

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD F. BURKHART, WILLIAM E.)
KELLY, RICHARD S. LAVERY, THOMAS R.)
PRATT and GERALD GREEN, individually)
and on behalf of others similarly situated,)

Plaintiffs,)

v.)

C.A. No. 2018-0691-NAC

GENWORTH FINANCIAL, INC.,)
GENWORTH HOLDINGS, INC. GENWORTH)
NORTH AMERICA CORPORATION,)
GENWORTH FINANCIAL INTERNATIONAL)
HOLDINGS, LLC and GENWORTH LIFE)
INSURANCE COMPANY,)

Defendants.)

MEMORANDUM OPINION

Date Submitted: January 21, 2026

Date Decided: October 23, 2026

Thomas A. Uebler, Adam J. Waskie, Sarah P. Kaboly, MCCOLLOM D'EMILIO SMITH UEBLER LLC, Wilmington, Delaware; Edward F. Haber, Michelle H. Blauner, Patrick J. Vallely, SHAPIRO HABER & URMYY LLP; *Counsel for Plaintiffs.*

Srinivas M. Raju, Kevin Gallagher, Elizabeth J. Freud, RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware; Reid L. Ashinoff, Kenneth J. Pfaehler, T. Carter White, DENTONS US LLP, New York, New York; John C. Hueston, Marshall A. Camp, Padraic Foran, Zachary Murray, HUESTON HENNIGAN LLP, Los Angeles, California; *Counsel for Defendants.*

COOK, V.C.

The elderly or individuals with serious health conditions often struggle to do everyday tasks without assistance or expensive supportive equipment. Long term care insurance (“LTCI”) mitigates that risk and expense by providing funds to help pay for assisted living and other supportive care. Given the nature of LTCI, policyholders typically purchase coverage long before they begin receiving benefits. Once a policyholder becomes eligible, LTCI benefits payments can last for years. As a result, LTCI companies must carefully manage claims reserves to ensure they have funds to pay benefits long into the future. Recent financial pressures caused by rising claims costs, resistance to premium hikes, and increased longevity have caused many LTCI companies to restructure their business or exit the market.

Defendants are a group of affiliated insurance companies that sell various forms of insurance, including LTCI. In the mid-2010s, Defendants restructured their LTCI business due to a series of economic and legal factors. Specifically, between 2015 and 2016, Defendants isolated their LTCI business from their other insurance lines while repatriating it in the U.S. Executing that plan required terminating a series of inter-entity reinsurance agreements that provided asset-backed financial guarantees to support the LTCI liabilities. During the restructuring period, the group’s LTCI underwriter also issued a series of dividends to its parent companies. Plaintiffs filed this suit alleging that those actions constituted intentional and constructive fraudulent transfers that violated the Delaware Uniform Fraudulent Transfer Act (“DUFTA”). This decision addresses Defendants’ Motion for Summary Judgment, Plaintiffs’ Rule 56(d) Motion, and Defendants’ Motion to Strike Plaintiffs’

Rule 56(d) Motion. For the reasons discussed herein, the Court grants Defendants’ Motion for Summary Judgment and denies both the Rule 56(d) Motion and Motion to Strike as moot.

I. BACKGROUND

The following background discussion is drawn from the parties’ submissions on the motion for summary judgment. “At this procedural stage, the court must view the evidence in the light most favorable to the non-movant.”¹

A. The Parties

Plaintiffs purport to represent a class of Defendant Genworth Life Insurance Company (“GLIC”) LTCI policyholders and agents who expect to receive benefits and commissions payments over the coming decades.² As of this decision’s submission

¹ *Meteora Cap. Partners, LP v. Roadzen Inc.*, 2026 WL 2530118, at *1 (Del. Ch. Aug. 27, 2026) (citing *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992)).

² See Plaintiffs’ Second Amended and Supplemental Class Action Complaint (“SAC”) ¶¶ 2–6, 14 (Dkt. 132). In January 2024, Plaintiffs sought certification of a class consisting of all (1) beneficiaries of in-force GLIC LTCI policies and (2) agents entitled to future commission payments based on their sale of GLIC LTCI policies. See Plaintiffs’ Motion for Class Certification (Dkt. 291); Defendants’ Brief in Opposition to Plaintiffs’ Motion for Class Certification (Dkt. 295). The Court deferred its ruling on class certification. See Transcript of 6-13-2024 Oral Argument (Dkt. 347).

date, no policyholder Plaintiff has made a claim under their GLIC LTCI policy.³ Similarly, each agent Plaintiff has received all commission payments due.⁴

Defendants Genworth Financial Inc. (“Genworth”), Genworth Holdings, Inc. (“Holdings”), Genworth Financial International Holdings, LLC (“GFIH”), Genworth North American Corporation (“Genworth NA”), and GLIC are a group of affiliated insurance companies.⁵ Through Holdings, Genworth indirectly owns and operates the other Defendants.⁶ Before the at-issue transactions, Genworth’s subsidiaries included non-parties Brookfield Life Assurance Company Limited (“Brookfield”) and Brookfield Life and Annuity Insurance Company Limited (“BLAIC”).⁷ Genworth’s corporate structure at that time was as follows:⁸

³ *E.g.*, Transmittal Affidavit of Kenneth J. Pfaehler in Support of Defendants’ Motion for Summary Judgment (“Pfaehler Aff.”), Ex. 9 at 28; Ex. 10 at 71–72 (D.I. 373). *See also* Affidavit of Scott Goodman in Support of Defendants’ Motion for Summary Judgment (“Goodman Aff.”), Ex. 28 (D.I. 377) (representing that GLIC has paid \$18,242,015,710 in LTCI benefits since the challenged transactions).

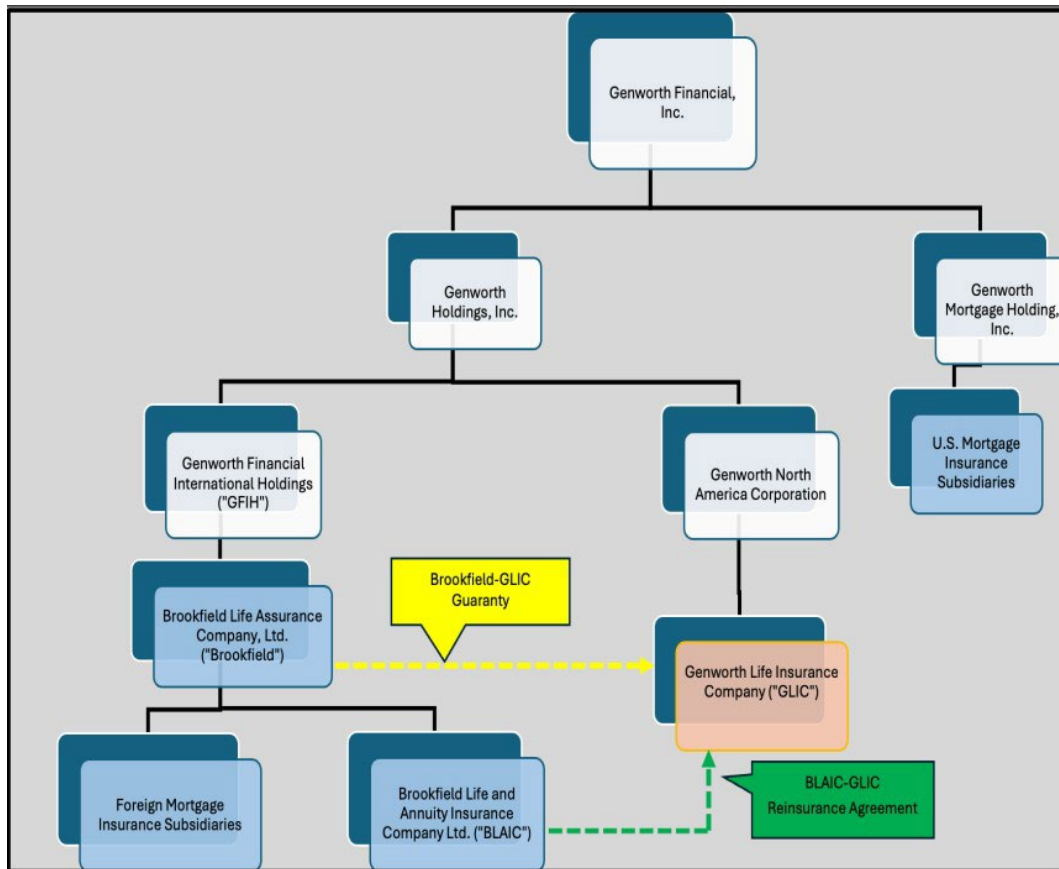
⁴ *E.g.*, Pfaehler Aff., Ex 12 at 46; Ex. 13 at 59–60. *See also* Goodman Aff., Ex. 28 (representing that GLIC has paid \$953,632,281 in LTCI commissions since the challenged transactions).

⁵ *See* SAC ¶¶ 7–11. All Defendants, except for Genworth NA, are Delaware entities. *See id.* ¶¶ 7–8, 10–11. Defendant Genworth NA is organized under Washington law. *See id.* ¶ 9.

⁶ *See id.* Based on that control, this opinion refers to “Genworth” when referring to the group as a whole or when discussing group-wide decisions or actions.

⁷ *See id.* ¶¶ 122, 126.

⁸ Plaintiffs’ Demonstrative from the January 21, 2026, Summary Judgment Hearing at 6 (Dkt. 431). The Court includes the demonstrative for illustrative purposes only.



B. LTCI And Delaware Insurance Regulation

LTCI covers nursing, assisted living, and other healthcare costs for people who cannot perform daily tasks without assistance.⁹ Genworth sells LTCI through GLIC.¹⁰ GLIC's LTCI policies are "[g]uaranteed [r]enewable for [l]ife" so long as

⁹ See Linhong Chen & Xiaocang Xu, *Effect Evaluation of the Long-Term Care Insurance (LTCI) System on the Health Care of the Elderly: A Review*, 13 J. Multidisciplinary Healthcare 863, 864 (2020) ("LTCI system . . . refers to an institutional arrangement to share the nursing expenses incurred by people who cannot take care of themselves due to chronic diseases or physical and psychological disability[.]").

¹⁰ See Pfaehler Aff., Ex. 1 at 1.

policyholders pay their annual premiums.¹¹ Given LTCI's nature,¹² companies—including Genworth—use complex actuarial formulas to project uncertain benefits payouts over decades.¹³ Recent macro effects have raised the risk profile of LTCI as an insurance product generally, causing several insurance companies to scale down their LTCI business or exit entirely.¹⁴

Genworth's LTCI business is not immune from these headwinds and has experienced similar financial strain.¹⁵ In response to those pressures, GLIC has repeatedly sought regulatory approval to raise its LTCI premiums pursuant to its Multi-Year Rate Action Plan ("MYRAP").¹⁶

¹¹ *E.g., id.* at 21.

¹² Because LTCI helps cover costs associated with a loss of daily function and long-term care, individuals often purchase coverage long before they receive benefits. *See, e.g.,* Pfaehler Aff., Ex. 8. Once a policyholder becomes eligible, they typically receive LTCI benefits for several years. *See* Jeffrey R. Brown & Amy Finkelstein, *The Private Market for Long-Term Care Insurance in the United States: A Review of the Evidence*, 76 J. Risk & Ins. 5 (2009). Therefore, LTCI companies must carefully balance the premiums they receive in the short term with the benefits they expect to pay out in the long term. *See id.*

¹³ *See* Pfaehler Aff., Ex. 38 at 8–11; Ex. 39 at 9–12.

¹⁴ *See* Pfaehler Aff., Ex. 39 at 10 ("Since 2000, all major determinants of premium adequacy and product profitability had been deteriorating. Overall claim experience had deteriorated substantially, and carriers were exiting the market. LTC[I] products were materially underpriced and certain monoline LTC[I] companies were shown to be undercapitalized. Insolvencies followed."). *See also* Chen & Xu, *supra* note 9.

¹⁵ *See, e.g.,* Transmittal Affidavit of Thomas A. Uebler, Esquire to Plaintiffs' Answering Brief in Opposition to Defendants' Motion for Summary Judgment ("Uebler Aff."), Ex. 7 at 2 (D.I. 401) ("GLIC Margins Largely Eroded From Higher Expected Claims Cost. Future Rate Actions Needed To Offset Higher Claim Cost & Support Positive Margins.").

¹⁶ *See, e.g., id.* at 4, 21. GLIC can increase the premiums LTCI policyholders pay when actuarially justified, subject to state regulatory approval. *See* Pfaehler Aff., Ex. 1 (LTCI policy disclosing GLIC's ability to seek regulatory approval to raise premiums).

The Delaware Department of Insurance (“Department”), led by the Delaware Insurance Commissioner (“Commissioner”), has broad statutory authorization to regulate the insurance industry.¹⁷ The Department regulates GLIC as a Delaware domiciled insurance company. That regulation includes (1) testing GLIC’s cash flow to monitor its capitalization;¹⁸ (2) directing GLIC to answer questions concerning its operations;¹⁹ and (3) reviewing GLIC’s annual actuarial memorandum and audited financials.²⁰ Once every five years, the Department audits GLIC’s “affairs, transactions, accounts, records, documents, [] assets . . . and any other fact relevant to its business methods, management, and its dealings with policyholders[.]”²¹ The Commissioner has broad authority to impose penalties, order corrective action, or even take GLIC under supervision if its responses or finances are unsatisfactory.²²

The Department also has authority over mergers among insurers. Importantly, advance approval from the Commissioner is required before a proposed merger involving a Delaware insurer can be consummated. The statute sets out

¹⁷ See 18 *Del. C.* §§ 301–334, 526, 1108, 4930, 5005, 5006, 5901 *et seq.*

¹⁸ See Goodman Aff., Exs. 18–22 (evidencing the ongoing regulatory dialogue between GLIC and the Department).

¹⁹ See, *e.g.*, Goodman Aff., Ex. 4; Ex. 17.

²⁰ 18 *Del. Admin. C.* §§ 301-2.0, 301-5.0. Similarly, the Department reviews GLIC’s quarterly financials. See Goodman Aff. ¶ 8. In so doing, the Department considers GLIC’s risk-based capital reports, which indicate whether the company holds sufficient capital based on its risk profile. See 18 *Del. C.* § 5802; Goodman Aff., Ex. 5, Ex. 7.

²¹ 18 *Del. Admin. C.* § 101-3.1; see 18 *Del. C.* § 318.

²² *E.g.*, 18 *Del. C.* §§ 329, 5803–5806, 5905.

certain requirements, including filing the contemplated merger agreement and plan with the Commissioner, notice to the stockholders of the insurers involved, and a hearing.²³ Only after these statutory requirements are met may such a merger be approved. Further, the Commissioner is not required to approve a proposed merger if they find that the proposed transaction is one or more of the following:

- (1) Is contrary to law.
- (2) Unfair or inequitable to the stockholders of any insurer involved.
- (3) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in [Delaware] or elsewhere.
- (4) Would materially tend to lessen competition in the insurance business in [Delaware] or elsewhere as to the kinds of insurance involved or would materially tend to create a monopoly as to such business.
- (5) Is subject to other material and reasonable objections.²⁴

C. The Reinsurance Agreement, Brookfield And BLAIC

In 2001, Brookfield entered into a permanent reinsurance agreement (“Reinsurance Agreement”), under which it financially guaranteed a portion of Genworth’s LTCI liabilities.²⁵ Only GLIC’s predecessor in interest and Brookfield were parties to the Reinsurance Agreement, which disclaimed “creat[ing] any legal relationship between [Brookfield] and the persons . . . insured under the LTC[I] Policies[.]”²⁶ Thus, the Reinsurance Agreement did not give LTCI policyholders or agents any right to payments from Brookfield.²⁷ In 2007, Brookfield acquired an

²³ 18 *Del. C.* § 4930(b).

²⁴ *Id.* § 4930(b)(1)–(5).

²⁵ Uebler Aff., Ex. 1 (“Reinsurance Agreement”).

²⁶ *Id.* § 2.1.

²⁷ *See id.*

interest in two profitable foreign mortgage insurance (“FMI”) businesses, which became part of the assets backing the Reinsurance Agreement.²⁸ By 2009, Brookfield had reinsured 50% of GLIC’s LTCI liabilities.²⁹

In 2011, BLAIC assumed Brookfield’s obligations under the Reinsurance Agreement.³⁰ Contemporaneously, Brookfield financially guaranteed BLAIC’s reinsurance payments (“Guaranty”).³¹ The Guaranty ensured that the FMI assets would continue backing GLIC’s LTCI liabilities, although it did not require Brookfield to maintain any specific reserves to support its obligation to BLAIC.³²

In 2013, Genworth decided to repatriate its LTCI business from Bermuda to the United States.³³ The repatriation was announced in 2014; changes to Bermuda’s insurance laws requiring “significantly higher LTC[I] reserves” prompted the repatriation.³⁴

²⁸ See Uebler Aff., Ex. 2.

²⁹ See Reinsurance Agreement.

³⁰ See *id.* at Genworth0029494.

³¹ *Id.* at Genworth0029497; Affidavit of Babak Alimard in Support of Defendants’ Motion for Summary Judgment (“Alimard Aff.”) ¶ 4 (D.I. 375). BLAIC never triggered its right to funds from Brookfield under the Guaranty. See *id.* ¶ 7.

³² *Id.* ¶ 4; Alimard Aff., Ex. 2 at Genworth 0029423–26.

³³ See Uebler Aff., Ex. 17 at 3.

³⁴ Uebler Aff., Ex. 12 (noting repatriating would “[a]void[] Bermuda requirements for significantly higher LTC[I] reserves & capital (~\$2B charge) while protecting international dividends from LTC[I] exposure.”); Ex. 17; Ex. 18. See also Uebler Aff., Ex. 20 (“Completion of the repatriation by 4Q 2016 will remove our long term care insurance business from Bermuda prior to the full implementation of its Solvency II requirements is a key strategic priority for Genworth[.]”).

D. Actuarial Assumptions And The Challenged Transactions

In 2014, actuaries at Genworth questioned some of the assumptions used to project GLIC's future LTCI liabilities.³⁵ Specifically, they asserted that Genworth's chief actuary adopted overly aggressive assumptions designed to artificially ensure a positive cash flow margin on GLIC's books.³⁶ Those actuaries felt the new assumptions "were unreasonable, especially in the tail . . . [and] unsupported by any experience[.]"³⁷ Indeed, one actuary cautioned that if Genworth's chief actuary "pursues his current actions, he is going beyond professional requirements and venturing into the realm of financial fraud."³⁸ The concerned actuaries noted that the new assumptions could have serious knock-on effects for GLIC's finances.³⁹

Contemporaneous with that actuarial debate, GLIC announced that its "comprehensive claim reserve review" necessitated increasing reserves by \$531 million based on revised assumptions concerning claims terminations and benefits

³⁵ See Uebler Aff., Ex. 30; Ex. 31; Ex. 32; Ex. 97 at 16–19, 41–43; Ex. 98 at 65–67.

³⁶ Uebler Aff., Ex. 29 (Genworth's chief actuary writing he would "do everything [he] can to architect a positive margin that is actuarially defensible."); Ex. 30 ("Rob Vrolyk announced his intentions to target positive margins to, in his words, 'buy management one more year.' He implied (and maybe stated outright. I can't recall exactly) he was willing to get aggressive in modeling assumptions to produce this result.").

³⁷ Uebler Aff., Ex. 97 at 42; see Uebler Aff., Ex. 30 at 3 ("[t]he recent adjustments . . . to the assumptions used for the CFT margin calculations are in my opinion aggressive and unrealistic."); Ex. 36.

³⁸ Uebler Aff., Ex. 30 at 3.

³⁹ See Uebler Aff., Ex. 98 at 188.

utilizations.⁴⁰ As a result, Genworth’s stock price fell and a credit agency lowered its rating.⁴¹ This prompted consultants to recommend that Genworth “split into two companies,” with one dedicated solely to LTCI.⁴² That split would “separate future dividends and proceeds coming out of [Genworth’s other businesses] from LTC[I]” liabilities.⁴³ Thus, Genworth’s 2014 10-K disclosed its intent “to seek regulatory approvals to effectively unwind the long-term care insurance agreement between GLIC and BLAIC and release the related Brookfield [G]uarant[y][.]”⁴⁴

Ultimately, Genworth devised a two-step process to effectuate the repatriation and isolation of its LTCI business.⁴⁵ In step one, Brookfield would cancel the Guaranty (“Cancellation”) and replace its commitment with a Capital Maintenance

⁴⁰ Uebler Aff., Ex. 6 at 1. Despite those actuarial revisions, Plaintiffs insist GLIC continues to anchor its new model in similarly unrealistic, results-driven assumptions. *See* Plaintiffs’ Answering Brief in Opposition to Defendants’ Motion for Summary Judgment (“MSJ Opp’n”) at 16–21.

⁴¹ Uebler Aff., Ex. 7 at Genworth0533356; Ex. 8.

⁴² Uebler Aff., Ex. 9 at Genworth1160294–97. Genworth’s investment bankers suggested GLIC’s contemplated repatriation as one possible way to effectuate that split. *Id.* at Genworth1160303.

⁴³ *Id.* at Genworth1160303; *see* Uebler Aff., Ex. 10 (Genworth’s bankers stating Genworth’s “businesses [are] currently threatened by LTC[I] exposure[.]”). Indeed, Genworth later commented that its LTCI obligations were a “contagion risk [] [] impacting rating[.]” Uebler Aff., Ex. 13 at Genworth 1186297.

⁴⁴ Uebler Aff., Ex. 14. *See also* Pfaehler Aff., Ex. 23 at 5 (“The separation and isolation of LTC[I] provides Genworth the best opportunity to focus on achieving our multi-year rate action plan. Not only is this essential for GLIC’s financial health, it has further benefits for the policyholders of our other insurance companies in that it reduces the impact of potential uncertainty associated with LTC[I][.]”); Pfaehler Aff., Ex. 18.

⁴⁵ *See, e.g.*, Uebler Aff., Ex. 4.

Agreement (“CMA”).⁴⁶ Under the CMA, “GFIH [] agree[d] to provide capital to BLAIC to fund payment obligations to GLIC . . . under the Reinsurance Agreement”⁴⁷ but, as with the Guaranty, did not have to maintain any specific assets to back up that commitment. Importantly, the CMA provided that it would “remain in full force and effect until the date upon which the Reinsurance Agreement[] terminate[s],” which GLIC acknowledged would happen automatically upon completion of the contemplated repatriation.⁴⁸ Like the Guaranty, the CMA did not give GLIC’s LTCI policyholders or agents a right to seek funds from GFIH.⁴⁹ In step two, BLAIC would merge into GLIC (“Merger”, and together with the Cancellation, “Reinsurance Termination”).⁵⁰ Both steps of Genworth’s plan for the Reinsurance Termination required regulatory approval, including from the Department.⁵¹

⁴⁶ *Id.* Step-one would culminate in “Brookfield[’s] Dissolution.” *Id.* at Genworth0197163.

⁴⁷ Alimard Aff., Ex. 2; *see id.*, Ex. 1 (“CMA”). As part of that process, Genworth “[d]istribute[d] Brookfield’s [s]ubsidiaries . . . to GFIH[,]” including the FMI businesses. Uebler Aff., Ex. 4 at Genworth0197163.

⁴⁸ CMA ¶ 3.

⁴⁹ *See id.* ¶ 4 (“[N]o policy holder or any other person or entity shall have any right to recover damages or other losses allegedly sustained as a result of GFIH’s failure to comply with the provisions of this agreement[.]”).

⁵⁰ *See* Uebler Aff., Ex. 4.

⁵¹ *See* Alimard Aff. ¶¶ 8–35.

E. The Department Reviews Both Steps Of The Reinsurance Termination

On September 1, 2015, Genworth asked the Department to approve the Cancellation.⁵² To do so, Genworth submitted a “Prior Notice of Transaction” Form D with the Department, which detailed Genworth’s request for approval to terminate the Guaranty and replace it with the CMA.⁵³ The form requested permission that the “Guaranty be terminated and concurrently therewith replaced by a Capital Maintenance Agreement[,]”⁵⁴ and explained that “[t]he Capital Maintenance Agreement would remain in effect only for so long as the Reinsurance Agreements would remain in effect and . . . upon completion of the LTC Repatriation Plan . . . all of the Reinsurance Agreements will have been terminated and the [CMA] would automatically be terminated.”⁵⁵ Genworth’s submission also attached a draft of the CMA.⁵⁶ On September 8, 2015, the Department approved “the Terminat[ion] of the Guaranty from Brookfield . . . and the new [CMA].”⁵⁷ Thereafter, the CMA went into

⁵² Alimard Aff., Ex. 2.

⁵³ *Id.*

⁵⁴ *Id.* at Item 2(b).

⁵⁵ *Id.* at Item 3.

⁵⁶ *Id.* at Ex. 4. The draft CMA also had a provision noting it would “remain in full force and effect until the date upon which the Reinsurance Agreements terminate.” *Id.* ¶ 3.

⁵⁷ Alimard Aff., Ex. 3; *see id.* Exs. 5–6 (Virginia regulators approving the Cancellation).

effect, but BLAIC never invoked its rights thereunder before the CMA terminated as part of the Merger.⁵⁸

On June 1, 2016, Genworth requested the Department's approval to effectuate the Merger.⁵⁹ As part of the review process, the Department ordered a hearing before former Vice Chancellor Lamb, who acted as the hearing officer ("Hearing").⁶⁰ The Department gave notice of that Hearing on its website, in two Delaware newspapers, and on the official state public meeting calendar.⁶¹ Despite that notice, no objector appeared at the Hearing on September 8, 2016.⁶² The Hearing included written and oral testimony from both fact and expert witnesses.⁶³ Genworth did not raise the CMA's existence, terms, or termination at the Hearing, which, as described above, the Department had approved in September 2015.⁶⁴

After the Hearing, the hearing officer concluded that "the testimony and evidence submitted . . . indicate that the proposed [M]erger would not substantially

⁵⁸ See CMA ¶ 3; Alimard Aff. ¶ 7.

⁵⁹ See Alimard Aff., Ex. 10; see 18 *Del. C.* § 4930(b).

⁶⁰ See Alimard Aff., Exs. 22–24.

⁶¹ See Alimard Aff., Ex. 14 at Genworth0031323.

⁶² *Id.* at Genworth0031328.

⁶³ See Alimard Aff., Exs. 21–24; Goodman Aff., Ex. 2; Ex. 9.

⁶⁴ See Uebler Aff., Exs. 21–24. See also Alimard Aff., Ex. 14 (not mentioning the CMA). At oral argument, Defendants rejected Plaintiffs' "argument that [] the department forgot about the CMA," instead insisting "the department knew full well about the CMA . . . it's not that the [D]epartment didn't know about the CMA, but they ha[d] a completely different view as to the solvency of GLIC." Transcript of 1-21-2026 Oral Argument on Defendants' Motion for Summary Judgment ("OA Tr.") at 65 (Dkt. 433).

reduce the security of . . . the policyholders of GLIC in [Delaware] or elsewhere.”⁶⁵ The hearing officer recommended that the Department approve the Merger.⁶⁶ On September 15, 2016, the Commissioner adopted the hearing officer’s factual findings and approved the Merger.⁶⁷

The Merger—and thus the second and final step of the Reinsurance Termination—closed on October 1, 2016, thereby terminating the Reinsurance Agreement and CMA.⁶⁸ As part of the Merger, GLIC received a \$785 million capital infusion and \$900 million fixed annuity block,⁶⁹ prompting the company to significantly increase net assets on its balance sheet.⁷⁰ The Merger also accomplished Genworth’s goal of repatriating and isolating its LTCI business from its other insurance lines as well as the FMI assets.⁷¹

⁶⁵ Uebler Aff., Ex. 28 at Genworth0028392.

⁶⁶ *Id.* at Genworth0028394.

⁶⁷ Alimard Aff., Ex. 24. The Commissioner also found “the proposed Merger would not substantially reduce the security of or service to be rendered to the policyholders of GLIC in [Delaware] or elsewhere” and “[t]here is no evidence to indicate that the proposed Merger is unfair or inequitable to the stockholders of any insurer involved.” *Id.*

⁶⁸ Uebler Aff., Ex. 71 at 318; *see* CMA ¶ 3; Alimard Aff., Ex. 10.

⁶⁹ *See* Alimard Aff. ¶ 35; Alimard Aff., Ex. 28.

⁷⁰ *Compare* Goodman Aff., Ex. 3 at 2–3, *with* Goodman Aff., Ex. 4 at 2–3.

⁷¹ *See* Alimard Aff., Ex. 10 (detailing the Merger’s process and effect).

F. GLIC After The Challenged Transactions

Three weeks after the Merger closed, Genworth agreed to merge with non-party China Oceanwide.⁷² That merger never materialized.⁷³ Yet, in contemplation thereof Genworth prepared a fair value assessment of its assets and liabilities.⁷⁴ As part of that process, a Genworth executive informed the company's accountants that "the most advantageous market for transferring the [LTCI] contracts . . . may not actually be selling the book [of] business to a market participant, but to . . . enter receivership by the State Regulators[.]"⁷⁵ The executive also wrote that "for the insurance contracts in GLIC [] [] the estimated fair value . . . of the insurance liabilities will significantly exceed the fair value of the net assets[.]"⁷⁶ Consistent with those statements, for purposes of the China Oceanwide merger, Genworth determined that "[t]he FV calculations for LTC[I] . . . produce a total liability FV which exceeds the market value of assets."⁷⁷ Genworth later reaffirmed that the

⁷² Uebler Aff., Ex. 56.

⁷³ Uebler Aff., Ex. 57.

⁷⁴ Uebler Aff., Ex. 100 at 300–302. In preparing that report, Genworth recognized that "[a] third party valuation [] would likely add conservatism for some of our assumptions beyond Risk Margins[.]" Uebler Aff., Ex. 60 at Genworth0228567.

⁷⁵ Uebler Aff., Ex. 58 (detailing "considerations for the determination of the fair value.").

⁷⁶ *Id.*

⁷⁷ Uebler Aff., Ex. 64 at Genworth0053538. "FV" refers to fair value. *See id.* at Genworth0053517.

“[a]ggregate FV of [l]iabilities, based on a market participant view, is significantly in excess of Aggregate FV of Assets.”⁷⁸

Post-merger, the Department continued overseeing GLIC’s operations.⁷⁹ GLIC always passed annual cash flow testing.⁸⁰ The Department’s most recent five-year review of GLIC—which covered the relevant period—resulted in “no significant findings . . . [and] no recommendations[.]”⁸¹ The Department also conducted targeted examinations of GLIC’s LTCI business in 2020, 2021, and 2022, and “made no finding[s],” including “any that raised any issues that would reflect on GLIC’s solvency.”⁸² Over the relevant period and through this decision’s submission date, the Department never imposed penalties on GLIC, ordered corrective action, or took the business under state supervision.⁸³ GLIC insists it is financially stable with \$29

⁷⁸ Uebler Aff., Ex. 66 at Genworth0228461.

⁷⁹ *See, e.g.*, Goodman Aff. ¶ 19; Goodman Aff., Ex. 10.

⁸⁰ Goodman Aff. ¶ 18.

⁸¹ Goodman Aff., Ex. 16; *see* Goodman Aff. ¶ 25–27. The Department made several recommendations regarding GLIC’s future operations, yet none related significantly to the parties’ dispute. *See* Goodman Aff., Ex. 14; Ex. 15 (Genworth’s response to the Department’s suggestions).

⁸² Goodman Aff. ¶¶ 31–32. The Department did not issue any final reports for those targeted exams. *Id.* ¶ 32. Yet, the Department did repeatedly ask GLIC for supplemental information, which GLIC provided. *See, e.g.*, Goodman Aff., Ex. 17.

⁸³ *See* Goodman Aff., Ex. 5; OA Tr. at 150–51.

billion in assets and \$3.5 billion in capital backing its LTCI liabilities.⁸⁴ GLIC attributes much of that alleged financial stability to its successful MYRAP.⁸⁵

Throughout the post-Merger period, GLIC dedicated significant resources to securing regulatory approval to increase its LTCI premiums pursuant to its MYRAP.⁸⁶ Those efforts have generated \$28.1 billion in premium increases, at a rate exceeding GLIC's assumptions.⁸⁷ Today, GLIC continues pursuing rate increases under its MYRAP.⁸⁸ GLIC is also exploring other ways to cut future LTCI costs, including (1) benefit reduction options; (2) a new provider network; and (3) a new wellness program.⁸⁹ Plaintiffs dispute whether these efforts have increased GLIC's financial stability—noting the company's depressed risk-based capital ratios post-Merger.⁹⁰ Plaintiffs' actuarial expert suggested the "rate increases have all been driven by continued worsening assumptions, resulting in the need to get additional

⁸⁴ See Goodman Aff., Exs. 5–6. To be sure, GLIC's current financial health is hotly contested, with Plaintiff's expert projecting in 2023 that GLIC had a cash flow testing margin of negative \$7 billion and a \$4.2 billion reserve funding deficit. Affidavit of Brian Rankin to Plaintiffs' Answering Brief in Opposition to Defendants' Motion for Summary Judgment ("Rankin Aff."), Ex. 1 (Dkt. 403).

⁸⁵ Goodman Aff. ¶¶ 63–69.

⁸⁶ *Id.* ¶ 68 (calling the MYRAP "GLIC's most important business initiative.").

⁸⁷ *Id.* ¶¶ 65–66.

⁸⁸ *Id.* ¶ 67.

⁸⁹ See Pfaehler Aff., Ex. 36 at 49, 115; Ex. 37 at 140–141, 183–185.

⁹⁰ See Uebler Aff., Exs. 68–69. In 2023, a credit rating agency gave GLIC a C++ rating, assigned "to insurance companies, that have in our opinion, a marginal ability to meet ongoing obligations." Uebler Aff., Ex. 70.

rate increases.”⁹¹ Indeed, one of Defendants’ actuarial experts conceded the MYRAP “did not strengthen” GLIC’s financial position.⁹² Further, Plaintiffs insist GLIC’s projected positive cash flow assumes \$4.1 billion in unapproved rate increases that may not materialize.⁹³ Thus, Plaintiffs maintain there is still a significant risk that GLIC will eventually default on its LTCI liabilities.⁹⁴

G. Procedural History

Plaintiffs initiated this action (“Action”) on September 21, 2018,⁹⁵ and filed an Amended Complaint in January 2019.⁹⁶ That complaint advanced four DUFTA claims against Defendants.⁹⁷ Defendants moved to dismiss, arguing (1) Plaintiffs failed to plead a cognizable injury and (2) the claims concerning GLIC’s 2012–2014 dividends were untimely.⁹⁸ On January 31, 2020, the Court granted in part that

⁹¹ Uebler Aff., Ex. 101 at 160–161.

⁹² Uebler Aff., Ex. 99 273:18–275:20. Yet, Defendants’ expert also testified that “the structure of the overall risk of the block is a lot less with a lot of policyholders taking [reduced benefit options],” such that “[t]he financial risk is better, but the cash flow margin is lower.” *Id.* at 275–276.

⁹³ *See* Uebler Aff., Ex. 70 at 48; Ex. 72 at Genworth1484377; Ex. 102 at 78–80.

⁹⁴ *See, e.g.*, Rankin Aff., Ex. 1.

⁹⁵ *See* Verified Class Action Complaint (Dkt. 1).

⁹⁶ *See* Amended Verified Class Action Complaint (“FAC”) (Dkt. 19).

⁹⁷ *See id.* ¶¶ 141–65.

⁹⁸ *See* Defendants’ Opening Brief in Support of Their Motion to Dismiss the Amended Complaint (“MTD I Br.”) (Dkt. 24).

motion to dismiss (“MTD I”),⁹⁹ holding that Plaintiffs alleged a cognizable injury, but claims challenging pre-2014 dividends were time-barred.¹⁰⁰

On May 26, 2021, Plaintiffs filed their operative Second Amended Complaint.¹⁰¹ The operative complaint realleges the four claims in the amended complaint and adds three new DUFTA claims challenging GFIH’s post-Merger sale of the FMI assets.¹⁰² Defendants moved to dismiss the three new DUFTA claims.¹⁰³ On May 5, 2022, the Court granted that motion (“MTD II”), holding that Counts V–VII of the operative complaint “do not seek monetary damages or [] an equitable ‘right to payment’” and thus “do not fit within [] DUFTA’s definition of a ‘claim.’”¹⁰⁴

In 2025, Defendants filed their Motion for Summary Judgment in this action (“Motion for Summary Judgment”).¹⁰⁵ Contemporaneous with their opposition brief,

⁹⁹ See Opinion on Defendants’ Motion to Dismiss (“MTD I”) (Dkt. 85).

¹⁰⁰ MTD I at 2–3.

¹⁰¹ See Plaintiffs’ Second Amended and Supplemental Class Action Complaint (“SAC”) (Dkt. 132). Plaintiffs filed their Second Amended Complaint without opposition. See Dkt. 130; Dkt. 131.

¹⁰² See SAC ¶¶ 181–220.

¹⁰³ See Opening Brief in Support of Defendants’ Motion to Dismiss Counts V, VI and VII of the Second Amended Complaint (Dkt. 142). At the same time, Defendants answered Counts I–IV. See Answer to Second Amended and Supplemental Class Action Complaint (Dkt. 140).

¹⁰⁴ Opinion on Defendants’ Motion to Dismiss Counts V, VI and VII of the Second Amended Complaint at 4, 22 (Dkt. 221).

¹⁰⁵ See Defendants’ Opening Brief in Support of Their Motion for Summary Judgment (“MSJ Br.”) (Dkt. 372). Defendants filed the Motion for Summary Judgment after the Court granted their motion to vacate the then-calendared trial dates over Plaintiffs’ opposition. See Dkt. 362; Dkt. 366.

Plaintiffs filed a Motion for Determination under the Court of Chancery’s pre-amendment version of Rule 56(d) (“56(d) Motion”).¹⁰⁶ Defendants then moved to strike the 56(d) Motion as procedurally improper (“Motion to Strike”).¹⁰⁷ The Court heard oral argument on the motions earlier this year.¹⁰⁸

II. STANDARD OF DECISION

Under Rule 56(c), “[t]here is no ‘right’ to summary judgment.”¹⁰⁹ Summary judgment “is only appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.”¹¹⁰ When evaluating a motion for summary judgment, the Court views “the facts and inferences in the light most

¹⁰⁶ See Plaintiffs’ Motion for Determination Under Rule 56(d) (“56(d) Motion”) (Dkt. 395). The Court adopted an amended version of Court of Chancery Rule 56, effective June 1, 2026. See Order Amending Rules 56, 54–65.1, 67, 69–72, 77–78, 81–83, 85–88, and 100 of the Court of Chancery Rules (Del. Ch. May 18, 2026) (effective June 1, 2026).

¹⁰⁷ Defendants’ Motion to Strike Plaintiffs’ Rule 56(d) Motion (“MTS Br.”) (Dkt. 408). Defendants filed their reply brief in support of their Motion for Summary Judgment on the same day. Defendants’ Reply Brief in Support of Their Motion for Summary Judgment (“MSJ Reply”) (Dkt. 409). The parties completed briefing on the Motion to Strike over the following months. Plaintiffs’ Opposition to Defendants’ Motion to Strike Plaintiffs’ Rule 56(d) Motion (“MTS Opp’n”) (Dkt. 414); Defendants’ Reply Brief in Further Support of Motion to Strike Plaintiffs’ Rule 56(d) Motion (“MTS Reply”) (Dkt. 417).

¹⁰⁸ See OA Tr. In addition, it is worth noting that the Court deferred ruling on class certification. The Court did so in connection with Defendants’ discovery motion practice concerning the funding of this litigation by competitor insurance companies. That motion practice has been the subject of oral argument, multiple rulings, and *in camera* review by the Court. See Dkts. 327, 347; *Burkhart v. Genworth Fin., Inc.*, 2024 WL 3888109 (Del. Ch. Aug. 21, 2024); *Burkhart v. Genworth Fin., Inc.*, 2024 WL 5160436 (Del. Ch. Dec. 18, 2024).

¹⁰⁹ *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002); see Ct. Ch. R. 56(c).

¹¹⁰ *Riad v. Brandywine Valley SPCA, Inc.*, 319 A.3d 878, 883 (Del. 2024); see *Deloitte LLP v. Flanagan*, 2009 WL 5200657, at *3 (Del. Ch. Dec. 29, 2009) (“A fact is material if it ‘might affect the outcome of the suit under the governing law.’” (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986))).

favorable to the non-movant.”¹¹¹ “Any application for such a judgment must be denied if there is any reasonable hypothesis by which the opposing party may recover, or if there is a dispute as to a material fact or the inferences to be drawn therefrom.”¹¹² The Court will not grant summary judgment if doing so reveals material facts that may be resolved in either party’s favor.¹¹³ Yet, “if the moving party puts facts into the record which, if unrebutted, entitle it to summary judgment, the burden shifts to the defending party to dispute the facts by affidavit or proof of similar weight; i.e. the party opposing summary judgment is obliged to adduce some evidence showing the existence of a dispute of material fact.”¹¹⁴ “Summary judgment must be granted when the nonmovant fails to respond to facts which the movant has placed in the record which entitle him to summary judgment.”¹¹⁵ The Court may also deny summary judgment “if it decides, upon examination of the facts presented, that it is

¹¹¹ *GMG Insurance Agency v. Edelstein*, 328 A.3d 302, 309 (Del. 2024).

¹¹² *In re El Paso Pipeline Partners, L.P. Derivative Litig.*, 2014 WL 2768782, at *8 (Del. Ch. June 12, 2014) (quoting *Vanaman v. Milford Mem’l Hosp., Inc.*, 272 A.2d 718, 720 (Del. 1970)).

¹¹³ *See Caruso v. Barton*, 341 A.3d 472 (Table), at *1 (Del. 2025).

¹¹⁴ *VLIW Technology, LLC v. Hewlett-Packard Co.*, 2005 WL 1089027, at *7 (Del. Ch. May 4, 2005); *see Phillips v. Delaware Power & Light Co.*, 216 A.2d 281, 285 (Del. 1966).

¹¹⁵ *Fortiline, Inc. v. McCall*, 341 A.3d 1027, 1030 (Del. Ch. June 27, 2025).

desirable to inquire into or develop more thoroughly the facts at trial in order to clarify the law or its application.”¹¹⁶

III. ANALYSIS

The Court first evaluates Defendants’ Motion for Summary Judgment before addressing the 56(d) Motion and the Motion to Strike. Defendants are entitled to summary judgment because the Action is an impermissible collateral attack.

A. Defendants Are Entitled To Summary Judgment

The Defendants’ Motion for Summary Judgment advances four main arguments.¹¹⁷ First, Defendants maintain Plaintiffs lack standing because “they have not suffered any injury and do not face an actual or imminent injury that is certainly impending.”¹¹⁸ Second, Defendants insist Plaintiffs’ DUFTA claims fail because the Reinsurance Termination did not render GLIC insolvent.¹¹⁹ Third, Defendants contend that the Merger did not result in a transfer of debtor property sufficient to sustain a DUFTA claim.¹²⁰ Finally, Defendants argue this Action is an

¹¹⁶ *Stercula v. Wengert*, 2025 WL 1881783, at *2 (Del. Ch. July 8, 2025) (citation omitted).

¹¹⁷ See MSJ Opening Br. at 1–8. Plaintiffs reject each argument. See MSJ Opp’n at 31–69.

¹¹⁸ MSJ Opening Br. at 29–35.

¹¹⁹ See *id.* at 35–40.

¹²⁰ See *id.* at 54–60.

impermissible collateral attack on the Commissioner’s prior approval of the Merger, which the primary administrative jurisdiction doctrine also bars.¹²¹

Although the Plaintiffs do have standing, Defendants are entitled to summary judgment because the Action is barred by the collateral attack doctrine. And although the arguments as to the insolvency and transfer questions raise interesting, contested questions of Delaware law, the Court need not reach a definitive holding on these issues.

1. The Plaintiffs Have Standing

Because “[s]tanding is [] properly viewed as a threshold issue,” the Court first addresses Defendants’ contention that Plaintiffs have not shown an actual or imminent cognizable injury sufficient to confer standing.¹²² Defendants note that GLIC (1) has paid all owed LTCI liabilities; (2) holds \$29 billion in LTCI reserves; and (3) receives \$800 million more per year in LTCI income than it pays out as claims and commissions.¹²³ Defendants also point out that under *Plaintiffs’* expert’s model,

¹²¹ See *id.* at 40–54.

¹²² *Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251, 1262 (Del. 2021); MSJ Opening Br. at 29–35. Defendants assert the possibility of future harm is especially attenuated here given that “eight years have elapsed since the merger, six and a half years since this case was filed, and decades more would have to elapse and many contingencies occur before Plaintiffs could face any injury.” *Id.* at 33–34.

¹²³ See MSJ Opening Br. at 29–30. Plaintiffs challenge whether the post-Challenged Transactions facts concerning GLIC’s financial status are relevant for determining standing. See MSJ Opp’n at 34.

“GLIC will have the ability to pay claims for at least another 22 years.”¹²⁴ Indeed, Plaintiffs concede that GLIC will remain solvent until 2048.¹²⁵ Thus, Defendants insist Plaintiffs’ alleged injury is too speculative to confer standing under DUFTA.¹²⁶

Defendants’ standing arguments mirror positions they took in their MTD I papers.¹²⁷ The MTD I ruling analyzed Plaintiffs’ standing.¹²⁸ After extensive briefing and argument, the Court ruled that under DUFTA “a creditor with an unmatured and contingent claim does have standing . . . even though her contractual right to payment is contingent and not yet mature.”¹²⁹ As such, the Court concluded that Plaintiffs’ allegation that “Defendants transferred substantial assets in an intentional effort to avoid an intact contractual obligation to pay Plaintiffs billions of

¹²⁴ MSJ Opening Br. at 30–31. Defendants also note that even if Plaintiffs’ expert is correct, GLIC would only default on its LTCI liabilities if it “failed to seek actuarially justified rate increases or insurance regulators . . . stopped granting them” and “[t]here is no reason to believe that GLIC will not continue to seek and obtain rate increases as actuarially justified.” *Id.* at 31.

¹²⁵ MSJ Opp’n at 31 (“GLIC has sufficient assets to pay claims through 2047[.]”); OA Tr. at 99.

¹²⁶ See MSJ Opening Br. at 32–34.

¹²⁷ Compare MTD I Br. at 22–40 (“A possible future GLIC default on LTC[I] [] claims or agent commissions is not an actual or imminent injury. . . . Plaintiffs allege only a speculative possibility of a future default, not an imminent, certainly impending injury.”), with MSJ Opening Br. at 29–35 (“Plaintiffs lack standing because they have not suffered any injury and do not face an actual or imminent injury that is certainly impending.”), and MSJ Reply 7–13 (similar).

¹²⁸ See MTD I at 15–27 (“Defendants’ standing argument rests on the premise that Plaintiffs have failed to plead an injury that is ‘certainly impending’ because any eventual nonpayment of claims or commissions would require multiple intervening events, including, for example, continued resistance from regulators to GLIC’s proposed premium increases.”).

¹²⁹ *Id.*

dollars . . . is exactly the ‘material risk of harm’ the General Assembly sought to mitigate.”¹³⁰ Thus, the Court held that Plaintiffs have standing because the relevant injury is not the chance that GLIC will default on its LTCI liabilities, but “the quantum of prejudice [Plaintiffs] suffer[ed] when [Defendants] intentionally move[d] assets to defraud them.”¹³¹ Because that injury allegedly occurred when Defendants effectuated the Reinsurance Termination, it is not impermissibly speculative.¹³²

The Court’s prior ruling concerning Plaintiffs’ standing under DUFTA is law of the case.¹³³ The law of the case doctrine “prohibits courts from revisiting issues previously decided . . . to promote ‘efficiency, finality, stability and respect for the judicial system.’”¹³⁴ Although the law of the case doctrine is not “an absolute restriction[,]” courts will only revisit a prior decision that is “clearly wrong, produce[s] an injustice or should be revisited because of changed circumstances.”¹³⁵ The party seeking to overcome the law of the case doctrine has the burden to show one of those

¹³⁰ *Id.* at 19–20.

¹³¹ *Id.* at 22–23.

¹³² *See Employers Ins. Co. of Wausau v. First State Orthopaedics, P.A.*, 312 A.3d 597, 608 (Del. 2024) (“An actual or imminent injury is one that is neither hypothetical nor conjectural.”).

¹³³ *See Hoskins v. State*, 102 A.3d 724, 729 (Del. 2014) (“The law of the case is established when a specific legal principle is applied to an issue presented by facts which remain constant throughout the subsequent course of the same litigation.” (internal quotes omitted)).

¹³⁴ *State v. Wright*, 131 A.3d 310, 321 (Del. 2016) (quoting *Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 39 (Del. 2005)).

¹³⁵ *Wright*, 131 A.3d at 321–22 (citation omitted).

exceptions applies.¹³⁶ Relevant here, “[t]he law of the case doctrine has greater force when a case is transferred from one judge to another.”¹³⁷

Defendants make two main arguments to support their position that the Court should revisit its prior ruling that Plaintiffs have standing. Neither identifies a valid exception that justifies departing from the law of the case. First, Defendants argue the Supreme Court’s *Albence v. Mennella* opinion, issued after the MTD I decision, clarified the law concerning when a possible future injury confers standing.¹³⁸ True, but the MTD I decision held Plaintiffs *already suffered an injury* at the time of the Reinsurance Termination—namely, “the quantum of prejudice [they] suffer[ed] when [Defendants] intentionally move[d] assets to defraud them.”¹³⁹ As such, this Action does not implicate *Albence*’s commentary on what constitutes a sufficiently imminent future injury to confer standing.

Second, Defendants insist “key conclusory allegations that the Court had to accept as true [at the pleading stage] now stand contradicted by the undisputed

¹³⁶ See *Hoskins*, 102 A.3d at 729–33.

¹³⁷ *Siegman for Siegman v. Columbia Pictures Ent., Inc.*, 1993 WL 10969, at *3 (Del. Ch. Jan. 15, 1993) (citing *Frank G.W. v. Carol M.W.*, 457 A.2d 715, 718–19 (Del. 1983)); see *Fletcher Int’l, Ltd v. ION Geophysical Corp.*, 2012 WL 1883040, at *3 n.12 (Del. Ch. May 23, 2012).

¹³⁸ MSJ Br. at 2, 33 (citing *Albence v. Mennella*, 320 A.3d 212, 222 (Del. 2024) (internal quotes omitted)). The *Albence* court held that basing standing on a possible injury three years in the future “stretches imminence, an admittedly elastic concept, beyond the breaking point.” *Albence*, 320 A.3d at 222. Yet, the *Albence* court made that statement in the context of finding a state senator lacked standing to challenge a voting law, because he would not face reelection for more than three years. *Id.* Thus, the court held the senator did not face an imminent injury sufficient to confer standing. See *id.* at 221–22.

¹³⁹ MTD I at 22–23.

material facts.”¹⁴⁰ Defendants’ summary judgment briefing does not identify what specific facts the Court accepted as true in the MTD I decision that discovery proved false, or how those facts alter the standing analysis.¹⁴¹ At oral argument, Defendants asserted that the MTD I ruling accepted Plaintiffs’ allegations that the Reinsurance Termination rendered GLIC insolvent and that future rate increases were speculative, but the record shows GLIC is financially sound and the MYRAP is effective.¹⁴² That argument misses the mark.

The MTD I opinion did not rest its standing decision on the factual issues of GLIC’s alleged insolvency or ability to raise premiums.¹⁴³ Rather, the Court determined as a matter of law that “a creditor with an unmature and contingent claim [] ha[s] standing to bring a claim under DUFTA even though her contractual right to payment is contingent and not yet mature.”¹⁴⁴ That decision was rooted in the timing of a DUFTA injury which occurs at the time of transfer, not when the debtor fails to make a payment.¹⁴⁵ Here, the alleged transfer occurred at the time of the

¹⁴⁰ MSJ Reply at 7–13; *see RBC Cap. Mkts., LLC v. Educ. Loan Tr. IV*, 87 A.3d 632, 642 (Del. 2014) (“On review of a motion to dismiss, th[e] Court accepts all well pleaded factual allegations as true[.]” (internal quotes omitted)).

¹⁴¹ *See generally* MSJ Reply at 7–9.

¹⁴² OA Tr. at 48–49.

¹⁴³ *See* MTD I at 18–27.

¹⁴⁴ *Id.* at 22.

¹⁴⁵ *See id.* at 29 (“Under the DUFTA, such claims must be brought ‘within 4 years *after the transfer is made.*’” (quoting 6 *Del. C.* § 1309(1), (2))). Indeed, Defendants seemingly recognized that a DUFTA injury occurs at the time of transfer when they successfully argued

Reinsurance Termination. Thus, accepting Plaintiffs' allegations as true at the pleading stage did not impact the Court's standing analysis, such that discovery does not compel departing from the law of the case.

Defendants' current standing position repeats arguments the Court rejected at the pleading stage. The Court's prior determination that Plaintiffs have standing under DUFTA is law of the case. Defendants have not identified any exception which justifies revisiting that prior decision. Moreover, the law of the case doctrine is particularly strong in this Action because the case was transferred from one judge to another.¹⁴⁶ Therefore, summary judgment would not be warranted on standing grounds.

2. Defendants' Insolvency And Transfer Arguments Under DUFTA

The Court turns next to Defendants' arguments that the Reinsurance Termination did not leave GLIC insolvent or with unreasonably small capital and that the Merger did not involve a transfer of debtor property. Although these two arguments raise interesting and important considerations, they need not be resolved because the collateral attack doctrine compels summary judgment in Defendants' favor. Nevertheless, this decision briefly describes them.

To begin, both arguments concern elements of a DUFTA claim. Under DUFTA,

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation:
(1) With the actual intent to hinder, delay or defraud any creditor of the

for dismissal of Plaintiffs' claims related to dividends GLIC paid from 2012 to 2014 on laches grounds. *See id.* at 29–37.

¹⁴⁶ Letter dated May 18, 2022, from Chancellor McCormick to counsel regarding reassignment of this action (Dkt. 227).

debtor; or (2) Without receiving a reasonable equivalent value in exchange for the transfer or obligation, and the debtor: a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or b. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.¹⁴⁷

Because “DUFTA is modeled on UFTA [Uniform Fraudulent Transfer Act], a uniform act, [] the decisions of other jurisdictions interpreting the same (or substantially similar) model statutes [are appropriate] guidance.”¹⁴⁸

a. Insolvency

Defendants argue that GLIC was solvent at the time of the Reinsurance Termination, which neither rendered GLIC insolvent nor left it with “unreasonably small capital” to conduct its business.¹⁴⁹ Notably, a debtor being insolvent or insufficiently capitalized is only a required element of a constructive fraudulent transfer claim.¹⁵⁰ Thus, even if Defendants prevailed on their arguments concerning

¹⁴⁷ 6 *Del. C.* § 1304.

¹⁴⁸ *Cleveland-Cliffs Burns Harbor LLC v. Boomerang Tube, LLC*, 2023 WL 5688392, at *8 & n.100 (Del. Ch. Sept. 5, 2023).

¹⁴⁹ See MSJ Br. at 35–40; MSJ Reply at 15–16.

¹⁵⁰ *Renco Gp., Inc. v. MacAndrews AMG Holdings LLC*, 2015 WL 394011, at *10 (Del. Ch. Jan. 29, 2015).

those elements, that would not compel entering summary judgment on all Plaintiffs' claims.¹⁵¹

DUFTA “does not impose a continuous insolvency [or unreasonably small capital] requirement[;]” rather, a creditor must establish the debtor was insolvent or insufficiently capitalized at the time of transfer.¹⁵² Defendants rely on the “cash flow” test to argue GLIC was and is solvent.¹⁵³ Under the cash flow test, “[a] debtor who is generally not paying debts as they become due is presumed to be insolvent.”¹⁵⁴ Although a debtor may be cash flow insolvent when it actually defaults on debts or is sufficiently likely to default in the future, “courts have held that a debtor’s actual payments of debts as they become due can doom a constructive fraud claim.”¹⁵⁵ “[U]nreasonably small capital,” in turn, “denotes a financial condition short of

¹⁵¹ See SAC ¶¶ 194–99 (alleging termination of the Reinsurance Agreement constituted an intentional fraudulent transfer).

¹⁵² *Quadrant Structured Prods. Co., Ltd. v. Vertin*, 115 A.3d 535, 548 (Del. Ch. 2015); see *Premier Healthcare, Inc. v. Waters*, 2024 WL 4403295, at *3 (Del. Ch. Oct. 4, 2024) (holding “a claim for constructive fraudulent transfer” requires proving “the transferor was insolvent at the time of the transfer, or was rendered insolvent by the transfer.” (internal quotes omitted)).

¹⁵³ See MSJ Br. at 35–40.

¹⁵⁴ *Cleveland-Cliffs Burns*, 2023 WL 5688392, at *9 (quoting 6 *Del. C.* § 1302(b)).

¹⁵⁵ *Off. Comm. of Unsecured Creditors v. Calpers Corp. Partners LLC*, 2020 WL 6385619, at *16 (D. Me. Oct. 30, 2020) (citing *In re Joy Recovery Tech. Corp.*, 286 B.R. 54, 76 (Bankr. N.D. Ill. 2002) (collecting cases); see *CIBC Bank USA v. JH Portfolio Debt Equities, LLC*, 2021 WL 2230976, at *10 (Del. Super. June 2, 2021); *In re Mobilactive Media, LLC*, 2013 WL 297950, at *32 (Del. Ch. Jan. 25, 2013); *Yu v. GSM Nation, LLC*, 2018 WL 2272708, at *20 n.267 (Del. Super. Apr. 24, 2018).

equitable insolvency.”¹⁵⁶ But the facts relevant to determining whether an entity is undercapitalized largely overlap with those considered when evaluating insolvency.¹⁵⁷ When considering whether a debtor is sufficiently capitalized, courts apply a “reasonable foreseeability” test.¹⁵⁸

Considering the cash flow insolvency and unreasonably small capital tests here reveals a mixed bag concerning GLIC’s financial status after the Reinsurance Termination. There is conflicting evidence concerning the status of GLIC’s post-Merger balance sheet and the reasonableness of GLIC’s cash-flow projections.¹⁵⁹ It

¹⁵⁶ *E.g.*, *Moody v. Sec. Pac. Bus. Credit, Inc.*, 971 F.2d 1056, 1070 (3d Cir. 1992) (“If the drafters viewed these concepts interchangeably, one would expect them to have employed the same language.”); *see Bundesen v. Beck*, 1992 WL 29810, at *10 (Del. Ch. Feb. 12, 1992) (“Even if [debtor] was not rendered insolvent by the conveyance . . . the conveyance would be deemed fraudulent as to creditors if the property remaining after the conveyance was an unreasonably small capital.”).

¹⁵⁷ *See Bundesen*, 1992 WL 29810, at *10; *In re F-Squared Inv. Mgmt., LLC*, 2019 WL 4261168, at *16 (Bankr. D. Del. Sept. 6, 2019). Namely, the unreasonable small capital test also considers the debtor’s (1) cash flow projections; (2) capital cushion, access to capital, and ability to generate revenue; and (3) specific business and its need for capital during the period in question. *See Moody*, 971 F.2d at 1072–73; *In re F-Squared*, 2019 WL 4261168, at *16; *Calpers Corp. Partners*, 2020 WL 6385619, at *14; *Barrett v. Cont’l Ill. Nat. Bank & Tr. Co.*, 882 F.2d 1, 4 (1st Cir. 1989).

¹⁵⁸ *E.g.*, *In re Tribune Co.*, 464 B.R. 126, 168 (D. Del. 2011) (citing *Moody*, 971 F.2d at 1073).

¹⁵⁹ *Compare Rankin Aff.*, Ex. 1 at 32–43 (suggesting GLIC’s financial projections at the time of the Merger and continuing today relied on flawed, results-driven assumptions), *and Uebler Aff.*, Ex. 58 at Genworth0221569 (“[F]or the insurance contracts in GLIC [] [] the estimated fair value . . . of the insurance liabilities will significantly exceed the fair value of the net assets[.]”), *and Uebler Aff.*, Ex. 60 at Genworth0228567 (“A third party valuation view would likely add conservatism for some of our assumptions beyond Risk Margins[.]”), *and Uebler Aff.*, Ex. 66 at Genworth0228461 (“Aggregate FV of Liabilities, based on a market participant view, is significantly in excess of Aggregate FV of Assets.”), *with Transmittal Affidavit of Carter White in Support of Defendants’ Reply Brief in Support of Their Motion for Summary Judgment (“White Aff.”)*, Ex. 14 at 68 (Plaintiffs’ expert testifying that PGAAP accounting methodology used in the China Oceanwide’ transaction documents is not typically

is undisputed that “GLIC has not failed to pay any creditor both before the [M]erger [] and in the nine plus years since”¹⁶⁰ and that GLIC has sufficient capital to pay its LTCI liabilities through 2047.¹⁶¹ While those facts might be dispositive in favor of Defendants in a typical cash flow insolvency or unreasonably small capital test, the long-term structure of LTCI as a product suggests that such a result is not necessarily warranted here.

Because policyholders purchase coverage while they are still healthy and receive benefit payments for years after they qualify, LTCI companies typically pay out relatively little in benefits during the early years of a policy and use that time to build up their premium reserves.¹⁶² Accordingly, Defendants admit that the at-issue LTCI liabilities “are very long-term claims” that extend significantly beyond 2047.¹⁶³ Consistent with that admission, Plaintiffs’ experts concluded that GLIC is “\$4 billion short out in the tail” post-2047¹⁶⁴ and “the fair value of GLIC’s liabilities exceeded

used to determine solvency), *and* Alimard Aff. ¶ 35 (noting GLIC received “over \$11 billion of funds supporting BLAIC’s reserves[,] [] the repatriation of a \$900 million fixed annuity block . . . [and a] \$785 million capital infusion” as part of the Merger), *and* Alimard Aff., Ex. 28 (GLIC’s balance sheet showing the impact of the Merger).

¹⁶⁰ OA Tr. at 7; *see* Goodman Aff., Ex. 28. Indeed, GLIC has made \$19 billion in such payments post-Merger. *See* Pfaehler Aff., Ex 42 at 64; Ex. 43 at 61–62; OA Tr. 13:8–13, 20:5–9; Goodman Aff., Ex. 28.

¹⁶¹ *See* Pfaehler Aff., Ex 42 at 64; Ex. 43 at 61–62; Ex. 49 at 22–23.

¹⁶² *See* Jeffrey R. Brown & Amy Finkelstein, *The Private Market for Long-Term Care Insurance in the United States: A Review of the Evidence*, 76 J. Risk & Ins. 5 (2009). Because GLIC’s capital reserves must last for decades, Plaintiffs contend the company’s “capital adequacy must be measured under that [] time horizon.” MSJ Opp’n at 47.

¹⁶³ OA Tr. at 13, 20 (stating “everybody’s agreed” GLIC can pay its LTCI liabilities “only though 2047.”).

¹⁶⁴ *Id.* at 34; Pfaehler Aff., Ex 48 at 15, 149–62.

the fair value of its assets as of the date of the Reinsurance Termination by many billions of dollars.”¹⁶⁵ That said, GLIC has passed its annual cash flow testing every year following the Merger, and the Department’s most recent five year review resulted in no significant recommendations.¹⁶⁶ Further, the MYRAP’s success suggests that GLIC has the ability to generate additional revenue.¹⁶⁷ Yet, evidence also suggests that GLIC’s financial viability beyond 2047 “is dependent on [further]

¹⁶⁵ Uebler Aff., Ex. 92 at 43–46. Because “Genworth did not prepare a [] Fair Value calculation as of September 30, 2016[,]” Tobleman relied on documents covering “the first half of 2017” and 2018 to support his conclusions. *Id.* Yet, Tobleman’s report states that “[g]iven the magnitude of the difference in the fair market value of liabilities and assets . . . even if there were differences in the available data to which assumptions were applied between the two measurement dates, [he] can state with a very high degree of certainty that no such variation would have reversed or meaningfully reduced the . . . deficiency between liability and assets.” *Id.* at 45–46. Whether, and how, Tobleman’s use of post-Merger data might affect the credibility and weight of his conclusions would be an issue for trial. *See Cruz v. State*, 12 A.3d 1132, 1136 (Del. 2011).

¹⁶⁶ Goodman Aff. ¶¶ 18–19, 25–27; *see* Goodman Aff., Exs. 9–11, 16.

¹⁶⁷ Goodman Aff. ¶¶ 65–67 (noting that GLIC has already secured \$28 billion in premium increases and continues to expend significant resources to secure approval to raise rates). But, as discussed above, the actual utility of MYRAP rate increases may be significantly limited. *See* Uebler Aff., Ex. 101 at 160–161 (one of Plaintiffs’ actuarial experts suggesting that the “rate increases have all been driven by continued worsening assumptions, resulting in the need to get additional rate increases”); Uebler Aff., Ex. 99 at 273–75 (one of Defendants’ actuarial experts conceding the MYRAP “did not strengthen” GLIC’s financial position).

highly uncertain rate increases that might not materialize”¹⁶⁸ and that its ability to raise revenue is decreasing over time.¹⁶⁹

Given the Court’s ruling on the collateral attack doctrine below, the Court need not dilate on these issues. It is sufficient to give readers a flavor of these serious questions. But, considering the context of this LTCI business, which depends on forecasting substantial liabilities that mature decades into the future, and the fact-intensive arguments put forward by the parties, it seems most accurate to say that multiple genuine disputes of material fact remain concerning whether the Reinsurance Termination rendered GLIC insolvent or insufficiently capitalized. In that case, summary judgment in Defendants’ favor on the issue of insolvency or insufficient capital would be inappropriate.¹⁷⁰

¹⁶⁸ MSJ Opp’n at 28–31; *see* Uebler Aff., Ex. 77 at Genworth1244059 (noting the “[m]ain tool to address closing the gap [between GLIC’s LTCI assets and liabilities] has been unapproved rate increases[.]”). Plaintiffs point to a smattering of documents that suggest GLIC recognizes the threat to its business if regulators reject future rate approval requests. *See* Uebler Aff., Ex. 70; Ex. 78 (“Future rate increases are important to GLIC’s ability to pay future claims. The inability to obtain future rate increases may impair GLIC’s ability to do so.”); Ex. 79 (same). For example, GLIC’s 2023 annual cashflow testing assumed over \$3 billion in future unapproved rate increases to reach a positive margin. Uebler Aff., Ex. 72; Rankin Aff., Ex. 1 at 173.

¹⁶⁹ Specifically, the evidence shows that GLIC is not issuing a significant number of new LTCI policies and current policyholders are aging such that premium runways are shrinking. *See* Uebler Aff., Exs. 73–77, 80 (“The Need For Urgency In Addressing The Challenges Of In-Force LTC Blocks Cannot Be Overstated. Premium Runway Is Rapidly Declining While The Bulk Of Claims Are Still In The Future.”). *See also* Rankin Aff., Ex. 1 at 131–36 (detailing the effects of “[t]he declining premium runway and aging population of GLIC’s policyholders.”).

¹⁷⁰ *E.g., F.A.M.E. LLC v. EmTurn LLC*, 362 A.3d 326, 330 (Del. 2026); *In re El Paso Pipeline Partners, L.P. Derivative Litig.*, 2014 WL 2768782, at *8 (quoting *Vanaman*, 272 A.2d at 720) (“Any application for [summary] judgment must be denied if there is any reasonable hypothesis by which the opposing party may recover, or if there is a dispute as to a material fact or the inferences to be drawn therefrom.”).

b. Transfer

This decision next briefly describes Defendants’ argument that Plaintiffs’ claims over the Reinsurance Termination lack another element of a proper DUFTA claim. Defendants contend that Counts III and IV fail because they do not concern “a transfer of debtor property.”¹⁷¹

DUFTA requires “[a] transfer made or obligation incurred by a debtor” to establish liability.¹⁷² A “transfer” is “every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset . . . includ[ing] payment of money, release, lease and creation of a lien or other encumbrance[.]”¹⁷³ “Asset” means any “property of a debtor.”¹⁷⁴ DUFTA defines “property” as “anything that may be the subject of ownership.”¹⁷⁵ Thus, to sustain Counts III and IV, Plaintiffs must show that the Reinsurance Termination resulted in a disposition of, or parting with, something GLIC owned.¹⁷⁶ Defendants insist Plaintiffs cannot do so, because (1) the CMA was not an asset that belonged to GLIC;

¹⁷¹ Opening Br. at 54–60; *see* 6 *Del. C.* §§ 1301(12), 1304(a). Counts III and IV challenge the Reinsurance Termination. *See* SAC ¶¶ 194–205.

¹⁷² 6 *Del. C.* § 1304(a).

¹⁷³ 6 *Del. C.* § 1301(12).

¹⁷⁴ 6 *Del. C.* § 1301(2). DUFTA’s definition of “[a]sset” includes several carve-outs, yet no party argues those exceptions apply here.

¹⁷⁵ 6 *Del. C.* § 1301(10).

¹⁷⁶ *See Burkhardt v. Genworth Fin., Inc.*, 275 A.3d 1259, 1277 (Del. Ch. 2022) (“[T]he law is settled that liability under DUFTA will not be imposed on transfers of *non-debtor* property.” (internal quotation marks omitted) (emphasis in original)).

(2) Plaintiffs could not place a lien on the CMA; and (3) “the CMA terminated in accordance with its terms” which is not a “transfer” under DUFTA.¹⁷⁷

To be sure, Defendants’ transfer arguments present interesting questions of Delaware law. For example, case law does not appear to provide clear guidance on the question of whether the termination of the CMA was a “transfer” under DUFTA. Defendants insist that no qualifying transfer occurred because the “CMA terminated according to its express terms” as part of the Merger¹⁷⁸ and that “[t]he termination of a contract by its terms . . . does not constitute a transfer[.]”¹⁷⁹ Yet, in enacting DUFTA, the General Assembly adopted an expansive statutory definition of “transfer” that, Plaintiffs argue, can be read to encompass a contract termination.¹⁸⁰ Neither Plaintiffs nor Defendants cite any Delaware precedent addressing whether the termination of a contract constitutes a “transfer” under DUFTA.¹⁸¹ And out-of-state cases have “not[ed] a split in authority on th[e] issue” concerning whether and

¹⁷⁷ MSJ Opening at 54–60; *see* MSJ Reply at 27–28.

¹⁷⁸ MSJ Opening Br. at 60.

¹⁷⁹ *Id.*

¹⁸⁰ MSJ Opp’n at 55–58; 6 *Del. C.* § 1301(12) (“‘Transfer’ means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset[.]”).

¹⁸¹ *See* MSJ Opening Br. at 60; MSJ Opp’n at 55–58; MSJ Reply at 27–28.

when a contract's termination may constitute a transfer for fraudulent transfer purposes.¹⁸²

Defendants cite a string of cases suggesting that “[w]hen a termination is pursuant to the terms of a contract, there is no transfer[.]”¹⁸³ Yet, those cases could be read as factually distinct from this Action: for example, none of the cases Defendants cite involved an insider transaction where the entities terminating the relevant contract were controlled by the same parent. Conversely, here, Plaintiffs make an evidence-supported argument that Genworth caused its subsidiaries to terminate the valuable Reinsurance Agreement that backstopped GLIC’s LTCI liabilities.¹⁸⁴ To that end, Plaintiffs cite cases that suggest the intentional termination of a contract resulting in the “loss of valuable property right” is a “transfer” for fraudulent transfer purposes.¹⁸⁵

Because the Court grants summary judgment on collateral attack doctrine grounds for the reasons explained below, this decision need not resolve the transfer aspect of Defendants’ summary judgment motion. But the lack of Delaware precedent

¹⁸² *E.g., Pazzo Pazzo, Inc. v. Speedwell Ventures, LLC*, 2021 WL 2493487, at *4 (D. N.J. June 18, 2021), *aff’d sub nom. In re Pazzo Pazzo Inc.*, 2022 WL 17690158 (3d Cir. Dec. 15, 2022).

¹⁸³ *In re Glick*, 568 B.R. 634, 673 (Bankr. N.D. Ill. 2017) (citing *Sullivan v. Willock (In re Wey)*, 854 F.2d 196, 199 (7th Cir. 1988), *overruled in part on other grounds, In re Wolf*, 644 B.R. 725 (Bankr. N.D. Ill. 2022); *see Ford-Torres v. Cascade Valley Telecom, Inc.*, 2008 WL 551503, at *9 (D. Or. Feb. 26, 2008); *In re Hloros*, 2017 WL 5903457, at *4 (E.D. Mich. Nov. 30, 2017).

¹⁸⁴ *See, e.g., Uebler Aff.*, Ex. 4; Ex. 9; Ex. 10; Ex. 13 at Genworth1186297.

¹⁸⁵ *In re EBC I, Inc.*, 356 B.R. 631, 641 (Bankr. D. Del. 2006); *Matter of Commodity Merchants, Inc.*, 538 F.2d 1260, 1263 (7th Cir. 1976).

and mixed conclusions from other jurisdictions, as well as the potential broader policy implications of Delaware’s answer to this question and the unusual and hotly disputed factual record, do not suggest this question is well-suited to summary judgment. Instead, the more prudent course would seem to be to deny summary judgment on the transfer question because, following “a preliminary examination of the facts presented . . . it is desirable to inquire into and develop the facts more thoroughly at trial in order to clarify the law or its application.”¹⁸⁶

3. The Action Is An Impermissible Collateral Attack

Delaware law has long prohibited collateral attacks on final judicial or administrative determinations except for fraud or lack of jurisdiction.¹⁸⁷ A collateral attack “is an attempt to avoid, defeat, evade, or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial.”¹⁸⁸ Thus, “[c]laims that aim to modify [a] final [determination] by revisiting the core issue in the” prior administrative ruling or that “ask[] [the court] to conclude the [agency] [] erred” are “impermissible collateral attacks.”¹⁸⁹ In determining whether the collateral attack doctrine applies, “[a]

¹⁸⁶ *Express Scripts, Inc. v. Del. State Empl. Benefits Comm.*, 2021 WL 5873177, at *7 (Del. Ch. Dec. 13, 2021) (collecting cases).

¹⁸⁷ *See Robins v. Garvine*, 136 A.2d 549, 550 (Del. 1957); *Taylor v. Hatzel & Buehler*, 258 A.2d 905, 907 (Del. 1969).

¹⁸⁸ *In re Vale*, 2015 WL 721038, at *4 (Del. Ch. Feb. 19, 2015) (internal quotes omitted).

¹⁸⁹ *ETC Ne. Field Servs., LLC v. Muse*, 2024 WL 2797337, at *10 (Del. Ch. May 31, 2024) (internal quotes omitted).

claimant’s description of his attack is not dispositive. Neither is whether the parties or claims are the same.”¹⁹⁰ Instead, “the court must examine the harm alleged and the relief sought in the [s]econd [action] to see whether it is a disguised attempt to get a second review of a prior [determination].”¹⁹¹

Under that standard, this Action is a collateral attack on the Commissioner’s approval of the Merger.¹⁹² The Department’s prior review considered whether the Reinsurance Termination would substantially undermine GLIC’s ability to perform its LTCI obligations.¹⁹³ Relying on the hearing officer’s post-Hearing recommendation, the Commissioner concluded “the proposed Merger would not substantially reduce the security of or service to be rendered to the policyholders of GLIC in [Delaware] or elsewhere.”¹⁹⁴ Based on that conclusion, the Commissioner approved the Merger.¹⁹⁵ Despite the public notice soliciting comments from “any

¹⁹⁰ *Id.* (citing *Gulf LNG Energy, LLC v. Eni USA Gas Mktg. LLC*, 242 A.3d 575, 591 (Del. 2020)).

¹⁹¹ *Gulf LNG*, 242 A.3d at 589–90.

¹⁹² *See* Opening Br. at 40–48.

¹⁹³ Uebler Aff., Ex. 28; *see* Alimard Aff., Exs. 21–23.

¹⁹⁴ Uebler Aff., Ex. 28.

¹⁹⁵ *Id.* Plaintiffs insist non-Delaware UFTA cases show that the Department’s “approval of the Merger and its financial oversight of GLIC do not deprive this Court of jurisdiction to adjudicate the DUFTA claims asserted.” MSJ Opp’n Br. at 58–65 (citing *ABN Amro Bank, N.V. v. MBIA Inc.*, 17 N.Y.3d 208 (2011); *Drain v. Covenant Life Insurance Co.*, 712 A.2d 273 (Pa. 1998); *LaFarge Corp. v. PA Ins. Dept.*, 735 A.2d 74 (Pa. 1999)).

person[.]”¹⁹⁶ Plaintiffs did not appear at the Hearing or object to the Merger at the time.¹⁹⁷

Here, Plaintiffs allege the Reinsurance Termination “jeopardized the [LTIC] policyholders’ ability to receive benefits and the agents’ ability to receive [] commissions” by “intentionally . . . stripp[ing] GLIC of assets and of access to capital support from affiliates, without any provision to GLIC of reasonably equivalent value [or] fair consideration[.]”¹⁹⁸ Plaintiffs also allege the Merger “left GLIC with insufficient capital to meet its obligations to policyholders and agents, and given its future obligations, rendered it inadequately capitalized and/or insolvent.”¹⁹⁹ Thus, Plaintiffs’ *core* allegations in this Action challenge the Commissioner’s main finding in approving the Merger and ask the Court to find that the Commissioner erred.

Additionally, Plaintiffs seek relief in this Action that was available through the Department’s review—unwinding the Merger and thus the Reinsurance Termination. Straining to avoid this characterization, Plaintiffs insist “the object of

¹⁹⁶ Alimard Aff., Ex. 23.

¹⁹⁷ Nor did the insurance companies that seem to be funding this litigation. The Hearing occurred “subsequent to notice in accordance with law” in two Delaware “newspapers of general circulation” and “on the Delaware Department of Insurance website and on the Delaware State meeting calendar[.]” Uebler Aff., Ex. 28. Plaintiffs argue that notice “is not sufficient under the doctrine of collateral attack to say that the plaintiffs in this case had a full and fair opportunity to litigate the fraudulent transfer case claims in front of the Delaware Insurance Department[.]” OA Tr. at 118. That position is dubious given that Plaintiffs do not actually argue they lacked constructive notice of the Hearing. *See* Opp’n Br. at 63–64 (“[T]he ‘notice’ of the hearing consisted of publication in Delaware newspapers unlikely to be seen by virtually any policyholders.”).

¹⁹⁸ SAC ¶ 17; *see id.* ¶¶ 19, 21–24, 116–39, 183–85, 192, 195–97, 204.

¹⁹⁹ *Id.* ¶ 17; *see id.* ¶¶ 18, 51, 56–57, 92, 186, 190–91, 198, 202–03.

this case is to restore to GLIC \$1.5 billion of claims-paying resources,” not unwind the Merger.²⁰⁰ But the operative complaint’s allegations and prayer for relief belie that argument. Plaintiffs request “an [] order requiring [D]efendants to unwind the Reinsurance Termination and restore to GLIC . . . all of the value fraudulently transferred from GLIC[.]”²⁰¹ Indeed, Plaintiffs assert that “the damage the Fraudulent Transfers have caused and will cause *can be remedied only by injunctions requiring the unwinding of the [Reinsurance Termination]* in a manner that will restore to GLIC the capital support that was stripped from it by means of those transfers.”²⁰² Thus, notwithstanding Plaintiffs’ assertions to the contrary, the Court concludes this Action seeks relief available in the Department’s prior proceedings.

Plaintiffs also argue that they “assert different claims, under different statutes” in this case than those at issue in the Department’s prior review of the Merger.²⁰³ But the collateral attack doctrine “test is whether the claims ‘aim to modify the [f]inal [a]ward by revisiting the core issue in the [f]irst [proceeding],” not whether the claims asserted, or statute at-issue, is the same.²⁰⁴ Indeed, this Court has endorsed the idea that a party “may not file a suit in court making claims alleged

²⁰⁰ MSJ Opp’n Br. at 62–63.

²⁰¹ SAC at Prayer for Relief; *see id.* ¶ 30.

²⁰² *Id.* ¶ 29.

²⁰³ Opp’n Br. at 63.

²⁰⁴ *ETC Ne. Field Servs.*, 2024 WL 2797337, at *10 (quoting *Gulf LNG*, 242 A.3d at 592).

to be independent but that in fact attack a[] [prior decision].”²⁰⁵ As discussed, Plaintiffs’ claims in this action challenge the Commissioner’s core finding when she approved the Merger. Moreover, Plaintiffs’ requested relief seeks to modify the Commissioner’s prior approval by unwinding the Merger. Thus, the fact that Plaintiffs assert different claims, under a different statute than those at issue in the Hearing, does not mean the collateral attack doctrine does not apply.

In sum, this Action (1) challenges one of the Commissioner’s core findings in approving the Merger; (2) asks the Court to hold the Commissioner erred in her Merger review; and (3) seeks relief previously available from the Commissioner. As such, the Action is an impermissible collateral attack on the Commissioner’s prior approval of the Merger.

To resist this conclusion, Plaintiffs argue the “doctrine is inapplicable because Defendants obtained approval of the Merger by making material misrepresentations to and withholding key information from [the hearing officer] about the existence and termination of the CMA.”²⁰⁶ Fraud in the prior proceeding is a well-recognized exception to the collateral attack doctrine.²⁰⁷

For support, Plaintiffs point to the fact that Genworth did not raise the CMA, discuss its terms, or mention that it would not survive the Merger during the

²⁰⁵ *Id.*

²⁰⁶ MSJ Opp’n at 62–65.

²⁰⁷ *See Robins*, 136 A.2d at 550; *Keen v. Naegele*, 1989 WL 72037, at * 4 (Del. Ch. June 14, 1989) (“[F]raud or collusion with respect to the prior judgment itself [] robs that judgment of its binding effect.”).

Hearing.²⁰⁸ In their briefing, Plaintiffs suggest this demonstrates Genworth “concealed” this information and that Genworth’s Merger application was “misleading[.]”²⁰⁹

But Plaintiffs fail to identify a genuine issue of material fact as to whether Genworth defrauded the Department such that the collateral attack doctrine would not apply. Critically, in September 2015—about a year prior to the Hearing—GLIC received approval from the Department to terminate the Guaranty and concurrently replace it with the CMA.²¹⁰ The form GLIC filed to receive this approval comprised five pages, plus exhibits, and clearly articulated the “desire[] that the Guaranty be terminated and concurrently therewith replaced by a Capital Maintenance Agreement[.]”²¹¹ It also laid out that “[t]he Capital Maintenance Agreement would remain in effect only for so long as the Reinsurance Agreements would remain in effect” and “upon completion of the LTC Repatriation Plan (which is currently expected to occur in the first half of 2016) all of the Reinsurance Agreements will have been terminated and the Capital Maintenance Agreement would automatically be terminated.”²¹² The form further included a draft of the CMA as an exhibit, which in turn expressly provided that the CMA would “remain in full force and effect until

²⁰⁸ See Uebler Aff., Ex. 21–24; OA Tr. at 108.

²⁰⁹ MSJ Opp’n at 10–11.

²¹⁰ Alimard Aff., Ex. 2

²¹¹ *Id.*

²¹² *Id.*

the date upon which the Reinsurance Agreements terminate[.]”²¹³ Following its review of GLIC’s submission, the Department approved the proposed termination of the Guaranty and new CMA on September 8, 2015—just a year before the Hearing.²¹⁴

Accordingly, there is no genuine dispute that the Department possessed the relevant information about the CMA and its termination on which Plaintiffs premise their fraud argument. The Department received that information from Genworth as part of Genworth’s request for the Department’s approval of the first step of the Reinsurance Termination. So Plaintiffs are left to assert that Genworth failed to point out to the Department and the hearing officer during the Hearing that the CMA would terminate as part of the Merger. According to Plaintiffs, this is sufficient to require trial on whether Genworth committed *fraud* precluding application of the collateral attack doctrine.

But, as already noted at length, the Department reviewed and approved Genworth’s request for approval of the CMA, which included the plain statement that “upon completion of the LTC Repatriation Plan (which is currently expected to occur in the first half of 2016) all of the Reinsurance Agreements will have been terminated

²¹³ *Id.* The Department’s subsequent approval of GLIC’s request was “contingent upon [the Department’s] receipt of an agreement signed by all of the contracting parties” and an affidavit “attest[ing] that no changes have been made between the original agreement submitted and the executed agreement.” Alimard Aff., Ex. 3.

²¹⁴ Alimard Aff., Ex. 3 (acknowledging receipt of GLIC’s Form D, “whereby the Company seeks the Department’s approval to terminate an existing Guaranty . . . and concurrently replace with a Capital Maintenance Agreement[.]” and providing that “[t]he Department has reviewed the terms of this proposed agreement and based upon the Department’s review and recommendation, the Department hereby **APPROVES** the terminat[ion] of the Guaranty . . . and the new Capital Maintenance Agreement”) (bolding and capitalization in original).

and the Capital Maintenance Agreement would be automatically terminated.”²¹⁵ Years after the fact, one can no doubt second-guess whether the Hearing record could have been more expansive. But frankly that will almost always be the case. It does not mean that there is a triable issue of fact as to whether Genworth committed fraud.

The Commissioner appointed a hearing officer who in turn held the Hearing for the purpose of taking evidence concerning whether to approve the Merger. Notice of the Hearing was given in accordance with Delaware law. The hearing officer heard witness testimony and received documentary evidence. “No objections to the proposed Merger were offered at the Hearing. No comments from members of the public were received at or in advance of the Hearing.”²¹⁶ Indeed, neither Plaintiffs nor the insurance companies that seem to be funding this litigation appeared at the noticed Hearing; presented evidence, briefing, or argument to the hearing officer or the Department; or otherwise objected to the Commissioner’s approval of the Merger in 2016. No one sought review of the approval decision.

The collateral attack doctrine supports a critically important policy of finality, including as to expert administrative decisions concerning highly regulated, complex, long-ago transactions like the Merger. The doctrine applies here to prohibit Plaintiffs’ efforts to “avoid, defeat, evade, or deny the force and effect of” the Commissioner’s approval of the Merger “in an incidental proceeding[.]”²¹⁷ The effect

²¹⁵ Alimard Aff., Ex. 2.

²¹⁶ Uebler Aff., Ex. 28 at Genworth0028391.

²¹⁷ *In re Vale*, 2015 WL 721038, at *4 (internal quotes omitted).

of the Merger on GLIC’s ability to fulfill its LTCI obligations was, by statutory mandate, the “core issue” in the Department’s review, and this Action asserts “[c]laims that aim to modify” the Commissioner’s final approval “by revisiting th[at] core issue” and, at bottom, “ask[] [the court] to conclude the [agency] [] erred[.]”²¹⁸ This is the essence of an “impermissible collateral attack[.]”²¹⁹ Defendants are therefore entitled to summary judgment.²²⁰

²¹⁸ *ETC Ne. Field Servs.*, 2024 WL 2797337, at *10 (internal quotes omitted).

²¹⁹ *Id.*

²²⁰ In addition to collateral attack doctrine, Defendants argue the primary administrative jurisdiction doctrine warrants summary judgment on all Plaintiffs’ claims. *See* MSJ Br. at 40–54. Although distinct, both doctrines support the idea that courts should generally defer to a state agency’s determination within its statutory area of expertise. *See Taylor*, 258 A.2d at 907 (“The decisions of administrative bodies acting in a judicial or quasi-judicial capacity are not subject to collateral attack unless they are void on their face, or beyond the jurisdiction of the agency. Particularly is this true when direct review by appeal is permitted, and the complaint against the prior decision is error or irregularity which is not jurisdictional.”); *Liberty Mut. Ins. Co. v. City Window Cleaning of Delaware, Inc.*, 2011 WL 2176519, at *1–2 (Del. Super. May 26, 2011) (“Primary administrative jurisdiction applies when a claim, while cognizable in a court of law, requires the specialized knowledge of the administrative board possessing that knowledge.” (citing *E. Shore Natural Gas Co. v. Stauffer Chem. Co.*, 298 A.2d 322, 325 (Del. 1972))). *See also Matter of Scottish Re (U.S.), Inc.*, 273 A.3d 277, 294 (Del. Ch. 2022) (detailing the Department and Commissioner’s specialized knowledge and statutory authority). Despite theoretical overlap between the two doctrines, collateral attack is a better fit given the Commissioner’s prior approval of the Reinsurance Termination and the lack of any ongoing proceeding before the Department. *Compare Banther v. State*, 884 A.2d 487, 492 (Del. 2005) (The collateral attack doctrine “requires that a question of fact essential to the judgment be litigated and determined by a *valid and final judgment*.” (internal quotes omitted) (emphasis added)), *with Levinson v. Delaware Comp. Rating Bureau, Inc.*, 616 A.2d 1182, 1187 (Del. 1992) (“Application of the doctrine of primary administrative jurisdiction results in staying or abstention of the judicial process until the proper administrative agency has made its ruling[.]”). In any event, given the Court’s ruling on the collateral attack doctrine, the Court need not reach the parties’ arguments concerning the primary administrative jurisdiction doctrine.

B. The 56(d) Motion And Motion To Strike Are Denied As Moot

Plaintiffs also filed the 56(d) Motion seeking a determination that GLIC was fair value insolvent at the time of the Merger.²²¹ In response, the Defendants filed the Motion to Strike, arguing the 56(d) Motion was procedurally improper and should be stricken.²²² Having granted Defendant's motion for summary judgment on other grounds, the Court need not reach the issues raised by the 56(d) Motion and Motion to Strike. The 56(d) Motion and Motion to Strike are therefore both denied as moot.²²³

IV. CONCLUSION

Summary judgment will accordingly be entered for Defendants for the reasons discussed herein. Counsel for the parties will confer and file a joint form of proposed implementing order consistent with this decision within 10 business days.

²²¹ See 56(d) Motion. For clarity, Plaintiffs filed their 56(d) Motion under a version of Rule 56(d) that is no longer current following this Court's adoption of a revised Court of Chancery Rule 56, effective June 1, 2026. See Del. Ch. Ct. R. 56 (2026).

²²² See *supra* note 107.

²²³ Even if considered on the merits, Plaintiffs' request for a determination that "GLIC was fair value insolvent" in 2016 would likely be denied for reasons very similar to those discussed above forestalling Defendants' request for summary judgment on solvency. Much of the same evidence would lead to similar genuine disputes of material fact under the fair value test at the core of Plaintiffs' 56(d) Motion. In addition, Defendants' procedural arguments in the Motion to Strike—that Plaintiffs' motion misconstrued former Rule 56(d) and violated the scheduling order—were compelling. See MTS Br. § I ¶¶ 8–13, § II ¶¶ 14–16.