IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GENWORTH FINANCIAL, INC., GENWORTH LIFE INSURANCE COMPANY, and GENWORTH LIFE INSURANCE COMPANY OF NEW YORK,	)	
Plaintiffs,	)	
v.	)	C.A. No.: N22C-05-057 EMD CCLD
AIG SPECIALTY INSURANCE COMPANY, AXIS INSURANCE COMPANY, U.S. SPECIALTY INSURANCE COMPANY, and ACE AMERICAN INSURANCE COMPANY,	)	
Defendants.	)	

Submitted: December 4, 2024
Decided: February 21, 2025
Redacted: March 4, 2025[1]

Upon Consideration of Plaintiffs' Motion for Summary Judgment
GRANTED in part, DENIED in part.

Upon Consideration of Defendants' Motion for Summary Judgment
GRANTED in part, DENIED in part.

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[1] The Court received a request from Genworth to keep certain portions of this decision confidential pursuant to Superior Court Rule 5(g)(4). (D.I. No. 208). Genworth seeks confidential treatment only as to certain facts and not to any substantive portion of the decision. After review, the Court finds that Genworth's request complies with Superior Court Rule 5(g)(4) and is redacting portions of this decision as confidential.

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DAVIS, J.

I. INTRODUCTION

This is an insurance coverage dispute assigned to the Complex Commercial Litigation Division of this Court. Plaintiffs Genworth Financial, Inc., Genworth Life Insurance Company, and Genworth Life Insurance Company of New York (collectively "Genworth") seek coverage from Defendants AIG Specialty Insurance Company ("AIG"), AXIS Insurance Company ("AXIS"), U.S. Specialty Insurance Company ("U.S. Specialty") and ACE American Insurance Company ("ACE")[2] (collectively "Insurers") for three settlement (the "Settlements") that resolved three separate class actions related to Genworth's long term care insurance policies (collectively, "LTC Policies").[3]

The Court is familiar with the issues between the parties. Genworth moved for partial summary judgment (the "Genworth Motion") on October 3, 2022.[4] On December 1, 2022,

[2] The other named Defendants have settled with Genworth and "were or soon will be dismissed from this action." Plaintiffs' Opening Brief in Support of Their Motion for Summary Judgment (hereafter "PMSJ") at 1 n.1 (D.I. 177).
[3] *See generally* Amended Complaint (D.I. 62).
[4] D.I. No. 63.

Insurers filed their own motion for summary judgment (the "Insurers Motion").[5] The Court held a hearing on these motions on June 22, 2023.[6] The Court issued a decision on September 21, 2023 (the "Initial Decision").[7] In that decision, the Court granted, in part, and denied, in part, the Genworth Motion and denied the Insurers Motion.[8]

After the Initial Decision, the parties engaged in supplemental discovery regarding whether the Settlements fall within the Premiums Exclusion in Genworth's insurance policies.[9] The parties then filed a second set of cross motions for summary judgment (the "Motions") arguing supplemental discovery supported their position regarding whether the Settlements constitute a return of policyholder premiums.[10] For the reasons set forth below, Genworth's Motion for Summary Judgment is **GRANTED** in part, **DENIED** in part, and Insurers' Motion for Summary Judgment is **GRANTED** in part, **DENIED** in part.

II. BACKGROUND

The Court incorporates the facts as set out in the Initial Decision.[11] The facts set out below are those most relevant to resolving the Motions and those additional facts educed since the Initial Decision.

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[5] D.I. No. 67.
[6] D.I. No. 96.
[7] *Genworth Financial, Inc. v. AIG Specialty Insurance Company*, 2023 WL 6160426 (Del. Super. Sept. 21, 2023).
[8] *Id*.
[9] *See id.* at *13-15 ("the Court finds there are genuine issues of material fact as to whether portions of the settlement payments made to the Underlying Action class members consist of premiums or return premiums.").
[10] *See generally* PMSJ; Defendants' Opening Brief in Support of Their Motion for Summary Judgment (hereafter "DMSJ") (D.I. 184).
[11] *Genworth Financial,* 2023 WL 6160426, at *1-8. Capitalized terms not defined herein shall have the meaning ascribed to the term in the Initial Decision.

A. Genworth's Insurance Business and the Underlying Litigation

Genworth is an insurance company that sells a variety of retirement products, including LTC Policies.[12] LTC Policies cover individuals unable to perform basic daily functions.[13] LTC policyholders often buy coverage years before it is needed.[14] Genworth has a restricted ability to raise premiums due to the LTC Policies' long-term nature.[15] Premiums can only be raised with the approval of state insurance regulators.[16] Once regulatory approval is secured, Genworth presents policyholders with three options: (i) pay the increased premium rate for full coverage; (ii) pay the current premium rate for a reduced amount of coverage; or (iii) enter "Non-Forfeiture Status" ("NFS") and cease paying premiums for a fixed amount of coverage.[17]

The three underlying class actions (the "*Skochin* Action," the "*Halcom* Action," and the "*Haney* Action") (collectively the "Actions"), challenged Genworth's previous increases of LTC Policy premiums.[18] The Actions alleged that Genworth, pursuant to a companywide plan to cover revenue shortfalls, inadequately disclosed material information regarding Genworth's intent to seek additional premium increases in the following years.[19] The Actions contended that this inadequate disclosure prevented the plaintiffs from "make[ing] informed decisions" regarding whether to renew their policies.[20] The Actions maintained that the plaintiffs "ultimately made policy renewal elections they never would have made had [Genworth]

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[12] *Id.* at *1.
[13] *Id.*
[14] *Id.*
[15] PMSJ, Ex. 43 at 29:21-31:25.
[16] *Id.*
[17] *Id.* at 168:22-169:14; PMSJ Exs. 24 at 12:10-21; Ex. 51; Ex. 53.
[18] *Genworth Financial*, 2023 WL 6160426, at *4-6; *see* PMSJ Ex. 7 (hereafter "Skochin Compl."); Ex. 21 (hereafter "Halcom Compl."); Ex. 28 (hereafter "Haney Compl.").
[19] *See, e.g.*, Skochin Compl. ¶¶ 1, 22-25, 28-31, 95-96, 124-27, 132-44, 149-74, 182-83, 197-200, 220-21.
[20] *Id.* ¶1; Halcom Compl. ¶ 3; Haney Compl. ¶ 3.

adequately disclosed," its plan to increase rates.[21] Accordingly, the Actions argued the plaintiffs would "not have paid any of the premium increases," if Genworth provided full information.[22]

The Actions each asserted a claim of fraudulent inducement by omission,[23] and sought both "recission of their policy renewals," and a "return of premiums paid for each year a renewal of the policy was rescinded."[24] During discovery, the Actions' plaintiffs stylized their requested relief as a "refund of premiums."[25] That being said, the Actions did not challenge the premium hikes or Genworth's right to increase premiums.[26] In the *Skochin* Action, Genworth moved to dismiss pursuant to the "filed-rate doctrine."[27] The *Skochin* Court ultimately rejected that argument, holding that "asking for a refund" does not "necessarily mean[] that the filed-rate doctrine applies."[28]

The Settlements resolved the Actions. Pursuant to the Settlements, Genworth made additional disclosures through a "Special Election Letter" and offered class members different "Special Election Options," to change their LTC Policy status and receive damages.[29] Under the Special Election Options, class members were eligible for different damage payments based on

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[21] *Id.*
[22] *E.g.*, Skochin Compl. ¶ 160.
[23] Skochin Compl. ¶¶ 193-224; Halcom Compl. ¶¶ 219-35; Haney Compl. ¶¶ 186-203.
[24] Skochin Compl. ¶ 212; Halcom Compl. ¶ 234; Haney Compl. ¶ 202.
[25] DMSJ, Ex. M at 6.
[26] Skochin Compl. ¶ 1; Halcom Compl. ¶ 3; Haney Compl. ¶ 3.
[27] DMSJ, Ex. Q at 1-2, 10-16. The "filed rate doctrine . . . forbids a regulated entity from charging rates other than those filed with the regulatory agency." *Brown v. United Water Delaware Inc.*, 3 A.3d 253, 255 (Del. 2010). Genworth invoked the filed rate doctrine in the *Skochin* Action, arguing that because the premiums it charged for its LTC Policies were approved by regulators, they could not have been excessive. DMSJ, Ex. Q at 10-16 ("there can be no economic injury to a consumer for having paid the filed rates, and hence, no claim for monetary damages, even where fraudulent conduct is alleged." citing *Hill v. BellSouth Telecomms., Inc.*, 364 F.3d 1308, 1317 (11th Cir. 2004); *Marcus v. AT&T Corp.*, 138 F.3d 46, 61–62 (2d Cir. 1998)). Insurers now argue that Genworth's filed rate doctrine argument implicitly conceded that the Settlements were designed to return LTC policyholders' premiums. DMSJ at 15-18. Not so. As discussed below, the Settlements' text, not the Actions' plaintiffs' allegations, control what the Settlements represent. *Infra* IV.A.1. Conversely, the filed rate doctrine considers the plaintiff's "cause of action." *Marcus*, 138 F.3d at 59 ("the doctrine is applied strictly to prevent a plaintiff from bringing a cause of action even in the face of apparent inequities whenever either the nondiscrimination strand or the nonjusticiability strand underlying the doctrine is implicated by *the cause of action the plaintiff seeks to pursue*." (emphasis added)).
[28] DMSJ, Ex. S at 19.
[29] DMSJ, Ex. T ¶ 43; *see* DMSJ, Ex. U; Ex. V; Ex. W.

their coverage status.[30] While payments varied, NFS policyholders – those that stopped paying premiums before the Actions were filed – received lower, lump-sum, payouts because they had "weaker" claims.[31] The damages paid by Action and class type were calculated as follows[32]:

Special Election Option	***Skochin***	***Halcom***	***Haney***
NFS Option	$1,000	$2,500	$1,250
Paid-Up Benefits Option ("PBO")	Premiums paid 1/1/2016 – 12/31/2019	Premiums paid 1/1/2017 – 12/31/2020 OR 4X last annual premium	$10,000
Reduced Benefits Option ("RBO")	4X the difference between the current and reduced premiums	4X the difference between the current and reduced premiums OR 4X the difference between the actual and reduced 1/1/2022 premiums	$6,000, $3,000 or $1,200 depending on RBO selected

As part of the Settlements, Genworth also agreed to pay class counsels' fees and expenses, without reducing the benefits to any Settlement class member."[33]

During court approval hearings, the parties referred to the Settlements' as including previously paid "premiums."[34] However, the parties and the courts also referred to the Settlements' as "cash damages" or "damage payments."[35] Indeed, pursuant to Genworth's unopposed request, the *Skochin* court amended its earlier description of certain Settlement payments as a "return of premiums."[36] Regarding the attorneys' fees portion, the courts stated that although the Settlements created "one fund for class members and one for attorneys' fees,

[30] *Id.*
[31] DMSJ, Ex. III at 34; Ex. MMM at 64.
[32] *See* PMSJ Addendum 1; Addendum 2; Addendum 3.
[33] PMSJ, Ex. 10 ¶ 52; Ex. 26 ¶ 60; Ex. 33 ¶ 75.
[34] DMSJ, Ex. X at 23:10-13; Ex. Y at 176:13-177:3; Ex. Z at 131: 8-18.
[35] PMSJ Ex. 9 at 1; Ex. 14 at 2, 7, 16, 18-19; Ex. 20 at 4-7; Ex. 29 at 1-2, 12-14, 23-25.
[36] PMSJ, Exs. 18-20.

the two pools can nevertheless be treated as one 'constructive' common fund."[37] Despite the constructive common fund language, the courts noted attorneys' fees were "independent of the benefits being provided to the class," and did "not subtract from the amount that Genworth will disperse to plaintiffs."[38]

Genworth submitted a claim to Insurers for coverage after the courts approved the Settlements.[39]

B. Genworth's 2019 Professional Liability Insurance Policy

Genworth submitted the Settlements for coverage under Genworth's 2019 primary and excess professional liability insurance tower (the "Policies").[40] AIG wrote the primary policy, and all other Insurers adopted the same operative language.[41] Virginia law governs the Policies.[42] The Policies state Genworth is responsible for covering the first $25 million of any reimbursable loss.[43] After that retention is exhausted, the Insurers provide coverage in layers up to their respective policy limits as detailed below:[44]

Insurer	Policy Number	Layer	Liability Limit
Retention	N/A	N/A	$25 million
AIG	01-335-62-59	Primary	$10 million
AXIS	MNN712161/01/2018	First Excess	$10 million xs $10 million
U.S. Specialty	24-MGU-18-A43425	Second Excess	$15 million xs $20 million
ACE	DOX G24582322 009	Fourth Excess	$10 million xs $45 million

[37] DMSJ Ex. AA at 16; Ex. BB at 19-20; Ex. CC at 17.
[38] PMSJ, Ex. 20; Ex. 27.
[39] *See* PMSJ, Ex. 55.
[40] *Genworth Financial*, 2023 WL 6160426, at *2.
[41] *See* PMSJ, Exs. 1, 4-6.
[42] PMSJ, Ex. 1 (hereafter "Primary Policy") at End't 8.
[43] PMSJ, Affidavit of Michelle Migdon in Support of Plaintiff's Opening Brief in Support of Their Motion for Summary Judgment (hereafter "Migdon Aff.") ¶¶ 3-4, 11-12.
[44] Migdon Aff. ¶¶ 3-4.

Several provisions of the Policies are relevant here. The Policies' Insuring Clause provides that:

> Underwriters shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made by: 1) a policyholder . . . but solely with respect to **Defense Costs**, against the **Insureds** during the **Policy Period** or an applicable **Discovery Period** for any **Wrongful Acts** by the **Insureds** or by a person or entity for whom the **Insureds** are legally responsible in rendering or failing to render **Professional Services**, if such **Wrongful Acts** take place prior to the end of the **Policy Period**.[45]

"**Claim**" is defined as "a written demand for monetary or non-monetary damages or injunctive relief" or "a civil proceeding commenced by the service of a complaint or similar pleading."[46]

"**Loss**" is defined as:

> [T]he amount which the **Insureds** become legally obligated to pay on account of each **Claim** and for all **Claims** in the **Policy Period** . . . made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs**.[47]

"**Defense Costs**" is defined as "reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses . . . incurred by the **Insureds** in defending or investigating **Claims**[.]"[48]

"**Professional Services**" is defined as:

> [S]ervices, including but not limited to investment advisory services and investment management services, performed by or on behalf of the **Company** for: 1) a policyholder . . . The **Professional Services** must be performed in connection with the sales and marketing of insurance and investment products and/or a written contract or policy with such or to be issued to such policyholder . . . A written contract shall include an insurance **Policy** issued by the **Company**.[49]

[45] Primary Policy at 17.
[46] *Id.* 18.
[47] *Id.* at 19.
[48] *Id.* at 2.
[49] *Id.* at 19.

"**Wrongful Act**" is defined as "any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted . . . by the Company or by any person or organization for whom the Insureds are legally responsible."[50]

The Primary Policy also provides that:

> all **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against them, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.[51]

"**Interrelated Wrongful Acts**" is defined as "all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes."[52]

The Policies exclude certain types of claims from coverage.[53] Relevant here is the "Premiums Exclusion," which states Insurers are not liable for any portion of a "**Loss**" that "constitutes: . . . (iii) premiums, return premiums or commissions; but this exclusion shall not apply to **Defense Costs**."[54]

C. Genworth's Insurance Claim for the Settlements and Procedural History

Genworth first notified Insurers of the *Skochin* Action on January 25, 2019.[55] In September 2019, AIG responded and claimed that three policy exclusions – the Underwriting Exclusion; the Claim Reserves Exclusion; and the Premiums Exclusion – barred coverage.[56] The excess Insurers denied coverage for the same reasons.[57] Genworth provided Insurers notice of

[50] *Id.* at 20.
[51] *Id.* at 5.
[52] *Id.* at 3.
[53] *Id.* at 20-26.
[54] *Id.* at 25.
[55] *Genworth Financial*, 2023 WL 6160426, at *6.
[56] *Id.*
[57] *Id.*

the *Halcom* Action on January 19, 2021, and the *Haney* Action on November 5, 2021.[58] The parties do not dispute that the Actions are "similar," and therefore constitute a single claim which fell within the Policies' coverage period.[59] Accordingly, Insurers denied coverage for the *Halcom* and *Haney* Settlements, "assert[ing] the same three exclusions it asserted for non-coverage of the *Skochin* [Settlement]."[60]

After Insurers denied Genworth's claim, Genworth filed this suit seeking indemnification for the Settlements under the Policies.[61] Genworth seeks coverage up to Insurers' liability limits for $[REDACTED] in defense costs,[62] $60,490,488 paid to class counsel,[63] and $[REDACTED] paid to class members.[64] The breakdown of the total class-member payments by Action and Special Election Option is as follows:[65]

	***Skochin* Action**	***Halcom* Action**	***Haney* Action**	**Total**
NFS Option	$[REDACTED]	$[REDACTED]	$[REDACTED]	$[REDACTED]
RBO Option	$[REDACTED]	$[REDACTED]	$[REDACTED]	$[REDACTED]
PBO Option	$[REDACTED]	$[REDACTED]	$[REDACTED]	$[REDACTED]
Total	$[REDACTED]	$[REDACTED]	$[REDACTED]	$[REDACTED]

After Genworth amended its complaint,[66] the parties filed the Genworth Motion and the Insurers Motion.[67] As set out in the Initial Decision, the Court denied the Insurers Motion.[68] The Court partially granted the Genworth Motion, holding the Policies' Underwriting and Claims

[58] *Id.* at *7.
[59] DMSJ, Ex. C at 74:6-20; *Genworth Financial*, 2023 WL 6160426, at *2.
[60] *Genworth Financial*, 2023 WL 6160426, at *2.
[61] *See* Amended Complaint (D.I. 62).
[62] *Id.* ¶¶ 38, 61, 80, 94; *see* PMSJ, Exs. 36-37 (establishing Genworth's defense costs for the Actions).
[63] Amended Complaint ¶¶ 38, 56, 59, 61, 76; *see* Migdon Aff. ¶¶ 44-46 (establishing the amount of attorneys' fees paid by Genworth to class plaintiffs' counsel in the Actions pursuant to the Settlements).
[64] Amended Complaint ¶¶ 55, 61, 75, 93; *see* PMSJ, Exs. 40-41 (establishing the amount already paid by Genworth to class members under the Settlements).
[65] PMSJ, Exs. 40-41.
[66] *See* Amended Complaint (D.I. 62).
[67] *See* Plaintiffs' Motion for Partial Summary Judgment Dismissing Certain Insurer Coverage Defenses (D.I. 63); Defendants' Motion for Summary Judgment (D.I. 67).
[68] *Genworth Financial*, 2023 WL 6160426, at *1.

Reserves Exclusions did not bar coverage.[69] However, the Court denied the Genworth Motion regarding the Premiums Exclusion.[70] Interpreting the Policies under Virginia law, the Court held "[t]he language of the Premiums Exclusion is unambiguous – Genworth's loss is not covered by the Policies if the loss consists of premium payments being returned to the policyholders."[71] The Court also held "the language of the [Settlements] . . . dictates whether the 'Loss' constituted a return of premium payments to the class plaintiffs."[72]

The Court held there was a material issue of fact regarding whether the Settlements, or a portion thereof, returned premiums to class members.[73] The Court stated

> Genworth's arguments on the Premiums Exclusion are stronger. The provision seems to exclude the business situation where Genworth has to return premiums and then seeks indemnification. The Underlying Actions do not appear to seek the return of premiums.[74]

Yet, the Court also noted that

> settlement payment options seem to suggest that certain portions of the settlement amounts could have been calculated by adding up amounts equivalent to 100% of the Settlement Class member's paid-in premiums.[75]

Hence, the Court determined that it would be premature to grant summary judgment on the Premiums Exclusion.[76]

After conducting additional discovery, the parties filed the Motions.[77] Insurers ask the Court to grant summary judgment holding additional discovery revealed the Premiums Exclusion bars coverage for the Settlements.[78] Genworth asks the Court to grant summary judgment

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[69] *Id.* at *1, 9-13.
[70] *Id.* at *13-16.
[71] *Id.* at *15.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *See* PMSJ; DMSJ.
[78] *See* DMSJ at 1-3. DMSJ at 1-3.

holding the Premiums Exclusion does not apply to the Settlements, or at a minimum, that portions of the Settlements exceeding Insurers' liability limits are covered.[79] Briefing was completed on October 11, 2024,[80] and the Court held oral argument on December 4, 2024.[81]

III. STANDARD OF REVIEW

A. Summary Judgment

A motion for summary judgment will be granted when "after viewing the record in a light most favorable to a nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law."[82] The Court, in considering a motion for summary judgment, "examine[s] the record to determine whether genuine issues of material fact exist, 'but not to decide such issues.'"[83] The moving party bears the burden of proving his claim is supported by undisputed facts, if the motion is properly supported, the burden shifts to the non-moving party to demonstrate any material issues of fact.[84]

"These well-established standards and rules equally apply [to the extent] the parties have filed cross-motions for summary judgment."[85] "Where cross-motions for summary judgment are filed and neither party argues the existence of a genuine issue of material fact, 'the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.'"[86] But where cross-motions for summary judgment are filed

[79] PMSJ at 1-7.
[80] *See generally* Defendants' Reply Brief in Further support of Their Motion for Summary Judgment (hereafter "DMSJ Reply") (DI. 200); Plaintiffs' Reply Brief in Further Support of Their Motion for Summary Judgment (hereafter "PMSJ Reply") (D.I. 201).
[81] *See* Superior Court Proceeding Sheet for Cross Motions for Summary Judgment, heard on December 4, 2024 (D.I. 2005).
[82] *Celgene Corp. v. Humana Pharmacy, Inc*., 2023 WL 3944029, at *5 (Del. Super. May 31, 2023).
[83] *Genworth Financial,* 2023 WL 6160426, at *8.
[84] *Celgene Corp.*, 2023 WL 3944029, at *5.
[85] *Genworth Financial,* 2023 WL 6160426, at *8.
[86] *Id.*

and an issue of material fact exists, summary judgment is not appropriate.[87] To determine whether a genuine issue of material fact exists, the Court evaluates each motion independently.[88]

B. Virginia Insurance Contract Interpretation

The Policies provide that any dispute concerning the interpretation of the Policies is governed by Virginial law.[89] As such, the Court will utilize Virginia insurance contract law here. Virginia courts first apply the unambiguous language of insurance contracts in coverage disputes.[90] Any ambiguity must be "found on the face of the policy."[91] Language is ambiguous if it is susceptible to multiple meanings.[92] Ambiguous language "will be given an interpretation which grants coverage, rather than one which withholds it."[93] Insurance contracts are interpreted to ensure no term is rendered meaningless.[94]

Regarding an insurance exclusion specifically, the insurer has the burden to show "exclusionary language is clear and unambiguous."[95] Exclusionary language "will be construed most strongly against the insurer and the burden is on the insurer to prove that an exclusion applies."[96] Restated, where two interpretations of an exclusionary provision are "equally possible," the court adopts the one that provides coverage.[97]

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[87] *Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co.*, 2017 WL 2495417, at *5 (Del. Super. June 19, 2017), *aff'd sub nom.*, *Motors Liquidation Co. DIP Lenders Tr. v. Allstate Ins. Co.*, 191 A.3d 1109 (Del. 2018); *Comet Sys., Inc. S'holders' Agent v. MIVA, Inc.*, 980 A.2d 1024, 1029 (Del. Ch. 2008); *see also Anolick v. Holy Trinity Greek Orthodox Church, Inc.*, 787 A.2d 732, 738 (Del. Ch. 2001) ("[T]he presence of cross-motions 'does not act per se as a concession that there is an absence of factual issues.'" (quoting *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997))).
[88] *Motors Liquidation*, 2017 WL 2495417, at *5; see *Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 167 (Del. Ch. 2003).
[89] Primary Policy at End't 8.
[90] *Am. Reliance Ins. Co. v. Mitchell*, 385 S.E.2d 583, 547 (Va. 1989).
[91] *Id.*
[92] *Lincoln National Life Ins. Co. v. Commonwealth Container Corp.*, 327 S.E.2d 98, 101 (Va. 1985)).
[93] *Am. Reliance*, 385 S.E.2d at 547.
[94] *Heron v. Transp. Cas. Ins. Co.*, 650 S.E.2d 699, 702 (Va. 2007).
[95] *Am. Reliance*, 385 S.E.2d at 547.
[96] *Id.* (citing *Johnson v. Insurance Co. of North America*, 350 S.E.2d 616, 619 (Va. 1986)).
[97] *James River Ins. Co. v. Doswell Truck Stop, LLC*, 827 S.E.2d 374, 376 (Va. 2019).

IV. DISCUSSION

This case turns on the application of the Premiums Exclusion to the facts of the Settlement.[98] Insurers have the burden to show the Settlements "consisted of a return of premium payments to the class plaintiffs."[99] Genworth argues the Settlements fall outside the Premiums Exclusion.[100]

Genworth identifies three specific portions of the Settlements that it maintains do not constitute a return of premiums.[101] First, Genworth contends the costs it incurred defending the Actions do not fall within the Premiums Exclusion.[102] Insurers do not dispute that the Premiums Exclusion's plain text states it "does . . . not apply to defense costs."[103] Accordingly, Genworth's defense costs, totaling $[REDACTED], are not excluded and reduce the $25 million retention to $[REDACTED]. Second, Genworth argues its payments under the Settlements' NFS Option, which were calculated without reference to premiums paid, do not fall within the Premiums Exclusion.[104] Third, Genworth contends its payments to class counsel were not a return of premiums.[105] Insurers dispute these contentions, as well as Genworth's overarching argument that the entire Settlements fall outside the Premiums Exclusion.[106] The Court addresses each contention in turn.

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[98] *See* PMSJ at 1-7; DMSJ at 1-3.
[99] *Genworth Financial*, 2023 WL 6160426, at *15.
[100] PMSJ at 22-23, 30-35
[101] *Id.* at 23-29.
[102] *Id.* at 23.
[103] Primary Policy § III.A.(20)(iii); *see* Defendants' Brief in Opposition to Plaintiffs' Motion for Summary Judgment (hereafter "PMSJ Opp'n") at 11 n.4 (D.I. 195).
[104] *Id.* at 27-29.
[105] PMSJ at 23-27.
[106] PMSJ Opp'n at 11-36.

A. Genworth's Payments Under the RBO and PBO Settlement Options Returned Premiums, but Its Payments Under the NFS Options Did Not Return Premiums.

The parties invoke several arguments to support their position regarding whether Genworth's payments to class members under the Settlements were premiums or a return of premiums. Despite the nuance of these arguments, the Court recognizes that the Premiums Exclusion's language is unambiguous.[107] As the Court previously held, "Genworth's loss is not covered by the Policies if the loss consists of premium payments being returned to the policyholders."[108] Accordingly, if a Special Election Option was designed to compensate LTC policyholders for artificially inflated premiums due to Genworth's alleged non-disclosures, that is a return of premiums. Conversely, if a Special Election Option only compensated policyholders for Genworth's alleged misrepresentations, that is not a return of premiums. Based on that standard, the Court finds that the Settlements PBO and RBO payments returned premiums to policyholders, while the NFS payments did not.

1. Genworth's Payments to Class Members Under the NFS Option Were Not a Return of Premiums.

Genworth asks the Court to hold that its payments to class members under the NFS Options do not fall under the Premiums Exclusion. The NFS Option gave class members a flat payment of $1,000, $1,250, or $2,500, not damages "calculate[d] . . . based upon an amount of premiums the Class Members either paid or would not have paid if given adequate disclosures."[109] Genworth argues that because the NFS payments were calculated without reference to premiums paid, these payments cannot constitute a return of premiums.[110] Additionally, Genworth notes that the NFS payments were "not one of the examples of the

[107] *Genworth Financial*, 2023 WL 6160426, at *15.
[108] *Id.*
[109] PMSJ, Ex. 47 at 6; Ex. 43 at 118:11-23.
[110] PMSJ at 27-29.

Special Election Options this Court identified in its prior [opinion] as warranting discovery."[111] Moreover, Genworth highlights the fact that the *Skochin* court's statement that portions of the Settlements returned premiums, did not reference the NFS Option.[112] Accordingly, Genworth advocates that both the facts, and this Court's prior ruling, indicate that the Premiums Exclusion does not bar recovery of the NFS payments.

Insurers counter and argue the fact that the NFS "payments were flat amounts that do not appear to have been calculated based on premiums previously paid . . . does not mean that those settlements payments do not also constitute premiums or return premiums."[113] To support this, Insurers note that the NFS "class members suffered the same alleged harm as other class members . . . paying more in premiums," than they would have with full disclosures.[114] Accordingly, the NFS payment dispute is a disagreement about what controls the Settlements—the initial theory of liability or the negotiated result. Insurers rely on the complaints filed in the Actions, while Genworth invokes the Settlements' text.

In the Initial Decision, the Court held that "the language of the final settlement agreements of the Underlying Actions dictates whether the 'Loss' consisted of a return of premium payments to the class plaintiffs."[115] In so holding, the Court rejected Insurers' argument that the allegations in the Actions' complaints, not the Settlements' text, determines what the Settlements represent.[116] Insurers present no new argument as to why the Court should

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[111] *Id.* at 28.
[112] *Id.* at 28-29. The Court notes that the *Skochin* court later amended that statement such that it did not stylize any portion of the Settlements as a return of premiums. *See* PMSJ, Exs. 18-20.
[113] DMSJ at 28-30.
[114] *Id.* at 30-32. Insurers cite numerous documents indicating that all class members suffered the same harm – having paid higher premiums. *Id.* (citing Skochin Compl. ¶¶ 154-60; DMSJ, Ex. C at 123:18-124:10; Ex. L at 4; Ex. O at 720-21; Ex. Z at 80:15-81:17).
[115] *Genworth Financial*, 2023 WL 6160426, at *15.
[116] *See* Defendants' Combined Opening Brief in Support of Their Motion for Summary Judgment and Opposition to Plaintiff's Motion for Partial Summary Judgment at 36-39 (D.I. 67).

overrule its previous holding. While Virginia courts sometimes consider "the allegations in the [underlying] complaint" to determine whether a settlement is covered,[117] these courts do so in the context of exclusions that reference what the underlying suit alleged.[118] Here, the Premiums Exclusion's plain text states it bars coverage for payments that "*constituted* . . . premiums, return premiums."[119] The use of the word "constituted" suggests that what matters is the Settlements themselves, not what class plaintiffs sought to recover.[120] The Premium Exclusion does not discuss what the underlying suit "alleged" or what class members "sought," such that the Actions' complaints control the Settlements' characterization.[121] Therefore, even if the Court were writing on a blank slate, it would look to the Settlements' language to determine if the Premiums Exclusion applies.

Based on the Settlements' text, the NFS Option payments did not return premiums to class members. The NFS payments were flat awards, without reference to premiums paid.[122] Conversely, both the PBO and RBO payments were calculated based on premiums paid.[123] That the NFS payments did not incorporate premiums, while the PBO and RBO payments did, further supports the conclusion that the NFS payments were not a return of premiums.[124] Moreover, the

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[117] *West v. Harleysville Mutual Insurance Company*, 1998 WL 972255, at *3 (Va. Cir. June 24, 1998).
[118] *See id.* at *2-3 (evaluating the underlying complaint to determine if a settlement was barred by an exclusion for a "claim . . . arising out of or in connection with a business engaged in by an insured.").; *Towers Watson & Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 2024 WL 993871, *4 (E.D. Va. Mar/ 6, 2024) (considering the complaint to determine if a settlement was barred by an exclusion which stated "[i]n the event of a Claim alleging that . . . .").
[119] Primary Policy § III.A.(20)(iii) (emphasis added).
[120] *See, e.g.*, *Constitute*, MERRIAM-WEBSTER (2024) (defining "constitute" as to "make up, form, compose."); *see also Eberhardt v. Commonwealth*, 866 S.E. 38, 42 ("An undefined term . . . may be defined using its standard dictionary definition.").
[121] *See, e.g.*, *West*, 1998 WL 972255, at *2-3 (evaluating the underlying complaint to determine if a settlement was barred by an exclusion for a "claim . . . arising out of or in connection with a business engaged in by an insured.").
[122] PMSJ, Addendum 1 § II.2; Addendum 2 § III.1; Addendum 3 § III.1.
[123] PMSJ, Addendum 1 §§ I.A.1, I.B, III.A.1, III.B.1-2; Addendum 2 §§ I.A.1, I.B-C, II.1-2; Addendum 3 §§ I.A.1, I.B, II.1-2.
[124] *See generally City of Lewes v. Nepa*, 212 A.3d 270, 279, n.37 (holding that where a term is used in one portion of a writing, but omitted from another portion, that is a "meaningful variation" suggesting the drafted intended a different result).

NFS payments were not "credited against future premium payments nor did they result in an increase in benefits."[125] Thus, receiving an NFS payment did not affect a LTC policyholder's coverage. This suggests that the NFS payments were designed to compensate policyholders for Genworth's alleged non-disclosure, not reimburse them for artificially inflated premiums. Accordingly, the Court concludes the NFS payments did not return premiums to class members.

Insures point to "six types of evidence" to demonstrate the NFS payments constitute return of premiums;[126] however, this evidence does not overcome the Settlements' plain text. This evidence is extra-textual, not specific to the NFS payments, and relies on the since amended *Skochin* court's statement which indicated the *PBO* payments were a return of premiums.[127] Accordingly, the Premiums Exclusion does not bar the $[REDACTED] paid under the Settlements' NFS Options from the Policies' coverage.

Genworth's Motion for Summary Judgment regarding the NFS payments is **GRANTED**; Insurers' Motion for Summary Judgment on that issue is **DENIED**. Reimbursement for the NFS Option payments exhausts the Policies' remaining $[REDACTED]retention and Insurers' respective liability limits. Accordingly, regardless of the Court's ruling concerning how the Premium Exclusion applies to the rest of the Settlements, Insurers are liable to Genworth up to their policy limits. Nevertheless, the Court addresses the remaining arguments for the sake of completeness.

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[125] PMSJ at 29 (citing PMSJ, Ex. 10; PMSJ Addendum 1 § II.2; Addendum 2 § III.1; Addendum 3 § III.1).
[126] *See* DMSJ at 14-23 (arguing the "Underlying Complaints . . . *Skochin* Motion to Dismiss . . . Discovery . . . Approval Hearings . . . *Skochin* Approval Order . . . [and] Testimony of Underlying Plaintiffs' Counsel" demonstrate the Settlements returned premiums to plaintiffs).
[127] *Id.* Insurers' "evidence" relies on the allegations in the Actions and what the Actions' plaintiffs argued regarding their requested damages. *See id.* As discussed, what matters for determining what the Settlements represent is the Settlements' text, not what the class action plaintiffs initially sought. As such, Insurers' evidence does not alter the Court's analysis of the Settlements' plain text.

2. Genworth's Payments to Class Members Under the RBO and PBO Options Returned Premiums.

Genworth also asks the Court to enter summary judgment holding the RBO and PBO Special Election Options payments did not return premiums to class members. To support its NFS position, Genworth relies heavily on the fact that the NFS payments were calculated without reference to any premiums paid.[128] Despite this, Genworth's position that the RBO and PBO payments, which were determined using the premiums LTC policyholders paid,[129] did not return premiums suggests the method of calculation is not determinative.[130] Instead, Genworth maintains the RBO and PBO payments were "simply payment amounts negotiated by the parties."[131] Yet, Genworth provides no precedential or textual support for the distinction that the calculation method controls with regards to the NFS, but not the RBO or PBO, payments. Accordingly, the Court again relies on the Settlements' plain text, which calculated the RBO and PBO payments based on premiums that policyholders paid.[132]

The Settlements' text shows the RBO and PBO payments returned premiums to class members. For the *Skochin* and *Halcom* Settlements, the PBO payments were determined by calculating or estimating the total amount of premiums paid over the class period.[133] Thus, the PBO payments explicitly gave policyholders the premiums they paid during the relevant period. Genworth provides no conceptualization of these payments other than as a return of premiums.

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[128] *See* PMSJ at 27-29.
[129] The PBO and RBO payments in the *Skochin* and *Halcom* Actions were explicitly calculated with reference to the amount of premiums paid. PMSJ, Addendum 1 §§ I.A.1, I.B, III.A.1, III.B.1-2; Addendum 2 §§ I.A.1, I.B-C, II.1-2; Addendum 3 §§ I.A.1, I.B, II.1-2. In the *Haney* settlement, the PBO and RBO payments were a flat amount, but unlike the NFS payments, the amount of those payments was set using "data on [the] . . . average annual premium payments." PMSJ, Opp'n Ex. LLL at 8:10-24. A flat rate wase chosen, in Genworth's own words, solely "to simplify the Haney settlement." PMSJ at 13 n.6. Accordingly, that the *Haney* settlement's calculation methodology does not explicitly reference premiums paid, is not a meaningful distinction.
[130] *Id.* at 30-31.
[131] *Id.* at 30.
[132] PMSJ, Addendum 1 §§ I.A.1, I.B, III.A.1, III.B.1-2; Addendum 2 §§ I.A.1, I.B-C, II.1-2; Addendum 3 §§ I.A.1, I.B, II.1-2.
[133] PMSJ Addendum 1 § I.A.1; Addendum 2 § I.A.1.

Similarly, the RBO payments in the *Skochin* and *Halcom* Settlements were calculated by subtracting the premium rate paid before Genworth's alleged non-disclosure, from the current rate.[134] Thus, the RBO payments were designed to compensate policyholders for the amount they overpaid in inflated premiums due to Genworth's alleged non-disclosure. Again, because the RBO Option reimbursed LTC policyholders for premium overpayments, those damages constituted a return of premiums. While the RBO and PBO awards in the *Haney* Settlement were flat amounts, the parties set the payments using "data on [the] . . . average annual premium payments"[135] to "simplify the Haney settlement."[136] Thus, the fact that the *Haney* RBO and PBO payments were not explicitly calculated with reference to premiums paid, does not change the fact that they were designed to return premiums to policyholders.

That the RBO and PBO payments returned premiums to class members while the NFS payments did not, flows from the different status of the class members' LTC Policies when the Actions were filed. Members that received the NFS payments had stopped paying premiums without additional disclosures, while those that got the RBO or PBO payments paid the inflated premiums. Thus, the harm RBO and PBO status policyholders experienced was paying higher premiums. Conversely, the NFS status policyholders were harmed by the non-disclosure alone, not increased premium rates. Accordingly, that the Settlements were structured to return premiums to RBO and PBO, but not NFS, policyholders is logical.

Genworth advances several arguments regarding why the RBO and PBO payments did not constitute a return of premiums. First, Genworth notes the *Skochin* court amended its statement that the PBO payments returned premiums, as evidence that "these Cash Damages

[134] PMSJ Addendum 1 § I.B.1-2; Addendum 2 § I.B.1-2.
[135] PMSJ, Opp'n Ex. LLL at 8:10-24.
[136] PMSJ at 13 n.6.

payments were not a refund of premiums."[137] That change, however, was made at Genworth's request, after it had received AIG's coverage denial based on the Premiums Exclusion.[138] Genworth admits the change's purpose was to provide class members with a tax benefit.[139] Thus, the *Skochin* court's amendment does not establish the PBO payments were not a return of premiums. Second, Genworth maintains the PBO and RBO payments cannot return premiums, because the Settlements did not rescind class members' LTC Policies.[140] In support, Genworth cites to testimony of its own counsel in the Actions; however, this is "Genworth's position" and not a conclusion mandated by caselaw or the Settlements' text.[141] Finally, Genworth argues the fact that the various PBO and RBO payouts were calculated in different ways suggests they are not a return of premiums.[142] There are several other reasons why the payments would be different including the fact they resolved different class actions, challenging different policy periods, at different stages in the litigation.[143] Genworth addresses none of these alternative explanations in making its argument. Accordingly, the Court again relies on the Settlements' plain text and concludes the PBO and RBO payments returned premiums to class members. As such, those payments fall within the Premiums Exclusion and are not recoverable under the Policies.

Genworth's Motion for Summary Judgment on the PBO and RBO payments is **DENIED**; Insurers' Motion for Summary Judgment regarding those payments is **GRANTED**.

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[137] *Id.* at 30-31 (citing PMJS, Exs. 19-20).
[138] *See* DMSJ, Ex. HHH (Genworth's email to the *Skochin* court requesting "clarification that the Settlement relief includes . . . "Cash Damages," not the 'refund of premiums," sent November 11, 2020); PMSJ, Ex. 56 (AIG's denial of coverage, based in part on the Premiums Exclusion sent September 12, 2019).
[139] *See* PMSJ, Ex. Ex. 18; Ex. 43 at 152:20–153:12; Ex. 48; Ex. 52; Ex. 54.
[140] Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Judgment (hereafter "DMSJ Opp'n) at 21-22 (D.I. 196).
[141] PMSJ, Ex. 43 at 110:21-111:23.
[142] DMSJ Opp'n at 22.
[143] *See* Skochin Compl.; Halcom Compl.; Haney Compl; PMSJ Addendum 1; Addendum 2; Addendum 3.

B. There is a Genuine Issue of Material Fact Regarding What Portion of Genworth's Payment of Class Counsels' Fees and Expenses Falls Within the Premiums Exception.

Separate from Genworth's arguments concerning the Settlements' awards to class members, Genworth contends the $60,490,488 it paid to class counsel "does not constitute premiums or returned premiums."[144] Genworth notes the attorneys' fees were paid directly to counsel, who never held LTC Policies.[145] Therefore, a reasonable policyholder would not expect such payments to be "premiums" or to "return premiums."[146] Insurers do not dispute this. Rather, Insurers contend the payments to class members and counsel must be evaluated together because the Settlements were each a "constructive common fund for the benefit of class members."[147]

At the threshold, the Court notes that just because some portion of a settlement is "uncovered [] does not mean that the insured cannot seek indemnification for a portion of the settlement that is [] covered."[148] Thus, to the extend Insurers seek a blanket rule that the attorneys' fees are necessarily excluded because the RBO and PBO payments returned premiums, the Court declines to adopt such a standard.

While the parties' briefing contains extensive discussions of the common fund doctrine,[149] ultimately whether Genworth's payments to class counsel are covered by the Policies does not turn on the resolution of that issue. Under both the traditional and constructive common fund doctrines, payment to class counsel are only excluded if the underlying award to class

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[144] PMSJ at 23.
[145] *Id.*
[146] *Id.* at 3.
[147] DMSJ at 32-36.
[148] *UnitedHealth Group Inc. v. Hiscox Dedicated Corp. Member Ltd.*, 2010 WL 550991, at *11 (D. Minn. Feb. 9, 2010).
[149] *See* DMSJ at 32-36; DMSJ Opp'n at 14-19; DMSJ Reply at 3-10.

members fall within a policy exclusion.[150] As discussed above, Genworth's payments to class members under the NFS Special Election Option are not excluded by the Policies' Premium Exclusion.[151] Thus, even if Insurers' common fund argument is correct,[152] the common fund doctrine does not exclude Genworth's entire class counsel payment from coverage. The parties, however, only brief the class counsel fees portion of the Settlements as an all-or-nothing issue. Accordingly, there is a genuine issue of fact regarding what portion of Genworth's class counsel

[150] *See PNC Fin. Servs. Grp., Inc. v. Houston Cas. Co.*, 647 F. App'x 112, 123 (3d Cir. 2016). *But see UnitedHealth*, 2010 WL 550991, at *11 (D. Minn. Feb. 9, 2010).

[151] *Supra* IV.A.1.

[152] The Court notes that it is not clear that Insurers common fund argument is correct. It is undisputed that the Settlements were not a traditional common fund. Indeed, Insurers could not argue otherwise as the Settlements lack all the indicators of a traditional common fund. The hallmarks of a traditional common fund are that "the attorney's fees are paid by the client," and "each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf." *In re Home Depot Inc.*, 931 F.3d 1065, 1085 (11th Cir. 2019); *Boeing*, 444 U.S. at 479. Here, "the attorneys' fee component was to be paid separately from, and in addition to, the payments to the Class." PMSJ at 24-26; *see* PMSJ, Ex. 20; Ex. 27; Ex. 30 (stating the *Haney* Settlement "is not a capped, common-fund settlement."); Ex. 35 (attorneys' fees were paid "in addition to (not taken from) the cash damages paid to the Class."); Ex. 43 at 154:16-155:7. Additionally, the amount paid to class members was not a fixed sum deposited to an account from with each class member claimed their damages. *Id.* Rather, Genworth agreed to pay each class member individually based on the formulas outlined in the Settlements. *See* PMSJ, Exs. 40-41. The constructive common fund doctrine allows courts to consider separate payments to counsel and class members as a common fund to prevent the "parties [from] circumvent[ing] . . . what is in economic reality a common fund situation." *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1072 (S.D. Tex. 2012). That both the class members' and class counsels' payments "c[a]me[] from the same source," does not mandate application of the constructive common fund doctrine. *See Home Depot*, 931 F.3d at 1085-86 (declining to apply the constructive common fund doctrine even though the defendant paid both attorneys' fees and class member damages). *But see* PMSJ Opp'n at 24 (quoting *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996). Rather, courts apply the constructive common fund doctrine where the parties: (1) "negotiate the attorney's fees simultaneously with the settlement fund"; and (2) "agree to a cap" on damages; and determine attorneys' fees as a percentage of the total recovery. *See Home Depot*, 931 F.3d at 1080-81; *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 729 (Del. Ch. 2023). Here, those factors point in opposite directions. While the parties negotiated both the class recovery and attorneys' fees at the same time, the evidence suggests they were separate negotiations. *See* DMSJ, Ex. C. at 160:8-162:18; Ex. OOO at 171-72, 180-83; Ex. PPP at 333, 341-45; Ex. QQQ at 321, 330-33 (suggesting the attorneys' fees and class recovery awards were negotiated concurrently); *But see* PMSJ, Ex. 27 ("it was only upon reaching an agreement on the substantive terms of a settlement and Class member relief that further and reasonable consideration was given to" the amount to be paid to class counsel); Ex. 43 at 154:16-155:7 (suggesting the attorneys' fees portion of the settlement was negotiated after the parties had agreed to the class award). Additionally, while the parties capped attorneys' fees, the class members' recovery was uncapped. *See* PMSJ, Ex. 30 (joint filing by the parties stating "the Settlement itself is not a capped, common-fund settlement); DMSJ, Ex. T ¶ 52(b) (caping recoverable attorneys' fees under the Settlements); Ex. V, ¶ 60(b) (same); Ex. W, ¶ 75(a) (same). Conversely, the class counsel fees were calculated as a percentage of the total class recovery, suggesting a constructive common fund. DMSJ, Ex. T ¶ 52(b); Ex. V, ¶ 60(b); Ex. W, ¶ 75(a). Accordingly, the factors courts consider in evaluating whether to exclude attorneys' fees under the constructive common fund doctrine are inconclusive. Thus, even if the Court were to consider the merits of Insurers' constructive common fund argument, summary judgment would still be inappropriate.

award is attributable to the NFS payments. More briefing regarding the proper allocation of class counsel fees and expenses between the NFS and the PBO/RBO Options is required before the Court can address that issue.[153] Thus, Plaintiffs' and Defendants' Motions for Summary Judgment are **DENIED** regarding the class counsel fee and expenses portion of the Settlements.

V. CONCLUSION

For the foregoing reasons, Plaintiffs Motion for Summary Judgment is **GRANTED** in part, **DENIED** in part. Similarly, Defendants' Motion for Summary Judgment is **GRANTED** in part, **DENIED** in part.

IT IS SO ORDERED.

February 21, 2025
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, Judge

cc: File&ServeXpress

[153] While it seems logical to allocate class counsel fees to each Special Election Opinion based on the proportion of the total Settlements each option constituted, the Court will allow the parties to submit briefing on that issue.