IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

HEMISPHERE MEDIA GROUP, INC.,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. N24C-06-116 PAW CCLD
	)	
FAIR AMERICAN SELECT INSURANCE COMPANY,	)	
	)	
Defendant.	)	

Date Submitted: March 10, 2026
Date Decided: June 18, 2026

MEMORANDUM OPINION

Upon Plaintiff's Motion for Partial Summary Judgment that the "Larger Settlement Rule" Applies;
GRANTED.

John D. Hendershot, Esq.; Chad M. Shandler, Esq.; and Sara M. Metzler, Esq., of Richards, Layton & Finger, P.A.; William G. Passannante, Esq.; Raymond A. Mascia Jr., Esq.; and Regan E. Samson, Esq., of Anderson Kill P.C., *Attorneys for Plaintiff Hemisphere Media Group, Inc.*

Karine Sarkisian, Esq.; Blaise U. Chow, Esq.; Christina R. Salem, Esq.; and William A. Accordino Jr., Esq., of Kennedys CMK LLP, *Attorneys for Defendant Fair American Select Insurance Company*.

WINSTON, J.

I. INTRODUCTION

Hemisphere settled a stockholder class action for $15 million. It now seeks coverage from one of its D&O insurers for that settlement. The parties do not seriously dispute that some of the stockholder class action claims are covered and others are not. Rather, they dispute how the settlement should be allocated between the covered and uncovered claims. When an insurance policy does not direct the parties to apply a specific allocation method, Delaware law provides that the appropriate allocation method is the "Larger Settlement Rule." Under that rule, a settlement is allocated to covered claims except to the extent the insurer shows non-covered conduct or parties increased the settlement amount. Hemisphere now seeks summary judgment declaring that the Larger Settlement Rule is the appropriate allocation method.

The insurer opposes the motion. It contends, first, that summary judgment is premature without discovery. According to the insurer, this follows from the Court's prior ruling denying Hemisphere's motion to stay discovery and is correct in any event. But the Court's motion to stay ruling did not identify any factual dispute regarding *whether* the Larger Settlement Rule applies. That issue can be decided as a matter of law based on the underlying complaint and settlement agreement, and by applying the plain language of the policy. There may be a factual dispute regarding *how* the Larger Settlement Rule applies to this settlement, but Hemisphere's motion

no longer seeks judgment on that issue. Moreover, the insurer fails to identify a specific factual dispute or identify what discovery it needs, as it must to defeat a summary judgment motion.

Next, the insurer argues that the policy specifies an allocation method that governs over the Larger Settlement Rule. A close read of the policy, however, shows otherwise. Unlike the case on which the insurer chiefly relies, the policy does not direct that a specific allocation method applies. Rather, it says that the parties are to take certain factors into account in trying to agree on an allocation. It then says that if the parties cannot agree, then the insurer shall advance the amounts not in dispute until an allocation is determined under the provisions of the policy and applicable law. The provisions of the policy mandate that the insurer pay for covered loss, including settlements. They do not exclude settlements that also relate to conduct by an uninsured person or mandate an allocation method in the event the parties cannot agree. Accordingly, under Delaware law, the Larger Settlement Rule applies. As Delaware courts have recognized, that rule best upholds the expectations of the insured in purchasing coverage. No provision of the policy undermines those reasonable expectations.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. THE POLICY

Plaintiff Hemisphere Media Group, Inc. ("Hemisphere") purchased a tower of directors and officers ("D&O") liability policies.[1] The primary policy and four excess policies each include a $5 million limit.[2]

Defendant Fair American Select Insurance Company ("FASIC") issued the third excess policy in the tower (the "Policy").[3] The Policy follows form to, and thus incorporates by reference the terms of, the primary policy.[4]

The relevant Policy coverage part provides:

> The Insurer shall pay on behalf of the **Company Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** to the extent the **Company** is required or permitted to pay on behalf of the **Insured Persons** as indemnification.[5]

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[1] *See* D.I. 46, Pl. Hemisphere Media Group, Inc.'s Opening Br. in Support of Its Mot. for Partial Summ. J. that the "Larger Settlement Rule" Applies (hereinafter "Op. Br.") at 5-6; Exs. A-E. Lettered exhibits refer to the exhibits attached to the affidavit of Raymond A. Mascia Jr., Esq. *See* D.I. 46. Page numbers styled "'---" refer to Bates numbering.

[2] *See* Op. Br. at 5-6; *see generally* Exs. A-E.

[3] *See* Op. Br. at 5-6; Ex. D at '090; *see also* D.I. 59, Def. Fair Am. Select Insurance Company's Opp'n to Pl. Hemisphere Media Group Inc.'s Mot. for Partial Summ. J. that the "Larger Settlement Rule" Applies (hereinafter "Ans. Br.") at 3.

[4] *See* Op. Br. at 6; Ans. Br. at 3; Ex. D at '086. References and citations to terms of the "Policy" herein refer to terms found in the primary policy, Ex. A.

[5] Policy § I(B). Bolded words are defined terms bolded in the Policy.

"**Claim**" includes "any civil, criminal, administrative or regulatory proceeding commenced by . . . service of a complaint or similar pleading."[6] "**Loss**" is defined to mean:

> damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts (including punitive, exemplary or multiplied damages, where insurable by law) that any **Insured** is legally obligated to pay and **Defense Expenses**, including that portion of any settlement which represents the claimant's attorneys' fees.[7]

Of particular importance on this motion, the Policy includes provisions related to allocation of covered and uncovered Loss. Specifically, Section V(D)-(E) provides:

> (D) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim, Interview** or **Investigation Demand** made against the **Insured** contains both covered and uncovered matters, or because a **Claim, Interview** or **Investigation Demand** is made against both the **Insured** and others (including the **Company** for **Claims** other than **Securities Claims**) not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of **Loss** between that portion of **Loss** that is covered under this Policy and that portion of loss that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative

[6] *Id.* § II(C)(2).

[7] *Id.* § II(O).

> benefits obtained in connection with the defense and/or settlement of the **Claim**, **Interview** or **Investigation Demand** by, the **Insured** and others.
>
> (E) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in (D) above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.[8]

B. THE STOCKHOLDER ACTION

In May 2023, former Hemisphere stockholders brought a class action lawsuit in the Court of Chancery (the "Stockholder Action").[9] That action concerned a transaction through which Hemisphere's allegedly controlling stockholder bought out Hemisphere's minority stockholders, as well as a related transaction through which Hemisphere divested part of its business (together, the "Transactions").[10]

The Stockholder Action plaintiffs asserted fiduciary duty claims against two groups of defendants. The first group is the "Director Defendants," seven Hemisphere directors.[11] In Count I, plaintiffs alleged the Director Defendants, "in

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[8] *Id.* § V(D)-(E).

[9] *See generally* Ex. H. The Stockholder Action is comprised of two actions that were later consolidated. *See* D.I. 40, *Garfield v. Searchlight Cap. P'rs*, C.A. No. 2023-0555-JTL (consolidating action with *Edelman v. Searchlight Cap. P'rs*, C.A. No. 2023-0638-JTL, and declaring the *Garfield* complaint operative).

[10] *See* Ex. H ¶ 2.

[11] *See id.* ¶¶ 16-22, 24.

their capacity as Hemisphere Directors," "breached their fiduciary duties by agreeing to and entering into the Transactions without ensuring that the Transactions were entirely fair to Plaintiffs and other public stockholders" and by "issuing [a] false and misleading Proxy."[12] The second group is the "Controller Defendants," which include three entities allegedly involved in control of Hemisphere (the "Controller Entities").[13] In Count II, plaintiffs alleged the Controller Defendants breached their fiduciary duties as "the controlling stockholders of Hemisphere."[14] There is no dispute that the Controller Entities are not Insured Persons under the Policy.[15]

The Stockholder Action defendants moved to dismiss, and in January 2024, the Court of Chancery granted that motion in part and denied it in part.[16] The court

[12] *See* Ex. H ¶¶ 231, 233-34.

[13] *See id.* ¶¶ 13-15, 23, 42. The "Controller Defendants" also included certain of the Director Defendants "allegedly acting in an uninsured capacity." *See* Op. Br. at 11; Ex. H. ¶¶ 23, 237-39 (defining "Controller Defendants" to include certain Director Defendants and alleging that Controller Defendants breached fiduciary duties as "controlling stockholders" rather than in capacity as directors).

[14] *See* Ex. H ¶¶ 237-39.

[15] *See* Op. Br. at 10-11; Ans. Br. at 4-5.

[16] *See generally* Ex. I.

dismissed claims against three Director Defendants.[17] Otherwise, it denied the motion while limiting discovery in certain respects.[18]

Following the motion to dismiss ruling, the Stockholder Action parties settled the case for $15 million (the "Settlement").[19] The parties' stipulation of settlement, filed with the court, provides that the Settlement releases all claims asserted in the action.[20] In December 2024, the Court of Chancery approved the Settlement.[21]

Although other of the insurers in Hemisphere's D&O tower have paid toward defense costs and the Settlement, FASIC declined to consent to the Settlement and has not made payments under the Policy.[22]

C. PROCEDURAL HISTORY

Hemisphere filed this action in June 2024.[23] The now operative First Amended Complaint asserts counts against FASIC for breach of contract and seeks

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[17] *See id.* at 36:21-37:4.

[18] *See id.* at 5:17-23, 37:18-24.

[19] *See* Op. Br. at 15; Ans. Br. at 5; Ex. N §§ I.1(ii), III.2(a).

[20] *See* Ex. N §§ I.1(bb), IV.4.

[21] *See generally* Ex. O.

[22] *See* Op. Br. at 16-17; Ans. Br. at 5-6.

[23] *See* D.I. 1.

a declaratory judgment that the Settlement and defense costs incurred in the Stockholder Action are covered under the FASIC Policy.[24]

In October 2025, Hemisphere moved for partial summary judgment, seeking declarations that: (1) the Larger Settlement Rule—under which "a loss is fully recoverable unless the insurer can show that the liability for non-covered conduct increased the insurer's liability"—applies to the Settlement; and (2) applying the Larger Settlement Rule, "the Settlement was not increased by the uninsured parties, and therefore, FASIC must indemnify Hemisphere for the Settlement up to the FASIC Policy's $5 million limit."[25] Hemisphere also moved to stay discovery, on grounds that its summary judgment motion would "dispose of this case in its entirety" or "significantly limit or otherwise focus the discovery process."[26]

On November 3, 2025, the Court denied Hemisphere's motion to stay. The Court's text order explained that because "an issue of fact—whether the Settlement was increased by uninsured parties—has been raised, Defendant has a right to prepare its answer to the summary judgment motion based upon the full record, not

[24] *See* D.I. 22 ¶¶ 61-70, 81-88, 97-103. The First Amended Complaint also asserted claims against another excess insurer, which Hemisphere has since voluntarily dismissed. *See id.* ¶¶ 71-80, 89-96, 104-10; D.I. 48.

[25] Op. Br. at 2, 4 (quoting *RSUI Indem. Co. v. Murdock* (*Murdock Supreme Court*), 248 A.3d 887, 908 (Del. 2021)).

[26] D.I. 47 at 1.

just those facts asserted by Plaintiff."[27] Following that ruling, Hemisphere withdrew its request for declaration (2) above, meaning its motion now seeks only a declaration that the Larger Settlement Rule applies.[28]

FASIC filed an answering brief in response to Hemisphere's narrowed motion.[29] Hemisphere filed a reply.[30] The Court then heard oral argument.

III. STANDARD OF REVIEW AND INTERPRETATIVE PRINCIPLES

A. SUMMARY JUDGMENT

The Court grants summary judgment upon a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[31] The movant bears the burden of establishing the nonexistence of issues of material fact.[32] Upon such a showing, the burden shifts to the nonmovant

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[27] D.I. 60.

[28] *See* D.I. 62 ¶ 1.

[29] *See generally* Ans. Br.

[30] *See generally* D.I. 68, Pl. Hemisphere Media Group, Inc.'s Reply Br. in Further Support of Its Mot. for Partial Summ. J. that the "Larger Settlement Rule" Applies (hereinafter "Reply").

[31] Del. Super. Ct. Civ. R. 56(c).

[32] *KBranch, Inc. v. BSI3 Menu Buyer Inc.*, 2026 WL 446425, at *3 (Del. Super. Jan. 30, 2026) (citing *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979)).

to demonstrate genuine factual issues exist.[33] The Court views the facts in the light most favorable to the nonmovant.[34]

B. INSURANCE POLICY INTERPRETATION

The Delaware Supreme Court has summarized the principles governing insurance policy interpretation as follows:

> "Insurance contracts, like all contracts, 'are construed as a whole, to give effect to the intentions of the parties.'" Proper interpretation of an insurance contract will not render any provision "illusory or meaningless." If the contract language is "clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning." Where the language is ambiguous, the contract is to "be construed most strongly against the insurance company that drafted it." A contract is not ambiguous simply because the parties do not agree on the proper construction. "Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."
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> Insurance contracts should be interpreted as providing broad coverage to align with the insured's reasonable expectations. "Generally, an insured's burden is to establish that a claim falls within the basic scope of coverage, while an insurer's burden is to establish that a claim is specifically excluded." Courts will interpret exclusionary clauses with "a strict and narrow construction . . . [and] give effect to such exclusionary language [only] where it is found to be 'specific,' 'clear,'

[33] *Id.* (citing *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995)).

[34] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

> 'plain,' [']conspicuous,' and 'not contrary to public policy.'"[35]

IV. ANALYSIS

The parties' dispute concerns whether the "Larger Settlement Rule" is the appropriate method to allocate the Settlement. Accordingly, the Court starts with a primer on that rule and its adoption in this State. Then, this opinion addresses FASIC's three arguments against Hemisphere's motion: first, that the law of the case requires the Court to deny the motion; second, that there is a factual dispute regarding whether the Settlement resolves covered claims in part; and third, that the Policy provides an allocation method that governs instead of the Larger Settlement Rule. In addressing these arguments, the Court concludes that Hemisphere is entitled to summary judgment that the Larger Settlement Rule is the appropriate allocation method.

A. THE "LARGER SETTLEMENT RULE"

On occasion, a single insurance claim may be only partially covered, such as when it concerns both covered and uncovered conduct or both covered and uncovered persons.[36] In such a case, the parties, or the Court, may need to determine

[35] *Murdock Supreme Court*, 248 A.3d at 905-06 (citations omitted).

[36] *See* Joseph P. Monteleone & Nicholas J. Conca, *Directors and Officers Indemnification and Liability Insurance: An Overview of Legal and Practical Issues*, 51 Bus. Law. 573, 607-08 (1996) (explaining concept of allocation). Another

how much of the claim should be allocated to the covered part and how much to the uncovered part. If the parties are unable to agree on an allocation and instead bring their dispute before the Court, then the Court must start by deciding the appropriate method to determine how the claim should be allocated. In other words, the Court must first decide which "allocation method" applies.[37] All else equal, an insurer will prefer an allocation method that tends to allocate more of a claim to the uncovered part. And all else equal, an insured will prefer the opposite.

One allocation method, developed by courts, is the Larger Settlement Rule.[38] Under it, "a loss is fully recoverable unless the insurer can show that the liability for non-covered conduct increased the insurer's liability."[39] As applied to settlement of an action against both insured and uninsured persons, the rule dictates that "responsibility for any portion of a settlement should be allocated away from the

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scenario in which allocation comes into play is when a covered person is alleged to have acted "in both insured and noninsured capacities." *See id.* at 608.

[37] *See Arch Ins. Co. v. Murdock* (*Murdock Superior Court*), 2020 WL 1865752, at *7-8 (Del. Super. Jan. 17, 2020) (referencing potential for different "allocation method[s]" or an "allocation rule").

[38] *See* Monteleone & Conca, *supra* note 36, at 612-13 (tracing development of the rule).

[39] *Murdock Supreme Court*, 248 A.3d at 908.

insured party *only if the acts of the uninsured party are determined to have increased the settlement*."[40]

This Court adopted the Larger Settlement Rule in *Murdock*.[41] There, it implemented the rule in two steps. In step one, the Court decided *whether* the rule applied, based on three elements: "(i) the settlement resolves, at least in part, insured claims; (ii) the parties cannot agree as to the allocation of covered and uncovered claims; and (iii) the allocation provision does not provide for a specific allocation method (e.g., *pro rata* or alike)."[42] In step two, the Court addressed *how* the rule applied.[43] That required it to assess whether "the defense or settlement costs of the

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[40] *Id.* at 909 (quoting *Nordstrom, Inc. v. Chubb & Son, Inc.*, 54 F.3d 1424, 1432 (9th Cir. 1995)).

[41] *See Murdock Superior Court*, 2020 WL 1865752, at *7-8 (applying Larger Settlement Rule after observing that "Delaware courts have not addressed" its application and "have not seemingly adopted any other form of allocation rule in the event that there are covered and uncovered claims and the parties cannot agree on allocation"); *see also Endurance Risk Sols. Assurance Co. v. Clover Health Invs., Corp.*, 295 A.3d 136, 2023 WL 2815997, at *2 n.6 (Del. 2023) (TABLE) (characterizing *Murdock Superior Court* as "adopting the Larger Settlement Rule").

[42] *See Murdock Superior Court*, 2020 WL 1865752, at *7.

[43] In addition to affirming this Court in *Murdock* (discussed *infra*), the Delaware Supreme Court has acknowledged a distinction between whether an allocation method applies, on one hand, and how it applies, on the other. *See Stonewall Ins. Co. v. E.I. du Pont de Nemours & Co.*, 996 A.2d 1254, 1259 n.12 (Del. 2010) ("On appeal, the parties do not contest the allocation method chosen; rather, Stonewall contests the application of the method.").

litigation were, by virtue of the wrongful acts of the uninsured parties, higher than they would have been had only the insured parties been defended or settled."[44]

The Court in *Murdock* granted the insured summary judgment on step one.[45] It held that where the parties did not agree to an allocation and the policies' allocation provision did not "set[] out an allocation method that would govern," the Larger Settlement Rule applied.[46] It explained that "[t]he decision to apply the Larger Settlement Rule is to protect the economic expectations of the insured—*i.e.*, prevent the deprivation of insurance coverage that was sought and bought."[47] On step two, it indicated summary judgment would likely be appropriate only in part.[48] With respect to one of the underlying actions, the Court observed that "the factual record

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[44] *See Murdock Superior Court*, 2020 WL 1865752, at *7-9. The Court in *Clover Health* summarized *Murdock*'s two steps as a single, four-element test. *See Clover Health Invs., Corp. v. Berkley Ins. Co.*, 2023 WL 1978227, at *10 (Del. Super. Feb. 6, 2023) (quoting *Murdock Superior Court*, 2020 WL 1865752, at *7), *vacated by agreement of parties*, 2025 WL 3645057 (Del. Super. Oct. 22, 2025). The distinction between the two steps was not relevant in *Clover Health*, because both were satisfied as a matter of law and required coverage of all costs the insured sought. *See id.* at *12-13.

[45] *See Murdock Superior Court*, 2020 WL 1865752, at *6-8.

[46] *See id.*

[47] *See id.* at *7.

[48] *See id.* at *9 (explaining that, for one underlying action, "the Court does not see how the Larger Settlement Rule would not be dispositive in favor of the [insureds]," but noting that it would address the issue further at pre-trial conference).

needs to be expanded" to determine whether uncovered parties increased the settlement amount.[49]

Our Supreme Court affirmed.[50] It agreed that the policies provided broad coverage and did "not limit coverage because of the activities of others that might overlap the claims against the Insureds."[51] It further agreed that, accordingly, "[a]ny type of *pro rata* or relative exposure analysis seems contrary to the language of the Policies."[52] Thus, the Supreme Court determined that the trial court "properly applied the Larger Settlement Rule."[53]

Although it has on one occasion distinguished, this Court has not since questioned that the ruling of the *Murdock* trial court—and Supreme Court affirming it—states Delaware law on allocation.[54]

With this legal landscape in mind, the Court turns to FASIC's arguments against summary judgment that the Larger Settlement Rule applies.

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[49] *See id.*

[50] *See Murdock Supreme Court*, 248 A.3d at 890, 908-09.

[51] *Id.* (quoting *Murdock Superior Court*, 2020 WL 1865752, at *7).

[52] *Id.* (quoting *Murdock Superior Court*, 2020 WL 1865752, at *7).

[53] *See Clover Health*, 2023 WL 1978227, at *12 (citing *Murdock Supreme Court*, 248 A.3d at 909).

[54] *See, e.g.*, *id.* at *10-13 (applying *Murdock Superior Court*); *Verizon Commc'ns Inc. v. Ill. Nat'l Ins. Co.*, 2020 WL 8509725, at *4-5 & n.40 (Del. Super. Dec. 11, 2020) (applying *Murdock Superior Court* as "the case adopting the Larger Settlement Rule" but distinguishing based on factual differences).

B. THE LAW OF THE CASE DOCTRINE DOES NOT REQUIRE DENIAL OF HEMISPHERE'S MOTION.

FASIC contends, first, that the Court should not address the motion's merits because the law of the case requires denial.[55] According to FASIC, the Court's order denying Hemisphere's motion to stay discovery established law of the case that "summary judgment is premature" and "is to be denied."[56] At least with respect to Larger Settlement Rule step one, the law of the case doctrine does not apply.

The law of the case doctrine "operates as a form of intra-litigation *stare decisis*."[57] A matter becomes law of the case once it "has been addressed in a procedurally appropriate way," or, in other words, "when a specific legal principle is applied to an issue presented by facts which remain constant."[58] Such an "issue[] already decided by the court" will be "adopted without relitigation."[59] The doctrine "applies only to those matters necessary to a given decision and those matters which were decided on the basis of a fully developed record."[60]

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[55] *See* Ans. Br. at 7-9.

[56] *See id.* at 1.

[57] *Del. Dep't of Nat. Res. & Env't Control v. Food & Water Watch*, 246 A.3d 1134, 1138-39 (Del. 2021) (quoting *Frederick-Conaway v. Baird*, 159 A.3d 285, 296 (Del. 2017)).

[58] *See id.* at 1138 (first quoting *May v. Bigmar, Inc.*, 838 A.2d 285, 288 n.8 (Del. Ch. 2003), *aff'd*, 854 A.2d 1158 (Del. 2004) (TABLE); and then quoting *Frederick-Conaway*, 159 A.3d at 296).

[59] *Id.* (quoting *May*, 838 A.2d at 288 n.8).

[60] *Zirn v. VLI Corp.*, 681 A.2d 1050, 1062 n.7 (Del. 1996).

The law of the case does not require denial of the present motion. In denying Hemisphere's motion to stay, the Court determined that "an issue of fact—whether the Settlement was increased by uninsured parties—has been raised."[61] For that reason, the Court noted that "Defendant has a right to prepare its answer to the summary judgment motion based upon the full record, not just those facts asserted by Plaintiff."[62] The Court identified an "issue of fact" only concerning Larger Settlement Rule step two, which asks whether uninsured parties increased the settlement. The ruling did not extend to step one—the only step on which Hemisphere now moves—meaning it is not law of the case on that issue.[63]

Moreover, even if the ruling could be read as applying to any issue raised in Hemisphere's summary judgment motion, such a broad ruling was not necessary to the decision.[64] A motion to stay calls on the Court to "exercise its sound judgment in the supervision of the discovery process," balancing "[e]fficiency and fairness."[65] This requires the Court to make a practical determination regarding the likelihood a

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[61] *See* D.I. 60.

[62] *Id.*

[63] *See Williams v. PACCAR*, 2012 WL 4831658, at *1 (Del. Super. Oct. 8, 2012) ("[C]ourts will not apply the law of the case doctrine if a prior court did not actually reach the issue in question." (citations omitted)).

[64] *See Zirn*, 681 A.2d at 1062 n.7.

[65] *See In re McCrory Parent Corp.*, 1991 WL 137145, at *1 (Del. Ch. July 3, 1992).

dispositive motion will obviate the need for discovery.[66] Where it appears that discovery will proceed in any event, the Court may deny the motion.[67] Here, the Court's determination that discovery would likely proceed on step two was sufficient to deny the motion to stay. The Court did not need to rule that step one requires discovery[68] or that the summary judgment motion on step one must be denied.[69]

The motion to stay ruling did not reach the issue of whether Larger Settlement Rule step one raises a factual dispute, nor was it necessary to do so. Accordingly, the law of the case does not require denial of Hemisphere's summary judgment motion on that issue.

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[66] *See id.* (explaining that courts consider whether dispositive motion offers reasonable prospect of resolving case such that discovery would "likely be wasted").

[67] *See, e.g.*, *Slopeside Manager, LLC v. 12th & 5th Member, LLC*, 2025 WL 3231668, at *19 (Del. Super. Oct. 30, 2025) (denying motion to stay where it "would not avoid costs as litigation would continue regardless of the Court's decision on [the dispositive] [m]otion"); *Pensionskasse Der ASCOOP v. Random Int'l Hldg., Ltd.*, 1993 WL 35977, at *2 (Del. Ch. Jan. 26, 1993) (denying motion to stay because litigation would proceed in one court or another, meaning "[l]ittle will be gained from a brief stay of discovery").

[68] To be sure, a court may determine in its discretion that a stay of discovery is warranted even where a dispositive motion would not resolve the entire case. *See, e.g.*, *Kuroda v. SPJS Hldgs., L.L.C.*, 2009 WL 58910, at *1 (Del. Ch. Jan. 2, 2009). Here, however, it did not appear that discovery on step one, if any were appropriate, would have been broader than discovery on step two.

[69] Moreover, although motions to stay often require the Court to make a preliminary assessment of the underlying motion, the Court generally does not "prejudge the merits" of the dispositive motion. *See McCrory*, 1991 WL 137145, at *2. This further weighs against applying a motion to stay ruling as law of the case to the underlying dispositive motion.

C. THERE IS NO ISSUE OF MATERIAL FACT THAT THE SETTLEMENT RESOLVES COVERED CLAIMS, AT LEAST IN PART.

Turning to the merits, FASIC next argues that Hemisphere "has not satisfied the first element of the Larger Settlement Rule."[70] According to FASIC, without discovery, reliance on the underlying complaint and settlement agreement cannot show that "the settlement resolves, at least in part, insured claims."[71] Although it may be possible for Larger Settlement Rule step one to turn on a disputed issue of fact, here, FASIC has not raised one.

When the loss to be allocated arises from a settlement, the underlying complaint and settlement agreement will generally control whether the first element of Larger Settlement Rule is satisfied. That is because those documents will ordinarily govern which legal claims are asserted and released, as they do here.[72] The Stockholder Action complaint defines the claims at issue, and the settlement agreement, approved by the Court of Chancery, provides that all claims in the

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[70] Ans. Br. at 10.

[71] *See id.* at 10-12; *Murdock Superior Court*, 2020 WL 1865752, at *7.

[72] Though likely the exception, there could be a case where the underlying complaint and settlement agreement are insufficient. Potential examples include cases where (a) the complaint and settlement agreement are, on their faces, unclear regarding what is asserted or released; or (b) there is some credible reason to doubt the veracity or effectiveness of the settlement agreement. Here, however, FASIC has not argued these documents are unclear or provided any reason to doubt their veracity or effectiveness. Moreover, where, as here, a court has approved the settlement, it seems less likely that the complaint and settlement agreement would not control.

complaint are released.[73] FASIC does not seriously dispute that Stockholder Action Count I is a covered claim or that it was released in the Settlement.[74] Accordingly, the Settlement resolved, at least in part, covered claims.[75]

Without challenging any specific coverage element, FASIC contends it needs discovery.[76] A party opposing summary judgment, however, must do more than state generally that an issue requires discovery.[77] Rule 56(f) "authorizes a party opposing summary judgment to file an affidavit requesting limited discovery if the facts it needs to oppose the motion successfully are outside of its control."[78] Such an

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[73] *See* Ex. N §§ I.1(bb), IV.4; Ex. O ¶ 12(a).

[74] *See* Ans. Br. at 10-12 (asserting only that it needs discovery, without asserting that Count I is not a covered claim or that the Settlement did not release it). FASIC suggests that Hemisphere has not "attempt[ed] to meet its burden" to show the Settlement resolves a covered claim, including because it has not "point[ed] to the particular insurance policy provisions that are applicable." *See id.* at 10; D.I. 75, Mar. 10, 2026 Oral Arg. Tr. (hereinafter "Tr.") at 21:16-23. But Hemisphere identified the relevant coverage provisions and explained why they apply, *see* Op. Br. at 6-7, 20-21, which FASIC has not rebutted.

[75] FASIC may contend that the Settlement payment was mostly, or even entirely, for uncovered claims, but that is a dispute under Larger Settlement Rule step two, not reason to withhold summary judgment on step one.

[76] *See* Ans. Br. at 10-12; Tr. at 22:10-14 (FASIC identifying no particular reason why the Settlement is not covered, but instead contending it cannot take a position without discovery).

[77] *See Corkscrew Mining Ventures, Ltd. v. Preferred Real Estate Invs., Inc.*, 2011 WL 704470, at *6 (Del. Ch. Feb. 28, 2011).

[78] *Id.*; *see also Options Clearing Corp. v. U.S. Specialty Ins. Co.*, 2021 WL 5577251, at *10 (Del. Super. Nov. 30, 2021) ("[A] party opposing summary judgment may, pursuant to . . . Rule 56(f), request limited discovery if it cannot present facts essential to oppose the summary judgment motion." (alteration in original) (citing

affidavit must state "with some degree of specificity, the additional facts sought by the requested discovery."[79] FASIC has not filed an affidavit, nor has it, even in briefing or argument, specified additional relevant facts.[80] When Hemisphere filed its motion, this case had "been pending for over a year and discovery has never been stayed."[81] And, FASIC had nearly two months to file its opposition. It cannot now rely on generalized assertions that discovery is required.[82]

Aveanna Healthcare, LLC v. Epic/Freedom, LLC, 2021 WL 3235739, at *28 (Del. Super. July 29, 2021))).

[79] *Bay Cap. Fin. v. Barnes & Noble Educ., Inc.*, 2020 WL 1527784, at *10 (Del. Ch. Mar. 30, 2020) (quoting *Ryan v. Lyondell Chem. Co.*, 2008 WL 2923427, at *22 (Del. Ch. July 29, 2008), *rev'd on other grounds*, 970 A.2d 235 (Del. 2009)), *aff'd*, 249 A.3d 800 (Del. 2021) (TABLE).

[80] *See* Ans. Br. at 10 (stating only that "[t]here has been no discovery on the settlement, the agreement, or any of the [underlying claims]," but providing no indication of what discovery FASIC needs or how it could create a genuine issue of material fact); Tr. at 27:3-28:4 (FASIC contending that it needs discovery regarding "whether the actual settlement agreement terms, the intent of the settlement, actually fits into the policy terms" without specifying what this discovery would be or how it would create a genuine issue of material fact).

[81] *See Corkscrew*, 2011 WL 704470, at *6 (granting summary judgment despite assertions that nonmovant needed discovery).

[82] At oral argument, FASIC requested a sur-reply on this issue. *See* Tr. at 21:13-16. The Court retains discretion regarding whether to accept a sur-reply, the purpose of which is "to allow a party to respond to *new arguments*." *See In re Restatement of Declaration Tr.*, 2013 WL 1497046, at *1 (Del. Ch. Apr. 12, 2013); *Those Certain Underwriters at Lloyd's, London v. Nat'l Installment Ins. Servs., Inc.*, 2008 WL 2133417, at *11 (Del. Ch. May 21, 2008), *aff'd*, 962 A.2d 916 (Del. 2008) (TABLE). Hemisphere's reply did not raise new arguments but responded to FASIC's suggestion that discovery was required to determine whether the Settlement resolved covered claims. *See* Op. Br. at 20-21 (arguing that the "Settlement resolved the Stockholder Action, which asserted covered claims"); Reply at 8 (explaining further

D. THE POLICY DOES NOT PROVIDE AN ALLOCATION METHOD THAT WOULD GOVERN OVER THE LARGER SETTLEMENT RULE.

Last, the parties dispute Larger Settlement Rule element three, whether the Policy's allocation provision provides for a specific allocation method. Hemisphere contends this case is like *Murdock*,[83] whereas FASIC points to cases that have distinguished it.[84]

In *Murdock*, the Court considered the following allocation provision:

> If in any Claim, the Insureds who are afforded coverage for such Claim incur Loss jointly with others (including other Insureds) who are not afforded coverage for such Claim, or incur an amount consisting of both Loss covered by this Policy and loss not covered by this Policy because such Claim includes both covered and uncovered matters, then the Insureds and the Insurer agree to use their best efforts to determine a fair and proper allocation of covered Loss. The Insurer's obligation shall relate only to those sums allocated to matters and Insureds which are afforded coverage. In making such determination, the parties shall take into account the relative legal and financial exposures of the Insureds in connection with the defense and/or settlement of the Claim.[85]

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why the Settlement resolved covered claims, in response to FASIC's answering brief). And as noted above, FASIC had a fair chance to raise any disputes of material fact with its answering brief. Accordingly, its request for a sur-reply is denied.

[83] *See* Op. Br. at 22-25.

[84] *See* Ans. Br. at 14-18.

[85] *Murdock Superior Court*, 2020 WL 1865752, at *3.

This provision, the Court held, did not provide "an allocation method that would govern over the Larger Settlement Rule."[86] The Court rejected the insurers' suggestion that the provision mandated an allocation method in its last sentence: "In making such determination, the parties shall take into account the relative legal and financial exposures of the Insureds in connection with the defense and/or settlement of the Claim."[87] As the Court explained, that sentence, along with the rest of the provision, "speaks only as to a situation where the 'Insureds' and 'Insurer' work together with 'best efforts' to arrive at a fair and proper allocation of covered Loss."[88] It did not "establish[] a method of allocation in the event the parties cannot, using best efforts, agree upon allocation between covered and uncovered claims."[89] The Court further explained that the Larger Settlement Rule best fit the policies as a whole. That was because the policies "cover all Loss that the Insured(s) become legally obligated to pay," which "implies . . . a complete indemnity for Loss regardless of who else might be at fault for similar actions."[90]

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[86] *Id.* at *8.

[87] *Id.*

[88] *Id.* at *6.

[89] *Id.* at *8

[90] *Id.* at *7.

In *Verizon*, by contrast, the Court held that a policy's allocation provision mandated an alternate allocation method.[91] The provision there provided:

> In connection with any Claim, other than a Claim that is or includes a Securities Claim, with respect to: (i) Defense Costs jointly incurred by, (ii) any joint settlement entered into by, or (iii) any Judgment of joint and several liability against any Organization and any insured Person, there shall be a fair and equitable allocation as between any such Organization and any such Insured Person, taking into account the relative legal and financial exposures and the relative benefits obtained by any such Insured Person and any such Organization, without any presumption that the coverage afforded to the Insured Person shall in any way reduce the allocation to the Organization which shall not be Insured for such allocation. In the event that a determination as to the amount of Defense Costs to be advanced under the policy cannot be agreed to, then the Insurer shall advance Defense Costs excess of any applicable retention amount which the insurer states to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.[92]

The Court distinguished this language from the provision in *Murdock*. In particular, the Court noted that, unlike *Murdock*, this allocation provision "unambiguously provides a method that is independent of an agreement and reads as a completely controlling allocation method."[93] The *Verizon* allocation clause instructed that, for jointly incurred defense costs, "there must be a fair and equitable

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[91] *Verizon*, 2020 WL 8509725, at *5.

[92] *Id.* at *2.

[93] *Id.* at *5.

allocation that accounts for the relative legal and financial exposures and the relative benefits obtained by those insured and uninsured."[94] In addition, the Court noted that the allocation provision "contemplates a disagreement" and requires that, if there is one, the insurer "will pay what it believes is fair and equitable until a different amount is either agreed upon or determined in accordance with the Policy and law."[95] "Considering the Provisions' general allocation directive," the Court interpreted this to mean that "upon disagreement the relative legal and financial exposures and benefit method must be applied."[96]

Here, like *Murdock* and unlike *Verizon*, the Policy lacks language mandating an allocation method. Like the provision in *Murdock*, Section V(D) governs the parties' obligation to make efforts to agree on allocation. It provides that they "will use their best efforts to determine a fair and appropriate allocation."[97] Also like *Murdock*, the provision then provides considerations that the parties will "take into account" in making these efforts to agree.[98] Specifically, the parties "agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained

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[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *See* Policy § V(D).

[98] *Id.*

in connection with the defense and/or settlement of the **Claim** . . . by, the **Insured** and others."[99]

As FASIC points out, unlike *Murdock*, the Policy also contains a clause contemplating disagreement, a so-called "disagreement clause."[100] In particular, Section V(E) provides:

> In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in (D) above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.[101]

Although this clause addresses disagreement, it does not provide an allocation method to govern over the Larger Settlement Rule. Instead, it directs that if there is a disagreement, then the insurer will advance the portion of Loss not in dispute, and it contemplates that a final amount will be "agreed upon or determined pursuant to the provisions of this Policy and applicable law."[102]

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[99] *Id.* This opinion hereinafter uses the term "Relative Exposures and Benefits Considerations" to refer to the Section V(D) language: "the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** . . . by, the **Insured** and others."

[100] *See* Ans. Br. at 12-13; *see also* Op. Br. at 25.

[101] Policy § V(E).

[102] *Id.*

FASIC posits, in essence, that this disagreement clause language mandates application of the Section V(D) Relative Exposures and Benefits Considerations. But that is not what the disagreement clause says. Instead, the disagreement clause contemplates that a final amount will be determined pursuant to "the provisions of this Policy"—that is, the whole Policy—and "applicable law." None of the "provisions of this Policy," including Section V(D), mandate application of the Relative Exposures and Benefits Considerations. Rather, Section V(D) directs the parties to take those considerations into account when making efforts to agree.[103] What the "provisions of this Policy" *do* mandate is that the "Insurer shall pay on behalf of the **Company Loss** resulting from a **Claim**," defining Loss to include "settlements . . . that any **Insured** is legally obligated to pay."[104] The Policy as a whole, then, mandates broad coverage for "settlements . . . that any **Insured** is legally obligated to pay." It does not exclude coverage where a settlement also relates to conduct by an uninsured person, nor does it mandate a particular allocation

[103] *See Murdock Superior Court*, 2020 WL 1865752, at *8 (holding similar provision did not mandate an allocation method over the Larger Settlement Rule).

[104] *See* Policy §§ I(B), II(O). Insuring Agreement (B) provides, in full: "The Insurer shall pay on behalf of the **Company Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** to the extent the **Company** is required or permitted to pay on behalf of the **Insured Persons** as indemnification." FASIC does not contend that any specific aspect of that coverage grant is not satisfied.

method. And when a settlement relates both to an insured and uninsured person, "applicable [Delaware] law" directs that the Larger Settlement Rule applies.[105]

FASIC contends that the presence of a disagreement clause means the result here must be the same as *Verizon*.[106] But in *Verizon*, unlike here and *Murdock*, the policy contained language instructing that "there must be" a particular allocation regardless of whether there was agreement.[107] Specifically, the policy provided, in relevant part, that "there shall be a fair and equitable allocation . . . taking into account the relative legal and financial exposures and the relative benefits obtained."[108] The Court also looked to the policy's disagreement clause, but its holding was based on "the Provisions' general allocation directive"—i.e., the

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[105] *See* Policy § V(E); *Murdock Superior Court*, 2020 WL 1865752, at *7-8. In *Murdock*, the coverage provisions were phrased as providing coverage for "all Loss," whereas the provisions here lack the word "all." *See id.* at *2, *7. This difference, however, does not distinguish this case from *Murdock*, nor does FASIC argue that it does. Grants of coverage are interpreted broadly, and exclusions narrowly. *See Murdock Supreme Court*, 248 A.3d at 906. Accordingly, it is reasonable to interpret a grant of coverage for "Loss" to mean coverage for "all Loss," except to the extent specifically excluded. *See id.* (explaining that "an insurer's burden is to establish that a claim is specifically excluded" (citation omitted)).

[106] *See* Ans. Br. at 12-16.

[107] *See Verizon*, 2020 WL 8509725, at *5 ("The Allocation Provision instructs that . . . there must be a fair and equitable allocation that accounts for the relative legal and financial exposures and the relative benefits obtained by those insured and uninsured.").

[108] *See id.* at *2.

directive that "there shall be a fair and equitable allocation."[109] True, like here, the disagreement clause referenced an allocation method "determined pursuant to the provisions of this policy and applicable law."[110] The key difference, however, is that in *Verizon*, "the provisions of this policy" mandated that there "shall be" a different allocation method.[111] That specific directive, not present here, controlled over the general grant of coverage and Larger Settlement Rule that upholds that coverage grant. Accordingly, *Murdock*, not *Verizon*, controls here.

FASIC also relies on *Calamos Asset Management v. Travelers Casualty & Surety Co. of America*, in which the District of Delaware held that an allocation provision similar to the one at issue mandated an allocation method over the Larger

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[109] *See id.* at *2, *5 ("*Considering the Provisions' general allocation directive*, it must follow that upon disagreement the relative legal and financial exposures benefit method must be applied." (emphasis added)).

[110] *See id.* at *2; Policy § V(E).

[111] *See Verizon*, 2020 WL 8509725, at *2, *5. FASIC suggests that there is no difference because the Policy here uses the word "will," which is equivalent to "shall." *See* Ans. Br. at 20-21. The decisive difference is not between "will" and "shall" but the context in which those words are used. In the Policy here, "will" is used to describe what the parties "will take into account" when they are "us[ing] their best efforts to determine a fair and appropriate allocation." *See* Policy § V(D). In *Verizon*, "shall" was used in the context of directing that "there shall be a fair and equitable allocation" that takes into account specific factors, regardless of whether the parties had agreed on an allocation. *See Verizon*, 2020 WL 8509725, at *2.

Settlement Rule.[112] The court there reasoned that a contrary interpretation would "create nothing but a vicious cycle" in which, after failing to agree despite best efforts, the parties would be required to make "more best efforts."[113] This was based on the court positing that the "provisions of this policy" must "refer back to 'fair and equitable allocation'" mentioned earlier in the allocation clause.[114] Respectfully, this Court disagrees. The "provisions of this Policy" refers to all of the Policy's provisions.[115] If one of them directed that a specific allocation method shall apply, as did the policy in *Verizon*, then it would control. Otherwise, what controls is the Policy's grant of coverage.[116] That grant, absent a specific exclusion or mandated

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[112] *See* Ans. Br. at 16-17 (citing *Calamos Asset Mgmt., Inc. v. Travelers Cas. & Surety Co. of Am.*, 2021 WL 1721661, at *4-5 (D. Del. Apr. 30, 2021), *clarified*, 2021 WL 4902450 (D. Del. Oct. 21, 2021)).

[113] *See Calamos*, 2021 WL 1721661, at *5. *Calamos* and FASIC also suggest that a contrary interpretation of the disagreement clause would render it "illusory or meaningless." *See id.*; Ans. Br. at 13 (quoting *Murdock Superior Court*, 2020 WL 1865752, at *5). Not so. The disagreement clause still serves the function of requiring the insurer to advance any amounts not in dispute until a final allocation is determined. That function might not serve the insurer's interests, but it gives meaning to the provision.

[114] *See Calamos*, 2021 WL 1721661, at *5.

[115] *See* Policy § V(E).

[116] The court in *Calamos* suggested that "[t]he only provision of the policy left after (failed) best efforts is the 'fair and appropriate allocation.'" *See Calamos*, 2021 WL 1721661, at *5. That overlooks the importance of a policy's coverage provisions. *See Murdock Superior Court*, 2020 WL 1865752, at *8 ("The Court cannot read the Allocation Provision in isolation and not apply the scope of coverage for Claims . . . .").

allocation rule, creates an expectation that the insured will be indemnified for settlements it is legally obligated to pay.[117] The Larger Settlement Rule best fulfills that expectation.[118]

The parties have not agreed upon an allocation. In that scenario, the Policy does not mandate a specific allocation method. Accordingly, under Delaware law, the Larger Settlement Rule applies.

V. CONCLUSION

For the foregoing reasons, Hemisphere's motion for partial summary judgment is **GRANTED**. The Larger Settlement Rule is the proper allocation method for the Settlement. Whether the Settlement was increased by uninsured parties remains at issue.

IT IS SO ORDERED.

/s/ *Patricia A. Winston*
Patricia A. Winston, Judge

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[117] *See Murdock Superior Court*, 2020 WL 1865752, at *7-8 (explaining that where "there is Loss that constitutes a Claim" within the coverage provisions, "[t]he Insureds, therefore, have an economic expectation of indemnification under the Policies" and that "[a]ny type of *pro rata* or relative exposure analysis seems contrary to the language of the Policies").

[118] *See id.* at *8 (recognizing that the Larger Settlement Rule "protect[s] the economic expectations of an insured when [it] purchases coverage under an insurance policy").