IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MSG NETWORKS INC,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
v.	)	**C.A. No. N23C-01-103 PRW CCLD**
	)	
FEDERAL INSURANCE COMPANY, *et al.*,	)	
	)	
Defendants/Counterclaim Plaintiffs.	)	

Submitted: April 24, 2026
Decided: June 11, 2026
Issued: June 24, 2026*

Upon Defendant/Counterclaim Plaintiffs' Motion for Summary Judgment,
GRANTED.

Upon Plaintiff/Counterclaim Defendant MSG Networks Inc's Motion for Summary Judgment,
DENIED.

MEMORANDUM OPINION AND ORDER

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WALLACE, J.

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* This public version of the Court's decision is issued after providing the parties an opportunity to request redaction of certain information that was previously treated as confidential—none were requested—and with the Court's own necessary corrections.

This insurance coverage dispute arises from a settlement reached by the Madison Square Garden Networks Inc. ("MSGN") shareholders after a merger between MSGN and Madison Square Garden Entertainment Corp. ("MSGE"). XL Specialty Insurance Company, U.S. Specialty Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., Endurance American Insurance Company, and Homesite Insurance Company (collectively, the "Insurers") aver that the Bump-Up Clause[1] in MSGN's Directors and Officers ("D&O") insurance policy excludes coverage. The Insurers seek summary judgment on all MSGN's claims and a declaratory judgment that they don't owe coverage. XL Specialty and National Union also seek to recoup their $10 million advances toward the Settlement. MSGN seeks summary judgment that the Insurers must cover the Settlement. MSGN alternatively contends that the Bump-Up Clause doesn't capture attorney's fees taken from the Settlement's common fund.

For the foregoing reasons, the Insurer's Motion for Summary Judgment is **GRANTED**, and MSGN's Motion for Summary Judgment is **DENIED**.

I. FACTUAL BACKGROUND

The Court draws the following background from the undisputed facts in the pleadings and the documentary exhibits the Parties submitted. All Parties moved for

[1] *See Genzyme Corp. v. Federal Ins. Co.*, 622 F.3d 62, 67 n.2 (1st Cir. 2010) ("[T]he term 'Bump-Up' is used in the insurance industry to describe litigation seeking to increase or 'bump-up' the consideration paid for a security.").

summary judgment and attest that no material facts are disputed.[2] So the Court considers the cross-motions as a stipulation for a decision on the merits.[3] And the Court views all submissions accompanying the cross-motions as undisputed facts.[4]

A. THE PARTIES

Before MSGN and MSGE combined (the "Merger"), Plaintiff MSGN was an independent domestic corporation incorporated in Delaware, with its principal place of business in New York.[5] MSGN is a leader in sports content development and distribution.[6] The Insurers were MSGN's insurers at the times relevant to this dispute through a Primary Policy and several Excess Policies that follow form to the Primary Policy.[7]

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[2] Mot. for Summ. J. Filed By Defs./Counercl. Pls. (D.I. 217); Pl.'s Mot. for Summ. J. (D.I. 218) *see also* Op. Br. in Supp. of Pl.'s *Daubert* Mot. to Exclude the Testimony and Opinions of Defs.' Proffered Expert Guhan Subramanian at 5 (D.I. 226) ("Here, the parties have cross-moved for summary judgment following full discovery as a matter of law and undisputed fact and, thus, the parties are in agreement that this case can and should be decided as a matter of law."); Defs.' Opp'n to Pl.'s *Daubert* Mot. to Exclude the Testimony and Opinions of Defs.' Proffered Expert Guhan Subramanian at 10 (D.I. 234) ("No material disputed facts preclude granting the Insurers' motion for summary judgment . . . .").

[3] Del. Super. Ct. Civ. R. 56(h); *see also Pike Creek Recreational Servs., LLC v. New Castle Cnty.*, 238 A.3d 208, 213 (Del. Super. Ct. 2020), *aff'd,* 259 A.3d 724 (Del. 2021); *United Westlabs, Inc. v. Greenwich Ins. Co.*, 2011 WL 2623932, at *8 (Del. Super. Ct. June 13, 2011), *aff'd,* 38 A.3d 1255 (Del. 2012).

[4] *Gateway Estates, Inc. v. New Castle Cnty.*, 2015 WL 13145613, at *14 n.174 (Del. Super. Ct. Sept. 29, 2015), *aff'd,* 140 A.3d 1142 (Del. 2016).

[5] First Amended Compl. [hereinafter "Compl."] ¶ 14 (D.I. 52); Aff. of Leslie Ahari Ex. B at 17 (D.I. 217); *Id.*, Ex. Y at 7; Aff. of Keith McKenna Ex. 1 [hereinafter "Merger Agreement"] Preamble (D.I. 219); *Id.*, Ex. 29 at DECLARATIONS; MSGN's Answer to Federal Insurance Company's Countercl., ¶ 1 (D.I. 95).

[6] Ahari Aff., Ex. H at 2 (D.I. 217); *Id.*, Ex. Y at 7.

[7] Compl., ¶¶ 30–31; Defs.' Op. Br. in Supp. of Their Mot. for Summ. J. [hereinafter "Insurers'

B. MSGE ACQUIRES MSGN

MSGE—now Sphere Entertainment—is an entertainment company that operates live sports and entertainment venues.[8] Its portfolio encompasses Madison Square Garden, the Radio City Rockettes, and the Christmas Spectacular.[9] The Dolan Family Group, which comprises members of the Dolan family and affiliated trusts, controlled both entities before the Merger.[10] One primary reason for the Merger was for MSGE to reap MSGN's cash to fund MSGE projects, including the Sphere in Las Vegas.[11] MSGE was constructing the Sphere at the time of the Merger.[12]

Before the Merger, the Dolan Family Group owned 21.3% of MSGE's outstanding common stock, including all outstanding MSGE Class B common stock, representing 70.7% of the voting power.[13] The Dolan Family Group also owned 26.7% of MSGN's outstanding common stock, including all outstanding MSGN Class B common stock, representing 76.9% of the total voting power.[14]

MSJ Br."] at 16 (D.I. 217); McKenna Aff., Ex. 39 (D.I. 219).

[8] Ahari Aff., Ex. B at 17 (D.I. 217); *Id.*, Ex. Y at 7.

[9] *Id.*, Ex. H at 2.

[10] *Id.*, Ex. C at 59, 314–15; *Id.*, Ex. B at 2, 118.

[11] *Id.*, Ex. B at 59; *Id.*, Ex. H at 1.

[12] *Id.*, Ex. H at 2.

[13] *Id.*, Ex. B at 133.

[14] *Id.*, Ex. B at 37; McKenna Aff., Ex. 2 at 50–51, 117–22 (D.I. 219).

In early 2021, both boards began discussions on merging the companies.[15] And in July 2021, MSGN and MSGE executed a stock-for-stock reverse triangular merger, in which MSGN combined with an MSGE subsidiary, becoming MSGE's wholly owned subsidiary.[16]

C. SHAREHOLDER ACTIONS

After merging, MSGN Class A Shareholders sued MSGN's directors in the Delaware Court of Chancery.[17] The MSGE shareholders also filed a derivative suit connected to the Merger.[18] The Court of Chancery then consolidated the actions.[19] The MSGE shareholders asserted that the merger process was unfair and that their stock had been undervalued.[20] Similarly, the MSGN shareholders alleged an unfair merger process and that the board and controlling shareholders undervalued their stock.[21]

The MSGN Class A Shareholders retained Professor Bilge Yilmaz to

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[15] Ahari Aff., Ex. B at 59 (D.I. 217).

[16] *See generally* Merger Agreement; Dec. 15, 2025 MSJ Hr'g 8–9 (D.I. 247); Insurers' MSJ Br. at 32–33.

[17] Ahari Aff., Ex. N (D.I. 217).

[18] *See In re Madison Square Garden Entertainment Corp. Stockholders Litigation*, Case No. 2021-0468.

[19] *See In re MSG Networks, Inc. Stockholder Class Action Litigation*, C.A. No. 2021-0575; Ahari Aff., Ex. Y at 16.

[20] *See In re Madison Square Garden Entertainment Corp. Stockholders Litigation*, Case No. 2021-0468.

[21] *See In re MSG Networks Inc. Stockholder Class Action Litigation*, Case No. 2021-0575; Ahari Aff., Ex. Y at 16.

substantiate their damages.[22] Professor Yilmaz determined that the Class A Shareholders incurred around $371 million in total damages.[23] Professor Yilmaz alternatively calculated that the Class A Shareholders were entitled to $44.9 million in "but for" damages stemming from the difference in the Sphere cost projections provided to MSGN and the increased costs provided to James "Jim" Dolan—who was the Executive Chairman of MSGN and simultaneously Chief Executive Officer and Executive Chairman of MSGE—but never disclosed to the MSGN special committee.[24]

Before settling, MSGN's counsel explained to the Insurers that there was concern that, if there was a trial, the Court of Chancery could find that the process leading up to the Merger was unfair.[25] As such, there was concern that the Court would award nominal damages to the MSGN Class A Shareholders.[26]

In March 2023, the MSGN action settled, and MSGN assented to pay $48.5 million to the MSGN Class A Shareholders.[27] MSGN and XL Specialty entered into an agreement under which XL Specialty consented to advance $10 million toward

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22 Ahari Aff., Ex. S [hereinafter "Yilmaz Report"].

23 Yilmaz Report ¶ 237.

24 *Id.*

25 McKenna Aff., Ex. 7 at 43–44, 66 (D.I. 219).

26 *Id.*, Ex. 7 at 43–44, 66.

27 *Id.*, Ex. 26 at 17; Ahari Aff., Ex. EE at 12 (D.I. 223).

the Settlement and could recoup the advance if the Policy didn't provide coverage.[28] MSGN and National Union did the same.[29] MSGN shouldered the remaining Settlement costs.[30] The MSGE derivative suit separately settled for $85 million.[31]

D. MSGN'S INSURANCE

MSGN's D&O liability policies included an insurance program covering the period from December 1, 2020, to December 1, 2021.[32] The program entails a Primary Policy and several Excess Policies issued by the Insurers.[33] Federal Insurance Company issued the Primary Policy.[34] And the Excess Policies follow form thereto, meaning they adopt its terms and conditions.[35] The Primary Policy contains a bump-Up Clause, which, *inter alia*, provides that amounts paid in acquisition-related litigation that represent or are substantially equivalent to an increase in consideration aren't covered:

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[28] MSGN's Answer to XL Specialty Insurance Company's Countercl., ¶¶ 24–25 (D.I. 97); McKenna Aff., Ex. 35 [hereinafter "MSGN-XL Agreement"] (D.I. 219).

[29] MSGN's Answer to National Union Fire Insurance Co. of Pittsburgh, PA's Am. Countercl., ¶¶ 3–4 (D.I. 101); McKenna Aff., Ex. 36 [hereinafter "MSGN-National Agreement"] (D.I. 219).

[30] Ahari Aff., Ex. Y at 16–17 (D.I. 217).

[31] Pl.'s Reply Br. in Supp. of its Mot. for Summ. J. [hereinafter "MSGN's MSJ Reply"] at 9 (D.I. 228); McKenna Aff., Ex. 54 at 50 (D.I. 228); *Id*., Ex. 46 at 29–30 (D.I. 224); Ahari Aff., Ex. Y at 16–17 (D.I. 217); *Id*., Ex. Z at 21.

[32] McKenna Aff., Ex. 29 at NOTICE (D.I. 219).

[33] *See generally id*., Ex. 29.

[34] *Id*., Ex. 29 at DECLARATIONS.

[35] *See generally id.*, Ex. 29; Pl.'s Op. Br. in Supp. of its Mot. for Sum. J. [hereinafter "MSGN's MSJ Br."] at 14 (D.I. 219); Insurers' MSJ Br. at 16.

> **Loss** does not include any portion of such amount that constitutes any:
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> . . .
>
> (3) amount that represents, or is substantially equivalent to, an increase in the consideration paid (or proposed to be paid) in an acquisition (or proposed acquisition) of more than 50% of the outstanding securities or other ownership interest of an entity, including an Organization, or in the right to vote for election of, or to appoint, more than fifty percent (50%) of the directors or limited liability company managers or members, or the equivalent of such positions, of an entity, including an Organization; except for any amount otherwise covered under Insuring Clause (A).[36]

E. COVERAGE DISPUTE

MSGN filed this action seeking declaratory relief.[37] The Insurers countersued, seeking declaratory relief that the Bump-Up Clause blocks coverage for the Settlement.[38] Specialty Insurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. also seek to regain their $10 million advances.[39]

II. PARTIES' CONTENTIONS

The Insurers insist that the Bump-Up Clause applies to the $48.5 million Settlement and bars coverage.[40] They say the Settlement satisfies all the Bump-Up

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[36] *Id.*, Ex. 29 at Endorsement 20 [hereinafter the "Bump-Up Clause"].

[37] *See generally* Compl. (D.I. 1).

[38] Insurers' MSJ Br. at 20; D.I. 56, 58, 60, 62, 64, 66, 67, 70. MSGN settled with Federal Insurance Company, RLI Insurance Company, and Berkley Insurance Company, and the Court dismissed these insurers with prejudice. D.I. 115, 151, and 156.

[39] Insurers' MSJ Br. at 20; D.I. 64, 76.

[40] Insurers' MSJ Br. at 22.

Clause's criteria.[41] Those are: (1) the amount represents, or is substantially equivalent to, an increase in the consideration paid; (2) in an acquisition; (3) of more than 50% of the outstanding securities or other ownership interest of an entity, including an Organization, or in the right to vote for election of, or to appoint, more than 50% of the directors of an entity, including an Organization.[42]

To counter, MSGN contends that the Bump-Up Clause does not obstruct coverage because the Bump-Up criteria aren't met, and the Insurers must cover the Settlement.[43] MSGN is adamant that the Settlement wasn't an increase in consideration and that the Merger was not a qualifying acquisition since the Dolans controlled MSGN before and after the Merger.[44] MSGN doesn't claim that the Settlement is not an amount otherwise covered under Insuring Clause (A).[45] MSGN instead targets: the Settlement for failing to represent an increase in consideration paid in the Merger; and, the Merger for failing to be an acquisition of controlling securities or voting rights.[46]

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41 *Id*. at 22.

42 *Id*. at 22.

43 MSGN's MSJ Br. at 19–28.

44 *Id*. at 28–34.

45 *See generally* MSGN's MSJ Br.

46 Dec. 15, 2025 MSJ Hr'g 10.

After oral argument on the motions,[47] the Parties filed supplemental briefs[48] addressing the Delaware Supreme Court's intervening decisions in *Illinois Nat'l Ins. Co. v. Harman Int'l Indus., Inc.*,[49] and *AIG Specialty Insurance Company v. Genworth Financial Inc.*[50]

III. STANDARD OF REVIEW

This Court can grant a moving party's motion for summary judgment under Delaware Superior Court Rule 56 when no genuine issue of material fact exists, and the party is entitled to judgment as a matter of law.[51] The Court won't grant summary judgment if there are disputed material facts[52] or if "it seems desirable to inquire thoroughly into [the facts] to clarify the application of the law to the circumstances."[53] The moving party has the burden of establishing that "its claim is

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[47] Before argument, the parties briefed a *Daubert* motion and two motions to strike evidence in the summary judgment materials. D.I. 225, 226, 232, 233, 234, 237, 238, 239, 240. The Court has assessed the motions and briefings and finds that the documentary evidence disputed by the parties is hardly relevant—and certainly not determinative—to whether the unambiguous Bump-Up Clause covers the Settlement. And so, the Court need not address those materials in this decision.

[48] D.I. 253, 254, 262, 263.

[49] ---A.3d----, 2026 WL 204209 (Del. Jan. 27, 2026).

[50] 2026 WL 620937 (Del. Mar. 5, 2026).

[51] Del. Super. Ct. Civ. R. 56; *Jiggy Puzzles, LLC v. Steelhead Acquisition EE, Inc.*, 2026 WL 465112, at *4 (Del. Super. Ct. Feb. 18, 2026); *Genworth Fin., Inc. v. AIG Specialty Ins. Co.*, 2025 WL 688987, at *6 (Del. Super. Ct. Feb. 21, 2025), *aff'd,* 2026 WL 620937 (Del. Mar. 5, 2026).

[52] *Radulski v. Liberty Mut. Fire Ins. Co.*, 2020 WL 8676027, at *3 (Del. Super. Ct. Oct. 28, 2020); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.").

[53] *Ebersole v. Lowengrub*, 180 A.2d 467, 468–69 (Del. 1962).

supported by undisputed facts."[54] If the moving party meets its burden, the burden shifts to the non-moving party to show there is a "genuine issue for trial."[55] In determining whether such a genuine issue exists, "the Court must view the facts in the light most favorable to that non-moving party."[56] "Lastly, the Court accepts as true the parties' factual stipulations."[57]

The Court's "well-established standards and rules apply in full when the parties have filed cross-motions for summary judgment."[58] And since these "cross-motions for summary judgment are filed and the parties do not argue 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 them."[59] With that, the questions before this Court are questions of law, not fact, and the Parties, by filing cross-motions for summary judgment, stipulate that

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[54] *Radulski*, 2020 WL 8676027, at *3 (citing *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979)).

[55] Del. Super. Ct. Civ. R. 56(e); *CNH Indus. Am. LLC v. Am. Casualty Co. of Reading*, 2015 WL 3863225, at *1 (Del. Super. Ct. June 8, 2015) ("If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder.").

[56] *Radulski*, 2020 WL 8676027, at *3 (citing *Judah v. Del. Tr. Co.*, 378 A.2d 624, 632 (Del. 1977)).

[57] *Id.*

[58] *Id*. at *4 n.35 (collecting cases); *Genworth*, 2025 WL 688987, at *6; *Zenith Energy Terminals Joliet Hldgs. LLC v. CenterPoint Props. Tr.*, 2023 WL 615997, at *8 (Del. Super. Ct. Jan. 23, 2023).

[59] *Sarraf 2018 Fam. Tr. v. RP Holdco, LLC*, 2022 WL 10093538, at *5 (Del. Super. Ct. Oct. 17, 2022) (cleaned up); *Mark III Media, Inc. v. Big Horn Television LLC*, 2026 WL 560144, at *3 (Del. Super. Ct. Feb. 27, 2026).

the issues raised by their motions are ripe for a decision on the merits.[60]

"[T]he interpretation of contractual language, including that of insurance policies, is a question of law."[61] And the Insurers shoulder the burden of proving any coverage exclusion's applicability.[62] If the exclusion applies and the language "is clear and unequivocal," the exclusionary clause[63] will be construed "narrowly to give effect to the interpretation most beneficial to the insured" based on its plain meaning.[64]

IV. DISCUSSION

The Bump-Up Clause provides that the Primary Policy doesn't cover losses when: (1) the amount represents, or is substantially equivalent to, an increase in the consideration paid; (2) in an acquisition of more than 50% of the outstanding

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[60] *Radulski*, 2020 WL 8676027, at *4 (quoting *Health Corp. v. Clarendon Nat. Ins. Co.*, 2009 WL 2215126, at *11 (Del. Super. Ct. July 15, 2009)).

[61] *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 286 (Del. 2001); *see also Eagle Force Hldgs., LLC v. Campbell*, 187 A.3d 1209, 1232 (Del. 2018) (noting that whether a contract's material terms are sufficiently defined is mostly, if not entirely, a question of law).

[62] *Harman Int'l Indus., Inc. v. Illinois Nat'l Ins. Co*., 2025 WL 84702, at *5 (Del. Super. Ct. Jan. 7, 2025) [hereinafter "*Harman II*"].

[63] Although found within the Loss provision, the Bump-Up Clause operates as an exclusion based on its exclusionary effect. *See Clear Channel Outdoor Hldgs., Inc. v. Illinois N. Ins. Co.*, 2026 WL 1347392, at *9 (Del. Super. Ct. Apr. 28, 2026) (holding that the insurers had the burden to prove that a disgorgement amount was excluded, even though it was found in a loss provision of that policy). The Court finds that the Bump-Up Clause functions as an exclusion and treats it as such. *See* 17 *Williston on Contracts* § 49:111 (4th ed.) ("An exception or exclusion in a policy of insurance is a limitation of liability or a carving out of certain types of loss to which the coverage or protection of the policy does not apply.").

[64] *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982); *Harman II*, 2025 WL 84702, at *5; *Gallup, Inc. v. Greenwich Ins. Co.*, 2015 WL 1201518, at *9 (Del. Super. Ct. Feb. 25, 2015).

securities or other ownership interest of an entity, including an Organization, or in the right to vote for election of, or to choose, more than 50% of the directors of an entity, including an Organization.[65] The Settlement satisfies all these criteria, and the Bump-Up Clause precludes coverage.

First, as the MSGN Class A Shareholders submitted to the Court of Chancery, and the Court of Chancery recognized, the Settlement compounded the consideration paid to the Class A Shareholders. Second, MSGE and MSGN merged in a reverse-triangular merger, which this Court and others have held is indeed an acquisition. Third, MSGE amassed more than 50% of MSGN's outstanding securities and the right to pick more than 50% of MSGN's directors.

Lastly, the Court determines that the entire Settlement sum is an increase in consideration, including the attorney's fees deducted from the common fund. This is because, under the common fund doctrine, the entire Settlement benefits the class plaintiffs and boosts their consideration.

A. BUMP-UP CLAUSE CASELAW

Before undertaking its substantive analysis, the Court walks through three recent decisions to elucidate the state of the law on bump-up provisions in D&O insurance policies. The first case comes from this Court, the second from the Fourth Circuit after that decision, and the third from the Delaware Supreme Court, affirming

[65] The Bump-Up Clause.

the first decision from this Court. These cases inform the Court's decision today.

1. *Harman International Industries v. Illinois National Insurance*—"*Harman II*"

In *Harman II*, this Court encountered a bump-up clause that barred coverage if: (1) the settlement related to an underlying acquisition; (2) inadequate deal price was a viable remedy in the underlying action; and (3) the settlement represented an effective increase in consideration.[66] *First*, the Court held that a reverse triangular merger is an acquisition as it is a merger in which the acquiring corporation's subsidiary is absorbed into the target corporation, becoming a subsidiary of the acquiring corporation.[67] *Second*, the Court concluded that damages for inadequate deal price weren't a viable remedy in the underlying action because the underlying action alleged violations of Exchange Act Sections 14(a) and 20(a).[68] *Lastly*, the Court ruled that the underlying settlement didn't represent an increase in deal consideration since: (1) Harman denied any wrongdoing in the settlement agreement; (2) the parties in the underlying litigation settled early, with minimal discovery, to dodge costs; and (3) the settlement amount was "grossly inadequate" as compensation for inadequate deal price, and the settlement class involved only former Harman shareholders who held shares at the time of the merger but sold

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[66] *Harman II*, 2025 WL 84702, at *6.

[67] *Id*. at *7–8.

[68] *Id*. at *9–10.

before receiving any deal consideration.[69] The Court ruled that the Insurers failed to meet their burden of proving that the bump-up clause precluded coverage and entered judgment for plaintiff Harman.[70]

2. *Towers Watson v. National Union Fire Insurance*—"*Towers II*"

Shortly after *Harman II* came *Towers II*. There, the United States Court of Appeals for the Fourth Circuit affirmed a district court decision that a bump-up clause forestalled coverage.[71] That clause prevented coverage if: (1) there was a claim alleging consideration paid; and (2) the settlement represented an effective increase in the consideration shareholders got for the acquisition.[72] The court found that the underlying action asserting claims under federal securities law and Delaware law satisfied the first prong.[73] On the second prong, the court opined that the settlement represented an effective increase in consideration.[74] In doing so, the court observed that the lawsuit sought to rectify a shortfall in the merger process that devalued the shareholders' stocks and that the settlement compensated the shareholders for the purportedly inadequate consideration they received from the

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[69] *Id*. at *10–12.

[70] *Id*. at *12.

[71] *Towers Watson & Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 138 F.4th 786, 789 (4th Cir. 2025) [hereinafter "*Towers II*"].

[72] *Towers II*, 138 F.4th at 793.

[73] *Id*. at 790, 793.

[74] *Id*. at 793–94.

merger.[75] The court also held that the attorney's fees taken from the settlement's common fund were not covered because the entire settlement represented an effective increase in the class plaintiffs' consideration.[76]

3. *Illinois National Insurance v. Harman International Industries*—"*Harman III*"

Most recently, in a 3-2 decision, our Supreme Court affirmed *Harman II*.[77] Citing *Towers II*, the Court disagreed with this Court and decided that the underlying suit—although based on Section 14(a) claims—relied on allegations of inadequate consideration and sought damages for inadequate price or consideration.[78] Still, the Court agreed with this Court's finding that the settlement didn't represent an effective increase in consideration.[79] The Court distinguished *Harman*'s facts from those in *Towers II*.[80] And it outlined that: (1) the settlement class included Harman shareholders who held stock at any time, without requiring class members to hold stock through the transaction's closing date; (2) the underlying action settled early in the litigation; and (3) the settlement amount was based on the cost of continuing litigation, falling almost directly in the center of the estimated range of litigation

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[75] *Id*. at 793–96.

[76] *Id*. at 796–97.

[77] *Illinois Nat'l Ins. Co*. v. *Harman Int'l Indus., Inc.*,---A.3d----, 2026 WL 204209, at *1 (Del. Jan. 27, 2026) [hereinafter "*Harman III*"].

[78] *Harman III*, 2026 WL 204209, at *8–10.

[79] *Id*. at *10–14.

[80] *Id*.

costs.[81]

The dissenting justices said they agreed with the *Towers II* decision and would find that the *Harman* settlement amount represented an increase in consideration.[82] The dissenters stressed that, even if the record was unclear about how many class shareholders sold their shares before closing, at least some class members held their shares through closing and received a bump up in consideration.[83] Those justices added that it would be easier and more efficient for courts to limit their review of settlements in these cases to the settlement's real effect, rather than the settling parties' motivations.[84] Lastly, they agreed with *Towers II* that attorney's fees paid from the settlement are subject to the bump-up provision.[85]

With that backdrop, the Court begins its examination.

B. THE BUMP-UP CLAUSE SEIZES THE SETTLEMENT.

Insurance policies are contracts.[86] And courts prioritize the parties' intentions when interpreting a contract.[87] Courts will also construe the contract as a whole,

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[81] *Id.*

[82] *Id.* at *15 (Seitz, C.J. and Traynor, J., dissenting).

[83] *Id.*

[84] *Id.*

[85] *Id.* at *15 n.10.

[86] *Monzo v. Nationwide Prop. & Cas. Ins. Co.*, 249 A.3d 106, 118 (Del. 2021).

[87] *CNH Am., LLC v. Am. Cas. Co. of Reading, Pennsylvania*, 2014 WL 626030, at *4 (Del. Super. Ct. Jan. 6, 2014).

giving effect to all provisions therein.[88] Clear and unambiguous contract language will be given its ordinary and usual meaning.[89] To do this, Delaware courts may turn to dictionaries for assistance.[90] A contract is not ambiguous because the parties disagree about the contract's proper construction.[91] Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible to two or more different interpretations.[92] And where the contract's language is plain and unambiguous, it must be enforced as written.[93]

1. The Settlement represents an increase in consideration and is substantially equivalent to an increase in consideration.

The Bump-Up Clause covers two consideration types: (1) amounts that represent an increase in consideration; OR (2) amounts that are substantially equivalent to an increase in consideration. Either will do. In other words, the Bump-Up Clause catches amounts meant to increase the deal's value and amounts that largely equate to increasing the deal's value.[94]

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88 *Origis USA LLC v. Great Am. Ins. Co.*, 345 A.3d 936, 952 (Del. 2025).

89 *Thompson St. Capital Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1166 (Del. 2025).

90 *Harman III*, 2026 WL 204209, at *8.

91 *CNH Am., LLC*, 2014 WL 626030, at *4.

92 *Diner v. Plume Design, Inc.*, 354 A.3d 968, 981 (Del. Super. Ct. 2026); *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, 2024 WL 1596021, at *21 (Del. Super. Ct. Apr. 12, 2024), *reargument denied*, 2024 WL 3273427 (Del. Super. Ct. July 2, 2024).

93 *Priveterra Capital, Mgmt., LLC v. Pixium Vision, LLC*, 2026 WL 940227, at *4 (Del. Super. Ct. Apr. 7, 2026).

94 Perhaps it may be explained another way: for a settlement to represent an uptick in

On the substantially equivalent type, "substantially" means "to a large degree."[95] "Equivalent" means "equal in value, force, amount, effect, or significance" or "corresponding in effect or function; nearly equal; virtually identical."[96] The Insurers have shown that the Settlement satisfies both.

a. The Settlement represents an increase in consideration.

To determine whether the Settlement represents an increase in consideration, the Court may look to the record evidence to discern the Settlement's bases.[97] The Court looks at: (1) the Settlement's language; (2) indications that the Settlement amount represents compensation for an inadequate deal price; (3) the stage of litigation at the time of the Settlement; and (4) the Settlement class's composition.[98]

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consideration, it must be for the purpose of "bumping up" the deal's value. *See Harman III*, 2026 WL 204209, at *7 ("Determining whether the Bump-Up Provision applies requires two steps. Under the first step, we consider whether the underlying Claim alleges inadequate deal consideration for the Transaction. If the answer is yes, then we must determine whether the Settlement Amount, or any portion of the Settlement Amount, represented the amount by which such alleged inadequate deal consideration was effectively increased. The Bump-Up Provision will exclude coverage of the Settlement Amount, or a portion of the Settlement Amount, if, and only if, Insurers show that both requirements have been met."); *see also Northrop Grumman Innovation Systems, Inc. v. Zurich Am. Insurance Company*, 2021 WL 347015, at *22 ("And so, if the Knurr settlement—which admitted no wrongdoing—'represent[s]' anything at all, then it represents a 'bump down'—not a 'bump up.' Accordingly, the Bump Up Exclusion doesn't apply as a matter of law.").

[95] *Substantially*, CAMBRIDGE DICTIONARY (last accessed June 10, 2026) https://dictionary.cambridge.org/us/dictionary/english/substantially.

[96] *Equivalent*, BLACK'S LAW DICTIONARY 680 (12th ed. 2024).

[97] *Harman II*, 2025 WL 84702, at *10.

[98] Unlike in *Harman II*, the term "Claim" isn't in the Bump-Up Clause and is not a qualifying term. *Compare Harman II*, 2025 WL 84702, at *1, *with* the Bump-Up Clause. So, the Settlement need not arise from a claim—it just needs to represent or be substantially equivalent to an increase in consideration. Still, the underlying claim provides context and is relevant to resolving what the

While all are important factors for the Court to consider, none are dispositive.[99]

First, looking to the Settlement's language, MSGN denied any wrongdoing and liability.[100] MSGN also denied that the shareholders asserted a valid claim against it.[101] The Settlement adds that MSGN entered into the agreement "solely to avoid the substantial burden, expense, inconvenience and distraction of continued litigation and to resolve each of the Released Plaintiffs' Claims as against the Released Defendant Parties."[102] This language suggests that the parties settled the case to eschew litigation costs.

Second, the Insurers highlight that, in the MSGN Class A Shareholders' motion seeking approval in the underlying suit, the shareholders informed the Court of Chancery that the Settlement represented an 8.8% increase in consideration.[103] In that motion, the shareholders claimed that the Settlement amount was a substantial "get" and that, after fees and expenses, the Settlement would be distributed to the class to reflect a $1.24 per-share increase.[104] In approving the Settlement, the Court

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Settlement represents, and the Court considers it here.

[99] *Harman II*, 2025 WL 84702, at *10.

[100] McKenna Aff., Ex. 26 (D.I. 219); Ahari Aff., Ex. R [hereinafter the "Settlement"] at 8 (D.I. 217).

[101] The Settlement at 8.

[102] *Id.*

[103] Ahari Aff., Ex. EE at 12 (D.I. 223).

[104] Ahari Aff., Ex. V at 34–35 (D.I. 217).

of Chancery noted that this "get" is a cash result that is "a meaningful benefit and is calculated by the plaintiffs to represent an 8.8 percent premium to deal price to MSGN's minority or public stockholders."[105] This result is strong evidence that Settlement indeed constituted an increase in consideration.

In response to this evidence, MSGN points to the Settlement, which states that MSGN entered into it "solely" to avert litigation costs.[106] MSGN also highlights that the MSGN and MSGE shareholders received consideration, and the MSGN and MSGE shareholder claims were consolidated and diametrically opposed.[107] Thus, any amount paid to the overlapping shareholders, predicated on bumping up the deal, would need to include an offset, as the MSGE shareholders would then have "overpriced" shares.[108]

True, MSGN's evidence weakens the assumption that the Settlement represented an increase in consideration rather than an avoidance of costs or litigation risks, as it shows the Settlement may have been motivated by a desire to avoid costs. Still, this evidence doesn't wholly foreclose a conclusion that the Settlement represented an increase in consideration. Indeed, there is substantial and sufficient—and more compelling—evidence in the record that the Settlement

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[105] Ahari Aff., Ex. EE. at 32 (D.I. 223).

[106] Pl.'s Answering Br. in Opp'n to Defs.' Mot. for Summ. J. at 23 (D.I. 224).

[107] *Id*. at 23–24.

[108] *Id*. at 24.

actually and intentionally represents an increase in consideration.

The Court of Chancery noted that the Settlement directly increased the value of the Class A Shareholders' shares. Too, the MSGE settlement is separate from the MSGN Settlement. And the Court is not tasked with determining whether that settlement resulted in an increase in consideration for the MSGE shareholders. Rather, that settlement means little when determining whether the MSGN Settlement resulted in increased consideration. This Settlement was paid by MSGN; distributed on a pro-rata, per-share basis to the Class A Shareholders; and directly increased the Shareholders' initial compensation from the Merger.[109]

Also, as stated, Professor Yilmaz alternatively calculated damages related to the Sphere project to be around $44.9 million.[110] The $48.5 million Settlement was an 8.8 percent increase over the Merger's cash value at closing.[111] And MSGN represented to the Court of Chancery that that amount "is 108 percent of our cleanest-shot damages number—i.e., Professor Yilmaz's Sphere fraud number."[112] While not the exact $44.9 million estimation, the Settlement largely corresponds to

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[109] The Settlement at 19–20.

[110] Yilmaz Report ¶ 237. The Court recognizes that expert reports are generally inadmissible as evidence because they constitute hearsay. *Gerstley v. Mayer*, 2015 WL 756981, at *9 n.48 (Del. Super. Ct. Feb. 11, 2015). But there is no hearsay concern here as the report is not being used to prove the truth of its contents. *See* D.R.E. 801(c). Instead, the report is offered to show how the underlying parties reached the Settlement amount—not to show that Professor Yilmaz's report is true or correct.

[111] Ahari Aff., Ex. EE at 12, 32 (D.I. 223).

[112] Ahari Aff., Ex. W at 12, 16.

what the MSGN shareholders sought to recover under the Sphere fraud claim and falls within Professor Yilmaz's estimate.[113]

What's more, the MSGN Class A Shareholders' cause of action was curable by an increase in consideration. The Class A Shareholders sued to recover damages for their stock's undervaluation and received direct payments from the Settlement.[114] They sought an upwardly adjusted buyout price had there been a fair deal and fair price.[115] Since the MSGN Class A Shareholders sued for increased consideration and received a resulting bump-up, this factor favors the Insurers.[116]

Third, at the time of settlement, the parties had completed extensive discovery and had mediated.[117] They were deep into the litigation, settling just a month before the scheduled trial date.[118] This is differentiable from *Harman II*, where the

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[113] Unlike *Harman II* and *III*, the Settlement amount does not fall midrange of the estimates of defense costs for continuing litigation. *See Harman III*, 2026 WL 204209, at *14 (noting that the estimated defense costs were about $25 to $30 million, and the settlement was for $28 million). Here, the Settlement amount was for $48.5 million, and MSGN claims that the estimated costs were around $30 million. MSGN's MSJ Br. at 2–3, 27–28. The $48.5 Settlement amount is closer to the Professor Yilmaz "but for" damages estimate.

[114] *See* Ahari Aff., Ex. Q at 70 [hereinafter "Class-Action Complaint"] ("The 0.172 exchange ratio per share to Class members is inappropriate, unfair, and inadequate.") (D.I. 217).

[115] *See* Class-Action Complaint at 78–79.

[116] Granted, there were discussions in the lead-up to the settlement about the potential of only proving an unfair process, not price. McKenna Aff., Ex. 7 at 43–44, 66–67 (D.I. 219). And so MSGN contends it settled to avoid a nominal damages award by the Court of Chancery. But this doesn't change the fact that the Settlement increased the Class A Shareholders' consideration received from the Merger. And this doesn't change the fact that the Settlement amount correlates with Professor Yilmaz's alternative damages calculation.

[117] The Settlement at 4–6.

[118] *Id*. at 1; Ahari Aff., Ex. T at 46 (D.I. 217); *Id.*, Ex. EE at 12.

settlement occurred early in the litigation.[119] And this factor too, therefore, lends to a finding of increased consideration since the parties were deep into the case when they settled and were likely not intending to merely avert litigation.

Fourth, the Class A Shareholders comprised the class that exclusively sought an increase in consideration. These facts are of particular import as: (1) the Class A Shareholders received consideration from the Merger; (2) they sued to boost the consideration they got; and (3) they were directly paid because of their suit.[120] This shows that the Settlement represented an increase in consideration.[121] So, upon a hard look at what the Settlement represents, the Insurers have shown it constitutes an increase in consideration.

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[119] *Harman II*, 2025 WL 84702, at *11.

[120] *E.g.*, *Onyx Pharmaceuticals Inc. v. Old Republic Ins. Co*, 2022 WL 18143421, at *19 (Cal. Super.) ("Giving the terms of the Loss Exclusion their usual meaning, the claim of the Onyx shareholders alleged that the price paid by Amgen for the acquisition of 100% ownership of Onyx . . . at $125 per share was inadequate, i.e., was less that the highest price that might reasonably be obtained, and thus the Claim for indemnity of Onyx for the settlement payment is not covered. It is reasonable that the insurance carriers did not want to have insurance proceeds be a means of funding the purchase of assets by a corporation - which, as pragmatic matter, would be the result if insurance funds were paid to Onyx, which is now wholly-owned by its acquirer Amgen.").

[121] *See Ceradyne, Inc. v. RLI Insurance Co.*, 2022 WL 16735360, *9–11 (C.D. Cal. 2022) (differentiating case from *Northrop* where underlying action was for inadequate consideration and the stipulation class was the injured shareholders); *Genzyme Corp. v. Federal Ins. Co.*, 622 F.3d 62, 74 (finding an increase in consideration when underlying complaint alleged that directors and officers depressed stock value and repurchased for a lower price). *Cf. Northrop Grumman*, 2021 WL 347015, at *22 (differentiating a Section 14(a) action with a fiduciary breach claim brought under state law for bump-up clause purposes).

b. The Settlement is substantially equivalent to an increase in consideration.

The Settlement is also substantially equivalent to an increase in consideration. As discussed, the Settlement stoked the acquisition price. And "substantially equivalent to" means largely equal to. Not only does the Settlement represent an actual increase in deal consideration, but it is also largely equal to one, since, again, the consideration given to the MSGN Class A Shareholders increased the deal consideration. As well, the Settlement amount falls within Professor Yilmaz's estimate and is substantially equivalent to his estimate of the Class A Shareholders' damages.[122]

Accordingly, the Settlement represents and is substantially equivalent to a step-up in consideration for the Class A Shareholders. The derivative suit addressed the value of the Class A Stockholders' shares, and the evidence validates that the Settlement value was intended to compensate them. These facts are analogous to *Towers II*, since the underlying suit sought an increase in consideration, the Settlement went to the aggrieved shareholders on a pro-rata basis, and the parties settled on the eve of trial, with an expert report that resembles the Settlement amount. Similarly, these facts cure the issues the Supreme Court identified in *Harman III* when affirming that that settlement didn't represent an increase in consideration. As

[122] Yilmaz Report ¶ 237.

a result, the Insurers have met their burden on this issue—the Settlement value is compensation to bump up the deal price.

2. The Merger was an acquisition.

But for the Bump-Up Clause to apply, there must have been an acquisition. The Insurers contend that the transaction was an acquisition because MSGE acquired MSGN, obtaining more than 50% of the outstanding securities as well as the right to vote for or appoint more than 50% of MSGN's Directors.[123] In response, MSGN avers that the Merger was not a change in control, as the Dolans controlled MSGN before and after the transaction.[124]

The Merger resulted from a reverse triangular merger. The Court ruled in *Harman II* that a reverse triangular merger is—in its plainest terms—an acquisition effectuated via a merger mechanism.[125] The Fourth Circuit held the same in *Towers II*.[126]

And recall, this Bump-Up Clause is far more express in defining what constitutes an acquisition thereunder. It applies to an acquisition in which more than 50% of MSGN's outstanding securities are acquired, or in which the right to vote

[123] Insurers' MSJ Brief at 31–35.

[124] MSGN's MSJ Brief at 31.

[125] *Harman II*, 2025 WL 84702, at *7.

[126] *Towers II*, 138 F.4th at 790, 793.

for, or to select, more than 50% of MSGN's directors is acquired.[127] Both conditions are met here.

There is ample evidence of an acquisition of more than half of MSGN's outstanding securities. The "Agreement and Plan of Merger" provides that MSGE will acquire MSGN through a merger of Merger Sub with and into MSGN, with MSGN surviving the merger as a direct wholly-owned MSGE subsidiary.[128] The Merger's proxy statement provides that MSGN's Class A Stockholders received MSGE Class A common stock for each MSGN Class A common stock they held before closing.[129] MSGN's Class B stockholders received 0.172 shares of MSGE Class B common stock for each share of MSGN Class B common stock held before closing.[130] MSGN stated in its Notification and Report Form required under the Hart-Scott-Rodino Antitrust Act of 1976 that MSGE held 0% of MSGN's voting securities before the Merger and 100% after the Merger.[131] And MSGE and MSGN issued a joint press release announcing that MSGE would acquire MSGN in an all-stock, fixed-exchange-ratio transaction.[132] Even MSGN's expert agrees that MSGE

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[127] The Bump-Up Clause.

[128] Merger Agreement at Recitals; *see also id*. at § 2.1 (describing the transfer of stock ownership from the Merger).

[129] Ahari Aff., Ex. B. at 58 (D.I. 217).

[130] *Id*., Ex. B. at 58 (D.I. 217); *Id*., Ex. H. at 1.

[131] *Id*., Ex. J Item 2(d)(i).

[132] *Id*., Ex. H.

acquired all MSGN's outstanding securities and voting securities.[133] Given all this, MSGE no doubt secured more than half of MSGN's outstanding securities and voting rights.[134]

But MSGN insists that there was no change in control because the Dolans retained control over MSGN and MSGE. MSGN maintains that requiring a change in control is a reasonable Bump-Up Clause interpretation because acquiring more than 50% of the stock or voting rights constitutes a change-in-control transaction.[135] But the Bump-Up Clause's plain language lacks a change-of-control requirement. Indeed, the Bump-Up Clause specifies all that must occur for an acquisition to occur. MSGE had to procure either half of MSGN's outstanding shares or the right to designate more than half of MSGN's directors.[136]

To counter, MSGN points to certain testimony from Federal Insurance Company that the Bump-Up Clause was contemplated to capture change-in-control transactions.[137] Unless a contract is unambiguous, extrinsic evidence may not be used to interpret the parties' intent, to vary the contract's terms, or to create an

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[133] Ahari Aff., Ex. FF, 60 (D.I. 223).

[134] *See generally Genzyme*, 622 F.3d at 72 (explaining that acquiring the right to cancel shares functions as a purchase).

[135] MSGN's MSJ Brief at 29–32; Pl.'s Reply Br. in Supp. of its Mot. for Summ. J. at 20–22 (D.I. 228).

[136] The Bump-Up Clause.

[137] MSGN's MSJ Brief at 30.

ambiguity.[138] And when an insurance contract's language is clear and unambiguous, the Court will not destroy or twist the words under the guise of construing them.[139] MSGN's purported change-in-control requirement goes beyond the plain language of the unambiguous Bump-Up Clause. Even if the Court were to consider that which Plaintiff urges, the Dolans are separate from the MSGN and MSGE entities,[140] and MSGN makes no piercing-the-corporate-veil claim that would warrant melding the Dolan families with the MSG entities.[141] Plainly put, the Bump-Up Clause never mentions change in control and isn't ambiguous. Thus, the Court declines to accept MSGN's invitation to read words into the Bump-Up Clause that aren't there.

Given all this, the Merger is an acquisition under the Bump-Up Clause, and the Insurers are not required to cover the Settlement payout that represents additional consideration. Before the Merger, MSGE didn't hold half of MSGN's shares or voting power. After the Merger, it did. Likewise, XL Specialty Insurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. are entitled to recoup

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[138] *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997).

[139] *IDT Corp. v. U.S. Specialty Ins. Co.*, 2019 WL 413692, at *7 (Del. Super. Ct. Jan. 31, 2019).

[140] *See Principal Growth Strategies, LLC v. AGH Parent LLC*, 288 A.3d 1138, 1162 (Del. Ch. 2023) (quoting *Buechner v. Farbenfabriken Bayer Aktiengesellschaft*, 154 A.2d 684, 687 (Del. 1959) ("[t]he corporation is an entity, distinct from its stockholders even if the subsidiary's stock is wholly owned by one person or corporation.")).

[141] *See Wallace on behalf of Cencom Cable Income Partners II, L.P. v. Wood*, 752 A.2d 1175, 1184 (Del. Ch. 1999) (explaining that piercing the corporate veil requires the corporate structure to cause fraud or injustice and, effectively, must be a sham and exist for no other purpose than as a vehicle for fraud); *see also id*. at 1183 ("[p]ersuading a Delaware court to disregard the corporate entity is a difficult task.").

$10 million each for the funds advanced since the Bump-Up Clause envelops the Settlement, and MSGN agreed that they could reclaim their advances were that so.[142]

C. THE BUMP-UP CLAUSE ALSO EXTINGUISHES THE FEE AND COST AWARD.

Invoking *Towers II*, the Insurers argue that they don't have to pay the Fee and Expense Award. Applying the common fund doctrine, the *Towers II* court held that the federal district court correctly included the attorney's fees award as an increase in consideration under a bump-up clause.[143] In doing so, the court noted that the underlying settlement authorized the shareholders' class representative to ask the court to award attorney's fees and costs from the common fund.[144] The court also acknowledged that the settlement didn't specifically allocate a portion of the settlement fund for attorney's fees, and the shareholders were only able to afford their attorneys through the settlement award.[145] Hence, the court affirmed the district court's ruling that, no matter how the additional consideration was distributed once

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[142] This Court has recognized that an insurer generally cannot unilaterally engender a right to recoup paid settlement costs unless the policy allows the insurer to do so. *Textron Inc. v. Endurance Am. Ins. Co.*, 346 A.3d 639, 647–48 (Del. Super. Ct. 2025). But MSGN entered into enforceable agreements allowing XL Specialty and National Union to retrieve costs if successful in this action. MSGN-XL Agreement and MSGN-National Agreement. And, in both agreements, MSGN agreed not to raise the voluntary payments doctrine in this litigation. *Id*. Since these are enforceable agreements, and MSGN doesn't contest that XL Specialty and National Union are unable to retake their advances—besides arguing that the Bump-Up Clause doesn't exclude the Settlement—XL Specialty and National Union can recoup their advances.

[143] *Towers II*, 138 F.4th at 796.

[144] *Id*. at 796.

[145] *Id*. at 797 n.12.

paid to the beneficiaries, it was, *in toto*, an increase.[146]

PNC Financial Services Group v. Houston Casualty Company[147] is also instructive. There, the Third Circuit affirmed that a settlement payment was engulfed by an insurance exclusion because it aimed to refund customers.[148] But the court overturned the district court's ruling that attorney's fees paid from the settlement fund were not within the provision's reach.[149] The court—noting that the Third Circuit recognizes the common fund doctrine—concluded that the fact that the attorney's fees were paid with the settlement fund did not change the fund's goal: to refund customers.[150] Because that settlement fund triggered the exclusion, the attorney's fees paid from the fund were also excluded.[151]

Delaware, too, follows the common fund doctrine. "Under the common fund doctrine, 'a litigant or 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.'"[152] When a judgment produces a common fund, counsel may

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[146] *Id*. at 796.

[147] 647 F. App'x 112 (3d. Cir. 2016).

[148] *Id.* at 114.

[149] *Id.* at 122.

[150] *Id*.

[151] *Id*. at 123.

[152] *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1252–53 (Del. 2012) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

apply for a fees and expenses award from the fund.[153]

Here, the Bump-Up Clause covers the Fee and Expense Award because the award is substantially equivalent to an increase in consideration. Although this amount didn't reach the shareholders, it maximized the Settlement Fund from which they profited.[154] As discussed, the Settlement Fund represented a bump-up in deal consideration. MSGN first contributed to the Settlement Fund, then lead counsel applied for the fee and expense award.[155] The Settlement payment to the fund benefitted the Class A Shareholders, and there was another step to pay fees and expenses apart from MSGN's payment.[156] Put simply, the fee award is fused into the Settlement under the Bump-Up Clause, and the entire amount enhances the shareholders' consideration. Hence, the entire amount represents and is substantially equivalent to an increase in consideration.[157]

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[153] *In re Dell Techs. Inc. Class V Stockholders Litig.*, 326 A.3d 686, 697 (Del. 2024).

[154] *See Genworth*, 2025 WL 688987, at *11 (noting that, under both the traditional and common fund doctrines, payments to class counsel are excluded if the underlying award to the class falls within the exclusion).

[155] Settlement at 31–33. Also, the disposition of the Fee Application wasn't a material term of the Settlement and approval of the fee application wasn't a condition of the Settlement. *Id*. at 32.

[156] *See Ceradyne*, 2022 WL 16735360, at *11–12 (collecting cases that generally observe that if an act is not covered, then coverage cannot be bootstrapped based on an attorney's fees claim); *see also Onyx*, 2022 WL 18143421, at *13 n.9 (agreeing with insurers that attorney's fees paid from the settlement were not separately covered under the policy because "[u]nder the terms of the underlying Settlement Agreement and the ultimate Judgment and Order granting final approval of the class action settlement, the settlement money paid by Onyx was paid into a common settlement fund belonging to the shareholder class members. Out of that common fund, the Court then awarded attorneys' fees to the Plaintiffs' Class Counsel as part of the distribution and allocation of those funds - over which Onyx has no direct control, involvement, or obligation.").

[157] As well, the Bump-Up Clause doesn't provide a carve out for attorney's fees that might

V. CONCLUSION

Without doubt, the Insurers bore the burden to prove the bump-up provision's applicability. They have proved so here.

MSGN asks the Court to ignore the MSGN Class A Shareholders' allegations, the Settlement they obtained from MSGN for an inadequate price, and the Settlement's resulting boost in the consideration they received. The Insurers present a record replete with evidence that the Settlement reflected an increase in consideration from the Merger, and that MSGE garnered more than half of MSGN's shares. Thus, the Insurers have met their burden of demonstrating that the Bump-Up Clause precludes coverage, and MSGN has failed to meaningfully rebut the Insurers' proof.

For these reasons and in the manner expressly set forth above, the Court: **GRANTS** the Insurers' Motion for Summary Judgment; and **DENIES** MSGN's Motion for Summary Judgment.

The Parties shall confer and provide the Court with a form of implementing final order on or before June 30, 2026.

IT IS SO ORDERED.

/s/ Paul R. Wallace
Paul R. Wallace, Judge

warrant coverage of the fees and costs award. *Compare* the Bump-Up Clause, *with Ceradyne*, 2022 WL 16735360, at *12 (noting that bump-up clause explicitly carved out defense costs in connection with the underlying claim).