

CITATION: Fehr v. Sun Life Assurance Company of Canada, 2026 ONSC 5338
COURT FILE NO.: CV-10-00411183-00CP
DATE: 20260923

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ELDON FEHR, GAETAN LAURIER,
LESLIE MICHAEL LUCAS, JAMES
PATRICK O’HARA, REBECCA JEAN
CLARK, and LLOYD SHAUN CLARK

Plaintiffs (Moving Parties)

– and –

SUN LIFE ASSURANCE COMPANY OF
CANADA

Defendant (Responding Party)

)
)
) *Won J. Kim, Michael C. Spencer, Megan B.*
) *McPhee, Aris Gyamfi, and Taylor Hu, for the*
) *Plaintiffs (Moving Parties)*
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)

)
) *Dana M. Peebles and Glynnis P. Burt, for*
) *the Defendant (Responding Party)*
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) **HEARD:** September 8, 2026

LEIPER, J.

REASONS FOR DECISION

Proceeding under the *Class Proceedings Act, 1992*

INTRODUCTION AND OVERVIEW

[1] The Plaintiffs move for court approval of a settlement they successfully negotiated with the defendant, Sun Life Assurance Company of Canada, after seventeen years of litigating this class action. The settlement, which is valued at \$213.5 million, will benefit approximately 100,000 current and former universal life insurance policyholders across Canada (the “Class”).

[2] The Plaintiffs commenced this action in 2010 and achieved certification on behalf of current and former holders of a set of policies sold by the predecessor insurance company to Sun Life in 1987 through mid-1998. These policies were marketed under the names “Universal Flexiplus,” “Universal Plus”, and “Universal OptiMet.”

[3] Among other things, the Plaintiffs alleged that Sun Life breached the terms of the policies by raising the Cost of Insurance (“COI”) rates and “Administrative Fees” based on impermissible

factors, and for other types of policies, by charging premiums above the “Maximum Premium” specified those insurance policies.

[4] Throughout this litigation, Sun Life denied these allegations. The parties litigated for years of motions, appeals and negotiations, Sun Life’s position was that it administered the policies according to the terms and consistent with industry standards. In settling the action, Sun Life does not admit liability.

[5] The settlement is structured to provide \$142.5 million in cash benefits for compensating past and current policyholders who were subject to the COI charges and Administrative Fees, or who paid premiums on policies purchased before 1992 that charged more than the Maximum Premium specified in the policies.

[6] Eligible current policyholders will receive their cash benefits automatically without having to complete an application. This means there will be a 100% take-up amongst eligible policyholders whose policies are still in force. Eligible past policyholders identified in Sun Life’s records will be able to fill out a streamlined application form that will not require them to provide supporting documentation.

[7] The remaining \$71 million of the proposed settlement represents the value to policyholders by funding a permanent cap on current policyholders’ COI rates and Administrative Fees. This feature aims to provide stable premiums to current policyholders so that they can maintain those policies.

[8] Throughout the litigation, Class counsel acted on contingency, without external funding, and subject to a commitment to indemnify the plaintiffs for any adverse costs awards, including a \$1 million cost award to Sun Life after the plaintiffs’ certification motion had been dismissed at first instance. This was not wholly by choice. Class counsel made funding requests that were rejected. However, class counsel also chose to continue with the action, and to bear financial risk.

[9] Class counsel’s willingness to bear the considerable financial risks of the litigation for over a decade and a half means that the Class need not pay out a 10% Class Proceedings Fund levy or a third-party funder charge. Given the size of the settlement, this means that an additional \$21.3 million CAD in funding is preserved for the benefit of the Class.

[10] Class counsel submit that the litigation risks and the outcome achieved for the Class, place this case in a *sui generis* category among settlements. In addition to seeking approval of the settlement, Class counsel seeks to be compensated in accordance with the 30% contingency set out in retainer agreements with the Plaintiffs.

[11] For the reasons that follow, I am satisfied that the settlement and related orders for its administration should be approved as fair, reasonable and in the interests of the Class. I approve Class counsel’s fees as being fair and reasonable. I approve the payment of honoraria to the representative plaintiffs.

[12] I set out next, in some detail, the history of the litigation. This is important context to the reasonableness of the settlement and the fees sought by Class counsel. The details reveal the hurdles crossed, the risk of failure, and the financial exposure assumed by Class counsel. The

details of the litigation show a remarkable commitment to the action by the representative plaintiffs with the support, expertise and grit of Class counsel.

BACKGROUND

The Discovery of the Policyholders' Claims: Sun Life v. MetLife

[13] In 2006, Sun Life sued MetLife in the Ontario Superior Court of Justice (the “Indemnity Litigation”), seeking indemnification for claims relating to certain policies it had inherited from a predecessor corporation originally sold by MetLife.

[14] Sun Life alleged that MetLife had engaged in or condoned a pattern of misrepresentations in its sale of certain life insurance policies, that it was now carrying, and sought indemnity for demands being made by its policyholders that it honour the representations made by MetLife’s agents.

[15] On January 22, 2010, MetLife obtained summary judgment to dismiss Sun Life’s action, based on a finding by Marrocco, J. that the \$1 million threshold for indemnification had not yet been met: *Sun Life Assurance Company of Canada v. Metropolitan Life Insurance Company*, 2010 ONSC 558 at para 42.

[16] Class counsel reviewed the reasons in that decision and sought copies of the documents filed in the litigation to explore whether policyholders might have a cause of action against Sun Life. Given the pattern of misrepresentations alleged by Sun Life against MetLife, counsel considered whether there were questions in common that could support certification of a class.

Sun Life’s 2010 “Flexiplus Options Program”

[17] In the spring of 2010, Sun Life launched a “Flexiplus Options Program” which offered existing Flexiplus policyholders a remedy if they believed that their MetLife sales representative promised that their insurance charges would be stable for certain periods of time.

[18] Under the Flexiplus Options Program, eligible policyholders could accept a one-time lump sum partial refund of past insurance increases deposited to their Accumulation Funds, or agree to an increase in their COI and Administrative Fee to a level that would then be fixed and guaranteed not to increase further. Flexiplus policyholders were given until May 30, 2010, to apply for the program.

[19] In November 2010, Sun Life wrote to the Flexiplus policyholders who had applied for the Flexiplus Options Program to confirm their eligibility and advised them for the first time that participating in the Flexiplus Options Program required policyholders to sign a release. The letters disclosed to the policyholders that there was a proposed class action lawsuit, stating that by signing a release, “you may give up your right to participate in the proposed class action lawsuit”. The letter from Sun Life provided policyholders with contact information for Class counsel.

Commencement of this Action

[20] On September 24, 2010, Universal Optimet policyholder Mr. Joseph (Jung Yub) Kang commenced this action. Mr. Kang alleged negligent and reckless misrepresentation, breach of contract, breach of the duty of good faith, and deceit and fraud in relation to the Universal Flexiplus, Universal Plus, Universal OptiMet, and Interest Plus policies. Although OptiMet policies were not specifically identified as a subject of policyholder complaints in the Indemnity Litigation, these policies included similar policy wording as Universal Flexiplus policies with respect to the cost of insurance, and as a result, counsel included those policies in this action.

[21] Between 2010 and 2011, class counsel refined the theory of the case by:

- a. reviewing the record from the Indemnity Litigation, including a 14-volume motion record totalling 8,512 pages, as well as a two-volume Cross-Examination Transcripts Brief containing cross-examinations of 16 MetLife agents and employees and 1 expert, totalling 1,438 pages;
- b. meeting with proposed class members to understand their experiences and vet them for suitability as proposed representative plaintiffs; and
- c. looking into the existence and outcome of any comparable litigation, including a U.S. class action settlement against MetLife involving allegations of deceptive sales practices with respect to universal life insurance policies.

[22] On June 28, 2011, Class counsel served a draft Fresh as Amended Statement of Claim with four additional proposed plaintiffs (Eldon Fehr, Angela Watters, Gaetan Laurier, and Leslie Michael Lucas).

The Contested Litigation

The Motion to Strike and Amendments to the Claim

[23] On being served with the proposed Fresh as Amended Statement of Claim, Sun Life moved to strike all of the plaintiffs' claims under rule 21 for failing to disclose any reasonable cause of action. Sun Life also moved to strike out most of the paragraphs in the Fresh as Amended Statement of Claim under rule 25 for failing to comply with the rules of pleading.

[24] On October 27, 2011, Perell, J. granted the majority of Sun Life's motion and struck much of the claim without leave to amend: *Kang v. Sun Life Assurance Company of Canada*, 2011 ONSC 6335 (the "Motion to Strike Decision"). Justice Perell found that the pleading did not disclose causes of action for breach of contract, breach of duty of good faith and fair dealing, breach of fiduciary duty, and rescission of policyholder releases, and as such, the cause of action criterion for certification under section 5(1)(a) of the *Class Proceedings Act*, S.O. 1992, c. 6, (the "CPA") would not be satisfied in relation to those claims: *Motion to Strike Decision* at paras.127, 141, 146, 151

[25] Justice Perell ordered costs of \$73,654.02 payable to Sun Life, in any event of the cause. In assessing costs of this magnitude, Perell, J. distinguished the motion from an "ordinary run-of-

the-mill pleadings motion”, describing the action as a “billion-dollar action with serious allegations of misconduct”: *Kang v. Sun Life Assurance Company of Canada*, 2011 ONSC 7436 at para. 9.

[26] The Plaintiffs successfully appealed. The Court of Appeal restored the claims for breach of contract, breach of the duty of good faith and fair dealing, and fraud and deceit, finding that the scope of the duty of good faith and fair dealing was not fully settled in the jurisprudence, thus it was premature to strike the claim: *Kang v. Sun Life Assurance Company of Canada*, 2013 ONCA 118 (“*Motion to Strike Appeal Decision*”) at para. 23.

[27] The Court of Appeal disagreed with Perell, J.’s findings that there was no tenable breach of contract claim in relation to the Universal Plus “Maximum Premium” issue, stating that “at the very least, the meaning of the term is ambiguous” and the claim should stand: *Motion to Strike Appeal Decision*, at para 42.

[28] The Court upheld Perell, J.’s decision to strike the plaintiffs’ allegations pertaining to policyholder releases, but left the door open for the plaintiffs to add a claim for rescission or declaratory relief on the releases: *Motion to Strike Appeal Decision*, at para. 53.

[29] Following the Court of Appeal’s decision, the Plaintiffs delivered a further revised Fresh as Amended Statement of Claim (the “FASOC”), which replaced Mr. Kang with the current Plaintiffs and with Angela Watters, an Interest Plus policyholder.

[30] The FASOC pleaded breach of contract in relation to the COI provision in the policies. The COI provision in the Flexiplus policy stated:

The monthly rate for the Cost of Insurance will be set by us from time to time based on the primary insured’s sex, issue age, underwriting class, policy year and the Specified Face Amount of Insurance.

[31] The FASOC pled that Sun Life imposed increases on COI using factors that were different from the list of identified factors set out in the policies. The plaintiffs further alleged that certain increases in Administrative Fees were not based on increases in administrative costs, but were merely disguised COI increases.

[32] Class counsel developed their breach of contract claim by closely examining the terms of the policies and consulting with insurance industry specialists. Ultimately, this case theory became the foundation for the action that was eventually certified.

Notice and Response by Settlement Class Members

[33] Class counsel published the Notice of Settlement Approval Hearing in accordance with the plan approved by the Court. Class members were notified of their right to make a written submission to the Court to support or oppose the Settlement by delivering it to Class counsel on or before August 31, 2026.

[34] In response, 34 Class members commented in support of the Settlement. Two persons submitted a Statement of Objection and Concern, which I discuss further below.

The Certification and Summary Judgment Motions and Related Procedural Motions

[35] After the pleadings motion litigation, the Plaintiffs worked to obtain certification, which Sun Life opposed.

[36] On July 10, 2013, the Plaintiffs served a twelve-volume motion record for certification including material from the Indemnity Litigation. Sun Life delivered an eight-volume responding record on November 29, 2013. The Plaintiffs delivered their reply record on February 10, 2014.

[37] The parties' records filed in respect of the certification motion contained more than a combined 5,500 pages of evidence with affidavits from each of the Plaintiffs, a Sun Life Director, dozens of former MetLife agents, and expert evidence from Mr. Ross Morton and Mr. Richard Forchuk, experts in the life insurance industry.

[38] On February 24, 2014, Sun Life delivered a 55-page notice of motion for summary judgment, in which it sought dismissal of the entire action. Sun Life argued that (a) each of the Plaintiffs' claims were statute barred, having been commenced after the expiry of the applicable limitation periods; (b) the Plaintiffs had no claim in breach of contract; and/or (c) there was no evidence in support of the Plaintiffs' claims.

[39] The scope of the summary judgment motion sparked a dispute over the sufficiency of Sun Life's productions. The Plaintiffs sought a further and better affidavit of documents from Sun Life given the scope of its summary judgment motion.

[40] Justice Perell denied the Plaintiffs' request, finding that the plaintiffs were "attempting to discomfort the Defendant, divert the focused summary judgment motion, and obtain something that they are not entitled to under the *Rules of Civil Procedure*": *Fehr v. Sun Life Assurance Company of Canada*, 2014 ONSC 2183 at para. 40.

[41] The Plaintiffs' motion for a stay pending a motion for leave to appeal this decision to the Divisional Court was denied on the basis that the Plaintiffs had failed to meet any of the elements of the test in *RJR-Macdonald Inc. v. Canada*, [1994] S.C.R. 311: *Fehr v. Sun Life Assurance Company of Canada*, 2014 ONSC 3447 at para. 4.

[42] In the meantime, between March 2014 and June 2015, the parties cross-examined 28 affiants in Toronto, Ottawa, Montreal, Vancouver, Edmonton, and Saskatoon, and conducted supplementary cross-examinations of four Plaintiffs.

[43] The Plaintiffs attempted to question witnesses about the valuation of contingent liabilities facing Sun Life with respect to policyholder claims, fraudulent concealment, the Indemnity Litigation, and Sun Life's selection of former MetLife agents. Sun Life refused to answer these questions, which led the Plaintiffs to bring a refusals motion for an order compelling Sun Life to answer.

[44] On May 4, 2015, Perell, J. dismissed the Plaintiffs' refusal motion, and awarded \$18,000 in costs, payable to Sun Life in any event of the certification motion., Perell, J. observed that "this is a very hard fought action": *Fehr v. Sun Life Assurance Company of Canada*, 2015 ONSC 3918 at paras 4, 7.

[45] In August and September 2015, the parties exchanged comprehensive, and lengthy written submissions in respect of the certification and summary judgment motions.

[46] From September 28 to October 7, 2015, the parties argued the certification and summary judgment motions over an eight court days: *Fehr v. Sun Life Assurance Company of Canada*, 2015 ONSC 6931 (“*Certification Motion Phase 1*”) at paras. 14, 500.

[47] In the 500-paragraph decision released on November 12, 2015, Perell, J:

- a. concluded the COI and Administrative Fee claims, the deceit and breach of good faith claims, and the rescission claims were not statute-barred;
- b. refused to certify the misrepresentation claims, finding no commonality in those claims or in the alleged systemic breaches of a duty of care;
- c. dismissed the Maximum Premium breach of contract claim as premature; and
- d. adjourned the portion of the certification motion with respect to the Flexiplus COI and Administrative Fee breach of contract claims, directing the parties to file further evidence with respect to the alleged COI increases.

Certification Motion Phase 1 at paras. 15, 294, 303, 314-315, 499.

[48] The motion adjourned for over a year, while the parties exchanged additional evidence as directed by Perell, J. Sun Life delivered the affidavits of Dean Chambers dated January 25, 2016, and July 29, 2016. Mr. Chambers was the Vice President, Individual Insurance, for Sun Life, and responsible for the pricing and re-pricing of individual life insurance products at Sun Life, including any adjustment in COI rates.

[49] The Plaintiffs delivered the affidavits of expert witness Paul M. Winokur dated May 20, 2016, and October 13, 2016, in response to the affidavits of Mr. Chambers. Mr. Winokur is a Consulting Actuary with over 40 years of experience in the life insurance industry including acting as Chief Actuary for Foresters Insurance Company. His experience included pricing and repricing universal life insurance policies.

[50] Messrs. Winokur and Chambers were both cross-examined. The parties prepared 850-page joint motion record and further written submissions for the continued hearing of the certification motion before Perell, J.

[51] On December 1, 2016, the parties continued their submissions on the motion for certification. Justice Perell dismissed the certification motion in its entirety, concluding that “it is a relatively straightforward matter to conclude” that “there is no evidence” and that there was “no basis in fact for the Plaintiffs’ allegation that there has been a breach of contract”: *Fehr v. Sun Life Assurance Company of Canada*, 2016 ONSC 7659 (“*Certification Motion Phase 2*”) at paras 48-49, 63.

[52] Justice Perell found that the initial COI rates and subsequent adjustments were made in accordance with the policy terms and industry practice: Certification Motion Phase 2, at paras. 49–

51. He concluded that the Plaintiffs had included a “speculative breach of contract claim” in an “omnibus class action” which they were using to seek out facts based on a new interpretation of the contract: *Certification Motion Phase 2*, at para. 57. Justice Perell ordered the Plaintiffs to pay Sun Life’s partial indemnity costs in the amount of \$1 million.

[53] Class counsel Mr. Kim stated in his submissions, that at this point, the action was “deader than a doornail.”

The Appeals from Certification and Summary Judgment

[54] Both parties appealed the outcome of the summary judgment and certification motions. The appeals were consolidated to be heard together at the Court of Appeal.

[55] On September 5, 2018, the Court of Appeal reversed the denial of certification of the breach of contract and fraudulent concealment common issues, upheld the denial of certification of the negligent misrepresentation claims, and allowed the Plaintiffs’ appeal from the decision to grant summary judgment for dismissing the misrepresentation, breach of contract, and maximum premium claims on limitations grounds: *Fehr v. Sun Life Assurance Company of Canada*, 2018 ONCA 718 (“*Certification Appeal Decision*”) at paras. 189, 201, 208, 213.

[56] The Court of Appeal emphasized the complexity of the policies, containing key terms that were a “matter of some controversy”: *Certification Appeal Decision*, at para. 64. The Court held that the motion judge had erred by going beyond the ‘some basis in fact’ inquiry incorrectly deciding the proposed common issues by interpreting the contract and finding that Sun Life had not breached it: *Certification Appeal Decision*, at para. 86. The Court of Appeal remitted the action back to Perell, J. for certification in accordance with its reasons and such further directions as may be necessary.

[57] Sun Life sought leave to appeal to the Supreme Court of Canada from the Court of Appeal’s decision respecting when policyholders were deemed to have discovered their misrepresentation claims. The Supreme Court of Canada dismissed the motion for leave on May 2, 2019: *Sun Life Assurance Company of Canada v. Eldon Fehr, et al.*, 2019 CanLII 37480 (SCC).

[58] The next legal dispute involved the wording of the certification order. Between March and October 2019, the parties disputed the proper class definitions, common issues, certification notices and litigation plan. Sun Life sought an order which removed certified common issue 10 on fraudulent concealment, altered the wording of several other certified common issues and limited the class definition. The Plaintiffs objected to all of these modifications.

[59] The parties served competing motions before Perell, J. to settle the terms of the certification order, the notices of certification, the notice program, and the litigation plan.

[60] In February 2020, Perell, J. released his decision, settling the terms of the certification order. The decision narrowed the certified common issues and class definition, approved a notice program for certification, and ordered the Plaintiffs to pay for it. Because negligent misrepresentation had not been certified, Angela Watters and the Interest Plus claim were removed from the proceeding. The remaining proposed Plaintiffs were appointed as representative Plaintiffs

for the Class, and CA2 Inc. was appointed as Notice Administrator: *Fehr v. Sun Life Assurance Company of Canada*, 2020 ONSC 1115 at paras. 94, 107.

[61] Pursuant to the certification order of February 20, 2020, the action was certified on behalf of the following sub-Classes:

- a. The “Universal Plus Class” is defined as persons who owned or own a Universal Plus policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policy.
- b. The “Flexiplus Class” is defined as persons who owned or own a Flexiplus policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policy whose monthly costs of insurance and/or monthly administration fee was increased in one or more of 2001, 2006, or 2015 or the ninth year of the policy.
- c. The “OptiMet Class” is defined as persons who owned or own an OptiMet policy sold by MetLife in Canada during the period 1987 through 1998, including any successor owners of the policy where an increased cost of insurance rate was charged and paid commencing in year nine (9) of the policy.

[62] Justice Perell certified the common issues as follows:

1. Was it a term of the Flexiplus policy that the cost of insurance ("COI") rate may be adjusted based on specified factors? If so, is Sun Life liable for breach of contract if increases were based in whole or in part on other factors?
2. Was it a term of the Flexiplus policy that Administrative Fees may be adjusted based on factors related to the cost of administering the policies? If so, is Sun Life liable for breach of contract if increases were based, in whole or in part, on other factors?
3. Was it a term of the OptiMet policy that the COI rate may be adjusted based on specified factors? If so, is Sun Life liable for breach of contract if increases were based, in whole or in part, on other factors?
4. Was it a term of the Universal Plus, Flexiplus, and OptiMet policies that the "Maximum Premium" amount set out in the policies was the highest amount of premium that the policyholder would ever be required to pay for the policy in any year, in order to prevent lapse of the policy? If so, are the plaintiffs entitled to a declaration to that effect?
5. If the answer to any of questions 1, 2, or 3 is that Sun Life breached the contract of insurance, did Sun Life administer the policies in a manner, including violating section 439 of the *Insurance Act*, R.S.O. 1990, c. 1.8

(prohibiting unfair and deceptive practices) such that the breach of contract was concealed?

[63] The Plaintiffs moved for leave to appeal the order to the Divisional Court on the basis that it was in a form that was inconsistent with the Court of Appeal's reasons certifying the action. In the interim, the Plaintiffs sought a stay of the order after Justice Perell wrote in a case conference endorsement on May 14, 2020, that:

..... if the Plaintiffs do not wish to comply with the Certification Order, they should bring a stay motion. Otherwise, I recommend (but do not order) that the Plaintiffs bring the requisite motions, failing which the Defendant may bring a motion to have the action decertified. The Plaintiffs shall have ten days to seek a stay of my Order or to bring the requisite motions.

[64] On July 23, 2020, the Divisional Court dismissed the Plaintiffs' leave to appeal motion, with costs payable by the Plaintiffs to Sun Life fixed at \$20,000, inclusive, payable forthwith: *Fehr v. Sun Life*, 2020 ONSC 4476 at para 1.

[65] The Plaintiffs brought a motion to settle the notices and litigation plan, which was finalized on January 5, 2021: *Fehr v. Sun Life Assurance Company of Canada*, 2021 ONSC 97 at para. 14.

[66] With certification obtained, and the necessary orders signed, the Plaintiffs arranged for notice of the action by way of publications in *The Globe and Mail* and *La Presse*, and by direct mail to 96,917 class members in postcard summary form. Approximately 3,700 postcard notices were returned as undeliverable. Ninety-two individuals opted out of the class action.

The Cross-Motions for Summary Judgment; The Plaintiffs' Motion on Investment Spread

[67] On March 30, 2021, Sun Life served a three-volume summary judgment record to determine the common issues in its favour. The record contained affidavits from:

- a. Dean Chambers, who had been a Vice President at Sun Life since December 2011, and had 15 years of experience as a pricing and product actuary with other insurance companies. His 65-page affidavit, excluding exhibits, opined on why common issues 1-4 should not be decided in the Plaintiffs' favor, as well as the factors that are considered in adjusting COI rates and administrative fees;
- b. Pavi Liitela, who was a former Director, Personal Insurance Pricing & Product Management at MetLife, and later a Director of National Account Underwriting. The affidavit opined on why it is incorrect to suggest that the "Maximum Premium" amount indicated on Universal Plus, Universal Flexiplus and Universal OptiMet policies indicates the most premium policyholders will ever have to pay in order to keep their policy in force; and
- c. Luc Farmer, who had been an actuary and Fellow of the Canadian Institute of Actuaries for over 40 years. His affidavit provided an expert actuarial opinion with respect to:

- i. whether the COI rate adjustments for the Universal Flexiplus policy and Universal OptiMet policy were carried out in a manner consistent with the policy terms, industry practice, and good actuarial practice
- ii. whether the Administrative Fee increases for the Universal Flexiplus policy were carried out in a manner consistent with the policy terms, industry practice, and good actuarial practice; and
- iii. whether the “Maximum Premium” amount set out in the Universal Plus, Universal Flexiplus and Universal OptiMet policies was the highest amount of premium that policyholders would ever be required to pay for the policy in any year in order to prevent lapse of the policy.

[68] The parties exchanged Affidavits of Documents pursuant to a timetable for the parties’ cross-motions for summary judgment on the common issues. The Plaintiffs brought a motion for a further and better affidavit of documents, from which they were able to obtain a supplementary affidavit from Sun Life listing 69 additional documents.

[69] In May 2022, the Plaintiffs served a 3,000-page responding and cross-moving record for summary judgment, which included expert evidence from:

- a. Jim Toole from FTI Consulting, Inc., who primarily provided an expert opinion on the adjustment of COI for Flexiplus policies, as raised by common issue 1; and
- b. Michael Kavanagh, an actuary with over 25 years of experience in actuarial valuation and management at life insurance companies in Canada. His expert report opined on the pricing of Flexiplus by MetLife and the discussions and analysis of the insurer’s experience with the product and consideration of COI repricing by MetLife and the successor insurers. The Kavanagh report addressed the affidavit of Mr. Luc Farmer, particularly his testimony that in his “actuarial opinion, the method and assumptions used by Sun Life and its predecessors to re-price the Universal Flexiplus COI rates in each of 2001 (based on the 1999 repricing report), 2006, and 2015 (based on the 2014 repricing report), are actuarially sound, consistent with standard actuarial practice, and in keeping with the policy wording”.

[70] During Class counsel’s review of Sun Life’s supplementary productions, Class counsel and Mr. Kavanagh discovered that Sun Life and its predecessors had increased the “investment spread” deducted from Flexiplus policyholders’ accumulation funds in 2001 and 2014. Those increases had not been communicated to policyholders or separately identified in their annual statements.

[71] With this new information in hand, in October 2022, the Plaintiffs sought leave to amend the pleading and add a common issue concerning investment-spread increases. Sun Life opposed the amendment and moved to strike portions of Mr. Kavanagh’s expert report addressing the issue of investment spread and profitability.

[72] On April 27, 2023, Akbarali, J. dismissed the Plaintiffs’ motion to add a common issue because the new proposed claim had been discoverable in 2016 and that the delay caused by adding the claim outweighed its potential benefit to the proceeding: *Fehr v. Sun Life Assurance Company*

of Canada, 2023 ONSC 2554 (“*Investment Spread Motion*”) at para. 21, 33. Justice Akbarali also granted Sun Life’s motion to strike the portions of the Kavanagh report dealing with the investment spread issue and awarded Sun Life \$75,000 in costs: *Investment Spread Motion*, at para. 52.

[73] The Plaintiffs’ unsuccessfully appealed Akbarali, J.’s decision to the Court of Appeal and were unsuccessful in their application seeking leave to appeal to the Supreme Court of Canada.

[74] The Court ordered costs against the Plaintiffs in the amount of \$50,000: *Fehr v. Sun Life Assurance Company of Canada*, 2024 ONCA 847 at para 112 (the “*Investment Spread Appeal*”).

[75] On June 24, 2025, the parties attended a case conference before me to schedule a three-day summary judgment motion for April 28-30, 2026. Shortly thereafter, the parties began to engage in sustained arms-length settlement discussions on a parallel track to litigation.

[76] The settlement discussions extended over the better part of a year, by way of multiple meetings, telephone calls and exchanges of correspondence, and negotiated through several proposals and draft terms. Counsel advise, and I accept that these negotiations were difficult, and at times, settlement appeared unlikely. The history of the litigation and costs spent to get to this stage, as well as the lack of Canadian precedent on the underlying questions of interpretation are all factors which could complicate settlement negotiations.

[77] In parallel to these discussions, Class counsel moved ahead with cross-examinations of the affiants for the summary judgment motion and a challenge to the admissibility of the affidavits of Dean Chambers to avoid delays and to sustain leverage if settlement was not achieved.

[78] On March 6, 2026, the parties’ counsel notified the Court that an agreement in principle to resolve the action was reached, approximately 7 weeks before the scheduled hearing dates for the summary judgment motions on the common issues. I vacated those hearing dates and scheduled a motion for approval of the notice of settlement to be heard on April 30, 2026.

The Settlement Agreement

[79] For nearly three months after agreeing in principle, the parties continued to negotiate the specific terms in the proposed settlement agreement. This led to an adjournment of the notice of settlement motion, so that parties would have the required time to agree on the details.

[80] The parties executed the settlement agreement on May 28, 2026, just before the rescheduled notice approval motion on June 1, 2026.

[81] The essential elements of the settlement agreement include:

- a. Sun Life will provide an all-inclusive Settlement Value of \$213.5 million, comprised of up to \$142.5 million in Cash Benefits and \$71 million in Future Policy Benefits;
- b. Class Counsel Fees and Administration Expenses, to the extent approved by the Court, would be paid from the Settlement Value;

- c. Any remaining/unclaimed funds from the Net Settlement Value after distribution of the Cash Benefits would revert back to Sun Life;
- d. the action would be dismissed, and all Class Members' claims would be released; and
- e. Class Members who held OptiMet policies, or Universal Plus policies from the later 1992, 1994 and 1998 series, or who previously signed a release (including participants in the Flexiplus Options Program) ("Prior Releasers") would not be eligible to receive settlement benefits for their policies but would be bound by the release.

The Allocation of the Settlement Benefits

[82] The proposed settlement benefits will be allocated amongst four groups of eligible Class Members:

- a. Current Flexiplus Policyholders;
- b. Past Flexiplus Policyholders;
- c. Current Universal Plus Policyholders; and
- d. Past Universal Plus Policyholders.

[83] Whether a Class Member is a "Current" or "Past" Policyholder within the meaning of the Settlement will be determined by whether the Class Member held the policy as of the March 31, 2026, Valuation Date.

[84] Within these four groups of policyholders, eligibility for Cash Benefits is further determined by whether the Class Member actually paid an increase in Cost of Insurance and/or Administrative Fees (for Flexiplus policyholders), or paid a premium in excess of the "Maximum Premium" set out in their policy (for Universal Plus policyholders). Successor owners of Flexiplus or Universal Plus policies are eligible where that person satisfies the applicable definition of a Current or Past Flexiplus or Universal Plus Policyholder and the eligibility criteria in Schedule "A."

[85] For Current and Past Flexiplus Policyholders who are eligible, the Cash Benefits will compensate them for a portion of the COI and Administrative Fee increases they have paid. There will be a supplemental Cash Benefit for Past Flexiplus Policyholders whose Flexiplus policies lapsed or were surrendered after a COI increase.

[86] For Current and Past pre-1992 Universal Plus Policyholders who are eligible, the Cash Benefits will compensate them for a portion of the COI charges they have paid above a multiple of the base coverage "Maximum Premium" set out in their policies.

[87] Estates of individuals who are deceased but would otherwise qualify as Current or Past Flexiplus or Universal Plus Policyholders will also be eligible to claim Cash Benefits under the Settlement.

[88] In addition to Cash Benefits, all Current Flexiplus Policyholders (whether they are eligible for Cash Benefits or not) will receive Future Policy Benefits in the form of a permanent freeze of their current COI and Administrative Fees for the future duration of their policies.

[89] Similarly, all Current Universal Plus Policyholders will receive Future Policy Benefits in the form of a cap on future COI charges based on a 3.15 multiple of the base coverage “Maximum Premium” indicated in their policy.

Exclusions

[90] OptiMet policyholders, individuals who hold later (1992+) versions of Universal Plus policies, and Prior Releasers are all excluded from receiving either Cash Benefits or Future Benefits under the proposed Settlement.

[91] With respect to OptiMet policyholders, evidence produced by Sun Life in support of its summary judgment motion revealed that there was no re-pricing of COI rates for any OptiMet policies. OptiMet policies were only sold in 1998, and the COI rates that were set in 1998 for both the initial and ultimate periods have never changed (and are guaranteed by the terms of the policy never to change).

[92] This is consistent with the absence of any evidence in any of the documentary productions delivered by Sun Life in its Affidavits of Documents (in 2014, 2021, and 2022) that would indicate that OptiMet policyholders experienced a COI increase outside of the pre-determined ultimate rate set out in the policy. In the absence of such an increase, there is no COI overcharge to compensate OptiMet policyholders for under the Settlement. This exclusion affects approximately 2,331 policies.

[93] With respect to Universal Plus policies, the Settlement Agreement excludes approximately 10,000 Universal Plus policies from the later policy series identified in Schedule “A” as the 1992, 1994 and 1998 series (collectively, the “Excluded UP Policies”).

[94] The Excluded UP Policies contain language in the policy that altered the meaning of the term “Maximum Premium” compared to earlier series of the Universal Plus policies. As the Plaintiffs’ material shows in this chart:

Universal Plus Policies (pre-1992)	Excluded UP Policies
The total premiums paid in a policy year may not exceed the maximum we set for that year.	The total premiums paid to date at any time may not exceed the total that would have been Paid if you had always paid the maximum premium.

[95] The cumulative premium language set out in the Excluded UP Policies is less ambiguous, and more consistent with the Sun Life's interpretation of the term "Maximum Premium" as the maximum premium that could be selected by the policyholder for tax-sheltering purposes.

[96] Given that the common issue certified asks whether the "Maximum Premium" amount in the policies was the highest amount of premium that the policyholder would ever be required to pay in any year, in order to prevent lapse of the policy", the owners of Excluded UP Policies do not have viable claims under the new language, and are justifiably excluded from the Settlement benefits.

[97] Lastly, the settlement agreement excludes prior releasors from receiving settlement benefits. Prior releasors are persons, including participants in the Flexiplus Options Program, who Sun Life compensated in exchange for a signed release. The releases used in the Flexiplus program provided that, by accepting the benefits from that program, the policyholder gave up the right to resolve a claim or dispute concerning the adjustability of the Flexiplus policy through legal action, including this proposed class action.

[98] Given that the existence of this proceeding and Class counsel contact information was disclosed to participants in the Flexiplus Options Program before they signed the release, along with an explicit warning that participating in the program might mean giving up their right to participate in this class action, Class counsel submit that it is highly likely that such releases would be upheld to preclude releasors from obtaining monetary damages at the individual issues stage.

The Distribution Protocol

[99] The Distribution Protocol, designed by Class counsel and agreed to by both parties, sets out a simplified process for eligible Class members to receive their cash benefits.

[100] At the commencement of the Claims Period, Sun Life will provide the Claims Administrator with lists of Approved Current Flexiplus Policyholders, Approved Past Flexiplus Policyholders, Approved Current Universal Plus Policyholders, and Approved Past Universal Plus Policyholders (the "Approved Lists"). The Class members who appear on these Approved Lists will be presumptively eligible for cash benefits, as they will have been identified by Sun Life from its internal records as having met the eligibility criteria for cash benefits under the settlement agreement.

[101] The Claims Administrator will create a confidential database from these Approved Lists which will allow Class Members to type in their personal and policy information and receive automatic confirmation of whether they appear on any of the Approved Lists.

[102] Approved Current Flexiplus Policyholders and Current Universal Plus Policyholders will receive their cash benefits automatically, in the form of a mailed cheque, without having to complete an Application. If a cheque is uncashed or undeliverable due to a change in address, Sun Life will deposit the cash benefit directly into the Accumulation Fund of the current policyholder in a tax-efficient manner. Once in the Accumulation Fund, the policyholder can use their Cash Benefit to pay premiums, or to withdraw the funds in accordance with the policy terms.

[103] Approved Past Flexiplus and Past Universal Plus Policyholders (or their estate trustees) will be required to submit an Application to the Claims Administrator by the Application Deadline, which will be no less than 12 months after the Claim Period begins. If they are included on the Approved Lists, these Approved Policyholders will not be required to submit any supporting documents proving their entitlement to receive cash benefits.

[104] Although the parties anticipate that all Class members who meet the eligibility criteria for cash benefits will be included on the Approved Lists, the Distribution Protocol sets out a process to reconsider any Class members who may have been inadvertently omitted. Applicants who believe that they meet the eligibility criteria for a cash benefit but do not appear on any of the Approved Lists will have the opportunity to complete a Disputed Eligibility Claim Form and provide supporting documentation to substantiate their eligibility. This will be assessed first by the Claims Administrator and then escalated to Sun Life for review if the application has merit.

ANALYSIS OF THE ISSUES

[105] The issues to be decided on this motion are:

- a. whether the Settlement Agreement is fair, reasonable, and in the best interests of the Class members and should be approved;
- b. whether Class counsel's request for approval of fees, disbursements, and applicable taxes should be approved; and
- c. whether honoraria should be paid to Eldon Fehr, Gaetan Laurier, Leslie Michael Lucas, Rebecca Jean Clark, Lloyd Shaun Clark, and Angela Watters.

A. Is the Settlement Agreement Fair, Reasonable, and in the Best Interests of the Class Members and Should it be Approved?

The Test for Settlement Approval

[106] The Plaintiffs initiated this proceeding under the *Class Proceedings Act, 1992* as it existed before the October 1, 2020 amendments. All references to the *CPA* in these reasons refer to the pre-2020 version.

[107] A proposed settlement of a class proceeding must be approved by the Court, pursuant to s. 29(2) of the *CPA*.

[108] There is an “overriding public interest” that favours the settlement of proceedings. Settlement benefits litigants and the court system, because it saves the parties the expense of disputed trials and reduces the strain on the administration of justice: *Dabbs v. Sun Life Assurance Co. of Canada*, [1998] O.J. No. 1598 at para. 14 (Gen. Div.) (“*Dabbs No. 1*”), quoting *Sparling v. Southam Inc.* (1988), 66 O.R. (2d) 225 at 230-1 (H.C.J.).

[109] On an approval motion, the Court must consider “whether in all the circumstances the settlement is fair, reasonable and in the best interests of those affected by it.”: *Dabbs v. Sun Life Assurance* [1998] O.J. No. 2811 at para. 30 (Gen. Div.) (“*Dabbs No. 2*”). The Court considers the

reality that settlements involve give and take. A fair settlement need not be a perfect settlement. It must be reasonable, meaning it will fall somewhere in a range of possible defensible resolutions: *Dabbs No. 2* at para. 30. Reasonableness uses an objective standard which takes into account the context of the litigation and the nature of the damages provided for by the settlement. It is a flexible standard applied to the “factual matrix “of the proceeding: *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572, at para. 70.

[110] Further, a settlement does not need to treat all class members equally in order to be approved: *Rizzi v. Handa*, 2021 ONSC 1004, at para 18; *Goyal v. Niagara College of Applied Arts and Technology*, 2020 ONSC 739 at para. 34.

[111] Courts consider the following factors in determining whether to approve a settlement:

- a. The likelihood of recovery or success;
- b. The amount and nature of the discovery, evidence or investigation;
- c. The settlement terms;
- d. The recommendation and experience of counsel;
- e. The future expenses and likely litigation risk;
- f. The recommendation of neutral parties;
- g. The number of objectors and the nature of the objections;
- h. Whether there was arms-length bargaining;
- i. The involvement of the representative plaintiff; and
- j. The parties’ positions taken by the parties during the negotiation.

Rizzi, at para. 17; *Lavier v. MyTravel Canada Holidays Inc.*, 2011 ONSC 3149 at para. 19; *Maggisano v. Skyservice Airlines Inc.*, 2010 ONSC 7169.

[112] The Court does not apply these factors mechanically but will use them as a guide. The facts of the case will influence the weight that may be given to one or more of the factors during the approval process: *Parsons* at para. 73. The Court’s analysis of a settlement involving latent damage caused by a tort, such as in *Parsons*, will not mirror the analysis of a settlement involving quantifiable financial loss arising from an alleged breach of a contract as in these proceedings.

[113] I find that the proposed settlement is fair, reasonable and in the best interests of the Class. The factors in this proceeding, all weigh in favour of approval. I discuss each in turn.

The Likelihood of Recovery or Success

[114] In assessing a plaintiff’s likelihood of success, the Court compares the settlement with what the plaintiff would likely have achieved at trial without making findings on the merits of the claims and defences: *Rizzi*, at para. 17; *Lavier v. MyTravel Canada Holidays Inc.*, 2011 ONSC 3149 at para. 19; *Maggisano v. Skyservice Airlines Inc.*, 2010 ONSC 7169 at para. 18.

[115] Here, the Plaintiffs’ claim rested on the contractual interpretation of the COI and Administrative Fee provisions in the Flexiplus policies, and the “Maximum Premium” term in the Universal Plus policies, neither of which have ever been conceded by Sun Life.

[116] Class counsel established that different courts may have taken different approaches to the contractual interpretation issue. For example, in the SCJ, Justice Perell found that “it is plain and obvious that there is no tenable breach of contract claim” for the Maximum Premium claim: *Motion to Strike Decision*, at para. 127. The Court of Appeal later found that the claim “ought to stand”, as the terms of the Policy are not “as clear as the motion judge considered them to be”: *Motion to Strike Appeal Decision*, at para. 42.

[117] Further, Perell, J. characterized the Flexiplus COI and Administrative Fee breach of contract issues as “one of the most hotly contested issues” at the certification motion: *Certification Motion Phase 1*, at para. 100. Justice Perell concluded that there was “no evidence” and “no basis in fact” to support these proposed common issues. He concluded that this aspect of the claim was “speculative”: *Certification Motion Phase 2* at para. 57.

[118] The Court of Appeal disagreed with that conclusion, finding that key provisions, including those under which Sun Life could adjust the COI were “opaque”: *Certification Appeal Decision*, at para. 64.

[119] Class counsel have not found any Canadian class proceeding decisions involving overcharges alleged in universal life policies for COI. However, in several decisions rendered by U.S. courts, policy language with the phrase “based on ...” has been interpreted, which is similar policy language to that applied to COI rate adjustments in this case.

[120] For example, in *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145 (7th Cir. 2013), the Court held that the words “based on” followed by a list of factor, the insured’s sex, issue age, policy year, and payment class, did not mean these were exclusive factors. There was no breach involved as a result of the insurance company basing increases on unlisted factors, including lapse assumptions and commissions. The Court upheld the decision of the court at first instance to dismiss the insured’s action.

[121] In contrast, *Fleisher v. Phoenix Life Ins. Co.*, 18 F. Supp. 3d 456 (S.D.N.Y. 2014), the Court held the listed “based on” factors were exhaustive or at least the policy was ambiguous, giving rise to the doctrine of *contra proferentem*, to the benefit of the insured. Following this ruling, the parties settled the action.

[122] The Plaintiffs developed their COI increase case theory in the present litigation at a time when there was no Canadian guidance and U.S. law was in its formative stages. This context supports a finding of risk related to the novelty of the issue, and difficulty for counsel in assessing the likelihood of success or failure.

[123] To state the obvious, the divergent U.S. case law, and non-existent Canadian precedent meant that the Plaintiffs’ chances of success were uncertain.

[124] Recent U.S. decisions have not resolved the debate. In *Slam Dunk I, LLC v. Connecticut General Life Ins. Co.*, 853 F. App’x 451 (11th Cir. 2021), the court rejected an argument that policy language allowing adjustments “based on” expected future mortality did not mean the insurance company could not consider other factors.

[125] In *re AXA Equitable Life Ins. Co. COI Litigation*, 595 F. Supp. 3d 196 (S.D.N.Y. 2022), the parties litigated for seven years on many similar issues as in the present case, until the eve of trial in October of 2023, when it settled. That settlement provided for a cash payment of \$307.5 million, and a COI rate freeze for five years valued at \$167.5 million.

The Amount and Nature of Discovery, Evidence, or Investigation

[126] As the litigation history reveals, the proposed settlement has arrived at an advanced stage of the proceeding. The action has been certified, discoveries are complete, expert reports have been exchanged, and the parties have briefed and prepared for multi-day competing summary judgment motions.

[127] The parties have had access to documentary productions and detailed reports from actuarial and industry experts to inform their views of the case. The Plaintiffs retained two experts for the certification proceedings (Mr. Ross Morton and Mr. Paul Winokur) and two more experts (Mr. Jim Toole and Mr. Michael Kavanagh) for the cross-motions for summary judgment. Their evidence addressed the sale, pricing and repricing of the Policies, the factors underlying the Flexiplus COI and Administrative Fee and the Universal Plus Maximum Premium increases, and the actuarial evidence advanced by Sun Life.

[128] The evidentiary record has been thoroughly tested through extensive cross-examinations, consisting of 32 cross-examinations during the first phase of the certification motion in 2014 and 2015, two cross-examinations in 2016, and four cross-examinations in preparation for the motions for summary judgment in 2025.

[129] Class Counsel submit, and I agree, that they are in an excellent position to understand the strengths and weaknesses of their case, and to make informed recommendations about the proposed settlement as measured against the alternative.

The Settlement Terms and Conditions

[130] As set out above, the settlement is valued at \$213.5 million, comprised of \$142.5 million in cash benefits and \$71 million in future policy benefits. These two components will compensate eligible members of the Class for past COI and Administrative Fee increases paid and provide certain policyholders with permanent freezes or caps in respect of charges going forward.

[131] This outcome is particularly meaningful for those members of the Class who are aging while relying on a fixed income and may no longer be insurable. Those members will benefit from the financial security provided by keeping their existing Sun Life policy in force. A freeze or cap on insurance charges will lessen the financial burden and the psychological uncertainty that can accompany indefinite and undefined future COI or fee increases.

[132] Subject to the exclusions which I have set out above, the settlement will achieve high rates of eligibility for benefits from the settlement for Class Members:

- a. 99% of the Current Flexiplus Policyholders will be eligible to receive a cash benefit for COI rate increases;

- b. 100% of the Current Flexiplus Policyholders will be eligible to receive a cash benefit for Administrative Fee increases;
- c. 100% of Current Flexiplus Policyholders will receive a future policy benefit in the form of a permanent freeze of their current COI rates and Administrative Fees;
- d. 90% of Past Flexiplus Policyholders will be eligible for cash benefits for net COI rate increases;
- e. 88% of Past Flexiplus Policyholders will also be eligible to receive a supplementary cash benefit for surrendering or lapsing their policies after experiencing a net COI rate increase;
- f. 90% of Current Universal Plus Policyholders with pre-1992 policies who were charged an alleged excess premium above the base coverage “Maximum Premium” will be eligible for a cash benefit;
- g. 94% of Past Universal Plus Policyholders with pre-1992 policies who were charged an alleged excess premium above the base coverage “Maximum Premium” stated will be eligible for a cash benefit; and
- h. 100% of Current Universal Plus Policyholders with pre-1992 policies will receive a future policy benefit in the form of a guaranteed cap on their COI rates calculated as a multiple of the base coverage “Maximum Premium” set out in their policies.

[133] Class counsel provided evidence that the distribution will benefit the policyholders, by way of either cash or future policy benefits across the Class as follows:

- a. 33,000 Current Flexiplus Policyholders;
- b. 27,900 Past Flexiplus Policyholders;
- c. 7,500 Current Universal Plus Policyholders; and
- d. 1,000 Past Universal Plus Policyholders.

[134] For eligible Current and Past Flexiplus Policyholders, the cash benefits will amount to a gross recovery of 37%-42% of the total alleged COI overcharges they have paid, and 20%-39% of the total alleged excess Administrative Fees paid.

[135] For eligible Current and Past Universal Plus Policyholders, the cash benefits will amount to a gross recovery of 36%-40% of the total COI charges paid in excess of the Maximum Premium amounts specified in their policies.

[136] Class counsel proposes a Distribution Protocol for the cash benefits as follows:

- a. the creation of an accessible confidential database of Approved Flexiplus and Universal Plus Policyholders which will allow Class Members to enter in their

personal and policy information on the Claims Administrator's website, and receive instant confirmation of eligibility for cash benefits;

- b. the automatic payment of cash benefits to Approved Current Flexiplus and Universal Plus Policyholders without requiring them to complete an Application, ensuring 100% take-up;
- c. waiver of any requirement for Approved Past Flexiplus and Universal Plus Policyholders to provide supporting documentation or proof of eligibility beyond completion of an Application form if their name appears on an Approved List for cash benefits;
- d. providing a process for policyholders to dispute their omission from an Approved List, but restricting appeals on the quantum of cash benefits to avoid unnecessary administration expenses; and
- e. calculating individual cash benefits by Sun Life rather than an actuary retained by the Claims Administrator.

[137] The settlement terms reflect partial recovery for the benefit of the class, which is a large group of individuals, who will receive immediate benefits in exchange for the delay, cost and risk of a trial. The elements of the administration are designed to make distribution of the cash benefits, smooth and to avoid unnecessary costs. Sun Life has agreed to participate and to furnish the information needed to facilitate the distribution.

[138] I am satisfied that the terms of settlement are reasonable, as are the proposed administrative steps for distribution of the cash benefits.

The Recommendation and Experience of Counsel

[139] Where the parties are represented by highly reputable counsel, "the court is entitled to assume, in the absence of evidence to the contrary, that it is being presented with the best reasonably achievable settlement and that Class counsel is staking his or her reputation and experience on the recommendation": *Ainslie v. Afexa Life Sciences Inc.*, 2010 ONSC 4294 at para. 31.

[140] In this case, experienced Class counsel unequivocally recommend the approval of the settlement. Their views are informed by their review of the mature evidentiary record, their experience testing the case by way of cross-examinations, and input from actuarial and industry experts. At this late stage in the litigation, and with the benefit of the comprehensive review from Class counsel of the jurisprudential landscape, this factor supports approval.

The Future Expense and Likely Duration of the Litigation

[141] Based on the history of the litigation, I am persuaded that without the settlement proposed, the parties would resume their adversarial positions. They would argue the summary judgment motions, which would then likely lead to appeals, with further delays and costs.

[142] If some or all of the common issues were not suitable for summary judgment, the parties may also have been required to proceed to a common issues trial.

[143] To state the obvious, the foreseeable expense of continued litigation would be substantial. Cost orders from this proceeding have ranged from five to seven-figures, and future costs orders from a summary judgment motion on the merits or a common issues trial would likely have exceeded the \$1 million costs order that was previously ordered against the Plaintiffs.

[144] Even if the Plaintiffs had succeeded on the common issues at summary judgment or trial, Sun Life would have had avenues of appeal available to it, including to the Supreme Court of Canada. At the end of those appeals, and only if successful on the common issues, members of the Class would still have had to proceed through an individual issues stage to prove their individual damages and respond to likely limitation defences available to Sun Life. All of these steps would involve delay, limited or no recovery for aging members of the Class, and increased and uncertain costs and expenses.

The Recommendation of Neutral Parties

[145] The Plaintiffs retained Mr. Jim Toole, their independent actuarial and insurance expert on summary judgment, to provide an opinion about the settlement and its implementation. Mr. Toole reviewed Sun Life's raw data spreadsheets and calculation methodologies and consulted with Sun Life's actuary as necessary.

[146] In that report, from an actuarial perspective, Mr. Toole found that the amounts attributed to the components of the settlement are reasonable and fair within the parameters of the value of the total settlement. Mr. Toole considered the Plaintiffs' important goal of limiting future rate increases. He wrote:

The future Flexiplus COI rate and Administrative Fee rate freezes and the pre-1992 Universal Plus COI rate caps based on a multiple of the base coverage Maximum Premium term in those policies appear to address the goal put forth by Plaintiffs' counsel of protecting aging policyholder populations. The valuations of those components of the Settlement appear reasonable, building on the internal data, methodologies, and proprietary actuarial modeling used by Sun Life in its normal insurance operations, as described above. The total value of the Future Benefits is \$71 million.

[147] In relation to the cash benefits portion of the settlement, Mr. Toole considered the total amount and its allocation among the subcategories of policyholders. He found that those amounts reflect "reasonably consistent Settlement Percentages, meaning consistent present value recovery rates among policyholder groups, which I consider to be a fundamental signifier of reasonableness and a hallmark of settlement fairness.

[148] I accept this evidence as relevant and material to the question of the reasonableness of the proposed settlement. That evidence supports approval of the settlement.

The Number of Objectors and the Nature of the Objections

[149] Counsel included a comment from two members of the Class, Serge and Barbara Fortin of Ottawa. Although styled as an objection, on review, the Fortins were asking for a measure of certainty in the administration of the settlement. They asked the Court to ensure that policyholders who faced increases to their premiums will be compensated and to ensure that future rate caps were enforced.

[150] I am grateful to Serge and Barbara Fortin for communicating their concerns and find that Class counsel's recommended settlement is designed to meet those concerns.

[151] This is a large Class. The absence of any other opposition received is significant given the breadth of the Court-approved notice program. Class counsel has described the Class as "engaged" and "motivated". If there were strenuous or multiple objections to the terms of the settlement, I find that it is likely that the Court would have heard from those members.

[152] This factor favours approval of the settlement.

The Presence of Good Faith and the Absence of Collusion

[153] The settlement is the product of good-faith, arms-length bargaining. The outcome is a realistically achievable recovery. The settlement negotiations took place over nine months, during which multiple in-person, virtual, and phone meetings between counsel were held, and several offers and counteroffers were exchanged. As the evidence filed on this motion reveals, the parties overcame several impasses that appeared to jeopardize the prospect of settlement at various points during the negotiations, including after the parties reached an agreement in principle.

[154] The integrity of the process is further confirmed by the fact that negotiations proceeded as the parties continued to prepare their respective cross-motions for summary judgment.

[155] I am satisfied that the independent and experienced counsel on both sides, along with the evidence of the duration, adversity and litigation history leaves no basis to find that there was any collusion. These negotiations were conducted in good faith, and the result is consistent with such a finding. This factor favours approval.

Communications with Class Members and Support of the Representative Plaintiffs

[156] Class counsel tendered evidence that they have been communicating with members of the Class by phone, email, and regular mail daily throughout this litigation, and are well informed about the members' experiences as policyholders. Thousands of members of the Class have reached out to the Class counsel team to provide copies of their insurance policies and to inquire about the status of the case.

[157] Class counsel has also been in close contact with the representative Plaintiffs, providing updates and seeking instructions at the outset of settlement discussions and at every important juncture thereafter. Each of the Plaintiffs support the Settlement, even though that not all of them will be eligible for the benefits of the settlement.

[158] This factor favours approving the settlement.

The Dynamics of Negotiations and Positions of Parties

[159] The dynamics of the settlement discussions were adversarial. The parties exchanged a variety of settlement proposals and counter proposals. The evidence reveals several areas of contention including the size of the settlement, the form of compensation to be offered to current policyholders, the distribution of benefits, and the length of the Claim Period.

Finding: The Settlement Should be Approved

[160] In applying the factors to the terms of settlement, the evidence, the history of the litigation and the risks presented by future ongoing litigation, I am satisfied that this settlement is a fair, reasonable and utterly appropriate result. It is the product of arms' length negotiations between experienced equals in class proceedings. Members of the Class were engaged and active during this litigation, and after fair notice, may be taken to have few if any objections to the settlement. The public interest and the interests of the Class are well-served by the outcome. I approve the settlement.

B. Should Class Counsel's Request for Approval of Fees, Disbursements, and Applicable Taxes be Approved?

[161] Class counsel seeks approval for the payment of legal fees in the amount of \$63,337,472.66 in fees, plus applicable HST, and \$2,375,091.14 in disbursements. The fees were provided for under a signed retainer agreement, providing for fees in a contingency rate of 30% of the Settlement less costs and disbursements, plus the fee portion of any costs obtained by Class counsel at any stage in the action.

[162] Over the course of the litigation, Class counsel docketed \$29,127,790 in fees. The fee request is therefore approximately a 2.2 multiplier on docketed time.

The Contingency Fee Retainer Agreement

[163] Approval of counsel fees in class proceedings is governed by sections 32 and 33 of the *CPA*. Pursuant to section 32, agreements respecting fees and disbursements between a lawyer and a representative plaintiff must be in writing and must be approved by the court to be enforceable.

[164] The Plaintiffs each executed retainer agreements with Class counsel providing for payment of fees upon the following contingency:

In the event the Client is successful in obtaining judgment on the common issues in favour of some or all class members or in obtaining a settlement that benefits one or more class members. The fees shall be paid by a lump sum payment or payments out of the proceeds of any judgment or order awarding damages, interest or costs to the class or any settlement which includes payments in favour of the class or a class member, or otherwise as may be directed by the court.

[165] Under the retainer agreements, Class counsel's fees may be calculated by either applying a multiplier to a base fee, or by applying a percentage of:

30% of the amounts (including damages and interest but excluding costs and disbursements) recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s) plus the fee portion of any costs obtained by Kim Orr [now Kim Spencer McPhee] at any stage of the Class Action.

[166] Class counsel have elected to seek approval of fees in this case using the contingency percentage method.

The Test for Approval of Class Counsel Fees

[167] The Court assesses fee approvals in class proceedings through the policy objective of achieving access to justice. As this case well demonstrates, a contingency fee arrangement is a well-known mechanism to permit class proceedings for actions that individually would be prohibitively uneconomic.

[168] The willingness of counsel to bring class actions and litigate them well depends not just on the level of monetary award given to Class counsel, but also the predictability and reliability of the award: *Ford v. F. Hoffman-La Roche Ltd.*, 2005 CanLII 8689 (ON SC) at para. 59.

[169] In the decision of *Cannon v. Funds for Canada Foundation*, the Court found in favor of a presumptive validity of contingency fee retainer agreements if such agreements are “fully understood and accepted by the representative Plaintiffs”: *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 at para. 8. The Court held at para. 8:

What I suggest is this: contingency fee arrangements that are fully understood and accepted by the representative plaintiffs should be presumptively valid and enforceable, whatever the amounts involved. Judicial approval will, of course, be required but the presumption of validity should only be rebutted in clear cases based on principled reasons.

[170] Counsel fees in the range of 30% are commonly approved in Ontario class proceedings: *Baker (Estate) v. Sony BMG Music (Canada) Inc.*, 2011 ONSC 7105 at para. 63; *Green v. CIBC*, 2022 ONSC 373 at para. 91; *Baroch v. Canada Cartage*, 2021 ONSC 7376 at paras. 25, 35; *Eidoo v. Infineon Technologies AG*, 2014 ONSC 6082 at para. 60. Fees greater than 28.5% are commonly awarded in late-stage settlements: *Brown v. His Majesty the King in Right of the Province of Ontario*, 2026 ONSC 2880 at para. 134.

[171] In the context of a “mega-fund” case (that is, where a settlement is greater than \$100 million: *MacDonald et al v. BMO Trust Company et al*, 2021 ONSC 3726 at para. 21) where application of the presumptive contingency approach yields a large sum for Class counsel fees, sometimes considered to be a windfall.

[172] In the “mega fund” settlement context, courts will consider the relevant factors in determining the reasonableness of the fees as articulated by the Court of Appeal in *Smith Estate v National Money Mart*, 2011 ONCA 233 at para 80. These factors include:

- a. the factual and legal complexities of the matters dealt with;

- b. the risk undertaken, including the risk that the matter might not be certified;
- c. the degree of responsibility assumed by class counsel;
- d. the monetary value of the matters in issue;
- e. the importance of the matter to the class;
- f. the degree of skill and competence demonstrated by class counsel;
- g. the results achieved;
- h. the ability of the class to pay;
- i. the expectations of the class as to the amount of the fees; and
- j. the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement.

[173] Class counsel fees are decided on a case-by-case basis. In addition to the *Smith* factors, the Court will consider an appropriate multiplier as a cross-check, and any other relevant factors to assess the appropriate fee: *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628 at para 23.

The Requested Fee Is Fair and Reasonable

[174] I find that applying the factors from *Smith Estate v National Money Mart* to class counsel's requested fees yields a conclusion that the fee requested in this case is fair and reasonable. The amount is proportionate to the recovery for Class Members. Class counsel have devoted years of effort, have prosecuted the claim with diligence and absorbed financial costs as well as risk in order to generate recovery that is the first of its kind in insurance industry class actions in Canada.

[175] I review and discuss each of the factors that support my finding next.

The Factual and Legal Complexities of the Matters Dealt With

[176] Throughout the case management and litigation, courts have commented on the complexities of this action. For example, in determining the costs of the summary judgment and certification motion before him, Perell, J. characterized the action as “a gigantic container ship of what could have been eighteen or so large containers of litigation”: *Certification Costs Decision*, at para. 11.

[177] The Court of Appeal underlined the complexity on appeal, describing the policies as “relatively complex financial instruments” for which the motions judge “required extensive additional evidence, including expert evidence, before he could determine whether Sun Life had breached the policy by adjusting the COI based on factors not enumerated in the policy”: *Certification Appeal Decision*, at paras. 64-65.

[178] The COI subject matter was beyond the knowledge of the average person; the breach of contract claims for alleged COI overcharges required extensive review of the policies, financial background, and consultation with industry experts.

[179] Class counsel described additional legal complexities and novel issues that arose including:

- a. the existence and scope of an insurer's duty of good faith and fair dealing in the administration of life insurance policies;
- b. whether statements regarding systemic misrepresentations by MetLife in the Indemnity Litigation were admissible admissions to overcome the commonality hurdle and in support of certifying a cause of action in negligent misrepresentation;
- c. the applicability of a rolling limitation period for breach of contract claims arising from COI charges;
- d. whether motions for approval of third-party funding agreements ought to be heard *ex parte*;
- e. whether limitation periods can be determined on a class-wide basis and be used to bind absent class members where the issue has not been certified; and
- f. whether insurance industry practice and actuarial principles should be considered when deciding how a "reasonable person" would understand the Flexiplus policy COI provisions.

[180] Class counsel investigated, analyzed and litigated these novel issues. They created new procedural and substantive law around the administration of insurance policies. Class counsel pointed out that Sun Life disclosed this action for years as the only active class action concerning the administration of individual insurance policies.

[181] Related to the novelty of these sub-issues was the uncertainty posed by the lack of Canadian jurisprudence and the mixed U.S. jurisprudence. This factor added to the uncertainty and complexity for class counsel.

The Risks Undertaken, Including the Risk that the Matter Might Not Be Certified / Responsibilities Assumed by Class Counsel

[182] The most important factors in determining whether the requested legal fee is fair and reasonable are the risks incurred, the results achieved, and whether the fee fixed by the agreement is reasonable and maintains the integrity of the profession: *MacDonald et al v. BMO Trust Company et al*, 2021 ONSC 3726 at para. 26.

[183] Risk is measured from the commencement of the action. These risks include certification risk, liability risk, and the risk of not recovering damages or not creating benefits for the class at all, leading to the risk for class counsel that no compensation will be received for any of the time spent pursuing the claim: involved in all contingency fee cases of receiving no compensation for

the time invested: *Green v. Canadian Imperial Bank of Commerce*, 2016 ONSC 3829 at para. 14; *Francis v. Ontario*, 2021 ONSC 4861 at para. 29.

[184] As Belobaba, J. put it in *Brown v. Canada (Attorney General)* 2018 ONSC 3429 at para. 43:

The greater the risk of failure and non-payment – that is, the greater the resulting financial impact on class counsel and their firm – the larger the premium. In a case where a class action has been settled with a minimal investment of time or effort, the risk of non-payment causing “personal consequences” to class counsel is relatively insignificant.

[185] The risk of failure was significant, especially at the beginning of this litigation. Class counsel, and the representative Plaintiffs, together were trailblazers. They assumed significant risks in taking on that role. The costs awards, setbacks and Sun Life’s vigorous defence of its position throughout raised the stakes for Class counsel. I find that the personal consequences to this small firm relative to its larger adversary, were real and significant.

Recovery Risk, Not Covered by Indemnification

[186] A single policyholder initiated this class proceeding in 2010 on behalf of over 100,000 class members who had purchased policies from MetLife between 1985-1998. The case management judge characterized the case as a “David v. Goliath type class Action”: *Fehr v. Sun Life Assurance Company of Canada*, 2012 ONSC 2715. That theme continued with Class counsel agreeing to litigate the case without the financial support of either the Class Proceedings Fund or a third-party funder.

[187] This meant that Class counsel bore the lost opportunity costs of time on the file, as well as the risk of not recovering their out-of-pocket disbursement incurred for the benefit of the Class. These were not insignificant: as described above, this complex proceeding required retaining experts from an early stage.

[188] In addition, class counsel bore the burden of indemnifying the Plaintiffs against adverse costs awards without a backstop. Costs to the end of the case could fairly be estimated in the millions of dollars.

[189] Class counsel submit, and I agree, that the willingness to assume those risks has had a direct and tangible benefit to the members of the Class.

[190] In exchange for disbursement funding and indemnity provision, the Class Proceedings Fund charges a statutory 10% levy (plus recovery of any disbursements it paid) against the amounts recovered by the Class. That 10% levy would be deducted from any settlement payable to the Class as a first charge. Private third-party funders charge similar or higher levies for supporting the risk of litigation.

[191] This factor represents a \$21.3 + million benefit to the Net Settlement Value to the Class.

Certification Risk

[192] A unique feature in this litigation is that Class counsel had early access to the facts from the MetLife-Sun Life Indemnity Litigation – given Sun Life’s focus on its exposure to liability for a pattern of misrepresentation at the time these policies were being sold.

[193] However, as that litigation was unfolding in 2010, the state of the law for certification of a class based on a negligent misrepresentation claim was unfavourable. In *Kumar v. Mutual Life Assurance Company of Canada*, a similar case against Sun Life’s corporate predecessor involving negligent misrepresentation in the marketing of life insurance policies, the Court of Appeal in 2003 denied certification due to lack of commonality: *Kumar v. Mutual Life Assurance Company of Canada*, 2003 CanLII 48334 (ON CA) at paras. 3, 46.

[194] Class counsel attempted to differentiate this proceeding from *Kumar*. The certification risk was high, and the Plaintiffs were ultimately unsuccessful in overcoming the commonality requirement at the certification motion and on appeal: *Certification Motion Phase 1*, at paras. 8, 11; *Certification Appeal Decision*, at para. 213.

Liability Risk

[195] From the beginning, Class counsel were faced with liability risks that threatened to bring a premature end to the proceeding. This included the motion to strike the entire claim, which led to two years of appellate litigation before the action was restored.

[196] Sun Life moved for summary judgment, seeking to dismiss the entire claim. The limitation period submissions resulted in partial success, and the need for Class counsel to litigate again in the Court of Appeal, successfully.

[197] The Plaintiffs faced more liability risk at the certification stage. Justice Perell adjourned the certification motion to obtain further (expert) evidence on the claim, and then determined that there was “no basis in fact” to support the certification of the proposed COI and Administrative Fee common issue. Although the Court of Appeal restored the breach of contract claim on appeal and certified the common issues, it remained an open question whether the Plaintiffs would ultimately prevail at trial.

[198] Taken together, the Plaintiffs faced the real risk that they could fail to establish Sun Life’s liability, given the views of several judges about the merits of their claim and the U.S. jurisprudence. This factor supports approval of the fee request.

The Monetary Value of the Matters in Issue / Results Achieved

[199] The monetary value in issue was high, in the hundreds of millions of dollars, even after accounting for claims that were dismissed or refused inclusion, such as the Investment Spread cause of action.

[200] The outcome is principled. For example, the claims regarding Interest Plus policies are not included because those claims were not certified as part of this class proceeding. The absence of benefits for OptiMet policyholders derives from proof that they did not actually experience COI

rate or Administrative Fee increases beyond what was described in their policies at the time of issuance.

[201] On Universal Plus, the fact that Maximum Premium claim benefits (caps) are provided only to holders of pre-1992 policies recognizes the legal effect of the change in policy wording in 1992. Nevertheless, the caps have meaningful value because the policies have a yearly renewable term structure providing for COI increases every year.

[202] The importance of that cap is made real by the “Statement of Objection and Concern” sent to the Claims Administrator and Class Counsel by the objectors, dated August 19, 2026. Serge and Barbara Fortin complained of having experienced “massive rate spikes over the last 10 years” with their pre-1992 Universal Plus policies. They asked the Court to ensure that the settlement guarantees “strict, permanent caps on future Cost of Insurance (COI) changes so Sun Life cannot force us to lapse our policy after 37 years of payments.”

[203] Courts have recognized the value of settlements that reduce future costs under policies already held by class members: *Jeffery v. London Life Insurance Company*, 2018 ONCA 716 at para. 53. Similarly, in *Dabbs v. Sun Life Assurance Co. of Canada*, at para. 15, the Court concluded that an annual dividend improvement and a reduction in the cost of term insurance gave relief to class members on a “no-proof” basis.

[204] Beyond the tangible monetary value of future policy benefits, including such benefits in the settlement meets the needs of the Class who value their policies enough to maintain them, even after they have funded years of increased COI. These members purchased their policies decades ago for long-term financial or estate-planning purposes. Many are now of an age, or in a state of health, that prevents them from obtaining comparable replacement coverage on reasonable terms. For them, this is a meaningful result, which I find contributes to the reasonableness of the fee sought by class counsel.

Importance of the Matter to the Class / Ability of the Class to Pay / Expectations of the Class as to Amount of Fees

[205] The matter was important to the Class because it provided members with a way to advance their claims without bearing disproportionate risks of the cost of litigation. The subject matter for Class members involved an important estate and financial planning policy. This context supports a finding of importance, and a commensurate barrier for individual members to bear the cost of litigation.

[206] Further, the proposed settlement relieves the Class from the burden of overcoming the potential limitations defences left open by the Court of Appeal’s certification/summary judgment decision to have those issues decided at the individual issues stage, as well as the burden of proving individual damages.

[207] Finally, the fee request is within the expectations of the Plaintiffs, who have each provided their approval and their support for the fee requested. No members of the Class object to the fee request presented by class counsel, although having had notice of the fee request.

The Degree of Skill and Competence Demonstrated by Class Counsel / The Opportunity Cost to Class Counsel Arising from the Litigation and Settlement

[208] I find that the results achieved in this proceeding arise from the high degree of skill and competence of Class counsel, who have decades of experience prosecuting and successfully resolving large class actions, and whose expertise in the field has been repeatedly recognized by Canadian courts: *Ramdath v George Brown College*, 2016 ONSC 3536 at para 2: See also *Merlo v. Canada*, 2017 FC 533 at para 34.

[209] Justice Belobaba described Class counsel in the settlement approval decision of *Ramdath v. George Brown College of Applied Arts and Technology*, 2016 ONSC 3536 at para 2. as having displayed an “unrelenting commitment to the best interests of the class members and for their superior results that were achieved.”

[210] I adopt those comments in this action. Class counsel in this case went beyond simply prosecuting known claims. Class counsel developed and discovered the COI/Administrative Fee breach of contract claim that was unknown to the members of the Class. As the litigation progressed, Class counsel reframed the case from misrepresentation to breach of contract, which addressed liability risk and called on a sophisticated understanding of the experiences of policyholders, the policy terms, repricing of COI rates, and the life insurance industry.

[211] Counsel’s decision to develop the COI/Administrative Fee breach of contract claim for this proceeding ultimately led to certification and allowed approximately 64,000 Flexiplus Policyholders (whose claims would have otherwise have not been certified) to seek recourse for alleged improper increases to their insurance charges.

[212] Class counsel’s skill was also necessary at the Court of Appeal to reverse two key decisions of the SCJ: striking large portions of the initial Statement of Claim, and dismissing certification – which otherwise would have effectively ended this proceeding. At every stage, the Plaintiffs faced a well-resourced defendant with access to excellent legal representation.

[213] As described in Ms. Gyamfi ‘s affidavit, advancing the claims of Class Members consumed significant time and resources from a small boutique litigation firm with three equity principals and a dozen lawyers at any given time. Ms. Gyamfi’s evidence, which I accept, is that in the active years of this litigation, the time incurred on this case exceeded 60% of the firm’s dockets for all its lawyers.

[214] Thus, Class counsel have absorbed significant opportunity cost by devoting such a proportion of the firm’s limited resources to a single case since 2010.

Comparison to Other Mega-Fund Settlements

[215] In *Green v. CIBC*, the Superior Court found “no reason to deviate from the 30% fee agreed upon by counsel”, finding that the contingency fee sought by counsel was within historic norms: *Green v. CIBC*, 2022 ONSC 373 at para. 91 (“*Green 2022*”). The Court concluded that the \$125 million in aggregate compensation available to the class was due, in large measure, to the entrepreneurship and risk tolerance of class counsel and that decreasing fees would essentially penalize the lawyers for their sustained effort.

[216] The Court took into consideration the fact that the Class Proceedings Fund did not provide financial assistance until eight years into the proceeding, and that the lawyers were from a small firm, persevering for 14 years in what the Court described as “a David v. Goliath situation”: *Green* 2022 at paras. 74 and 81. Similar considerations are all at play here.

[217] In the recent settlement approval case of *Brown v. His Majesty the King in Right of the Province of Ontario*, at para. 134, the Court approved a fee request of 28.5% on a \$60 million reversionary settlement fund, which it noted was “commonly awarded in late-stage settlements”. In *Brown*, at para. 133, the Court considered that counsel pursued the action “to the doorstep of trial” without any guarantee of payment, in an action that took 9 years to litigate.

[218] One point of distinction, which speaks in favour of the fees requested here, is that in both *Green* and *Brown*, class counsel benefited from CPF funding and indemnity against adverse costs awards.

[219] Class counsel appended a table at Appendix “A” to their factum with summaries of other high-value class action settlements and fee requests approved by Courts in recent years. In doing so, counsel ably distinguished this proceeding from those cases because of the significant litigation risk assumed by Class Counsel.

[220] I am satisfied that Class counsel have established that the fees and disbursements provided for in the contingency fee retainers signed by the representative Plaintiffs should be approved. The unique history of the litigation, the groundbreaking legal theory, the litigation hurdles and the personal risk borne by Class counsel for well over a decade, with the cross-check of a multiplier of 2.2, all support a finding that the fees sought are reasonable and fair. The members of the Class do not object to the fee, and there is precedent in similar situations for the Court to approve a contingency fee even in litigation which yields a settlement that is more than \$100 million and may fairly be described as a “mega fund” settlement.

[221] I approve the fees and disbursements sought by class counsel. I turn next to the submission that an honorarium should be approved for the representative Plaintiffs.

C. Should Honoraria Be Approved for the Representative Plaintiffs?

[222] Class counsel ask the court to approve payment of an honorarium to each of the representative Plaintiffs, and for putative representative Plaintiff, Ms. Angela Watters, in recognition of their exceptional contributions to the prosecution and resolution of this action. Counsel’s request applies to all except for Mr. O’Hara who sadly, passed away in 2024.

[223] An honorarium is not paid in every case, on the basis that such payments are to be modest and rare, to reflect exceptional contributions by representative plaintiffs in class actions: *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323 at para. 92.

[224] Each of the representative Plaintiffs in this action, amply meet the test for exceptionality. Each filed an affidavit which describes their extraordinary commitment to an action which was by no means certain, and required each to endure lengthy involvement in this litigation, be subjected to cross-examinations, and to make exceptional personal and vocational sacrifices. Their responsibilities were weighty and felt strongly by each representative.

[225] As Class counsel describe in the record, the representative Plaintiffs were intimately involved in the proceeding throughout the entire litigation, and made the following contributions to the Class:

- a. remained engaged with class counsel, including having received and considered developments in the litigation, and provided instructions when decisions affecting the Class were required;
- b. searched for and produced policy records and correspondence from Sun Life on a continuous basis throughout the litigation;
- c. reviewed drafts of sworn evidence for accuracy, and swore detailed affidavits used on the certification and summary judgment motions requiring detailed recollection of events from decades prior;
- d. attended lengthy and stressful cross-examinations by Sun Life's counsel and were required to prepare sufficiently to give accurate evidence under oath on matters capable of affecting the claims of the Class as a whole;
- e. travelled substantial distances to attend in-person cross-examinations;
- f. incurred employment disruption and took multiple days away from busy periods at work, resulting in professional sacrifices;
- g. devoted countless hours of personal and spare time to reviewing complex and technical legal materials and expert evidence;
- h. endured lost sleep, stress and other mental hardships;
- i. persevered through adverse decisions and repeated appellate proceedings.

[226] I agree that this list of contributions, which are well set out in each of the affidavits from the representative Plaintiffs, supports a finding of exceptional commitment on their part. Even when the litigation caused them substantial personal stress due to significant adverse costs awards and repeated setbacks, the representative Plaintiffs devoted their weekends and personal time to advance the interests of the Class.

[227] The Representative Plaintiffs understood that their claims might not succeed. Without their willingness to serve as Representative Plaintiffs when Mr. Kang stepped down, and to continue serving amidst multiple unfavorable decisions at first instance, the action could not have continued.

[228] Their commitment led to a significant settlement for the Class, and their selfless, active, resilient, and unusually demanding service to the Class over the past sixteen years constitutes exceptional circumstances deserving of honoraria.

[229] I conclude that the quantum of the honoraria requested is deserved and is sufficiently modest, given the size and scale of this proceeding, and the context of this \$213.5 million settlement.

CONCLUSION

[230] For these reasons, I approve the proposed settlement, the Distribution Protocol, and class counsel's request for legal fees in the amount of \$63,337,472.66, plus applicable HST, and \$2,375,091.14 in disbursements, inclusive of HST, as well as honoraria in the amount of \$25,000 for each representative Plaintiff. I approve the Notice of Settlement Approval and Notice Plan #2, and the appointment of Dewar Communications Inc. as Notice Administrator, and CA2 Inc. as Claims Administrator.

[231] Finally, I thank all counsel on both sides, for the skill and competence that they devoted to their client's interests. In doing so, each has played a role in supporting the administration of justice and the public interest in the settlement of complex litigation.

A handwritten signature in blue ink, appearing to read 'John', is written over a horizontal line.

Leiper, J.

Released: September 23, 2026

Corrected and Released: September 29, 2026

CITATION: Fehr v. Sun Life Assurance Company of Canada, 2026 ONSC 5338

COURT FILE NO.: CV-10-00411183-00CP

DATE: 20260923

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ELDON FEHR, GAETAN LAURIER,
LESLIE MICHAEL LUCAS, JAMES PATRICK
O'HARA, REBECCA JEAN CLARK, and LLOYD
SHAUN CLARK

Plaintiffs (Moving Parties)

– and –

SUN LIFE ASSURANCE COMPANY OF CANADA

Defendant (Responding Party)

REASONS FOR DECISION

Leiper, J.

Released: September 23, 2026

Corrected and Released: September 29, 2026