class Counsel’s experience, this is an outstanding recovery, particularly given the complexity of COI cases, the conflicting expert testimony on technical actuarial issues that a jury would be required to weigh, and the inherent uncertainties of litigation.

26. Susman Godfrey frequently takes high-stakes non-class commercial cases on a contingent fee basis. In cases like this one where the firm is advancing expenses, the firm has a

² Class Counsel is aware of at least two insurers who have imposed massive COI rate increases in the past year alone.

standard contingency agreement, under which it receives 45% of the gross sum recovered by a settlement that is agreed upon, or other resolution that occurs, after the 60th day preceding any trial, plus reimbursement of expenses. Sophisticated parties and institutions have agreed to these standard market terms. The requested fee here of 28% of the gross settlement benefit, or 1/3 of the cash component viewed in isolation, is less than what Susman Godfrey would receive under its standard contingency agreement entered into in a competitive market.

27. Unlike many firms on the class action side, Susman Godfrey represents plaintiffs and defendants; when entering into result-based fee deals, Susman Godfrey strives for a substantial return on its investment in time and expenses to compensate for risks and opportunity costs, including the opportunity to work on hourly billing work that provides a steady income stream. As is common in the industry, Susman Godfrey's contingency percentages are traditionally based on the gross amount recovered and provide for the recoupment of any advanced expenses.

28. The schedule below is a summary reflecting the amount of time spent by the attorneys and professional support staff of Susman Godfrey and Shoemaker Ghiselli + Schwartz LLC who were involved in this litigation, and the lodestar calculation using 2023 billing rates or equivalent 2023 billing rates for an attorney or paralegal who left the firm prior to 2023. The following schedule was prepared from daily time records regularly prepared and maintained by Susman Godfrey and Shoemaker Ghiselli + Schwartz LLC, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses are excluded and not reflected below.

Attorneys	Current Rate	Hours	Value
Ard, Seth (Partner)	\$1,200	742.8	\$891,360.00
Bridgman, Glenn (Partner/Associate) ³	\$800	128.4	\$102,720.00
Gervais, Michael (Partner)	\$800	780.0	\$624,000.00
Josephs, Halley (Partner)	\$800	24.1	\$19,280.00
Kirkpatrick, Ryan C. (Partner)	\$1,000	1,051.5	\$1,051,500.00
Nath, Rohit (Partner/Associate) ⁴	\$800	17.8	\$14,240.00
Sargent, Edgar C. (Partner)	\$800	542.1	\$433,680.00
Savage, Zachary B. (Partner/Associate) ⁵	\$800	918.4	\$734,720.00
Schwartz, Paul H. (Partner)	\$630	59.2	\$37,296.00
Sklaver, Steven G. (Partner)	\$1,300	757.5	\$984,750.00
Spear, Nicholas (Partner/Associate) ⁶	\$800	18.2	\$14,560.00
Fulford, Scott (Associate)	\$800	1,817.7	\$1,454,160.00
Krsulich, Lora (Associate)	\$775	972.9	\$753,997.50
Page, Kim (Of Counsel)	\$800	131.5	\$105,200.00
Adimora, Brenda (Staff Attorney)	\$400	224.5	\$89,800.00
Fenwick, Samantha (Staff Attorney)	\$400	22.4	\$8,960.00
Kaminsky, Alex (Staff Attorney)	\$400	184.5	\$73,800.00
Paralegals	Current Rate	Hours	Value
Arreola, Norberto	\$400	20.5	\$8,200.00
DeGeorges, Simon	\$400	644.8	\$257,920.00
Gamiz, Nic	\$250	79.8	\$19,950.00
Maldonado, Christopher	\$275	18.1	\$4,977.50
Roberts, Carrie	\$275	14.1	\$3,877.50
		9,170.8	\$7,688,948.50

29. The total number of hours expended on this litigation by attorneys and paralegals

³ Mr. Bridgman spent time on this case as a partner and as an associate; he worked on the case starting in May 2018 and was promoted to partner in January 2022.

⁴ Mr. Nath spent time on this case as a partner and as an associate; he worked on the case starting in June 2019 and was promoted to partner in January 2023.

⁵ Mr. Savage spent time on this case as a partner and as an associate; he worked on the case starting in June 2020 and was promoted to partner in January 2022.

⁶ Mr. Spear spent time on this case as a partner and as an associate; he worked on the case starting in February 2019 and was promoted to partner in January 2023.

is 9,170.8 hours through May 2023. The total lodestar value, derived by multiplying each professional's hours by his or her current hourly rate, is \$7,688,948.50. All time spent litigating this matter was reasonably necessary and appropriate to prosecute the action, and the results achieved further confirm that the time spent on the case was proportionate to the amounts at stake.

30. The hourly rates for Susman Godfrey's attorneys and professional support staff are the firm's standard hourly rates. The hourly rates of Class Counsel's attorneys range from \$400 to \$1,300 and the hourly rates of paralegals range from \$275 to \$400.

31. In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in October 2021, the median standard billing rate for equity partners was \$1,253, the 1st quartile standard billing rate was \$1,397, and the 3rd quartile standard billing rate was \$1,144. Here, all of the partners working on this matter are equity partners, and all but one had a billing rate under the median rate for equity partners.

32. The same survey stated that the median standard billing rate for associates was \$819, the 1st quartile standard billing rate was \$892, and the 3rd quartile standard billing rate was \$709. The billing rate of all the associates who have worked on this case are below the median standard billing rate.

33. As detailed and categorized in the below schedule, Susman Godfrey has advanced a total of \$1,149,627.29 in un-reimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably necessary to the prosecution of this action, and are of the type that Susman Godfrey normally incurs in litigation.

Expense Category	Amount
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Deposition Expenses/Witness Fees	\$90,679.80
Document Review Hardware/Hosting	\$72,174.59
Expert/Consultants	\$667,225.07
Filing/Service/Court Reporter Fees/Transcripts	\$3,647.60
Mediation Fees and Expenses	\$3,500.00
Mock Trial Expenses	\$105,446.53
Photocopies/Reproduction/Messenger Services	\$43,094.38
Research Expenses	\$33,692.71
Travel/Meals/Hotels/Transportation	\$132,066.61
Total Expenses	\$1,151,527.29

34. The amount of Settlement Administration Expenses incurred by Settlement Administrator JND Legal Administration LLC, including expenses incurred in connection with the 2021 class notice, is \$40,832.99 through May 31, 2023. Class Counsel seeks permission to reimburse the foregoing Settlement Administration Expenses pursuant to Section 2.5 of the Settlement Agreement, and such additional expenses as may be incurred by the Settlement Administrator.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 16, 2023

/s/ Steven G. Sklaver

 Steven G. Sklaver

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action 1:18-CV-01897-DDD-SKC

PHT Holding I LLC,
on behalf of itself and all others similarly
situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER
INSURANCE COMPANY,

Defendant.

**DECLARATION OF KEITH MCNALLY IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION
EXPENSES**

I, Keith McNally, declare as follows:

1. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, in connection with the class action settlement between Plaintiff, on behalf of itself and the class, and Defendant Security Life of Denver Insurance Company. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

A. Experience and Qualifications

2. I am a company director and the Chief Operating Officer at Demeter Capital Limited ("Demeter Capital"). Demeter Capital is authorized and regulated by the United Kingdom's Financial Conduct Authority (FRN 745647) and is a financial consulting company that offers independent, discrete and high quality analysis to clients active in alternative investments with a core focus in the insurance market. Demeter Capital has 3 other company directors, James Rouse, Marcos Flores, and Alejandra Limones who have worked together in a broad range of senior positions in institutional investor capacities in the longevity markets, which includes working at a large bank, large asset manager and as advisors to insurance companies. Demeter Capital works with large, regulated institutional investors with a mandate to assess and acquire life related exposure in the US and Europe to include life settlements and longevity/mortality derivatives. The team at Demeter Capital has traded in over \$20bn longevity risk swaps, notes and securitizations since 2003. Additionally, the team at Demeter Capital executed the first ever swap in the UK Pension fund market.

3. At Demeter Capital, I am responsible for advising on the creation of new life settlement investment funds and consulting for large financial institutions on their investment in life settlements. Prior to Demeter Capital, I was a Managing Director and Global Head of Macro Investor Products at Credit Suisse. I was also a member of Credit Suisse's European Fixed Income

Operating Committee. From 2006 to 2011, along with Demeter Capital company directors James Rouse and Marcos Flores, I was a leading member of the Credit Suisse Longevity Markets Group which structured and executed a number of pioneering synthetic longevity/mortality deals in the financial markets. I was also internal legal counsel at Credit Suisse in New York supporting various fixed income structuring businesses including the Latin American team. I was a New York State qualified attorney (retired) and hold an MSc in International Securities, Investment and Banking as well as a Law (LLB (Hons)) degree.

4. My colleague James Rouse is also a company director of Demeter Capital as well as its Chief Investment Officer, responsible for the risk models and underwriting of life settlement assets. Prior to Demeter Capital, Mr. Rouse was a Managing Director at Fortress Investment Group where he was primarily responsible for the analysis and pricing of life settlement portfolios. Prior to Fortress, Mr. Rouse had spent 11 years at Credit Suisse most recently as a Director within the Longevity Markets Group where he was responsible for the development of structured products and longevity derivatives linked to life settlements and pension schemes. Prior to the Longevity Markets Group, Mr. Rouse was in the Risk Management Division of Credit Suisse. Prior to Credit Suisse, Mr. Rouse worked as a manager within the Risk Control division at Sumitomo Bank and as a manager in the Financial Institutions Group at Deloitte and Touche.

5. My colleague Marcos Flores is also a company director of Demeter Capital as well as its Chief Executive Officer, acting as an expert consulting advisor for institutional clients in the insurance and credit lending markets globally. Prior to Demeter Capital, Mr. Flores started Hibiscus Capital Limited (“Hibiscus”) in 2012, a consultant to large Private Equity Funds and Insurance Companies with strategic investments. Prior to Hibiscus, Mr. Flores spent 12 years working at Credit Suisse as a Managing Director within the Longevity Markets Group. In his role,

Mr. Flores was responsible for the origination, structuring and distribution of longevity risk, which included life settlements. During this time, he was a SIAP (Significant Influential Approved Person) for the Financial Services Authority of the UK and worked with CARMAC (Credit and Risk Management Committee) within Credit Suisse to develop the global strategy of the longevity business at the bank. Prior to his activity in the longevity asset class, Mr. Flores led the Fixed Income structuring teams at Credit Suisse for Europe and Latin America. Mr. Flores joined Credit Suisse when the firm merged with Donaldson, Lufkin & Jenrette, where he was a member of the Latin American Structuring team. Mr. Flores had also spent three years in Commodities Sales and three years at an affiliate of the Spanish development bank, Banco Exterior de Espana, based in Mexico.

B. Valuation Purpose and Materials Considered

6. Demeter Capital was retained by Class Counsel to independently value the non-monetary benefits for a specific portfolio of life insurance policies (the “Class Policies”) contained in the proposed settlement of the above referenced action. These benefits include: (a) a commitment not to increase the cost of insurance rates (“COI”) for a period of 5 years from April 1, 2023 through April 1, 2028 (the “COI Rate Freeze”); and (b) a commitment not to contest a death claim on the grounds that the policy lacks an insurable interest or for misrepresentations in the application (the “Validity Confirmation” and together with the COI Rate Freeze, the “Non-Monetary Benefits”).

7. In conjunction with my colleagues, I participated in the preparation of the valuation of the Non-Monetary Benefits. I have relied on the financial market and modeling expertise of my colleagues in the completion of this work. The valuation methodology, valuation opinion and primary significant assumptions for the opinion, are proffered below and, in more detail, in the

report, dated June 16, 2023, on the valuation of the Non-Monetary Benefits, which is attached as Exhibit A (the “Report”).

8. In determining the estimated valuations of the Non-Monetary Benefits set forth in this Declaration, I have employed methods and analyses of a type reasonably relied upon by experts in the field of life settlements in forming the opinions and inferences on the subject.

C. Assumptions and Valuation Methodology

9. The primary significant scenario assumptions are set forth in Section 1 of the Report. The valuation methodology is set forth in the introduction of the Report.

10. Demeter Capital is receiving compensation for time spent on this assignment. The engagement of Demeter Capital for this assignment and the compensation for completing it are not contingent on the development or reporting of a predetermined value or any direction in value, the amount of the valuation opinion, or the attainment of a subsequent event directly related to the intended use of this valuation.

D. Valuation Opinion

11. As a result of procedures performed, it is my opinion that a reasonable estimate of the Non-Monetary Benefits is \$5,740,057. This amount represents the estimate of the COI Rate Freeze of \$4,806,861 as detailed in the Report and the estimate of the Validity Confirmation of \$933,196 as detailed in the Report.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

Executed this 15 June 2023 at London, United Kingdom.

DocuSigned by:
Keith McNally
6832B5C4E1824A5

Keith McNally

EXHIBIT A

Report On the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with Security Life of Denver Insurance Company (the “Report”)

Executive Summary

As a result of the analysis set forth in this Report, Demeter Capital Limited (“Demeter”) has determined that a reasonable estimate of the value of the two Non-Monetary Benefits secured for the benefit of the Settlement Class, is the following:

Commitment	Value
COI Rate Freeze	\$4,806,861
Validity Confirmation	\$933,196
Total	\$5,740,057

For purposes of this Report, the “Settlement Class” is assumed to be 293 of the 309 Strategic Accumulator Universal Life policies identified in the file of policy data that was provided to Demeter by Class Counsel (“Data Policy File”). The other 16 policies contained in the Data Policy File were issued in the states of Arkansas, Virginia, and Washington, and Demeter was instructed by Class Counsel to exclude those policies in accordance with the class definition set forth in the Class Certification Order and the Settlement Agreement.¹ Demeter’s understanding is that no policies opted out of the Class.

Scope

Demeter was retained by Class Counsel in connection with a class action against Security Life of Denver Insurance Company (“SLD”) to value the Non-Monetary Benefits contained in the Settlement Agreement in connection with its forthcoming motion for final approval of the settlement. In connection with that assignment, Class Counsel provided Demeter with the Data Policy File.

This Report provides an estimate of the value of two commitments from SLD with respect to the Settlement Class.

The two non-monetary benefits (the “Non-Monetary Benefits”) that are the subject of this Report are the following commitments by SLD:

- **COI Rate Freeze.** Agreement not to impose a new COI rate schedule for 5 years from the date of the Settlement Agreement (March 31, 2023). We have been asked to value this 5-year period as starting from April 1, 2023, and ending April 1, 2028.

¹ See Settlement Agreement at §1.4 (defining the Class as “[a]ll owners of Strategic Accumulator Universal Life (‘SAUL’) . . . policies subjected to Security Life of Denver’s (‘SLD’) cost of insurance (‘COI’) rate increase announced in September 2015, excluding owners whose policies issued in Alaska, Arkansas, New Mexico, Virginia, and Washington, and SLD, its officers and directors, members of their immediate families, and their heirs, successors, or assigns.”); see also Class Certification and Summary Judgment Order at 19, 24.

- **Validity Confirmation.** An agreement by SLD not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application. This promise lasts in perpetuity.

General Approach and Data Considered

A reasonable and fair approach to measure the value of the Non-Monetary Benefits to the Settlement Class is a present value of the expected cost of the promises— *i.e.*, the cost of providing the benefit. The discount rate applied to the calculations is representative of life insurance industry projects. A discount rate of 7% has been used. This is discussed in Section 1.8.

The calculations of the benefits' value are made by using future projections of the cashflows of the policies. The projections are performed both with and without the promises, and the value of the benefits is taken as the present value of the difference between the two projections.

The future projections require a modelling of the future mortality of the policies. Demeter has extensive experience with cash flow projections for life insurance policies including universal life insurance policies like policies in the Settlement Class. Demeter has regularly performed these types of calculations for our clients including life insurance companies and life settlement funds.

SLD has provided its own expectations of mortality for the Settlement Class, referred to in this report as SLD's base case mortality assumption. For the purposes of this Report Demeter has used this as the base scenario table. Demeter has estimated the volatility of expectations of mortality around this base case mortality as described in detail in section 1.

We have been provided with data for 293 policies that are within the scope of the Class. We have also been provided with a file of policy data as of January 17, 2023, with deaths, lapses, and surrenders updated through December 31, 2022².

We were asked to assume that the Non-Monetary Benefits start on April 1, 2023. Therefore, it was necessary to update the Settlement Class from January 1, 2023, to March 31, 2023. For the purposes of this Report, we have assumed a certain rate of lapse as described in section 1.2 and maturities consistent with the SLD's base mortality assumptions from January 1, 2023, to April 1, 2023.

Approach for Valuing the COI Rate Freeze

In providing the COI Rate Freeze, SLD is foregoing the ability to raise COI rates even in the event of negative changes to its mortality expectations of the Settlement Class (or for any other reason). To evaluate the benefit of the COI Rate Freeze, we considered the probabilities of various future changes in mortality of differing degrees of magnitude, and, using those numbers, compared (a) what SLD would have charged on the Settlement Class using a

² The experience data is through December 31, 2022, but the data was gathered as at January 17, 2023. For example, if someone died on December 27, 2022, but only notified SLD on the January 18, 2023, that death will not be included in the file.

hypothetical COI increase and (b) the projected charges using current COI rates, which, pursuant to the COI Rate Freeze, SLD now cannot increase through at least March 31, 2028.

Methodology for COI Rate Freeze Valuation

The main driver of a potential COI increase we have considered is the mortality performance of the Settlement Class.

The methodology for the COI Rate Freeze valuation is to project death benefits and COI deductions for the policies in five scenarios:

- Scenario 1: SLD's mortality expectations improve slightly.
- Scenario 2: SLD's mortality expectations improve significantly.
- Scenario 3: SLD's mortality expectations stay roughly consistent.
- Scenario 4: SLD's mortality expectations worsen slightly.
- Scenario 5: SLD's mortality expectations worsen significantly.

Considering only the mortality factor, the COI Rate Freeze provides meaningful benefits to the Settlement Class in the scenarios where SLD's expectations of mortality worsen, and SLD might have implemented a COI increase but for the freeze – i.e., Scenarios 4 & 5. The Scenarios of this Report have been built around SLD's base mortality assumptions as of August 9, 2018. Nothing in this Report should be taken as an endorsement of these assumptions or the accuracy or suitability of these assumptions for any purposes, other than that it records SLD's expectations of mortality as of August 9, 2018.

To ensure that SLD's base case mortality assumptions were suitable for the Scenarios of this Report Demeter reviewed the mortality experience of the Settlement Class during the period October 1, 2015, to December 31, 2022. The COI Rate Freeze provides meaningful benefits in the scenarios where SLD's expectations worsen, and SLD might have implemented a COI increase but for the freeze – i.e., Scenarios 4 & 5. We therefore combine Scenarios 1-3 into a single scenario.

The probability weights applied to the scenarios are calculated using the Gaussian Quadrature rule with inputs of the distribution assumption and variable volatility. The settings of the volatility and distributions for mortality and interest spread are described in section 1.

For future mortality improvements for the purposes of all Scenarios in this Report, we have used an internal mortality improvement assumption from SLD's mortality experience studies.

Mortality for Scenarios 1, 2, 3, 4 & 5 have been generated as described below in Section 1.1 (Mortality).

We have then calculated the value in these scenarios with a present value calculation of the resulting cash flows, using a discount rate of 7%.

The calculations use cashflows through March 31, 2028, which is when the COI Rate Freeze expires. Cashflows after March 31, 2028, are not included in the calculation as the COI Rate Freeze promise ends.

Each of the five scenarios needs to be quantified for

- Extent of the change in mortality expectations; and

- Probability of the scenario.

The quantification of the scenarios and outcomes are detailed in Section 2.

Approach for Valuing the Validity Confirmation

The Validity Confirmation is an agreement by SLD not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application. The Validity Confirmation is set forth in Section 3.2 of the Settlement Agreement, which provides:

SLD agrees to not take any legal action (including asserting as an affirmative defense or counter-claim), or cause to take any legal action, that seeks to void, rescind, cancel, have declared void, or seeks to deny coverage under or deny a death claim for any Final Settlement Class Member based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for the policy. If Defendant breaches this covenant, it shall also be liable for reasonable attorneys' fees and costs in connection with any such attempted rescission, cancellation, claim, or suit. The covenant set forth in this paragraph is solely prospective, and does not apply to any actions taken by SLD in the past. With the exception of the foregoing, nothing contained in this Agreement shall otherwise restrict SLD from: (i) following its normal procedures and any applicable legal requirements regarding claims processing, including but not limited to confirming the death of the insured; determining the proper beneficiary to whom payment should be made in accordance with applicable laws, the terms of the policy and policy specific documents filed with SLD; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age or gender of the insured; or (iii) complying with any court order, law or regulatory requirements or requests, including but not limited to, compliance with regulations relating to the Office of Foreign Asset Control, Financial Industry Regulatory Authority, and Financial Crimes Enforcement Network.

All Settlement Class Policies have been in force for more than 2 years and are all outside of their contestable periods. This means the risk for a policy holder of a contest to a death claim for reasons such as suicide or inaccuracy in medical statements has now passed. As a result, absent trivial issues such as a failure to present a death certificate, fraud or lack of insurable interest now present the main reasons why SLD would not pay a death benefit claim.

The calculation of the value of the Validity Confirmation was performed as the present value of the difference between two projections:

- SLD's base case mortality and lapse rate assumptions, and a risk of a challenge to the death benefit payment.
- SLD's base case mortality and lapse rate assumptions, and no risk of a challenge to the death benefit payment.

In providing the Validity Confirmation, SLD is foregoing the ability to challenge and resist death benefit claims in the future for the Settlement Class. In order to provide a valuation of the Validity Confirmation, we estimated the following:

- timing of the future claims for death benefits for the Settlement Class.
- the probability that SLD could successfully resist a claim; and
- the amount of pay-out that SLD would have saved in the event of successfully resisting a claim that SLD is now foregoing (and that is therefore a benefit going to the Settlement Class).

The timing of the future claims was projected using SLD's base case mortality and the lapse assumptions described in Section 1.2. However, whereas the projections for the COI Rate Freeze ended March 31, 2028, the Validity Confirmation has no end date and therefore projections were extended for 40 years – after the likely last policy maturity in the Settlement Class.

The present value of the death benefit claims was calculated by discounting at 7%.

Values are shown in Section 2.

Section 1 - Scenario Assumptions

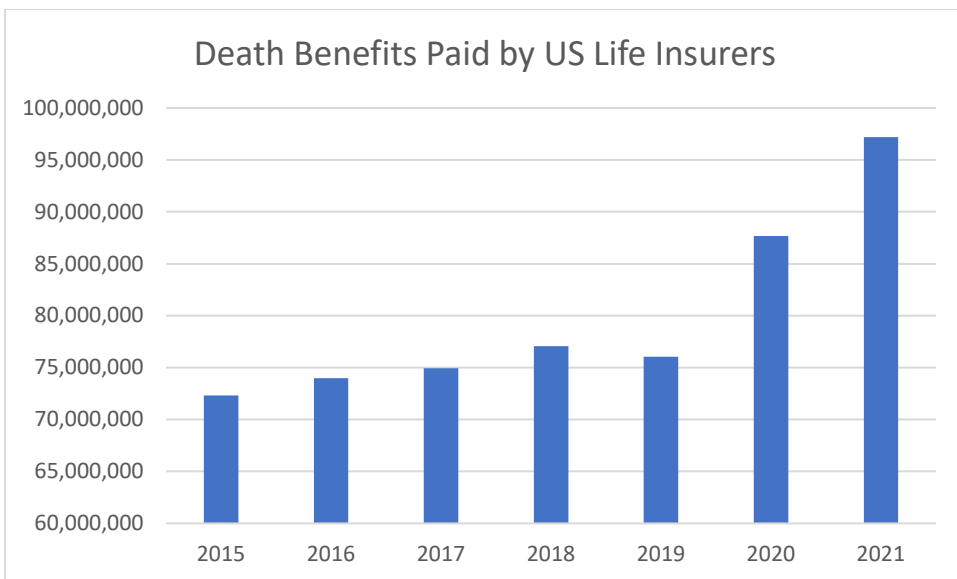
For purposes of this Report, Demeter has considered only the potential for COI increases driven by the projected mortality performance of the Settlement Class. We take no position and offer no opinion as to when a COI increase would be permissible under the terms of the policies, or what factors may appropriately be considered under those terms, or what grouping of policies into classes is permitted under the terms of the policies.

Our projections make use of the following assumptions.

1.1 Mortality

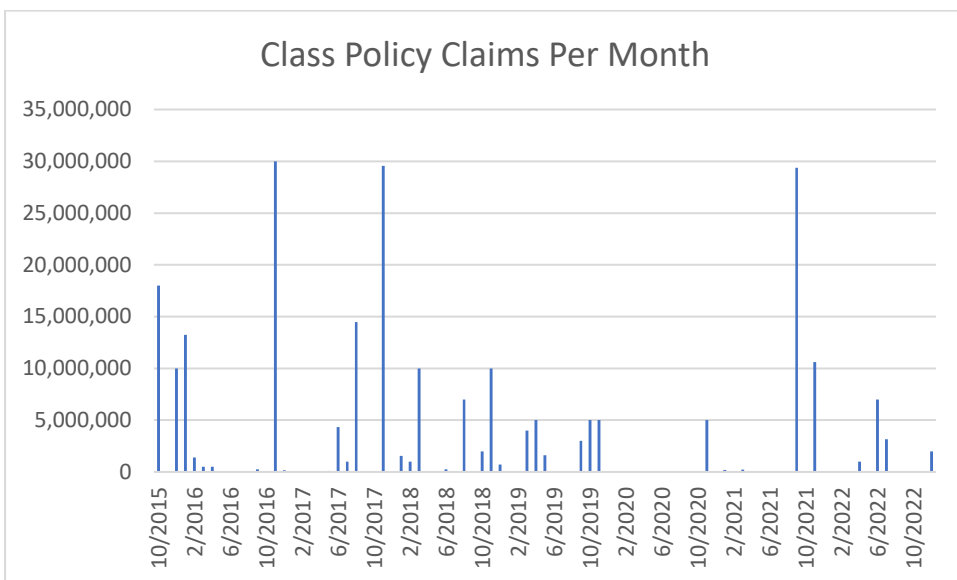
SLD used its own internal mortality table with various scalars and future mortality improvements applied to project mortality. This Report has used the assumptions the various scalar and mortality improvement assumptions approved by SLD management as of August 9, 2018. This Report considers the potential for variation in SLD's expected mortality rates for the Settlement Class over the next 5 years. SLD bears the risk that its mortality expectations for the Settlement Class increase and is unable to increase COI rates because of this settlement.

Mortality varies over time, US life insurance companies returns state that total claims (across all life products) increased in 2020 and 2021 during the time of the Covid-19 pandemic.



Source: Insurance Information Institute

On a month-by-month basis the Settlement Class demonstrate greater volatility than would be seen in aggregate for a year across the whole of SLD’s platforms. The graph below shows the claims history for the Settlement Class from October 2015 to December 2022.



In providing the COI Rate Freeze, SLD is foregoing the ability to raise COI rates in the event of negative changes to SLD’s best estimate mortality expectations of the Settlement Class. To evaluate the benefit of the COI Rate Freeze, we considered the probabilities of various future changes in SLD’s best estimate mortality by using scenarios of differing degrees of magnitude, and, using those numbers, the difference in what SLD would have been able to recover using a COI increase compared to that SLD now cannot increase COI rates for the next five years.

To calculate the probabilities of changes in mortality we required estimates of the volatility of mortality rates.

In August 2015, Demeter published a report using base Qx shock variance of 12% and mortality improvement variance of 0.75%. In connection with this Report, Demeter reviewed industry data around expectations of shock changes in mortality rates to see what changes or updates should be made to this. Sources for this review included insurance industry regulators who require life insurance companies to hold surplus capital above what might be expected, for unexpected shocks to risk factors. Demeter's analysis included the review of publications from the following authorities:

- The European Insurance and Occupational Pensions Authority's³ Solvency II capital adequacy program.
- The International Association of Insurance Supervisors⁴
- The Financial Stability Board⁵
- Office of the Superintendent of Financial Institutions (OSFI)⁶
- Australian Prudential Regulation Authority (APRA)⁷

The American Academy of Actuaries provided a presentation to the NAIC⁸ in a report dated November 9, 2019, by the Mortality Work Group of which considered a number of risk factors to mortality, including,

- Volatility risk: The risk of natural statistical deviations in mortality experience.
- Level risk: The risk of incorrect experience mortality assumptions.
- Trend Risk: The risk that future mortality improvement is different than assumed.
- Catastrophe Risk: The risk of a short-term spike in mortality or a longer-term increase in mortality from a currently unknown health event, including Pandemic or Terrorism

Many regulators work towards high degrees of confidence. For example The American Academy of Actuaries work uses the 95% percentile of risk.

For the purposes of this Report, we needed to estimate the expected value of the Non-Monetary Benefits, and not the 95% percentile. To do this we have assumed a log normal distribution for mortality changes.

Review of the literature sources listed above revealed nothing that would conflict with Demeter's report of 2015, if anything the events of the past few years have confirmed the reasonableness of the settings used in that report and this Report uses the same settings.

These give rise to the following scenarios:

³ <https://eiopa.europa.eu>

⁴ <https://www.iaisweb.org>

⁵ <https://www.fsb.org/>

⁶ <https://www.osfi-bsif.gc.ca/Eng/Pages/default.aspx>

⁷ <https://www.apra.gov.au/>

⁸

https://content.naic.org/sites/default/files/call_materials/Agenda%20%26%20Materials%20L-RBC%2011-9-21.pdf at attachment C

Scenario	QX Shock	FMI ⁹ Shock	Scenario Weight ¹⁰
Scenario 4 – Worsen Slightly	+9.2%	-0.55%	23.9%
Scenario 5 – Worsen Significantly	+22.3%	-1.3%	11.8%
Scenarios 1, 2 & 3 – No COI rate adjustment	None	None	64.2%

For comparison, the life insurance industry incurred an increase in claims of 15% in 2020 with an additional increase in claims of 11% in 2021 (*Source*: NAIC data) both during which the Covid-19 pandemic occurred. The CDC have reported excess population mortality for 2020 of 10.9% and 12.5% for 2021.

1.2 Lapse

The relationship between COI charges and mortality for Settlement Class is such that lapses favour SLD. SLD faces the risk that lapse rates are lower than expected and is unable to increase COI rates because of this settlement.

SLD provided actuarial memos containing lapse rate assumptions. SLD used two different lapse rate assumptions:

- High faced, low funded policies, with a low lapse rate.
- Remainder of the book, with a higher lapse rate.

Demeter reviewed the assumptions for lapse that SLD provided.

SLD's approach of dividing the book into two parts is reasonable, as the large face, low-funded policies are likely to be owned by life settlement investors.

Investors tend to buy large face policies, as the administrative costs of running small face policies make them uneconomic investments. Investors also tend to run low policy account values as they seek to maximise their investment return from the longevity risk and typically seek higher returns than the cash accumulation account interest crediting rate.

We are familiar with the life settlement market, and Strategic Accumulator Universal Life policies in the Settlement Class are common products in life settlement investor portfolios.

⁹ FMI means future mortality improvement.

¹⁰ Weights use the Gaussian Quadrature rule.

After the first few years, where lapse rates can be high, general life insurance books often have lapse rates of 4-6%.¹¹

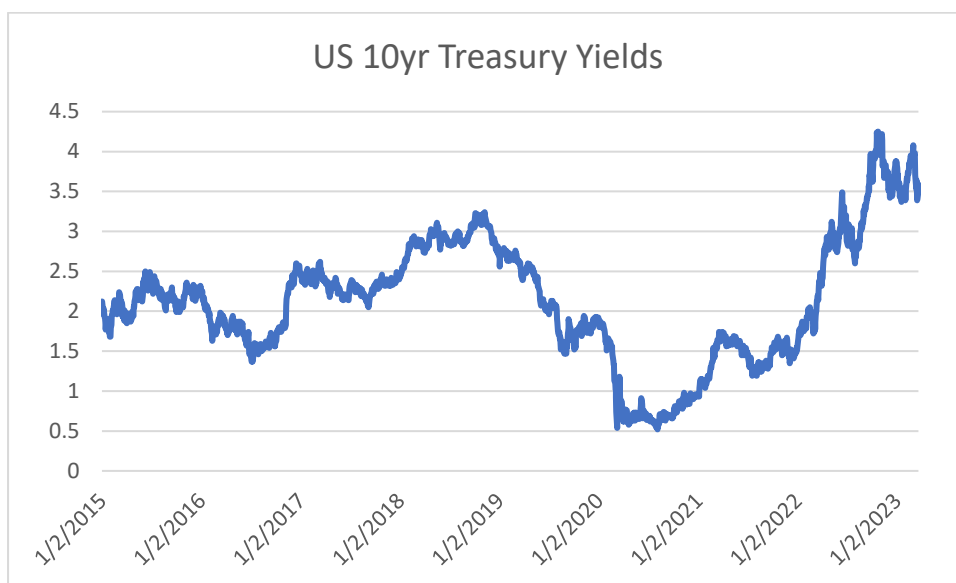
Life settlement investment portfolios, on the other hand often have much lower lapse rates, in Demeter’s experience this can be in the range of 0.5%-2%

In Demeter’s opinion after accounting for the split, SLD’s lapse rate assumptions are in line with industry averages, and we have used these assumptions in the projection scenarios to evaluate the Non-Monetary Benefits.

Based on our familiarity with the life settlement market, which owns a by death benefit substantial portion by death benefit of the Settlement Class, we believe it is unlikely that lapse rates will significantly vary from the rates above. Accordingly, these lapse rates have been used in all the projection scenarios to evaluate the Non-Monetary Benefits.

1.3 Investment Returns

The last COI redetermination occurred in October 2015 at a time of low investment returns.



Source: <https://home.treasury.gov/>

The policies contain a crediting rate mechanism which adjusts for changes in yields over time.

The cash value of Settlement Class Policies was low in 2015 (\$54.7m on \$637.2m of death benefit or 8.6% of death benefit¹²) and can be expected to subsequently be lower than this and

¹¹<https://www.soa.org/resources/research-reports/2019/2009-13-us-ind-life-persistency-update/>

¹² Total for all 309 policies including additional term rider (ATR).

remain lower given the life settlement ownership profile of the remaining active policies in the Settlement Class.¹³

These factors mean there is little further downside to SLD from investment returns in the next 5 years and variations in this factor have not been considered for this Report. Investment returns have not been included in the projection scenarios.

1.4 Expenses and Premium Taxes

The average face size of the Settlement Class is \$2.06 million, which is larger than the industry average policy size of \$183,780¹⁴ and means that COI and Premium load deductions are much larger than expense deductions. Changes in premium taxes rates are infrequent and tend to be for small amounts. For these reasons potential variations in expenses and premium taxes were considered immaterial for the purposes of this Report. As a result, expenses and premium taxes have not been included in the projection scenarios.

1.5 Premium Funding Pattern

For the purposes of this Report, we divided the policies into two groups, consistent with SLD's lapse rate assumptions as described in Section 1.2.

- High faced, low funded policies, with a low lapse rate assumption. For these we have projected payment of the minimum premium to keep the policy in force each month. This is consistent with the high rates of life settlements in these policies, and which have historically maintained low account values, this forms the majority of the remaining active death benefit in the Settlement Class.
- Remainder of the book, with a higher lapse rate, which are assumed to maintain a consistent account value of 14% of death benefit.

These two premium payment patterns have been assumed for all projection scenarios. As the majority of remaining active death benefit is held by life settlement investors, there is little further downside to SLD from a change in funding patterns in the next 5 years, and variations in this factor have not been considered for this Report.

1.6 Taxes

The personal rates of taxation that might apply to individual policy holders could differ substantially from one holder to another. So, for purposes of this Report, we have calculated the value of the Non-Monetary Benefit of freezing COI increases gross of taxes.

1.7 Contest Success Probability and Pay-out Rates of Resisted Claims

Data from market aggregate figures provides information about how often carriers resist a death claim:

¹³ The lower lapse rate of life settlement policies means that over time they become a greater proportion of the portfolio.

¹⁴ Source ACLI data for 2020.

Year	Disputes Settled (\$millions)	Amount Paid (\$millions)	Amount Denied (\$millions)	Incurred Claims (\$billions)	Denied / Incurred Ratio
2015	829.1	206.5	622.5	73.5	0.85%
2016	805.9	153.8	652.0	74.8	0.87%
2017	812.2	247.9	564.3	77.0	0.73%
2018	855.8	110.4	745.4	78.4	0.95%
2019	868.8	303.0	565.8	79.8	0.71%
2020	669.1	320.5	348.6	92.0	0.38%
2021	568.7	219.3	349.4	103.3	0.34%
Total	5409.6	1561.4	3848.0	577.1	0.67%

Source: ACLI tabulations of NAIC data.

The last few years have seen a resurgence of STOLI litigation.¹⁵ By making this settlement, SLD is foregoing the option to take part of this wave of new STOLI litigation and instead provides payment certainty on the policies and thus value to the Settlement Class. Also new in this trend has been an increase in success rates where some carriers have been able to convince courts to permit the retention of some or all the premiums received.

For these reasons, it is reasonable for settlement purposes to use the aggregate market rate data to provide the settings for the model scenario that includes risk of a challenge to payment of death benefit:

- Probability of resisting claim = \$5,409.6 m / \$577.1 bn = 0.94%
- Pay-out amount for resisted claim = \$1,561.4m / \$5,409.6 m = 28.9%

1.8 Discount Rates

To define the value today of the Non-Monetary Benefits provided by the Settlement, we must present value the future cash flows with a certain discount rate.

The owners of the portfolio are likely to fall into two disparate groups.

- Individuals who are currently receiving low rates of interest on their bank deposits, often less than 1% and who rarely use discounting to assess the value of a project.
- Life settlement funds who target high returns on capital and who are typically earning 8-9% returns on capital.

¹⁵ See, e.g., *Pacific Life Ins. Co. v. Wells Fargo Bank, N.A.*, C.A. No. 8:21-cv-737 (PJM) (D. Md.), *Columbus Life Ins. Co. v. Wilmington Trust, N.A.*, C.A. No. 20-735-MN-JLH (D. Del); *Sun Life Assurance Co. of Canada v. Bank of Utah*, Case No. 21-CV-3973-LMM (N.D. Ga.).

A large amount of the policies in the portfolio displays characteristics of investor ownership, including low lapse rates and minimal account value funding.

We have used a 7% percent discount rate for this Report which represents a blended average of the low rates of return expected by individuals and the higher rates being earned by life settlement funds. 7% percent is closer to the life settlement fund point of view, this reflects their majority ownership.

1.9 Reinsurance

Reinsurance is excluded from all the calculations in this Report. Although the availability of reinsurance may have an impact on SLD’s costs, reinsurance is not relevant to the value that policyholders would obtain from the Non-Monetary Benefits.

Section 2 - Results

2.1 COI Rate Freeze Valuation

As with the Validity Confirmation valuation we assumed a starting balance of death benefits given the in-force data as of December 31, 2022, and rolled this to March 1, 2023 using SLD’s base case mortality and lapse rate assumption described in section 1.1 and 1.2.

The assumed in-force balance was then projected forward for 60 months using the scenarios described earlier, including lapse, premium payment, and mortality assumptions. The projections were for account balance and death benefits of the policies. The present value of the difference between net death benefit payments¹⁶ and COI charges was calculated:

Scenario \$million	PV COI Charges	PV Net Death Benefit	Difference	Benefit	Scenario Weight
Scenario 4 - Worsen Slightly	\$78.96m	\$112.20m	-\$33.24m	\$9.41m	23.9%
Scenario 5 – Worsen Significantly	\$74.50m	\$119.89m	-\$45.39m	\$21.56m	11.8%
Scenario 1,2 & 3 - No COI rate adjustment	\$82.32m	\$106.15m	-\$23.83m	Nil	64.2%

The COI Rate Freeze Value was calculated as

(Worsen Slightly Scenario Benefit x Scenario Weight) + (Worsen Significantly Scenario Benefit x Scenario Weight)

¹⁶ Net means difference between death benefit and account value.

The benefit to the Settlement Class is the difference between (a) the projected COI charges to the Class under those probability-adjusted scenarios and (b) the projected charges given the COI Rate Freeze, pursuant to which SLD cannot exceed current COI rate scales even if mortality expectations deteriorate. The results are as follows:

- Worsen Slightly Scenario Benefit = $-\$23,831,450 - -\$33,244,104 = \$9,412,653$
- Worsen Significantly Scenario Benefit = $-\$23,831,450 - -\$45,393,193 = \$21,561,743$
- Total weighted benefit = $\$9,412,653 \times 23.9\% + \$21,561,743 \times 11.8\% = \underline{\underline{\$4,806,861}}$

We consider this valuation to be conservative. As noted above, we have analysed only mortality as a basis for a potential COI increase. However, insurers have used many different anticipated experience factors as justifications for COI increases, including lapses, taxes, and reinsurance. Indeed, our understanding reinsurance recaptures were one of, if not the, primary justification for the COI increase that SLD imposed in 2015. While we do not opine on whether SLD is legally permitted to increase COI rates as a result of reinsurance recaptures, or on any other basis besides mortality, the COI Rate Freeze protects the Class from any possible justification for a COI increase, and thus provides even greater benefits than calculated above.

2.2 Validity Confirmation Valuation

In providing the Validity Confirmation, SLD is foregoing the ability to challenge and resist death benefit claims in the future for Settlement Class. To determine the value of the Validity Confirmation, we performed a probability weighted net present value calculation using the assumptions set forth above. We utilized the data provided to project for the Settlement Class policies death benefits, and account balances for the period from March 31, 2023, to maturity. The projection includes the future probability of lapsing a policy, starting at March 31, 2023, using the lapse rate assumption. We assumed a starting balance of death benefits given the in-force data as of December 31, 2022 and rolled this to March 31, 2023 using SLD’s base case mortality and the lapse rate assumptions described in sections 1.1 and 1.2.

We then applied SLD’s base case mortality assumption table and future mortality improvements to generate forward Qx, i.e., mortality rates, for each Settlement Class policy and built a set of future survival probabilities starting at March 31, 2023. The future death benefits of the policies were projected using the probability of lapse and death for each month.

For the without Validity Confirmation scenario, the death benefits were reduced for a probability of being contested of 0.94 % and a pay-out ratio of 28.9 %.

Estimates of legal expenses incurred in resisting policies were not considered.

The results of each life insurance policy in the Settlement Class were then aggregated and discounted to reach our estimated value of the Validity Confirmation:

PV of future death benefits without Validity Confirmation	\$139,014,703
PV of future death benefits with Validity Confirmation	\$139,947,899
Value of Validity Confirmation	\$933,196

Section 3 – Impact of Opt Outs

The deadline to opt out has now passed, and we understand that no policy holders have elected this option. Accordingly, the Report assumes zero opt outs.

Conclusion

Using the methodology and assumptions set forth above as well as our own expertise in the subject matter, we calculated the values of the COI Rate Freeze and the Validity Confirmation. A summary of our findings are set forth in the table below.

Commitment	Value \$
COI Rate Freeze	\$4,806,861
Validity Confirmation	\$933,196
Total	\$5,740,057

We have performed a qualitative review of these results and believe that they are a reasonable calculation of the value of the Non-Monetary Benefits.

Demeter Capital

June 16, 2023

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action 1:18-CV-01897-DDD-SKC

PHT Holding I LLC,
on behalf of itself and all others similarly
situated,

Plaintiff,

v.

SECURITY LIFE OF DENVER INSURANCE
COMPANY,

Defendant.

[PROPOSED] ORDER AWARDING FEES AND EXPENSES

WHEREAS, Class Plaintiff PHT Holding I LLC, on behalf of itself and on behalf of the Class, entered into a settlement with Defendant Security Life of Denver Insurance Company;

WHEREAS, on April 18, 2023, the Court entered its Order granting preliminary approval of the proposed settlement (“Preliminary Approval Order”) (Dkt. 225). Among other things, the Preliminary Approval Order authorized Class Plaintiff to disseminate notice of the settlement, the fairness hearing, and related matters to the Class;

WHEREAS, notice was provided to the Class pursuant to the Preliminary Approval Order, and the Court held a fairness hearing on September 13, 2023, at 2:30pm;

WHEREAS, Class Counsel filed a fee application, seeking counsel fees and expenses;

WHEREAS, this application is uncontested by Defendant;

Having considered Class Counsel’s Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses, supporting declarations, oral argument presented at the fairness hearing, and the complete records and files in this matter,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The capitalized terms used herein shall have the meanings set forth in the Settlement Agreement, which was filed at Dkt. 224-3.

2. Class Counsel of Susman Godfrey shall receive attorneys' fees equal to \$10,000,000, plus a *pro rata* share of the interest earned on the Settlement Fund at the same rate and for the same period as earned by the Settlement Fund, to be paid out of the Settlement Fund created by the Settlement.

3. Class Counsel shall be reimbursed \$1,151,527.29 in costs and expenses reasonably incurred in the presentation and settlement of this litigation, to be paid out of the Settlement Fund created by the Settlement.

4. The Settlement Administration Expenses through May 31, 2023 are \$40,832.99. Under the terms of the Settlement Agreement, those costs are payable out of the Settlement Fund. Any additional Settlement Administration Expenses may be paid out of the Settlement Fund as they become due.

5. The Court shall entertain any supplemental application for reimbursement of future expenses incurred by Class Counsel on behalf of the Class.

6. This Order shall become effective immediately.

ENTERED this ____ day of _____ 2023.

Daniel D. Domenico
UNITED STATES DISTRICT JUDGE