

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PHT HOLDING I LLC, and JAMES KENNEY,)
on behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

PHL VARIABLE INSURANCE COMPANY,)

Defendant.)

Case No. 1:18-cv-03444 (MKV)

**DECLARATION OF JAMES ROUSE IN SUPPORT OF
CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF
LITIGATION EXPENSES, AND SERVICE AWARD**

[Redacted Version of Document Sought to Be Filed under Seal]

I, James Rouse, declare as follows:

1. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Award in connection with the class action settlement between Plaintiffs, on behalf of themselves and the class, and Defendant PHL Variable Insurance Company ("PHL"). 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 Co-Founder of Demeter Investments Limited and Demeter Capital Limited ("Demeter Investments"). Demeter Investments is a specialist in the longevity market, including U.S. universal and variable universal life insurance policies. Demeter Investments advises clients on how to evaluate universal life insurance policies, including the type of universal life insurance at issue in this case. Demeter Investments 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 Investments has traded in over \$20 billion longevity risk swaps, notes, and securitizations since 2003. At Demeter Investments, I am responsible for the risk models, including mortality risk modelling, proprietary trading models, and underwriting of mortality-based assets.

3. Demeter Capital Limited is licensed by the Financial Conduct Authority. Demeter Capital Limited has certified me for a Client Dealing role (FCA CF). I am authorized to provide investment advice to clients regarding their United States universal life insurance policies. I have worked as an advisor to global insurance companies and reviewed and familiarized myself with thousands of universal life insurance policies, underlying illustrations, and annual statements.

4. I have 25 years of experience in the life insurance industry. Prior to Demeter Investments, I was a Managing Director at Fortress Investment Group where I was primarily responsible for the analysis and pricing of life settlement portfolios. Prior to Fortress, I spent 11 years at Credit Suisse most recently as a Director within the Longevity Markets Group where I was responsible for the development of structured products and longevity derivatives linked to life settlements and pension schemes. Prior to the Longevity Markets Group, I was in the Risk Management Division of Credit Suisse. Prior to Credit Suisse, I 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. I was a registered broker of variable life insurance policies in New York (FINRA CRD#: 5196120) between November 9, 2006 and January 3, 2012, passing the Series 7 and Series 63 exams. I was involved in the purchase and sale of such insurance products in the United States from 2003 to 2022.

6. I am member of the Institute of Chartered Accountants in England and Wales, receiving my ACA qualification in 1997.

B. Executive Summary

7. As a result of the analysis set forth in this Declaration, I have 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	\$ 18,088,329
Validity Confirmation	\$ 8,091,888
Total	\$ 26,180,216

8. For this Declaration, “Settlement Class” means the 4,973 policies identified in the file of policy data provided to Demeter by Class Counsel.

9. Class Counsel has also advised that, to date, no one has opted out of the Class.

C. Scope

10. I and Demeter Investments were retained by counsel for the Plaintiffs in connection with the above-captioned case to value the non-monetary benefits provided in the settlement agreement in connection with Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Award.

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

12. The two non-monetary benefits (the "Non-Monetary Benefits") that are the subject of this Report are the following commitments by PHL:

- **COI Rate Freeze.** PHL agreed not to impose a new COI rate schedule before February 17, 2025.
- **Validity Confirmation.** An agreement by PHL 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.

13. 383 of the active Class Policies already had an enduring Validity Confirmation from PHL from a previous settlement agreement. These policies were included in the calculation of the COI Rate Freeze benefit but excluded from the calculation of the Validity Confirmation benefit.

D. General Approach and Data Considered

14. A reasonable and fair approach to measure the value of the Non-Monetary Benefits to the Class is a present value of the expected cost of the promises—*i.e.*, PHL's cost of providing the benefits. The appropriate discount rate for these present value calculations is 8%, which is typical of life insurance projections.

15. Using that discount rate, I calculated the present value of future projected cash flows for the policies, both with and without the COI Rate Freeze and Validity Confirmation. The value of the Non-Monetary Benefits is the difference between those two calculations.

16. To evaluate future projected cash flows for the policies, I modelled the future mortality of the policies. I and my company Demeter Investments have extensive experience with cash-flow projections for life insurance policies including universal life insurance policies like those in the Class. Demeter Investments regularly performs these types of calculations for our clients including life insurance companies and life settlement funds.

17. PHL has provided its own expectations of mortality for the Settlement Class, referred to in this report as PHL's base case mortality assumption.¹ For purposes of this Declaration, I used PHL's base case mortality assumption as the base scenario table. I have estimated the volatility of expectations of mortality around this base case mortality, as detailed below in Section H.1.

18. I was also provided a data file with data for the 4,973 Class Policies, including deaths updated through December 31, 2021.² The data file also contains, for each Class Policy, the COI charges currently being applied.

19. I was asked to assume that the Non-Monetary Benefits start on October 1, 2023. To implement that assumption, I updated the policy data from December 31, 2021 to October 1, 2023. Specifically, for the relevant period, I applied (i) an assumed lapse rate described below in Section H.2 and (ii) an assumed death/maturity rate, consistent with PHL's base mortality assumptions.

E. The COI Rate Freeze

20. COI Rate Freeze: Until February 17, 2025, PHL agrees to not increase the COI rate schedules on the Final Settlement Class above the COI rate schedules in place that became effective on each policy's first policy anniversary date falling on or after January 1, 2021. This

¹ PHL_KEN_394738.

² The experience data is through December 31, 2021, but the data was gathered as of numerous cut-off dates prior to December 31, 2021. For example, if someone died on December 15, 2021, but only notified PHL on January 2, 2022, that death will not be included in the file.

promise is subject to the caveat “unless requested to do so by any Government Regulators.” To my knowledge, no government regulator has ever asked or required an insurer to increase COI rates. To the extent regulators intervene at all, they usually do so to *prevent* COI rate increases. Accordingly, the possibility of a regulator requesting that PHL increase COI rates before February 17, 2025 is remote and immaterial to my valuation analysis.

21. The Settlement Agreement also provides that if a policyholder opts out of the Settlement Class, and if PHL agrees to extend the COI rate freeze for that opt-out policy, PHL will provide the same extension to the entire Class.

22. In providing the COI Rate Freeze, PHL is foregoing the ability to raise COI rates even in the event of negative changes to the mortality expectations of the Settlement Class (or for any other reason). To evaluate the benefit of the COI Rate Freeze, I considered the probabilities of various future changes in mortality scenarios with differing degrees of magnitude. Using those probabilities and scenarios across the relevant period, I calculated the difference between (i) what PHL would have been able to charge the Class Policies after a COI rate schedule increase and (ii) the charges resulting from PHL’s current COI rate schedule.

F. Methodology for COI Rate Freeze Valuation

23. The main driver of a potential COI increase is the mortality performance of the Settlement Class.

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

Scenario 1: PHL’s mortality expectations improve slightly

Scenario 2: PHL’s mortality expectations improve significantly

Scenario 3: PHL’s mortality expectations stay roughly consistent

Scenario 4: PHL’s mortality expectations worsen slightly

Scenario 5: PHL’s mortality expectations worsen significantly

25. Considering only the mortality factor, the COI Rate Freeze provides meaningful benefits to the Settlement Class in the scenarios where PHL's expectations of mortality worsen (Scenarios 4 and 5). In those scenarios, but for the COI Rate Freeze, PHL might have implemented a COI increase.

26. Scenarios 1–5 are built around PHL's base mortality assumptions as of September 1, 2020. Nothing in this Report should be taken as an endorsement of PHL's assumptions or the accuracy or suitability of those assumptions for any purposes, other than recording what PHL claims its mortality assumptions for the Class Policies were as of September 1, 2020. To ensure that PHL's base case mortality assumptions were suitable for the Scenarios of this Report, I reviewed the mortality experience of the Settlement Class for the period January 1, 2018, to December 31, 2021.

27. Because the COI Rate Freeze only provides meaningful benefits in Scenarios 4 and 5, Scenarios 1–3 were combined into a single scenario.

28. 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 are described below in Section H.1.

29. To project mortality improvement, I used [REDACTED].

30. Mortality for Scenarios 1–5 was generated as described below in Section H.1. Each of the five scenarios was quantified for: (1) extent of the change in mortality expectations and (2) probability of the scenario.

31. Using these quantifications, I calculated for the relevant period and for each of the scenarios the present value of future cash flows, using a discount rate of 8%.

G. Approach for Valuing the Validity Confirmation

32. The Validity Confirmation is an agreement by PHL 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 paragraph 61 of the Settlement Agreement, which provides:

PHL 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 Class Policy 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 PHL 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 PHL in the past. The covenant set forth in this paragraph does not apply to applications for reinstatement of lapsed policies. Nothing contained in this Agreement shall otherwise restrict PHL 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 PHL; making timely payments into insureds' accounts, where applicable; 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.

33. All policies in the Settlement Class have been in force for more than two 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 and lack of insurable interest are the main reasons why PHL would not pay a death benefit claim.

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

- PHL's base case mortality and lapse rate assumptions, and a risk of a challenge to the death benefit payment.

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

35. In providing the Validity Confirmation, PHL is foregoing the ability to challenge and resist death benefit claims in the future for the Settlement Class. To provide a valuation of the Validity Confirmation, we estimated the following for the Settlement Class (minus those policies that already benefit from a Validity Confirmation in connection with a prior settlement):

- the timing of the future claims for death benefits;
- the probability that PHL could successfully resist a claim; and
- the amount of pay-out that PHL would have saved in the event of successfully resisting a claim.

36. The timing of the future claims was projected using PHL's base case mortality and the lapse assumptions described below in Section H. Because the Validity Confirmation has no end date, projections were extended for 40 years. That period is likely sufficient to cover the last policy maturity in the Settlement Class.

37. 383 of the active Class Policies already have an enduring Validity Confirmation from PHL from a previous settlement agreement. These policies were excluded from the valuation calculation because PHL is not providing any new benefit to these policies.

38. As with the COI Rate Freeze valuation, I used an 8% discount rate to perform the present value calculations. The relevant values are detailed in Section I below.

H. Scenario Assumptions

39. For purposes of this Declaration, I considered only the potential for COI increases driven by the projected performance of the Class Policies. I take no position and offer no opinion as to when a COI increase would be permissible under the terms of the policies. Nor do I opine on what factors may appropriately be considered under the policy contracts, or what grouping of policies into classes is permitted under the terms of the policies.

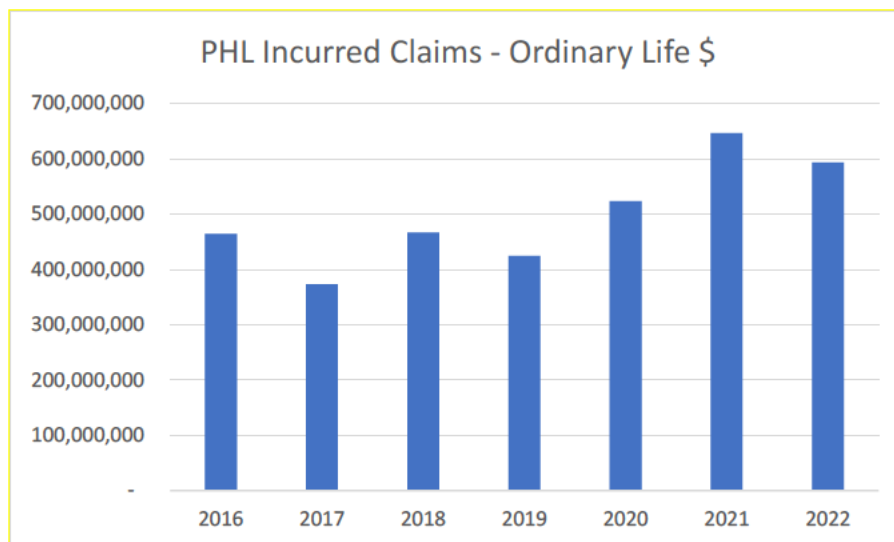
40. The valuation calculations rely on the following assumptions.

1. Mortality

41. PHL's September 1, 2020 memorandum titled [REDACTED] identifies the mortality assumptions I used for my analysis. Those assumptions include [REDACTED]. I used those assumptions as a baseline to perform the valuation calculations in this Declaration.

42. From that baseline, I considered the potential for variation in the assumed mortality rates during the relevant period. During that time, PHL bears the risk that its mortality expectations for the Settlement Class increase, yet PHL is unable to increase COI rates due to the Settlement Agreement.

43. Mortality varies over time. PHL's National Association of Insurance Commissioners ("NAIC") financial statements show that total claims for ordinary life policies increased in 2020/21 during the time of the Covid-19 pandemic.



44. This chart, which summarizes claims across all PHL’s “ordinary life” policies,

[REDACTED]

[REDACTED].³

45. To evaluate the benefit of the COI Rate Freeze, I considered the probabilities of various future changes in PHL’s best estimate mortality by using scenarios of differing degrees of magnitude. Using those probabilities and scenarios across the relevant period, I calculated the difference between (i) what PHL would have been able to charge the Class Policies after a COI rate schedule increase and (ii) the charges resulting from PHL’s current COI rate schedule.

46. To establish the contours of the various mortality scenarios, I referred to a report Demeter Investments published in August 2015. That report, in turn, evaluated industry data regarding expectations of shock changes in mortality rates.

47. The findings of that report are supported by numerous sources, including industry regulators that require life insurance companies to hold surplus capital to account for unexpected shocks to risk factors. Such regulators include:

- The European Insurance and Occupational Pensions Authority’s Solvency II capital adequacy program;
- The International Association of Insurance Supervisors;⁴
- The Financial Stability Board;⁵
- Office of the Superintendent of Financial Institutions (OSFI);⁶ and
- Australian Prudential Regulation Authority (APRA).⁷

³See PHL AT 142332 at -332 [REDACTED].

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/>

48. The Mortality Work Group of the American Academy of Actuaries (“AAA”) presented a report to the NAIC on November 9, 2019 titled “Life RBC – C-2 Mortality Risk.”⁸ In that report, the authors identified several 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.

49. To account for these risks, regulators often seek to ensure adequate capitalization at a confidence level of 95% or higher. For example, in “Life RBC – C-2 Mortality Risk,” the AAA authors determined “[t]he capital need” corresponding with “the greatest present value of accumulated deficiencies at the 95th percentile of the stochastic distribution of scenarios.”

50. Here, by contrast, the appropriate calculation is an *expected* value, not a value tied to the 95th percentile. To calculate an expected value, I evaluated a log normal distribution for mortality changes. Such distribution yields the following scenarios:

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%

⁸ https://content.naic.org/sites/default/files/call_materials/Agenda%20%26%20Materials%20LRBC%2011-9-21.pdf, attachment C.

⁹ FMI means future mortality improvement.

¹⁰ Weights use the Gaussian Quadrature rule.

51. For comparison, according to NAIC data, the life insurance industry incurred an increase in death claims (*i.e.*, a QX Shock) of 15% in 2020 during the COVID-19 pandemic. The CDC has reported excess population mortality for 2020 of 10.9% and 12.5% for 2021.

2. Lapse

52. [REDACTED]

53. I reviewed the lapse assumptions PHL used in its memo titled [REDACTED] [REDACTED] dated September 21, 2020. I compared those lapse assumptions to PHL's lapse experience for the period between January 1, 2018 and December 31, 2021.

54. [REDACTED]

55. Accordingly, to value the Non-Monetary benefits, I used PHL's lapse rate assumptions for each of the projection scenarios.

3. Investment Returns

56. [REDACTED]

57. [REDACTED] investment returns are not included in the valuation calculations for the Non-Monetary Benefits.

4. Expenses

58. [REDACTED]

59. For these reasons, potential variations in expenses are immaterial and were excluded from the projection scenarios.

5. Taxes

60. Federal corporate tax rates change infrequently in the United States, with just one such change enacted in the past 30 years.¹² Given that infrequency, the risk of a change in tax rates was excluded from this analysis.

61. Changes in premium tax rates are also infrequent. They also tend to be for small amounts and would only impact a portion of the Class Policies, since these are assessed by states and, in some cases, municipalities, at varying rates. For these reasons, I have excluded a potential change in premium tax rates from the projection scenarios.

6. Contest Success Probability and Pay-out Rates of Resisted Claims

62. Data from market aggregate figures indicates how often carriers resist a death claim¹³:

¹¹ ACLI data for 2020.

¹² See Tax Foundation, *Historical U.S. Federal Corporate Income Tax Rates & Brackets, 1909–2020* (Aug. 24, 2021), available at <https://taxfoundation.org/data/all/federal/historical-corporate-tax-rates-brackets/> (showing that, prior to 2018, corporate tax rates had not changed since 1993).

¹³ ACLI tabulations of NAIC data.

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%

63. The last few years have seen a resurgence of STOLI litigation.¹⁴ By entering the Settlement Agreement, PHL is foregoing the option to take part of this wave of new STOLI litigation. PHL has instead chosen to provide value in the form of payment certainty to the Settlement Class.

64. [REDACTED]

65. [REDACTED]

66. For group (1), the following assumptions applied:

¹⁴ See, e.g., *Pacific Life Ins. Co. v. Wells Fargo Bank, N.A.*, No. 8:21-cv-737 (PJM) (D. Md.); *Columbus Life Ins. Co. v. Wilmington Tr., N.A.*, No. 20-735-MN-JLH (D. Del); *Sun Life Assurance Co. of Canada v. Bank of Utah*, No. 21-CV-3973-LMM (N.D. Ga.).

- [REDACTED]

- [REDACTED]

67. For group (2), the following assumptions applied:

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

7. *Discount Rates*

68. [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

70. An 8% percent discount rate represents [REDACTED]

[REDACTED]

I. Results

1. COI Rate Freeze Valuation

71. As with the Validity Confirmation valuation, I assumed a starting balance of death benefits consistent with the in-force data as of December 31, 2021. I then rolled this forward to October 1, 2023 using PHL's base case mortality assumption and the lapse rate assumption described above.

72. Then, for each scenario, I calculated (i) the present value of COI charges; (ii) the present value of net death benefits paid;¹⁵ (iii) the difference between (i) and (ii); and (iv) the value of the resulting benefit:

Scenario	PV COI Charges	PV Net Death Benefit	Difference	Benefit	Scenario Weight
Scenario 4 - Worsen Slightly	██████	██████	██████	██████	23.9%
Scenario 5 – Worsen Significantly	██████	██████	██████	██████	11.8%
Scenario 1,2 & 3 - No COI rate adjustment	██████	██████	██████	████	64.2%

73. The COI Rate Freeze Value was calculated as follows:

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

The value of the benefit is the difference between the scenario and the COI Rate freeze that PHL will be stuck with due to the settlement:

- Worsen Slightly Scenario Benefit = \$147,317,249 - \$181,955,726 = \$34,638,477
- Worsen Significantly Scenario Benefit = \$147,317,249 - \$230,033,439 = \$82,716,190
- Total weighted benefit = (\$34,638,477 x 23.9%) + (\$82,716,190 x 11.8%) = \$18,088,329

2. *Validity Confirmation Valuation*

74. To determine the value of the Validity Confirmation, I performed a probability weighted net present value calculation using the assumptions set forth above. I utilized the data

¹⁵ “Net” in this context means difference between death benefit and account value.

provided to project for the Class Policies' death benefits and cash value balances for the period from October 1, 2023 to maturity.

75. As with the COI Rate Freeze valuation, I assumed a starting balance of death benefits consistent with the in-force data as of December 31, 2021. I then rolled this forward to October 1, 2023 using PHL's base case mortality assumption and the lapse rate assumption described above.

76. I then applied PHL's base case mortality assumption table and future mortality improvements to generate forward mortality rates, also known as "Qx." Using these Qx rates, I built a set of future survival probabilities starting at October 1, 2023. I projected the future death benefits of the policies using the probabilities of lapse and death for each month.

77. For the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Both groups were reduced by a pay-out ratio of 28.9% in the event of being contested. I conservatively excluded from my calculations an estimate of legal expenses likely to be incurred in litigation.

78. The results for each Class Policy were then aggregated and discounted to reach an estimated value of the Validity Confirmation. As mentioned above, such estimate assumes no value for policies that obtained a Validity Confirmation in a previous settlement.

PV of future death benefits Without Validity Confirmation = \$ 636,915,966

PV of future death benefits With Validity Confirmation = \$ 645,007,854

Value of Validity Confirmation = \$ 8,091,888

3. *Impact of Opt Outs*

79. Class Counsel has informed me that, as of the date of this Declaration, no one has opted out.

J. Conclusion

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

Commitment	Value \$
COI Rate Freeze	\$ 18,088,329
Validity Confirmation	\$ 8,091,888
Total	\$ 26,180,216

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

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

Executed this 9 October 2023 at London, United Kingdom.

James Rouse

James Rouse