UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: AXA EQUITABLE LIFE INSURANCE COMPANY COI LITIGATION [This document relates to *Brach Family Found, Inc., et al. v. AXA Equitable Life Ins. Co.*, No. 16 Civ. 740 (JMF)]	**ECF CASE** No. 1:16-cv-00740 (JMF)

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

I, James Rouse, declare as follows:

1. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, in connection with the class action settlement between Plaintiffs, on behalf of itself and the class, and Defendant AXA Equitable Life Insurance Company ("AXA"). I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

A. Experience and Qualifications

2. I am a Co-Founder of Demeter Investments Limited and Demeter Capital Limited ("Demeter Investments"). Demeter Investments is a specialist in the longevity market, including U.S. universal and variable universal life insurance policies. Demeter Investments advises clients on how to evaluate universal life insurance policies, including the type of universal life insurance at issue in this case. Demeter Investments works with large, regulated institutional investors with a mandate to assess and acquire life related exposure in the US and Europe to include life settlements and longevity/mortality derivatives. The team at Demeter Investments has traded in over $20bn longevity risk swaps, notes and securitizations since 2003. At Demeter Investments, I am responsible for the risk models, including mortality risk modelling, proprietary trading models, and underwriting of mortality-based assets.

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

4. I have twenty-five years of experience in the life insurance industry. Prior to Demeter Investments, I was a Managing Director at Fortress Investment Group where I was primarily responsible for the analysis and pricing of life settlement portfolios. Prior to Fortress, I spent 11 years at Credit Suisse most recently as a Director within the Longevity Markets Group where I was responsible for the development of structured products and longevity derivatives linked to life settlements and pension schemes. Prior to the Longevity Markets Group, I was in the Risk Management Division of Credit Suisse. Prior to Credit Suisse, I worked as a manager within the Risk Control division at Sumitomo Bank and as a manager in the Financial Institutions Group at Deloitte and Touche.

5. I was a registered broker of variable life insurance policies in New York (FINRA CRD#: 5196120) between November 9, 2006 and January 3, 2012, passing the Series 7 and Series 63 exams and have been involved in the purchase and sale of such insurance products in the United States from 2003 to 2018.

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

B. Valuation and Materials Considered

7. I was retained by Class Counsel to independently value the non- monetary benefits for a specific portfolio of life insurance policies (the "Class Policies") contained in the proposed settlement of the above referenced action. These benefits include: (a) a commitment not to increase the cost of insurance rates ("COI") for a period of 7 years from May 16, 2023 through May 16, 2030 (the "COI Rate Freeze"); and (b) an agreement not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy

application (the "Validity Confirmation" and together with the COI Rate Freeze, the "Non-Monetary Benefits").

8. I conducted a valuation of the Non-Monetary Benefits. I have relied on my financial market and modeling expertise in the completion of this work. The valuation methodology, valuation opinion and primary significant assumptions for the opinion, are proffered below and, in more detail, in my report, dated August 14, 2023, on the valuation of the Non-Monetary Benefits, which is attached as Exhibit A (the "Report").

9. In determining the estimated valuations of the Non-Monetary Benefits set forth in this Declaration, I have employed methods and analyses of a type reasonably relied upon by experts in the field of life settlements in forming the opinions and inferences on the subject.

C. Assumptions and Valuation Methodology

10. The primary significant scenario assumptions are set forth in Section 1 of the Report. The valuation methodology is set forth in the introduction of the Report.

11. I am receiving compensation for time spent on this assignment. My engagement for this assignment and the compensation for completing it are not contingent on the development or reporting of a predetermined value or any direction in value, the amount of the valuation opinion, or the attainment of a subsequent event directly related to the intended use of this valuation.

D. Valuation Opinion

12. As a result of procedures performed, it is my opinion that a reasonable estimate of the Non-Monetary Benefits is $167,500,000. This amount represents the estimate of the COI Rate Freeze of $158,100,000 as detailed in the Report and the estimate of the Validity Confirmation

of $9,500,000 as detailed in the Report.

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

Executed this 14 August 2023 at London, United Kingdom.

James Rouse

James Rouse

EXHIBIT A

Report On the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with AXA (the "Report")

Executive Summary

This Report concludes that a reasonable estimate of the value of the two Non-Monetary Benefits secured for the benefit of the Settlement Class, is the following:

Commitment	Value
COI Rate Increase Freeze	$ 158.1m
Validity Confirmation	$ 9.5m
Total	**$ 167.5m**

For this Report, the "Settlement Class" covers all of the 945 policies identified in the file of policy data provided by Class Counsel. These 945 policies already exclude all of the policies which are excluded from the Settlement Class as defined in the Settlement Agreement in section 1.23 ("Excluded Policies").

Scope

Demeter was retained by counsel for the plaintiffs in connection with a class action against AXA Equitable Life Insurance Company ("AXA") in order to value the non-monetary benefits contained in the settlement agreement in connection with its forthcoming motion for final approval of the settlement.

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

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

- **COI Rate Increase Freeze**. Agreement not to impose a new COI rate schedule until May 16, 2030.

- **Validity Confirmation**. An agreement by AXA not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application. This promise lasts in perpetuity.

General Approach and Data Considered

A reasonable and fair approach to measure the value of the Non-Monetary Benefits to the Class is a present value of the expected cost of the promises– *i.e.*, the cost of providing the benefit.

The discount rate applied to the calculations is representative of what is standard custom and practice for life insurance industry analysis and projects. A discount rate of 7% has been used. This is discussed in Section 1.8.

The calculations of the benefits' value are made by using future projections of the cashflows of the policies. The projections are performed both with and without the benefits, and the value of the benefits is taken as the present value of the difference between the two projections.

The future projections require a modelling of the future mortality benefits and premium payments of the policies.

AXA has provided its own expectations of mortality for the Settlement Class– a table known as ELAS16. For the purposes of this Report, ELAS16 is used as the base scenario table.

AXA's assumptions as to lapse rates for the policies have been used in the scenarios of this report.

Data has been provided containing:

- Details of the policies that were in force on October 1, 2015 and were subjected to an increase in COI rates. The Excluded Policies have been excluded from the analysis.
- Updated data as of May 26, 2023, with deaths updated through April 30, 2023[1].
- The COI charges under the scale imposed as a result of the October 2015 COI increase.

The calculations in this Report assume that the Non-Monetary Benefits start on May 16, 2023 (the date the parties agreed to settlement terms). For this purpose of the Report the calculations have assumed a certain rate of lapse as described in section 1.2 and maturities consistent with ELAS16 to project the policies from April 30, 2023 to the start date.

Approach for Valuing the COI Rate Increase Freeze

"COI Rate Increase Freeze": Until May 16, 2030, AXA agrees to not increase the COI rate schedules on the Final Class Policies above the COI rate schedules in place as of May 16, 2023.

In providing the COI Rate Increase Freeze, AXA is foregoing the ability to raise COI rates even in the event of negative changes to the mortality expectations of the Settlement Class. To evaluate the benefit of the COI Rate Increase Freeze, this Report considered the probabilities of various future changes in mortality scenarios of differing degrees of magnitude, and, using those numbers, the difference in what AXA would have been able to charge using a COI increase compared to what AXA now cannot until May 16, 2030.

Methodology for COI Rate Increase Freeze Valuation

The main driver of a potential COI increase considered in this Report is the mortality performance of the Settlement Class.

The valuation consists of two parts:

1. AXA is forgoing the possibility to change COI rates for recent changes in mortality expectations that have not yet been incorporated into COI rates, in particular changes

[1] The experience data is through April 30, 2023 but the data was gathered as of May 26, 2023. For example, if someone died on April 27, 2023, but only notified AXA on May 27, 2023 of that death, that death will not be included in the file.

between the internal mortality table AXA developed in 2013 (ELAS 12) and the internal mortality table AXA developed in 2017 (ELAS 16)

2. AXA is forgoing the possibility to change COI rates for future changes in mortality expectations that might occur until May 16, 2030.

Change from ELAS 12 to ELAS 16

The 2015 changes in COI rates for the Settlement Class were calculated using a table known as ELAS12 which was developed by AXA in 2013.

Since then AXA has performed a new mortality experience study and developed a table known as ELAS 16, which was developed in 2017.

In providing the COI rate increase freeze, AXA is forgoing the ability to increase COI rates due to changes between ELAS 12 and ELAS 16.

The methodology for Part 1 of the COI Rate Increase Freeze valuation is to project death benefits and COI deductions for the policies in three scenarios

Scenario A: Using ELAS 12 as the mortality expectation assumption.
Scenario B: Using ELAS 16 as the mortality expectation assumption plus a COI increase.
Scenario C: Using ELAS 16 as the mortality expectation assumption without a COI increase.

Mortality and COI rates are the only assumption differences between the scenarios. Assumptions for all other factors are kept the same in all scenarios.

The scenarios use ELAS 12 and ELAS 16. Nothing in this Report should be taken as an endorsement of ELAS 12 or ELAS 16 or the accuracy or suitability of these tables for any purposes, other than the scenarios of this Report and that they record AXA's declaration of its expectations of mortality at the time of the 2015 COI increase and more recently.

The COI increase in Scenario B is set so that the total mortality margin cashflow (defined as Death Benefit less COI deduction) is equal to that of scenario A.

The COI increase in Scenario B is a single scalar applied to all COI charges starting from May 16, 2023. This is intended only to quantify the overall size of the impact of changing from ELAS 12 to ELAS 16. Nothing in this Report should be taken as an endorsement or suggestion of a particular method for COI increases. The methodology in this Report is only reasonable for quantifying the total valuation of the Non-Monetary Benefits for settlement purposes and may not be suitable for implementation of an actual COI increase for a variety of reasons including fair treatment and equity between given classes, limits to changes in margins at a particular duration and other contractual or regulatory constraints.

The COI Rate Increase Freeze is then valued as the difference between the next 7 years of the projection in Scenario B and Scenario C. Those differences are discounted at a rate of 7% to give a present value.

The quantification of the scenarios are detailed in Section 2.

Future change in mortality from ELAS 16

In addition to foregoing the ability to change COI rates for the difference between ELAS 12 and ELAS 16, AXA is also foregoing the ability to change COI rates for any future modifications to its expectations of mortality.

The methodology for Part 2 of the COI Rate Increase Freeze valuation is to project death benefits and COI deductions for the policies in five scenarios:

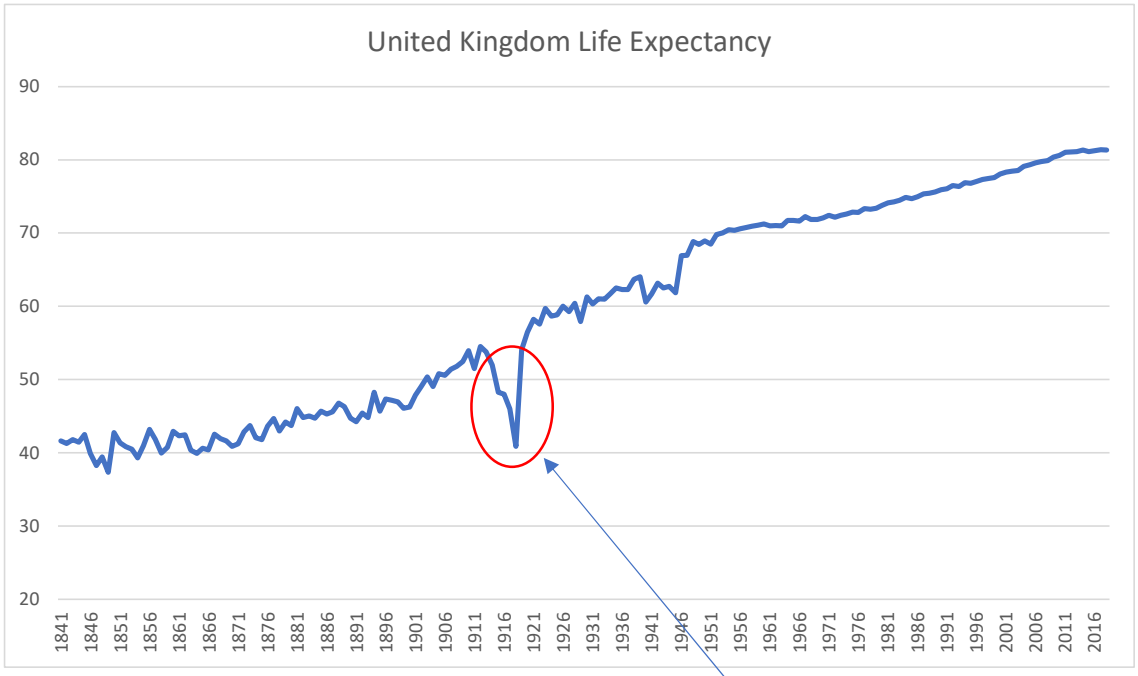
Scenario 1:	AXA's mortality expectations improve slightly
Scenario 2:	AXA's mortality expectations improve significantly
Scenario 3:	AXA's mortality expectations stay roughly consistent
Scenario 4:	AXA's mortality expectations worsen slightly
Scenario 5:	AXA's mortality expectations worsen significantly

Considering only the mortality factor, the COI Rate Increase Freeze provides meaningful benefits to the Settlement Class in the scenarios where AXA's expectations of mortality worsen, and AXA might have implemented a COI rate increase but for the freeze – i.e., Scenarios 4 & 5.

The scenarios have been built around AXA's mortality table ELAS 16, with Scenario 3 set equal to ELAS 16 plus AXA's expectations of future mortality improvement. Nothing in this Report should be taken as an endorsement of ELAS 16 or the accuracy or suitability of ELAS16 for any purposes, other than the scenarios of this Report and that it records AXA's declaration of its expectations of mortality.

Over the last two years mortality in the USA has been higher than previous years. This is known as excess mortality. For the purposes of this Report it has been assumed that the excess mortality is a temporary spike due to Covid-19 and using ELAS 16 for scenario 3 remains reasonable for the purposes of this calculation.

Pandemic spikes are not new, and typically mortality recovers afterwards to slightly better levels. For example, consider the 1918 flu pandemic, which can be seen in this graph:



Source: Mortality.org 1918 Flu pandemic and recovery.

The Settlement Class were issued to insured individuals with four different rating classes for non-smokers: standard plus, standard, preferred, and preferred plus and two rating classes for smokers: standard and preferred. Some of the life insurance policies have extra rating factors.

This classification was due to medical underwriting which leads to a Select and Ultimate rate pattern, and ELAS 16 is a select and ultimate rate table.

The average duration of the policies for the calculation period through May 16, 2030 was 20.5 years and average issue age 75.7. The select effects of underwriting at this age/duration will have mostly worn off and the mortality experience described above reflects primarily on the ultimate rate assumptions of the ELAS16 table. These ultimate rates will be the most important assumptions for the Settlement Class for any future redetermination.

For future mortality improvements Scenario 3 used an internal mortality improvement assumption from AXA's mortality experience studies.

Mortality for Scenarios 1, 2, 4 & 5 have been generated as described below in Section 1.1 (Mortality).

The total value in each scenario is calculated with a present value calculation of the resulting cash flows, using a discount rate of 7%. Each scenario is run twice, once with the COI Rate Increase Freeze in effect and once without.

The calculations use cashflows through May 16, 2030, which reflects that AXA cannot raise rate schedules for that period. Cashflows after May 16, 2030 are not included in the calculation as the COI Rate Increase Freeze promise ends.

Each of the five scenarios needs to be quantified for:

- Extent of the change in mortality expectations; and
- Probability of the scenario.

The quantification of the scenarios and outcomes are detailed in Section 2.

Approach for Valuing the Validity Confirmation

The Validity Confirmation is an agreement by AXA not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application.

"Validity Confirmation": Covenant Not to Sue/Assert as a Defense: AXA shall forever be barred from taking and shall not take any legal action (including asserting as an affirmative defense or counter-claim) that seeks to void, rescind, cancel, have declared void, or seek to deny coverage under or deny a death claim for any Final Class Member based on: (1) an alleged lack of valid insurable interest under any applicable law or equitable principles; or (2) any misrepresentation allegedly made on or related to the application for, or otherwise made in applying for, a Class Policy, except as set forth below. The covenant set forth in this paragraph is solely prospective, and does not apply to any actions taken by AXA in the past. Nothing contained in this Agreement shall otherwise restrict AXA from: (i) following its normal procedures and any applicable legal requirements regarding claims processing, including but not limited to confirming the death of the insured; determining the proper beneficiary to whom payment should be made in accordance with applicable laws, the terms of the policy, and policy specific documents filed with Defendant; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age, gender, or smoking status of the insured; (iii) in the event any Final Class Member initiates after the Final Approval Date a legal proceeding concerning any Released Claim, asserting any affirmative defenses or counterclaim in such litigation; or (iv) complying with any court order, law or regulatory requirements or requests, including but not limited to, compliance with regulations relating to the Office of Foreign Asset Control, Financial Industry Regulatory Authority and Financial Crimes Enforcement Network.

The Settlement Class owns policies that have been in force for more than 2 years and are all outside of their contestable periods. This means the risk for a policy holder of a contest to a death claim for reasons such as suicide or inaccuracy in medical statements has now passed. As a result, absent trivial issues such as a failure to present a death certificate, fraud or lack of insurable interest now present the main reasons why AXA would not pay a death benefit claim.

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

- Base case mortality (ELAS16) and lapse rate assumptions, and a risk of a challenge to the death benefit payment.
- Base case mortality (ELAS16) and lapse rate assumptions, and no risk of a challenge to the death benefit payment.

In providing the Validity Confirmation, AXA is foregoing the ability to challenge and resist death benefit claims on insurable interest and fraud grounds in the future for the Settlement Class. In order to provide a valuation of the Validity Confirmation, the following were estimated:

- timing of the future claims for death benefits for the Settlement Class;
- the probability that AXA could successfully resist a claim; and
- the amount of payout that AXA would have saved in the event of successfully resisting a claim that AXA is now foregoing (and that is therefore a benefit going to the Settlement Class).

The timing of the future claims was projected using ELAS16 and the lapse assumptions described in Section 1.2. However, whereas the COI Rate Increase Freeze calculations assumed an ending to the promise at May 16, 2030, the Validity Confirmation has no end date and therefore projections were extended for 40 years – after the likely last policy maturity in the Settlement Class.

The present value of the death benefit claims was calculated by discounting at 7%.

Values are shown in Section 2.

Section 1 – Scenario Assumptions

This Report has considered only the potential for COI increases driven by the projected performance of the Settlement Class. No position has been taken and no opinion is offered as to when a COI increase would be permissible under the terms of the policies, or what factors may appropriately be considered under those terms, or what grouping of policies into classes is permitted under the terms of the policies.

The projections make use of the following assumptions.

1.1 Mortality

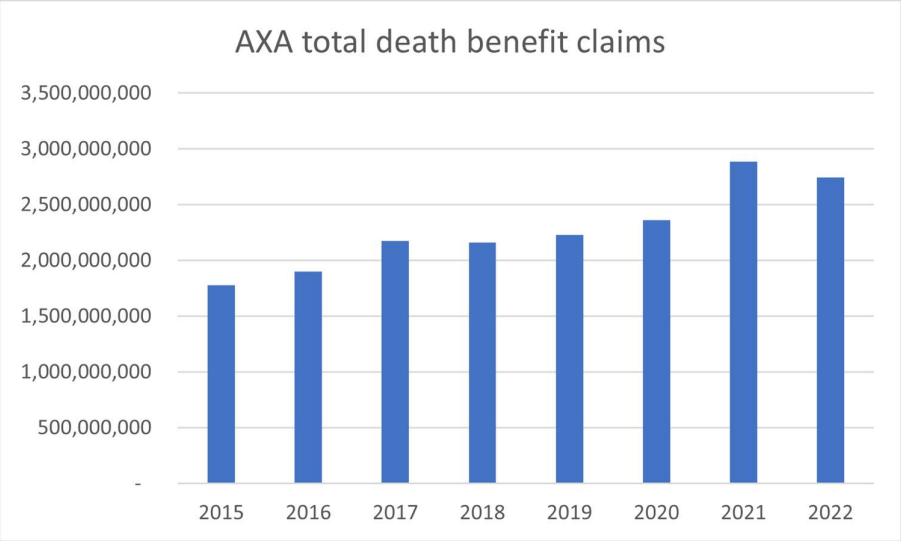
The COI rates for all policies in the Settlement Class were calculated using a table known as ELAS12 which was developed by AXA in 2013. Since then AXA has performed a new mortality experience study and developed a table known as ELAS 16, this was developed in 2017.

In providing the COI Rate Increase Freeze, AXA is forgoing the possibility to increase COI rates for changes between ELAS 12 and ELAS 16.

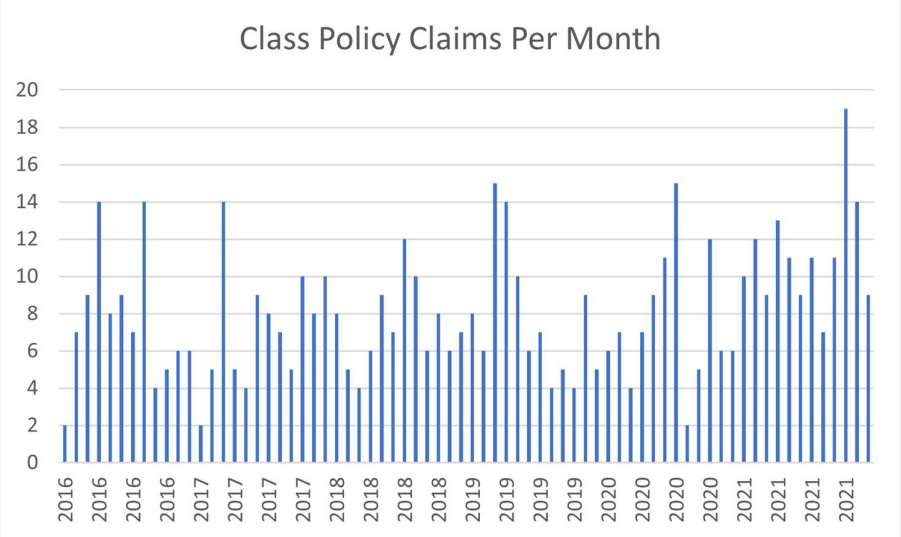
This Report contains the results of projecting the future death benefits and COI charges of the polices using both ELAS 12 and ELAS 16. This is described in detail in section 1 in the section "Change from ELAS 12 to ELAS 16."

In providing the COI Rate Increase Freeze, AXA is foregoing the ability to raise COI rates in the event of negative changes to AXA's best estimate mortality expectations for the policies within the Settlement Class. To evaluate the benefit of the COI Rate Increase Freeze, the probabilities of various future changes in AXA's best estimate mortality were assessed by using scenarios of differing degrees of magnitude, and, using those numbers, the difference in what AXA would have been able to recover using a COI rate increase compared to AXA now not being able to increase COI rate schedules until May 16, 2030.

Mortality varies over time, and AXA's NAIC returns state that total claims (across all life products) increased in 2021 and 2022 during the time of the Covid-19 pandemic.



On a month-by-month basis the policies within the Settlement Class demonstrate greater volatility than would be seen in aggregate for a year across the whole of AXA's platforms. The graph below shows the claims history for the Settlement Class from Jan 2016 – December 2021.



Calculating the probabilities of changes in mortality requires estimates of the volatility of mortality rates.

In August 2015, Demeter published a report using base Qx shock variance of 12% and mortality improvement variance of 0.75%.

Sources for this review included insurance industry regulators who require life insurance companies to hold surplus capital above what might be expected, for unexpected shocks to risk factors.

Demeter reviewed publications from the following authorities:

- The European Insurance and Occupational Pensions Authority's[2] Solvency II capital adequacy program,
- The International Association Of Insurance Supervisors,[3]
- The Financial Stability Board,[4]
- Office of the Superintendent of Financial Institutions (OSFI),[5] and
- Australian Prudential Regulation Authority (APRA).[6]

The American Academy of Actuaries provided a presentation to the NAIC[7] in a report dated November 9, 2019, by the Mortality Work Group which considered a number of risk factors to mortality, including,

- Volatility risk: The risk of natural statistical deviations in mortality experience.
- Level risk: The risk of incorrect experience mortality assumptions.
- Trend Risk: The risk that future mortality improvement is different than assumed.
- Catastrophe Risk: The risk of a short-term spike in mortality or a longer-term increase in mortality from a currently unknown health event, including Pandemic or Terrorism.

Many regulators work towards high degrees of confidence. For example, the American Academy of Actuaries work uses the 95% percentile of risk. The calculations of this Report, use an estimate of the expected value of the Non-Monetary Benefits, and not the 95% percentile. To do this, the Report assumes a log normal distribution for mortality changes.

In connection with this Report, I performed a review of the literature sources listed above and found nothing that would conflict with Demeter's report of 2015. If anything, the events of the past few years have confirmed the reasonableness of the settings used in that report and this Report uses the same settings.

The Qx shock variance of 12% and mortality improvement variance of 0.75% give rise to the following scenarios:

Scenario	QX Shock	FMI[8] Shock	Scenario Weight[9]
Scenario 4 – Worsen Slightly	9.24%	-0.55%	23.9%

[2] https://eiopa.europa.eu

[3] https://www.iaisweb.org

[4] https://www.fsb.org/

[5] https://www.osfi-bsif.gc.ca/Eng/Pages/default.aspx

[6] https://www.apra.gov.au/

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

[8] FMI means future mortality improvement.

[9] Weights use the Gaussian Quadrature rule.

Scenario 5 – Worsen Significantly	22.3%	-1.26%	11.8%
Scenarios 1, 2 & 3 - No COI rate adjustment	0%	0%	64.2%

For comparison, the life insurance industry incurred an increase in claims of 15% in 2020 (*Source*: NAIC data) during which the Covid-19 pandemic occurred. The CDC have reported excess population mortality for 2020 of 10.9% and 12.5% for 2021.

1.2 Lapse

The relationship between COI charges and mortality for the products is such that lapses favour AXA. AXA faces the risk that lapse rates are lower than expected and is unable to increase COI rate schedules as a result of this settlement.

AXA provided its lapse rate assumptions for the Settlement Class at the time of the COI increase and those lapse rate assumptions have been used in the all projection scenarios in this report.

The lapse rate is lower than general industry studies. I am familiar with the life settlement market, and the Settlement Class are common products in life settlement investor portfolios. The lapses on the book are therefore likely to be lower than general life insurance books, which often have lapse rates of 4-6%[10]

This Report assumes that the life settlement market, which owns a substantial portion of the Settlement Class, is unlikely to vary lapse rates significantly from AXA assumptions in a manner to cause a COI increase through May 16, 2030. Accordingly, these lapse rates have been used in all of the projection scenarios to evaluate the Non-Monetary Benefits.

1.3 Investment Returns

At the time of the last COI redetermination in October 2015, the cash value of the policies was low and it continues to remain low, for example as of August 31, 2016 $98.6m on $2,169.8m of death benefit for in force policies within the Settlement Class or 4.5% of death benefit). Review of recent premium payments shows this has remained low and it can be expected to remain low given the life settlement ownership profile of the Settlement Class.

These factors mean there is little further downside to AXA from investment returns through May 16, 2030 and therefore variations in this factor have not been, and need to be, considered for this Report. Investment returns have not been included in the projection scenarios.

[10]https://www.soa.org/resources/research-reports/2019/2009-13-us-ind-life-persistency-update/

1.4 Expenses and Premium Taxes

The average face size of the policies in force in the Settlement Class is $4.4m, which is larger than the industry average policy size of $183,780[11] and means that COI and premium load deductions are much larger than expense deductions. Changes in Premium Taxes rates are infrequent and tend to be for small amounts. For these reasons potential variations in expenses and premium taxes were considered immaterial for the purposes of this Report. As a result, expenses and premium taxes have not been included in the projection scenarios.

1.5 Premium Funding Pattern

For the purposes of this Report, premiums have been projected as the minimum premium to maintain the account value balance steady each month. This is consistent with the high rates of life settlements in the Settlement Class and low cash account values (4.5% of death benefit). The Lapse rates described in section 1.2 are independent of this premium payment pattern assumption.

The premium payment pattern has been assumed for all projection scenarios, there is little further downside to AXA from a change in funding patterns through May 16, 2023, and variations in this factor have not been considered for this Report.

Note that for Scenario B this means policy owners respond to a COI increase by increasing their premium payments and there is no change in the lapse rate assumption described in Section 1.2

1.6 Taxes

The personal rates of taxation that might apply to individual policy holders could differ substantially from one holder to another. So, for purposes of this Report, all calculations of the value of the Non-Monetary Benefits are gross of taxes.

1.7 Contest Success Probability and Pay-out Rates of Resisted Claims

Data from market aggregate figures provides information about how often carriers resist a death claim:

Year	Disputes Settled ($millions)	Amount Paid ($millions)	Amount Denied ($millions)	Incurred Claims ($billions)	Denied / Incurred Ratio
2015	829.1	206.5	622.5	73.5	0.85%
2016	805.9	153.8	652.0	74.8	0.87%
2017	812.2	247.9	564.3	77.0	0.73%
2018	855.8	110.4	745.4	78.4	0.95%

[11] Source ACLI data for 2020.

2019	868.8	303.0	565.8	79.8	0.71%
2020	669.1	320.5	348.6	92.0	0.38%
2021	568.7	219.3	349.4	103.3	0.34%
Total	5409.6	1561.4	3848.0	577.1	0.67%

Source: ACLI tabulations of NAIC data.

The last few years have seen a resurgence of STOLI litigation.[12] By making this settlement, AXA is foregoing the option to take part of this wave of new STOLI litigation and instead provides payment certainty on the policies and thus value to the Settlement Class. Also new in this trend has been an increase in success rates where some carriers have been able to convince courts to permit the retention of some or all the premiums received.

AXA has contended that many of the policies owned by the Settlement Class are unlawful STOLI, *see, e.g.,* Dkt. 174 (Amended Answer) at Eighth Affirmative Defense (alleging unclean hands and rescission). See also report of AXA's expert Glenn Hubbard at Section IV.A.

For these reasons, it is reasonable for settlement purposes to use the aggregate market rate data to provide the settings for the model scenario that includes risk of a challenge to payment of death benefit. The data above suggests the following estimates:

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

1.8 <u>Discount Rates</u>

Finding the value today of the Non-Monetary Benefits provided by the Settlement, requires use of a present value calculation of the future cash flows, which requires use of a certain discount rate.

The owners of the portfolio are likely to fall into two disparate groups.

- Individuals who are currently receiving low rates of interest on their bank deposits, and who rarely use discounting to assess the value of a project.
- Life settlement funds who target high returns on capital and who are typically earning 8-9% returns on capital.

A large amount of the policies in the portfolio display characteristics of investor ownership, including low lapse rates and minimal account value funding.

This Report uses a 7 percent discount rate for which represents a blended average of the low rates of return expected by individuals and the higher rates being earned by life settlement

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

funds. 7 percent is closer to the life settlement fund point of view, which reflects their majority ownership.

1.9 Reinsurance

Reinsurance is excluded from all the calculations in this Report. Reinsurance is not relevant to the value that policyholders would obtain from the Non-Monetary Benefits.

Section 2 – Results

2.1 COI Rate Increase Freeze Valuation

The calculation assumed a starting balance of death benefits given the in-force data as of 30 April, 2023 and rolled this to May 16 2023 using ELAS 16 and the lapse rate assumption.

The calculation was performed in two parts.

Part 1: Change from ELAS 12 to ELAS 16

Part2: Potential future changes

Part 1: Change from ELAS 12 to ELAS 16

The COI freeze will require AXA to continue using rates set in 2015 and prevent them from increasing rates for the change from ELAS 12 to ELAS 16.

To value this, the assumed in-force balance was projected forward for 480 months using the scenarios A and B described earlier, including lapse, premium payment, and mortality assumptions.

The projections were for account balance and death benefits of the policies.

The present value total net death benefit payments[13] and COI charges were calculated for the scenarios as follows:

A COI increase of 16.9% was applied to Scenario B. This increase was calculated so that the total mortality margin was the same as Scenario A, where mortality margin is the Difference between COI Charges and the Net Death Benefit.

Scenario $million	COI Charges	Net Death Benefit	Difference
Scenario A: ELAS 12	$1,066.0m	$1,837.1m	-$777.1m
Scenario B: ELAS 16 with 16.9% COI increase	$1,083.7m	$1,854.8m	-$777.1m

[13] Net means difference between death benefit and account value.

The projection was then changed to project forward to May 16, 2030 to represent the time period of the COI rate increase freeze and to use ELAS 16 as the mortality assumption in two scenarios:

Scenario B – ELAS 16 with 16.9% COI increase

Scenario C – ELAS 16 with no COI increase

The difference between scenario B and C was then taken as the value of Part 1 of COI Freeze - restricting AXA from changing COI rates due to the change from ELAS 12 to ELAS 16.

The cashflows were discounted at 7% to give a present value.

Scenario B: PV 7 years COI deductions with 16.9% COI increase = $758.6m

Scenario C: PV 7 years COI deductions without COI increase = $649.0m

Value of Part 1 = $758.6m - $649.0m = $109.6m

Part 2: Potential future change to ELAS 16

To value this, the assumed in-force balance was projected forward until May 16, 2030 using the scenarios 1-5 described earlier, including lapse, premium payment, and mortality assumptions.

The present value of the difference between net death benefit payments[14] and COI charges was calculated with the following results:

Scenario $million	PV COI Charges	PV Net Death Benefit	Difference	Benefit	Scenario Weight
Scenario 4 - Worsen Slightly	$667.5m	$1,128.2m	-$460.7m	$94.9m	23.9%
Scenario 5 – Worsen Significantly	$628.9m	$1,212.2m	-$583.3m	$217.4m	11.8%
Scenario 1,2 & 3 – No COI rate adjustment	$696.0m	$1,061.9m	-$365.8m	Nil	64.2%

[14] Net means difference between death benefit and account value.

The COI Rate Increase Freeze Value was calculated as

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

The benefit is the difference between the scenario and the COI Rate Increase Freeze that AXA will be stuck with due to the settlement.

Worsen Slightly Scenario Benefit = -$365.8m - -$460.7m = $94.9m

Worsen Significantly Scenario Benefit = -$365.8m - -$583.3m = $217.4m

Total weighted benefit = $94.9m x 23.9% + $217.4m x 11.8% = $48.5m

Sum of Part 1 and Part 2

The total value of the COI Rate Increase Freeze is the sum of Part 1 and Part 2

Total benefit = $48.5m + $109.6m = $158.1m

2.2 Validity Confirmation Valuation

In providing the Validity Confirmation, AXA is foregoing the ability to challenge and resist death benefit claims in the future for policies owned by the Settlement Class. The value of the Validity Confirmation was determined by a probability weighted net present value calculation using the assumptions set forth above.

The data provided for the Settlement Class death benefits, and account balances was projected for the period from May 16 2023 to maturity. The projection includes the future probability of lapsing a policy, starting at May 16 2023 using the lapse rate assumption. The starting balance of death benefits was given in the in-force data as of 30 April, 2023 and rolled to May 16 2023 using ELAS16 and the lapse rate assumption.

The ELAS16 table and AXA's future mortality improvement assumption were used to generate forward Qx, i.e., mortality rates, for each Class Policy and build a set of future survival probabilities starting at May 16 2023. The future death benefits of the policies were projected using the probability of lapse and death for each month.

For the without Validity Confirmation scenario, the death benefits were reduced for a probability of being contested of 0.94 % and a payout ratio of 28.9 %.

Estimates of legal expenses incurred in resisting policies were not considered.

The results of each life insurance policy in the Settlement Class were then aggregated and discounted to reach the estimated value of the Validity Confirmation.

PV of future death benefits without Validity Confirmation = $1,409.5 m

PV of future death benefits with Validity Confirmation = $1,419.0 m

Value of Validity Confirmation = $9.5 m

Conclusion

Using the methodology and assumptions set forth above the values of the COI Rate Increase Freeze and the Validity Confirmation are set forth in the table below.

Commitment	**Value $**
COI Rate Increase Freeze	$ 158.1 m
Validity Confirmation	$ 9.5 m
Total	**$ 167.5 m**

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

James Rouse

August 14, 2023