EFiled: Aug 07 2025 05:44PM EDT
Filing ID 76825699
Case Number 206,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MIDVALE INDEMNITY CO., Defendant-Below/ Appellant, v. AMC ENTERTAINMENT HOLDINGS, INC., Plaintiff-Below/ Appellee.	No. 206, 2025 ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE C.A. No. N23C-05-045-MAA CCLD **PUBLIC VERSION** **FILED ON AUGUST 7, 2025**

APPELLEE AMC ENTERTAINMENT HOLDINGS, INC.'S ANSWERING BRIEF ON APPEAL

OF COUNSEL
(admitted *pro hac vice*):

Robin L. Cohen
Adam S. Ziffer
Michelle R. Migdon
William A. Harris
COHEN ZIFFER FRENCHMAN & MCKENNA LLP
1325 Avenue of the Americas
New York, New York 10019
Tel: (212) 584-1890
rcohen@cohenziffer.com
aziffer@cohenziffer.com
mmigdon@cohenziffer.com
wharris@cohenziffer.com

BERGER MCDERMOTT LLP

David J. Baldwin (No. 1010)
Peter C. McGivney (No. 5779)
Periann Doko (No. 5476)
1105 N. Market Street, 11th Floor
Wilmington, DE 19801
(302) 655-1140 tel.
(302) 658-1131 fax
dbaldwin@bergermcdermott.com
pmcgivney@bergermcdermott.com
pdoko@bergermcdermott.com

Attorneys for Plaintiff-Below/Appellee AMC Entertainment Holdings, Inc.

Dated: July 24, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

NATURE OF THE PROCEEDINGS

This case involves the straightforward application of an insurance policy's plain and unambiguous "Loss" definition, which covers any "settlements." The Superior Court applied that language to confirm coverage for a settlement payment that Plaintiff-Below/Appellee AMC Entertainment Holdings, Inc. ("AMC") made to resolve a highly contested class action litigation. That AMC paid this settlement with stock, rather than cash, does not make it any less a "settlement[]," nor transform it into a business transaction. Recognizing this, Defendant-Below/Appellant Midvale Indemnity Company ("Midvale") tries to rewrite the policy language and manufactures a multitude of doomsday scenarios – but to no avail. The Superior Court correctly found that AMC's settlement payment "satisfies the Policies' definition of 'Loss.'" Ex. A at 16.[1] This Court should affirm that result.

AMC paid substantial premiums to purchase a tower of directors and officers and management liability ("D&O") insurance that covers any "settlements" of securities-related lawsuits. Midvale sold to AMC a $5 million excess policy (the "Midvale Policy" or "Policy") following form to the primary policy (the "Primary Policy") (collectively, the "Policies"). But when AMC settled a securities class

[1] "Ex." refers to Midvale's brief ("Mid.Br.") exhibits, "A___" to Midvale's appendix, and "B___" to AMC's appendix.

action lawsuit by making a substantial stock payment to the settling class, its insurers refused to cover that Loss. AMC has since settled with sixteen of the seventeen Defendants that it sued for coverage in this action – all except Midvale. B01547-50. Midvale has failed to honor its contractual obligations to cover AMC's payment of 6,897,018 shares of Class A common stock ("Common Stock") pursuant to a settlement agreement (the "Settlement Payment").

Midvale incorrectly claims that, because AMC paid that settlement in stock rather than cash, the Settlement Payment somehow did not meet the Policies' requirements. But the Policies cover the ***exact*** type of Loss that AMC suffered. "Loss" is specifically defined to include any "settlements" ***or*** "other amounts" that AMC "is legally obligated to pay." A0351 § II.(O). AMC's settlement meets both of these prongs, as it was a "settlement" (which is sufficient alone) and it also legally obligated AMC to pay stock worth $99.3 million to the plaintiff class. Nothing in the "Loss" definition or any other provision requires that settlements be paid with any particular form of compensation. Likewise, nothing in the Policies specifically precludes coverage for settlements paid with stock.

Unable to dispute this common-sense reading, Midvale twists the Policies into knots to support its preferred interpretation. Midvale emphasizes words that never appear therein, improperly links the word "settlements" with the word "pay," and

attempts to alter the "Loss" definition by reference to disparate policy provisions (which it also misinterprets). But even if Midvale could rewrite its Policy after a Loss (it cannot), Midvale ignores that companies routinely "pay" with stock, particularly in Delaware corporate transactions. Nor can Midvale avoid the fact that another portion of the "Loss" definition (the "Bump-Up Exclusion") uses the word "paid" to reference transaction consideration that routinely includes stock. Accordingly, the Superior Court properly held that the Policies "do[] not restrict coverage to cash payments or monetary amounts." Ex. A at 14.

Unable to prevail on the policy language, Midvale argues that AMC's Settlement Payment is not covered because it was merely a "reallocation of equity" that had "zero net impact" on AMC's balance sheet. Mid.Br. at 1-2. But, as the Superior Court recognized, Midvale's Policy "do[es] not condition coverage on a showing of economic harm or financial detriment." Ex. A at 17. Indeed, Midvale cannot point to anything in the Policies or Delaware law that requires AMC to show the balance sheet cost for any settlement. Regardless, even if such an extra-contractual showing were required, AMC's Settlement Payment ***did*** impose a substantial economic cost on AMC. AMC paid 6,897,018 shares of Common Stock to the class to satisfy its legal obligations under its settlement agreement. As required by basic accounting rules, AMC recorded a permanent $99.3 million

expense on its books for that Settlement Payment, which increased its net losses and accumulated deficit, and negatively impacted its financial health. AMC also indisputably lost a valuable corporate resource – it no longer had the ability to sell those shares for cash, exchange them for debt or use them in myriad ways for the corporation's benefit.

Finally, and critically, the Superior Court's decision in no way converts AMC's D&O insurance into a "funding source for a new stock issuance," nor will it lead to a host of hypothetical future harms. Mid.Br. at 3. The Settlement Payment was not a business transaction divorced from litigation, nor was it only "part" of a settlement. *Id*. It was the actual consideration paid by AMC to end a contentious, high-profile litigation that threatened AMC's business. This is exactly what a comprehensive D&O insurance program is designed to cover. This Court should affirm the Superior Court's decision granting summary judgment to AMC.

SUMMARY OF ARGUMENT

1. Denied. The Superior Court did not "misread" the plain language of the Policies (Mid.Br. at 3), but properly and fully applied it.

a. Midvale argues that its Policy only covers ***cash*** settlements, not settlements paid in stock. But this tortured reading is inconsistent with the Policies' plain terms, which never use the word "cash" and which cover "settlements" without any limitation or restriction. A0351 § II.(O). As the Superior Court rightly held, AMC seeks coverage for a "settlement[]" here. Ex. A at 13-14.

b. To avoid this, Midvale harps on the word "pay," ignoring the disjunctive "or" in the "Loss" definition, which permits recovery for any "settlements" ***or*** "other amounts" AMC "is legally obligated to pay." Regardless, AMC meets that second prong of the definition too, as AMC was legally obligated to make a Settlement Payment of 6,897,018 shares of AMC stock worth $99.3 million. Midvale next stretches the meaning of the word "pay" to include only transferring "money." Mid.Br. at 3. But that is contrary to common sense, dictionary definitions, Delaware law, and even the Policies' Bump-Up Exclusion, which all recognize that companies may "pay" with valuable assets, including stock. Indeed, Midvale's representative admitted

that, if AMC had sold the settlement shares for cash and used the proceeds to pay the settlement, that would be covered. *See* B00954 (118:5-119:22). Coverage does not disappear because AMC directly paid with securities.

c. Nor does the "structure and context" of the Polices convert the "Loss" definition into an exclusion for stock settlements. Mid.Br. at 3. As this Court has held, the Insuring Agreement language stating that Midvale shall pay Loss "on behalf of" AMC merely indicates that Midvale's coverage obligation arises once AMC becomes legally obligated to pay for Loss; it does not mean that Midvale cannot reimburse AMC after AMC makes payment in another form. *See AT&T Corp. v. Clarendon Am. Ins. Co.*, 931 A.2d 409, 420-21 (Del. 2007) (rejecting notion that coverage "turns entirely upon the matter of settlement structure"). Similarly, the Primary Policy's "Currency" provision confirms that Midvale must still cover a Loss, like AMC's, paid in a currency other than U.S. dollars. And Midvale's exhaustion provisions are unrelated provisions concerning attachment points for excess coverage. The Superior Court did not fail to read the Policy "as a whole" (Mid.Br. at 4); it analyzed each provision and rejected Midvale's forced interpretations. Ex. A at 15-17.

2. Denied. The Superior Court also did not "fail[]" to analyze Midvale's arguments regarding the Settlement Payment's "cost" to AMC. Mid.Br. at 4.

a. Rather, after substantial briefing and argument, the court correctly rejected Midvale's contention that AMC had to make an extra-contractual showing of harm – admittedly not required for cash payments – to get coverage under its Policy. The Superior Court properly held that: "The 'Loss' provision, and the rest of the Policies, do not condition coverage on a showing of economic harm or financial detriment. 'Loss' occurs anytime AMC makes a covered payment." Ex. A at 17.

b. In any case, AMC indisputably suffered permanent and significant financial detriment when it paid stock worth $99.3 million in settlement. Midvale misapplies basic accounting rules to suggest otherwise. Midvale overlooks AMC's income statement (which shows this loss as an expense) and ignores that this loss remains permanently on AMC's balance sheet through its accumulated deficit. Ernst & Young LLP ("EY"), AMC's independent financial auditors, and Kroll, LLC ("Kroll"), an independent valuation specialist, confirmed AMC's $99.3 million Loss, which did not simply vanish from its books or get offset when the shares were paid. Nor did the settlement merely reallocate AMC's ownership structure among AMC's shareholders. AMC itself paid out the settlement shares – and thus gave up a scarce and valuable asset – without receiving any cash or compensation in return.

c. Midvale boldly states that "[e]very court" that has addressed similar issues reached the same conclusion. Mid.Br. at 5. That is simply not true. Midvale cites only one published (and non-binding) decision, which relied on an improper analysis and an entirely different legal theory. By contrast, the Seventh Circuit has held that a $150 million stock settlement payment was a covered loss. *UNR Indus., Inc. v. Cont'l Cas. Co.*, 942 F.2d 1101, 1104-05 (7th Cir. 1981). Other authorities have held that non-cash settlements or settlements forgoing future payment streams are covered under similar language.

d. Despite Midvale's insistence otherwise, AMC's insurance claim satisfies the "core purpose" of D&O insurance and will not lead to perverse results. Mid.Br. at 5. AMC's D&O program covers the risk of litigation brought against AMC's executives, as well as securities claims brought against AMC. It is improper to deny coverage for a settlement, made to avoid such litigation risk, simply because there could be another future D&O claim. Nor will the Superior Court's decision turn D&O insurers into "investment banks." *Id*. AMC paid $99.3 million in stock to resolve a serious lawsuit; it did not issue that stock for ordinary business purposes or seek "financing" from its insurers for a corporate transaction. The Superior Court properly

focused on the facts and language before it, not hypothetical future claims. If Midvale wants to avoid such imaginary scenarios, it can draft policy language that specifically excludes them. But it may not rewrite AMC's Policies post-loss to avoid covering a "settlement[]" it plainly agreed to cover.

COUNTERSTATEMENT OF FACTS

A. AMC's Insurance Policies

AMC purchased a D&O insurance tower providing $100 million in coverage, in excess of a $10 million retention, for the policy period of January 1, 2022 to January 1, 2023. B00024-26. This included the Primary Policy, issued by XL Specialty Insurance Company ("XL"), and various excess policies. *Id*. Sixteen of seventeen insurers AMC sued below have settled, leaving only Midvale on appeal. B01547-50. Midvale provided $5 million in coverage, excess of $20 million, as part of a $15 million quota share layer. A0296-309. Midvale's Policy "follows form" to the Primary Policy's terms, conditions and definitions, unless stated otherwise. A0299 § 1.

Midvale does not dispute that its Policy covers the types of lawsuits at issue. The Primary Policy's Insuring Agreements state that "[t]he Insurer shall pay on behalf of [AMC] Loss" resulting from either an alleged "Securities Claim" against AMC or a Claim for a "Wrongful Act" against its indemnified directors and officers. A0348 § I.(B-C) (bold not included throughout); A0329. The Actions here involve both kinds of Claims.

The Primary Policy sets out a broad definition of "Loss," which means "damages, judgments, ***settlements***, pre-judgment and post-judgment interest or

other amounts . . . ***that any Insured is legally obligated to pay***" and defense costs, including class counsel's fees. A0351 § II.(O) (emphasis added); Mid.Br. at 7. Midvale's Policy explicitly states that it adopts the Primary Policy's "Loss" definition. A0300 § 3. Nothing in that definition – or in any other policy provision – states that "Loss" covers only cash settlements.

Another part of the same "Loss" definition, the Bump-Up Exclusion (not otherwise applicable here), states that "Loss" does not include "[a]ny amount which represents or is substantially equivalent to an increase in the consideration ***paid, or proposed to be paid***, by [AMC] in connection with" certain securities transactions. A0351-52 § II.(O)(5) (emphasis added). Multiple insurers, including the primary carrier here, have interpreted the reference to consideration "paid" in similar exclusions to include stock payments. *See infra* Section I.C.3.

The Primary Policy also contains a "Currency Provision" that confirms that settlements will be covered even if not paid by the insured in U.S. dollars:

> [I]f judgment is rendered, ***settlement is denominated or other elements of Loss are stated or incurred in a currency other than the United States of America***, payment of covered Loss due under this Policy, . . . will be made either in such other currency . . . , or, in the United States of America dollars . . . .

A0361 (emphasis added).

B. The Underlying Transactions and Litigation

After the COVID-19 pandemic negatively impacted AMC's liquidity and finances, retail investors bought significant amounts of AMC Common Stock in a "meme" stock movement, driving the price upwards. B00250-51. AMC used this opportunity to raise capital and reduce its debt by issuing more Common Stock, approaching the limit authorized by its Certificate of Incorporation ("Certificate"). *Id.*; B00351-55. Thereafter, AMC unsuccessfully sought shareholder approval to authorize more Common Stock. B00253-54; B00176-77; B00186-88.

Needing more capital to avoid potential bankruptcy, AMC created a new security, the AMC Preferred Equity Units ("APEs"). B00254-59. However, the APEs sold at a significantly lower price than Common Stock. *Id.* Given the APEs' discounted value (and weaker ability to generate capital), AMC scheduled a March 14, 2023 shareholder meeting and vote on a set of proposals seeking to (1) again increase the number of authorized shares AMC could issue and (2) effect a 1-for-10 reverse stock split of AMC's Common Stock (the "Proposals," which would convert the APEs into Common Stock). B00301; B00356-60. AMC needed the stock for "raising capital[,]" "expanding [its] business, acquisition transactions, [and] equity-based compensation," among other "corporate purposes." B00328.

To block these Proposals, AMC's shareholders served two books and records demands, followed by two shareholder class action complaints against both AMC and its directors and officers, which were later consolidated in the Delaware Court of Chancery (the "Consolidated Action") (collectively, the "Actions").[2] A0450-680; B00043-64. AMC indemnified its directors and officers. B00028.

The court entered an order that (1) allowed AMC to proceed with the vote on its Proposals, but (2) prohibited any amendment to AMC's Certificate pending a ruling by the court (the "Status Quo Order"). A0682-87. AMC investors voted in favor of the Proposals, but under that Order, AMC could not yet put those Proposals into effect. *Id.*; B00356-60.

C. The Settlement Agreement and Payment

Thereafter, the parties executed a Settlement Agreement (the "Settlement Agreement" or "Settlement"). B0073-163. The plaintiffs agreed to release all claims and dismiss the Consolidated Action, thus allowing AMC to proceed with its Proposals, and in exchange, AMC agreed to make a substantial "Settlement Payment" to the settling class (the "Class"). B00089-91. AMC agreed to pay one share of Common Stock for every 7.5 shares owned by record holders of Common

[2] The Actions constitute "Interrelated Claims" deemed to be one Claim made during the 2022-2023 policy period. A0350 § II.(K); A0357 § VI.(B).

Stock as of the Settlement Class Time (*i.e.*, the time after the reverse stock split, but before the conversion of APEs into Common Stock). *Id*. In court filings, the class plaintiffs explained that the Settlement was "one of the largest ***financial*** recoveries in a Delaware stockholder voting rights case," A0698 (emphasis added), and that it provides for "significant ***monetary*** value" to the Class, B00136 (emphasis added).

The Court of Chancery approved the Settlement on August 11, 2023. A0935-1046 (the "Approval Order"). On August 21, 2023, this Court rejected an objector's request for a stay pending appeal of the Approval Order (the "Supreme Court Order"), which allowed AMC to proceed with the Settlement. B00288-96. On August 28, 2023, AMC paid 6,897,018 shares of Common Stock to the Class (the "Settlement Shares" or "Shares"), thus satisfying its legal obligation under the Settlement Agreement. A1269.

D. AMC's $99.3 Million Loss

Under generally accepted accounting principles ("GAAP"), AMC incurred a $99.3 million expense and permanent business loss in making the Settlement Payment. B00643-74; B00727 (19:10-20:24); B00746 (94:17-95:3); B00762 (158:11-160:17); B00872-76 (208:1-214:16, 218:6-221:21).

In its first-quarter 2023 financial statements, AMC recorded the Settlement Payment as a contingent liability on its balance sheet and an "expense" on its income

statement, reflecting that it was a loss to the company. A1094; A1101; A1122; B00513-21; B00643-74; B00836-38 (61:17-70:11). Because the Settlement Payment was made only to a select Class (unlike a dividend), it was properly classified as an expense. B00514-16; B00655-56. AMC valued its Loss in each reporting period based on the estimated fair value of the Shares. B00513-53; B00657-72. In its third-quarter and year-end financial statements, AMC recorded a final "charge to other expense," which included an "estimated fair value of $99.3 million for the Settlement Payment." A1229; A1237; A1261; B00434; B00451; B00489; B00533-53; B00665-72.[3]

After paying the Settlement Shares, AMC removed or "extinguished" its contingent liability (which was now paid) and made an offsetting increase to additional paid-in capital ("APIC") (minus a negligible par value) on its balance sheet, which reflected the issuance of additional equity shares. B00648; B00665-71. But the "impact" was not "net-zero." Mid.Br. at 11. AMC's $99.3 million Loss remained on its balance sheet as a permanent loss through its accumulated deficit –

[3] Per standard accounting principles, AMC calculated the Settlement's $99.3 million value as of the day after the Supreme Court Order, when its Loss became final and no longer contingent. B00544-53; B00651-52; B00657-58; B00665.

which reflects the total amount by which its losses have exceeded its profits over time. B00648; B00665-71; B00762 (158:11-160:17).

AMC's accounting treatment was approved contemporaneously by EY, AMC's independent financial auditors, and Kroll, an independent valuation specialist. B00545; B00555-62; B00431-32.

Midvale does not dispute that AMC accurately accounted for the Settlement Payment. Midvale's economic expert testified that he had no reason to believe that AMC's accounting was "incorrect." B01196 (98:20-25). Midvale's accounting expert likewise stated that he was not challenging "AMC['s] accounting treatment." B01228 (101:10-102:13).

E. The Superior Court Decision

On February 28, 2025, the Superior Court granted summary judgment to AMC and against Midvale, correctly ruling that the Settlement Payment constituted a covered "Loss" under the Policies' clear terms. Ex. A at 14.

The Superior Court held that the definition of "Loss" in the Primary Policy "does not restrict coverage to cash payments or monetary amounts." *Id*. Countering Midvale's argument that stock is not "money" that can be "paid," the Superior Court found that Delaware courts have specifically recognized "the close similarity between stock and cash money." *Id.* at 13-14 (citing *In re Activision Blizzard, Inc.*

S'holder Litig., 124 A.3d 1025, 1053 (Del. Ch. 2015) (stating "'[s]tock is a form of currency that can be exchanged for other forms of currency or used for a variety of corporate purposes'")). The court thus declined to "insert a restricting clause into the Policy" providing "that only cash settlements are covered 'Loss.'" Ex. A at 14.

Other Policy provisions also supported that "stock can be 'paid.'" *Id*. at 15. The Superior Court noted that Delaware courts have reviewed similar bump-up exclusions in other matters involving "transactions in which stock, not cash, is exchanged." *Id*. It thus reasoned that, because the Bump-Up Exclusion's "use of the word 'paid'" can "apply to stock transfers," that "necessarily implies that stock can be an amount AMC 'pay[s.]'" *Id*. As "words take the same meaning in different parts of the same contract," that "creates covered 'Loss.'" *Id*. at 15, 15 n.81.

The Superior Court analyzed the Policy as a whole, properly rejecting Midvale's "technical, linguistic arguments." *Id*. at 16-17. It concluded that the Currency Provision reflects "the parties' awareness that 'Loss' payments may come in many forms and require a valuation for insurance indemnity purposes." *Id.* at 15-16. The court thus dismissed Midvale's suggestion that the absence of a provision defining how to value stock meant that stock payments were not covered. *Id*. at 16 n.83. The Superior Court also rejected Midvale's argument that Midvale cannot pay stock "on behalf of" AMC, finding that the Policies "obligate [Midvale] to indemnify

AMC for covered 'Loss,' but do not *require* [Midvale] to pay that 'Loss' directly." *Id*. at 16. Finally, the Court determined that Midvale's exhaustion provision addressed only "attachment points for excess coverage" and "does not modify" the Policies' "Loss" definition. *Id*. at 17 n.87.

The Superior Court did not fail to analyze the parties' accounting arguments. Mid.Br. at 4. Rather, it rejected Midvale's contention that AMC had to make an extra-contractual showing to trigger coverage. *Id.* at 17. The court concluded that "[t]he 'Loss' provision, and the rest of the Policies, do not condition coverage on a showing of economic harm or financial detriment." *Id.* Instead, "'Loss' occurs anytime AMC makes a covered payment." *Id.* Because the "'Loss' definition is satisfied by the Settlement," the Court concluded, "coverage under the Policies is invoked, regardless of AMC's economic harm." *Id.*

The Superior Court held: "The Settlement Payment includes an amount of shares, which AMC was legally obligated to pay under the terms of the Settlement. The Settlement payment, including stock, therefore satisfies the Policies' definition of 'Loss,' and invokes coverage under the Policies." *Id.* at 16-17.

ARGUMENT

I. THE SETTLEMENT PAYMENT IS COVERED UNDER THE POLICIES' PLAIN TEXT

A. Question Presented, Affirmatively Stated

The Superior Court correctly held that Midvale must cover AMC's stock Settlement Payment, as the plain definition of "Loss" includes ***any*** "settlements" ***or*** "other amounts" AMC is "legally obligated to pay," and the Policies contain no restrictions limiting settlements to only cash payments.

B. Scope of Review

Because interpretation of an insurance policy is a question of law, the Court's review is *de novo*. *RSUI Indem. Co. v. Murdock*, 248 A.3d 887, 905 (Del. 2021).[4]

Under Delaware law, courts look to the "ordinary and usual meaning" of policy language and interpret policy provisions "as providing broad coverage to align with the insured's reasonable expectations." *Id.* at 905-06. As Midvale recognizes (Mid.Br. at 19), Delaware courts may not "rewrite" insurance policies to impose more restrictive terms not otherwise included therein. *See, e.g.*, *Moore v. Home Indem. Co*., 274 A.2d 705, 707 (Del. Super. 1971).

[4] The parties agree that Delaware law applies to this D&O coverage dispute, as AMC is incorporated in Delaware. *Id*. at 900-01.

C. Merits of the Argument

1. The Settlement Constitutes Loss Under the Policies' Terms

The "plain and unambiguous policy text" does not foreclose AMC's coverage demand, as Midvale suggests (Mid.Br. at 15), but mandates coverage here.

The Superior Court correctly held that AMC's Settlement Payment falls squarely within the scope of the "Loss" definition – which expressly includes "***settlements***" "***or*** other amounts . . . that [AMC] is legally obligated to pay." A0351 § II.(O) (emphasis added). Nobody disputes that AMC paid 6,897,018 shares of Common Stock to the Class for a "settlement." That fact alone establishes that it is a covered Loss. AMC's Settlement Payment was also an "amount" that AMC was "legally obligated" to pay. Midvale cannot dispute that AMC's Settlement Agreement imposed on AMC a "legal obligation" to pay 6,897,018 – an "amount" – of Shares in settlement to the Class.

That the Settlement was paid in stock – and not cash – makes no difference. Nothing in the definition restricts "Loss" to cash payments or modifies or limits the reference to "settlements." Nor does anything in the Policies expressly disqualify a stock payment from coverage. There is no exclusion barring coverage for payments made with "stock" or "securities," even though the Policies' drafters knew how to

reference securities when intended, as they explicitly cover and define "Securities Claim[s]." *See* A0329; A0348.

2. Midvale Distorts the Word "Pay," Ignoring That Stock Can Be Paid

Notably, Midvale avoids referencing AMC's stock payment as a "settlement." Instead, Midvale focuses on the word "pay," and on words like "money" that are not used to define Loss. Regardless, the Superior Court refused to rewrite the Policies to insert nonexistent "restricting" terms, post-loss. Ex. A at 14.

Midvale first suggests that a covered "settlement" must also be an "amount[]" AMC is "legally obligated to pay." Mid.Br. at 15. But that reading renders the word "settlements" meaningless by turning "amounts" that AMC is "legally obligated to pay" into the only component of Loss. It also ignores the disjunctive word "or," which makes clear that either option ("settlements" or "other amounts") is a type of covered Loss. *See Gonzalez v. State*, 207 A.3d 147, 155 (Del. 2019). And Midvale's interpretation flouts the rule that "qualifying words and phrases" "refer solely to" the last word immediately preceding them. *Daniel v. Hawkins*, 289 A.3d 631, 662, 665 (Del. 2023). Thus, because "amounts" directly precedes "legally obligated to pay," the latter phrase applies only to "amounts," not to "settlements."

Regardless, AMC was also "legally obligated to pay" the Settlement Payment. To avoid this, Midvale targets the word "pay," and insists that "stock is not 'paid'"

– only "issued, bought, or sold." Mid.Br. at 16. But that does not comport with commercial reality. Corporations ***routinely*** make payments using stock, including in merger transactions or for employee compensation. *See Americas Mining v. Theriault*, 51 A.3d 1213, 1219, 1228, 1249-50 (Del. 2012) (corporation "agreed to pay" "newly-issued" shares in merger). GAAP supplies accounting rules for "share-based payment transactions." B00654-55. Even Midvale's expert agreed, testifying that "many, many cases involve the payment of securities." B01538 (12:14-15).

Understanding this, Delaware courts have specifically recognized that settlements can be paid in stock. *See, e.g.*, *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 3540662, at *2 n.3 (Del. Ch. June 5, 2015) (company had "option to pay" settlement in "shares of [its] common stock"); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Freeport-McMoRan, Inc.*, 767 F. Supp. 568, 569 n.2 (D. Del. 1991) (settlement included $11,570,437 "paid" in policyholder's "own stock").

Dictionary definitions do not support Midvale either. Midvale ignores multiple definitions presented below that define "pay" more broadly than merely using "money." In fact, "pay" means to "give in return for goods or service," "discharge indebtedness for," or "make compensation." *Pay*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/pay (last visited July 17, 2025). It also means "to settle" a "debt [or] obligation" by "transferring money or

goods" or "doing something." *Pay*, https://www.dictionary.com/browse/pay (last visited July 17, 2025). Even in the insurance context, "pay" means "giving ***something of value*** and its acceptance in satisfaction." *See, e.g.*, *Sauk Cnty. v. Emps. Ins. of Wausau*, 240 Wis. 2d 608, 616-17 (Wis. Ct. App. 2000) (emphasis added) (declining to "confin[e] 'payment' to a money payout"). Under these definitions, stock can be "paid" – regardless of whether it was "newly-issued" (Mid.Br. at 33).

To avoid these conclusions, Midvale cites the definition of "pay" in Black's Law Dictionary because it mentions "money." Mid.Br. at 15-16. But Midvale ignores that Black's broadly defines "money" to include "[a]ssets that can be easily converted to cash." B01544 (*Money*, Black's Law Dictionary (12th ed. 2024)). Black's also defines "payment" in common-sense terms, as "perform[ing] an obligation" through "the delivery of money ***or some other valuable thing***" to "discharge . . . the obligation." *Payment*, Black's Law Dictionary (12th ed. 2024) (emphasis added).[5] The word thus encompasses more than cash alone.

But even if Midvale's reliance on the word "money" were proper, stock and securities can still fall within that umbrella. *See, e.g.*, *United States v. Harmon*, 474 F. Supp. 3d 76, 89-90 (D.D.C. 2020) ("money" means "medium of exchange" or

[5] A verb and its noun have related meanings. *Cf. Fortis Advisors LLC v. Allergan W.C. Holding Inc.*, 2019 WL 5588876, at *6 n.56 (Del. Super. Oct. 30, 2019).

"method of payment"); *In re A.M.D.*, 78 P.3d 741, 746 (Colo. 2003) (en banc) ("'monetary' refers to" cash and "money markets, mutual funds, stocks, and bonds"); *Campbell v. St. Joseph's Indus. Sch.*, 53 A.2d 768, 772 (Del. Ch. 1947) (interpreting will, holding that "money" included "stocks, bonds and building and loan shares").

The Superior Court agreed, recognizing, under Delaware caselaw, the "close similarity between stock and cash money." Ex. A at 14. The court cited to *Activision*, which held that "[s]tock ***is a form of currency*** that can be exchanged for other forms of currency or used for a variety of corporate purposes," like "paying off debts, acquiring assets, compensating employees, or acquiring other entities." *Id.* (quoting 124 A.3d at 1053) (emphasis added). Indeed, AMC often referred to its equity as "currency," as it could be exchanged for cash. A1218; B00672-73; B00857 (146:10-18); B00867-88 (185:1-19, 187:7-191:17).

Midvale fails to distinguish *Activision*. Its discussion of "corporate-level or stockholder-level" injuries and rights that "travel with" shares of stock (Mid.Br. at 18) only confirms that stock can be "an asset of the corporation." *Activision*, 124 A.3d at 1053. Midvale argues that *Activision* merely recognized that "stock can be exchanged for money, not that stock *is* money." Mid.Br. at 18. But whether stock "is" money is irrelevant, as the Policies do not require AMC to pay any "money" to

invoke coverage. Rather, *Activision*, and the Superior Court, recognized that stock is ***like money***, *i.e.*, "a form of currency" that can be "paid." Ex. A at 14-15.

Midvale similarly errs in relying on *Wisconsin Central Ltd. v. United States*, 585 U.S. 274, 276-78 (2018), which concerned the term "money remuneration" in the Railroad Retirement Tax Act of 1937. First, that phrase appears nowhere in the Policies. *Wisconsin Central* also construed the word "money" based on its "ordinary meaning" ***in 1937***. *Id*. at 277. "[D]efinitions of money from 1937 are irrelevant" today. *See Harmon*, 474 F. Supp. 3d at 91 n.8 (rejecting *Wisconsin Central*'s "original-meaning approach" to interpreting "money").

Nor does it matter whether the IRS or AMC would accept stock for taxes or movie tickets. Mid.Br. at 16-17. Either can choose what form of payment they accept and retail sellers may reject payment in wire transfers, personal checks, or Euros. Yet Midvale cannot pretend those are not types of "payment" or "money."

Finally, Midvale concedes (Mid.Br. at 17) that insurers often provide "monetary payments" to insureds that incur non-cash losses, such as from a "collision" or "burned home." Midvale's cited definition of "insurance" does the same. *Id*. at 16 (*Insurance*, Black's Law Dictionary (12th ed. 2024)). Both prove AMC's point: insurance protects against the risk of lost assets, not just lost cash.

3. The Bump-Up Exclusion Confirms Stock Can Be Paid

The Superior Court's decision is also supported by the Bump-Up Exclusion, an exclusion in the "Loss" definition for amounts representing an increase in the "consideration paid, or proposed to be paid," in certain transactions. A0352 § II.(O)(5). Other insurers – including XL, the primary carrier here – have invoked similar exclusions to bar coverage in cases involving stock-for-stock transactions, where the consideration "paid" consisted of a company's stock. *See Viacom Inc. v. U.S. Specialty Ins. Co.*, 2023 WL 5224690, at *1, 4-5 (Del. Super. Aug. 10, 2023); *Northrup Grumman Innovation Sys., Inc. v. Zurich Am. Ins. Co.*, 2021 WL 347015, at *3-6 (Del. Super. Feb. 2, 2021). Those insurers necessarily presumed, and thereby admitted, that the stock exchanged therein was "paid" between the parties.

Viacom and *Northrup Grumman* illustrate that point. *Viacom* involved a transaction where "[a]ll Viacom shares were automatically converted into CBS common stock" at a set exchange ratio. 2023 WL 5224690, at *2, 7. Several insurers, including XL, the Primary Policy's drafter, disputed coverage under their bump-up exclusion – which (as here) barred coverage for settlement amounts representing the amount by which the price or consideration "paid or proposed to be paid" for a transaction was increased. *Id.* at *2-5. And in *Northrup Grumman*, certain insurers invoked their bump-up exclusion in the context of a "reverse

triangular stock-for-stock merger." 2021 WL 347015, at *4, 6. That exclusion (like this one) also applied where claims alleged the price or consideration "paid" was inadequate. *Id*. at *19. By relying on that exclusion in the context of stock-based transactions, these insurers all agreed that stock was "paid."

Midvale strains to offer a contrary interpretation. It claims the Exclusion cannot shed light on "the meaning of the word 'pay'" in other policy provisions – and that the present tense "pay" is different from the past tense "paid." Mid.Br. at 25-27. But that ignores the bedrock rule that words "should be given the same meaning when [] used in different places in the same contract," regardless of any difference in tenses. *Comerica Bank v. Glob. Payments Direct, Inc.*, 2014 WL 3567610, at *11 (Del. Ch. July 21, 2014); *Fortis*, 2019 WL 5588876 at *6 n.56.[6]

Midvale next claims that reading "pay" to include non-cash consideration would create "surplusage," because the Exclusion refers to amounts "substantially equivalent to" the inadequate "consideration paid" in a transaction. Mid.Br. at 26. But amounts "substantially equivalent" to an increase in transaction "consideration" refer to amounts that allegedly should have been paid in the original purchase price,

[6] Midvale's argument would also invert the rule that coverage grants in insurance policies are construed broadly and exclusions narrowly (*RSUI*, 248 A.3d at 906), by applying a more restrictive meaning for "pay" in the coverage grant (cash only) than in the Exclusion (cash or stock).

not the type of deal consideration (cash vs. non-cash). Plainly, a payment made to settle a securities lawsuit alleging an inadequate deal price cannot literally be an increase in deal consideration, because the deal is already complete. That amount is thus "substantially equivalent to" that deal consideration. Those words do not modify the form or manner in which Loss must be "paid."

Finally, AMC did not "waive" its argument on the Bump-Up Exclusion. Mid.Br. at 24 n.6. Both parties submitted supplemental briefing on that issue at the Superior Court's request. *See* A1600-01; A1604-19. And the Superior Court expressly addressed the parties' arguments in its Order. Ex. A at 15. Thus, the issue was "fairly presented to the trial court . . . for review." Del. Supr. Ct. R. 8. Moreover, the meaning of the word "pay" is not a new issue; AMC simply cited another example of policy language supporting its consistent position that one can "pay" using stock. *See Mundy v. Holden*, 204 A.2d 83, 84-85 (Del. 1964) (on appeal, "no acceptable reason" not to consider "additional reason in support of a proposition urged" earlier).[7]

[7] Midvale's cases are inapposite. *See In re Mindbody, Inc., S'holder Litig.*, 332 A.3d 349, 407-10 (Del. 2024) (issue raised only in "last footnote" on "last page" of "last post-trial brief"); *Matrix Parent, Inc. v. Audax Mgmt. Co., LLC*, 319 A.3d 909, 932 n.198 (Del. Super. 2024) (belated request for jurisdictional discovery); *CRE Niagara Holdings, LLC v. Resorts Grp., Inc.*, 2021 WL 2110769, at *6 (Del. Super. May 25, 2021) (raising issue previously abandoned).

4. No Other Policy Provisions Preclude Coverage

The Policies' "structure and context" only confirms Midvale's coverage obligations. Mid.Br. at 19. After reviewing the cited provisions (including the Bump-Up Exclusion above) and reading the Policies "as a coherent whole," *id.*, the Superior Court agreed. Ex. A at 14-17.

Midvale first urges that the words "pay on behalf of" in the Insuring Agreements require Midvale to pay AMC's Loss directly to the Class, which Midvale cannot do with new AMC stock. Mid.Br. at 20-21. But as the Superior Court understood (Ex. A at 16), under Delaware law, that language merely indicates that a policyholder "***need not*** pay for Loss first," or at all, before seeking insurance reimbursement. *See, e.g.*, *Sycamore Partners Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 WL 4130631, at *19 (Del. Super. Sept. 10, 2021) (emphasis added). In fact, the "pay-on-behalf-of" language reinforces that the insurer's coverage duty arises as soon as the policyholder "becomes 'legally obligated to pay,'" regardless of whether or when the policyholder itself (or a third party) pays the injured party:

> [T]he Policies' plain language ***does not require*** Sycamore to pay for Loss personally (or at all). . . . [A] ***Loss would not lose its status as Loss if Sycamore or someone else happened to pay for [] it before the Insurers provided coverage***.

Id. at *19-20 (emphasis added).

Accordingly, Midvale cannot cast *Sycamore* as requiring that Midvale pay first. Mid.Br. at 21. That case addressed whether the policyholder should lose coverage because it used external sources (rather than its own funds) to satisfy its liability (thus, the claimant was already paid); the court said no, because the policyholder had the ultimate obligation to pay. *Sycamore*, 2021 WL 4130631, at *19-22. Thus, while pay-on-behalf-of language ***permits*** a policyholder to seek reimbursement from its insurer before it pays for any Loss, it does not ***prohibit*** a policyholder (or an outside party) from paying the claim in the first instance. Midvale's corporate representative agreed, admitting that Midvale can (and does) reimburse policyholders who pay Loss first under similar policies. B00936 (45:10-46:10); B00953 (114:22-115:4).

Midvale is also wrong that the words "pay on behalf of" require any particular form of payment. This Court has said the opposite, holding that coverage under a pay-on-behalf-of policy depends on "economic substance," rather than "transactional form" or "settlement structure." *AT&T*, 931 A.2d at 420-21 (unnecessary to have consent judgment entered against directors before third party paid settlement; directors with obligation to pay still incurred Loss). Here,

Midvale's coverage obligation arose when AMC was "legally obligated" to pay the Settlement, regardless of how or in what form AMC eventually made that payment.[8]

Midvale finds no support in the Currency Provision either. Mid.Br. at 22. Instead, as the Superior Court held (Ex. A at 15-16), that provision proves that the Policies contemplate AMC paying Loss first, with subsequent reimbursement by Midvale. The Currency Provision states that Midvale may pay in U.S. dollars where "***settlement is denominated*** or other elements of Loss are stated or incurred in a ***currency other than***" U.S. dollars. A0361 (emphasis added). This makes sense only if Midvale must reimburse AMC for the dollar value of obligations that AMC first incurs directly. It also confirms that Loss may be denominated in ***any*** currency "other than" U.S. dollars, not just "foreign" currency. *Id.*; Mid.Br. at 22. That includes stock, which "is a form of currency." *Activision*, 124 A.3d at 1053. Nor does the provision provide a "meticulously detail[ed] procedure" for conversion of foreign currencies; it just references a standard published exchange rate. Mid.Br. at 22-23; A0361. The "absence of express terms" for converting stock-based Loss

[8] *Liggett Group, Inc. v. Affiliated FM Insurance Co.*, 2001 WL 1456853 (Del. Super. Sept. 12, 2001), *aff'd sub nom. Liggett Group, Inc. v. Ace Prop. & Casualty Insurance Co.*, 798 A.2d 1024 (Del. 2002), cited by Midvale, similarly held that, under pay-on-behalf-of policies, the insurer "owes [the policyholder] payment as incurred." *Id.* at *3 (under North Carolina law).

"does not mean the parties intended to exclude" that kind of Loss. *Quereguan v. New Castle Cnty.*, 2006 WL 1215193, at *8 (Del. Ch. Apr. 24, 2006).[9]

Midvale also incorrectly contends that its Policy's exhaustion provision excludes Loss not made in "legal tender." Mid.Br. at 23-24. However, as the Superior Court correctly found, that provision applies only to "attachment points for excess coverage," which relate to exhaustion of underlying insurers' coverage limits. Ex. A at 17 n.87. It "does not modify the definition of 'Loss' under the Policies" or impact Midvale's direct payment obligations here. *Id*. Nor do the Policies ever define "legal tender" – let alone restrict that term to exclude stock. Mid.Br. at 23.[10]

5. Caselaw Supports Coverage for Non-Cash Settlements

Courts across the country support coverage for non-cash settlements like AMC's. The Seventh Circuit ruled decades ago that a $150 million stock settlement payment was a covered loss. *UNR*, 942 F.2d at 1104-05. *UNR* reasoned that: (1) the insured had to pay a sum certain (stock with a set market value), (2) in satisfaction of asbestos claimants' claims, and (3) the order confirming it was final.

---

[9] The statement that "Loss and other amounts under this Policy" are "expressed and payable" in U.S. currency (Mid.Br. at 8, 22; A0361) merely refers to Midvale's obligation to pay its insureds in U.S. dollars. If all settlement amounts had to be expressed in U.S. currency, the Currency Provision would be meaningless, as there would be no need for conversion, even for foreign currency.

[10] Midvale represented to the Superior Court that, if the Settlement was covered and its value was not zero, its Policy would be exhausted. A1553; A1557.

942 F.2d at 1104-05. The court held: "Under any definition of judgment or settlement, this qualifies. Having suffered an adverse judgment or settlement, UNR has suffered a 'loss' within the meaning of the [Policy]." *Id*.

Similarly, in *Earth Elements, Inc. v. National American Insurance Co*., a California appeals court held that surrendering a counterclaim in settlement was an insured loss, as there was no "analytical distinction" between settling for "money" or any other "intangible item" that is "equally capable of being evaluated." 48 Cal. Rptr. 2d 399, 401-02 (Cal. Ct. App. 1995).

Other cases hold that settlement payments involving future benefits – which cannot be paid directly or immediately by the insurer, like stock – are still covered. In *International Insurance Co. v. Johns*, the Eleventh Circuit held that reducing the length of a consulting agreement in settlement was a "loss" under a pay-on-behalf-of policy. 874 F.2d 1447, 1452 n.9, 1454-55 (11th Cir. 1989). Although the reduction in terms was not an "out-of-pocket loss," the forgoing of "future payments" – just like AMC suffered – was nonetheless insurable. *Id*.

Finally, in *Sauk*, an agreement to indemnify another party for projected cleanup costs as consideration for a settlement was covered, even though "no sum of money" was paid out. 623 N.W.2d at 177-78; *see also In re Ill. Nat'l Ins. Co.*, 685 S.W.3d 826, 833, 838, 840 (Tex. 2024) (settlement payable only from insurance

recoveries, with no direct payout by policyholder, covered because policies "are assets" of insured).

6. Midvale's Hypothetical Fears of Abuse Are Unfounded

Unable to find support in the Policies, Midvale complains that the Superior Court's ruling would transform D&O insurance into a corporate funding mechanism and harm individual directors. Mid.Br. at 27-29. Midvale's parade of horribles misses the mark.

First, D&O insurance, in a comprehensive program like AMC's, protects executives from non-indemnifiable claims, but also protects the corporation from securities claims and claims for which it indemnifies executives. A0348. Providing coverage under the latter two protections accords with the Policies' purposes and plain terms.

Midvale next offers, in its own words, "absurd scenario[s]" regarding perceived harm to executives. Mid.Br. at 28. Midvale speculates that covering AMC's Loss would force directors and officers to accept stock as indemnification or engage in "open-market stock transactions." *Id.* However, Midvale ignores that executives are routinely paid with stock (and indemnification depends on internal agreements or laws not at issue here). Further, coverage for stock settlements would not "deplet[e]" D&O insurance any more than coverage for cash settlement

payments would on the same claim. *Id.* Regardless, since AMC indemnified its directors and officers here, its stock payment actually ***did*** "redound to their benefit." *Id*. at 27.

Nor is there any basis for Midvale's claim that the Superior Court's ruling would "convert" D&O policies into "corporate financing tool[s]." *Id.* at 28. AMC simply seeks coverage for a Settlement that resolved a contentious litigation – not to finance new ventures absent an otherwise-covered claim. Further, if Midvale worries about "incentiviz[ing]" stock-based settlements, nothing stops it from revising future policies to exclude such payments.[11]

[11] Midvale's authority is irrelevant. It cites cases involving interpretation of policy provisions not applicable here simply because insurers prevailed in D&O disputes. *Id.* at 29.

II. MIDVALE'S ECONOMIC HARM ARGUMENT FAILS

A. Question Presented, Affirmatively Stated

The Superior Court correctly held that the Policies do not "condition coverage" of AMC's stock Settlement Payment on an extra-contractual showing of economic harm (Ex. A at 17); regardless, AMC incurred significant harm in making the Settlement Payment.

B. Scope of Review

The Court's review is *de novo*. *Supra* Section I.B.

C. Merits of the Argument

Midvale contends that, even if stock payments are covered, because the Settlement Payment involved "new" equity, it cannot constitute Loss because it cost AMC "nothing." Mid.Br. at 30-31. However, as the Superior Court correctly held (Ex. A at 17), the Policies require no additional showing of "cost" to AMC or "depletion of assets" for a non-cash settlement. Mid.Br. at 30-31. And even if that extra burden existed here, AMC's stock payment indisputably ***did*** cause AMC harm.

1. Midvale's "Cost" Requirement Has No Basis in the Policies or Delaware Law

The Superior Court correctly held that the Policies do not "condition coverage" on an extra-contractual showing of financial detriment. Ex. A at 17. The

court recognized that "'Loss' occurs anytime AMC makes a covered payment," and coverage exists "regardless of AMC's economic harm." *Id.*

Midvale nevertheless contends that, even if its Policies covered "transfers of existing non-monetary assets," they do not cover "new equity" like the Settlement Payment. Mid.Br. at 31. To support this, Midvale distorts the word "pay" to create non-existent requirements that AMC must "relinquish something of ***existing*** value" and "suffer a corresponding depletion of assets." *Id*. (emphasis added). But nothing in the "Loss" definition mentions "value" or "assets" at all – let alone requires AMC to show any "relinquish[ment]" or "depletion" to establish coverage. Moreover, as AMC has shown, various cases hold that insurance applies even when a policyholder gives up something of intangible or ***future*** value. *See, e.g*., *Earth Elements*, 48 Cal. Rptr. 2d at 401-02; *Johns*, 874 F.2d at 1454-55.

Midvale also repeats arguments regarding the Policies' "structural features." Mid.Br. at 33. Midvale claims that the Policies require Midvale to "pay on behalf of" AMC with newly-issued AMC stock, which it "physically cannot" do. *Id*. But as explained, nothing in the Policies requires Midvale to pay AMC's Loss directly using AMC stock, let alone "issue" that stock. *Supra* Section I.C.4.

Further, Delaware law rejects the notion that Loss under a "pay-on-behalf-of" policy requires an "out-of-pocket cost." Mid.Br. at 32. Both *AT&T* and *Sycamore*

rejected the argument that, because a cash-strapped policyholder paid a settlement using third-party funds, it suffered no compensable loss. *AT&T*, 931 A.2d at 414-15, 420-21; *Sycamore*, 2021 WL 4130631, at *19-20. Rather, because coverage attaches once "an insured faces a legal obligation to pay," it was irrelevant whether the policyholder paid a settlement "personally (or at all)," or incurred a "business 'loss'" in making that payment. *Sycamore*, 2021 WL 4130631, at *19-22.

Midvale's argument collapses against those principles. Midvale could not complain if AMC had paid the same value in cash. Indeed, Midvale's representative agreed that AMC would have suffered Loss if it made the Settlement Payment in two steps: (1) issuing and selling the Shares in the market, then (2) paying the Class with the cash proceeds. B00954 (118:5-119:22). Midvale cannot avoid coverage because AMC reached the same result in a single step.

Finally, Midvale ignores that the Policies define "Loss," so any concept of economic harm – to the extent at all required – is already inherent therein. Any "settlements" or amounts AMC is "legally obligated to pay" encompass insurable harm, so long as they are incurred on behalf of insureds. Midvale cannot rewrite the "Loss" definition now to exclude "newly-issued stock," or require AMC to prove some other "cost" to establish "Loss." Mid.Br. at 33.

2. The Settlement Payment Caused AMC Economic Harm

Regardless, although not required by the Policies, AMC has indisputably suffered economic harm in making the Settlement Payment. AMC's financials reflect that AMC incurred a permanent business loss, which hurt its profitability and reduced its economic position. AMC also lost the opportunity to use the Settlement Shares for valuable corporate purposes.

i. AMC Incurred a $99.3 Million Loss

AMC incurred a loss from the moment it became legally obligated to pay the Settlement Shares.[12] As required by GAAP, AMC initially recorded the Settlement Payment as a contingent liability on its balance sheet, because it was not yet paid. B00649-62. It also recorded it as an "expense" on its income statement (here, its Statement of Operations), and in the Other Expense (Income) table in its financials, just as it would with any cash expense. *Id*.; A1094; A1101; A1122; B00514-21. That expense had a final "estimated fair value of $99.3 million." *See* A1261; B0665-71.

Recording an expense reflected that AMC had "us[ed] up" an "economic benefit[]" in agreeing to pay (and paying) the Settlement obligation. B00647-50;

[12] The Settlement Payment's financial "cost" to AMC was explained in detail by Michael Haines, AMC's Vice President of Financial Reporting, and AMC's accounting expert, a CPA with 30 years of experience. *See* B00039; B00627-28; B00643-74; B00727 (19:10-20:24); B00746 (94:9-95:3); B00762 (158:11-160:17); B00836-38 (61:17-70:11); B00872-76 (208:1-214:16, 218:6-221:21).

B00660-61; B00667; B00670. This increased AMC's net losses on its income statement and accumulated deficit on its balance sheet, which "adversely impacted AMC's profitability," and caused "a deterioration in AMC's financial condition." B00665-71. An accumulated deficit means a company "has generated net losses that have the effect of reducing [its] equity capital." B00648. Those effects were "detrimental to the company" and "permanent." B00837 (65:16-68:25). AMC's Settlement Loss and expense remains "forever" in its financials through its accumulated deficit. B00837 (67:3-8); B00853 (132:15-21); B00872-76 (208:1-214:16, 218:6-221:21).

Neither Midvale nor its experts challenged this accounting treatment, which was approved contemporaneously by AMC's independent financial auditors and valuation specialist. *See supra* at 15. It reflects quintessential economic harm.

ii. Midvale Misreads AMC's Financial Statements

Unable to dispute AMC's accounting, Midvale selectively ignores it. Midvale disregards AMC's income statement, even though that is where AMC "***record[s] losses***." B00875-76 (219:23-221:21) (emphasis added). The income statement "tells the world how you're doing, are you making money, are you losing money, what are your revenues, what are your expenses." *Id.* Midvale's accounting expert

agreed that one must review a company's full set of financial statements, including its income statement, to see its "losses." B01213 (42:16-44:10).

Midvale also misreads AMC's balance sheet, claiming the Settlement's "net impact" was "zero." Mid.Br. at 34. That is incorrect. On its balance sheet, AMC extinguished the contingent liability after paying the Shares (and satisfying its obligation), just as it would after paying a cash Settlement, and in turn, recorded a corresponding increase to its equity, in the form of APIC (additional paid-in capital). B00665-74. AMC also continued to record a loss via a permanent increase to its accumulated deficit, which reflected cumulative losses. *Id*. However, those two balance sheet items show different things. Increasing AMC's accumulated deficit showed a ***loss*** to AMC; by contrast, APIC simply shows the value of the new Shares that were paid out. B00648. Although APIC is recorded as "equity," it has nothing to do with a company's gains or losses. Increasing APIC was "not a gain" that "offset" or "reverse[d]" AMC's permanent loss, especially with AMC receiving no cash influx in return for the Shares. B00872-76 (208:1-214:16, 218:6-221:21); B00665-74. Even Midvale's accounting expert agreed, rejecting the idea that "reporting [APIC] somehow benefited the company economically." B01218 (61:14-22).

Midvale similarly errs in claiming that the Settlement simply "transferred ownership" of AMC's equity from one set of shareholders to another. Mid.Br. at 31. AMC never took existing shares from any investors to redistribute to others. B00698-99. AMC suffered a Loss because it paid the Settlement from its own coffers, regardless of how ownership percentages shifted as a result. Similarly, the analogy in the Court of Chancery's Approval Order, comparing AMC's equity to slices in a pie (Mid.Br. at 11, 34-35), only describes the Settlement's post-payment effect on ***investors***, not the loss to ***AMC***. Midvale's comparison to a stock split is likewise inapt. Mid.Br. at 32. A split involves equally dividing the current shareholders' outstanding ownership, while the Settlement (like a cash settlement) paid company assets to only a select Class. Whether "ownership rights" were "reconfigur[ed]" after the Settlement has nothing to do with AMC's Loss. *Id*.[13]

iii. The Settlement Payment Deprived AMC of Valuable Corporate Opportunities

Midvale also ignores the opportunity costs that AMC incurred from making the Settlement Payment. In paying out 6,897,018 shares to satisfy its Settlement obligations, AMC lost the chance to use those Shares for the corporation's benefit.

[13] Nor is it relevant if AMC "received a benefit" from the Settlement. Mid.Br. at 34 n.8. That is true of every settlement. If that prevented coverage, no settlement would qualify, and coverage would be illusory. *See First Bank of Del., Inc. v. Fid. & Deposit Co. of Md.*, 2013 WL 5858794, at *8-9 (Del. Super. Oct. 30, 2013).

Public companies like AMC routinely issue and sell stock to raise capital, reduce debt, and fund operations or initiatives. *Activision*, 124 A.3d at 1053 (stock is "an asset of the corporation"). Even Midvale acknowledged that "AMC could use stock for various corporate purposes," such as "sell[ing] [it] in the marketplace" to "raise cash." B00953 (115:20-116:5).

AMC's Shares were a finite and valuable corporate resource. The Actions concerned AMC's efforts to amend its Certificate to authorize additional Common Stock. *See supra* at 11-12. After the Settlement, AMC used its Shares for much-needed capital. In September 2023, it sold 40 million shares for over $300 million. B00588-98. Later in 2023, it sold additional shares, reduced its debt, and agreed to exchange shares for outstanding lien notes. B00601-21. The 6,897,018 shares were similarly valuable as "currency" in the marketplace. B00672-74; B00857 (146:10-18); B00867-88 (185:1-19, 187:7-191:17).[14]

Under Delaware law, issuing stock for no or inadequate consideration causes "harm to the corporation." *In re J.P. Morgan Chase & Co. S'holder Litig.*, 906 A.2d

[14] Midvale may counter (as it did below) that AMC could not have sold the Settlement Shares given the Status Quo Order. However, that barrier was temporary, and once lifted (by settlement or judgment), those Shares certainly had market value. Nor would AMC need to expend every last authorized share to suffer loss – AMC gave up 6,897,018 Shares without remuneration and now has fewer to cash in.

808, 818-19 (Del. Ch. 2005), *aff'd*, 906 A.2d 766 (Del. 2006). So does making a corporate overpayment, regardless of whether that payment was made in cash or stock. *Id*. AMC similarly suffered harm here, as it gave up stock ***without getting any cash in return***.

3. Fortuity Principles Actually Support Coverage Here

Finally, Midvale claims that coverage here would violate "fundamental insurance principles," as the Settlement Payment was not a "fortuitous loss." Mid.Br. at 35-36. That is incorrect.

AMC's Settlement Payment is the exact kind of fortuitous risk covered by the Policies, which cover Loss (*i.e.*, "settlements") from alleged "Securities Claim[s]" against AMC or Claims against its indemnified executives. A0348 §§ I.(B-C). The peril of litigation was the "unknown or contingent event" Midvale insured. Mid.Br. at 35. Settling with stock, rather than cash (which Midvale agrees is covered), was not a "voluntary" "business decision," but well within that insured risk. Mid.Br. at 36; *AT&T*, 931 A.2d at 421-22 (coverage does not depend on "settlement structure").

The "fortuity" and "known loss" doctrines – which bar insurance for losses already known or occurring ***when purchasing coverage*** – are inapposite. Mid.Br. at 36; *Appalachian Ins. Co. v. Liberty Mut. Ins. Co.*, 676 F.2d 56, 63 (3d Cir. 1982) (at-issue occurrence preceded policy effective date); *Nat'l Union Fire Ins. Co. of*

Pittsburgh, PA v. Rhone-Poulenc Basic Chems. Co., 1992 WL 22690, at *17 (Del. Super. Jan. 16, 1992) (doctrine inapplicable where insured unaware of loss when policies incepted), *aff'd*, 616 A.2d 1192 (Del. 1992). Midvale does not and cannot claim AMC knew of the Actions or the Settlement when purchasing the Policies.

Midvale is also flat-out wrong to contend that "all courts" addressing the issue find stock-based settlements uninsurable. Mid.Br. at 37. The Seventh Circuit in *UNR*, the highest court to consider the question, held that a ***stock settlement was covered*** under similar language. 942 F.2d at 1104-05. Other courts have rejected that insurance covers only "outlay[s] of cash." Mid.Br. at 38; *supra* Section I.C.5.

Rather than representing "unanimous precedent" (Mid.Br. at 37), *Enterasys Networks, Inc. v. Gulf Insurance Co.*, 364 F. Supp. 2d 28 (D.N.H. 2005), the only published decision to find otherwise, simply got it wrong. First, the *Enterasys* court undertook an improper analysis – not required by the Policies or elsewhere – of whether corporate "assets" were diminished. *Id.* at 31. *Enterasys* is directly contrary to AMC's cases finding loss where an insured gave up a future benefit, which ***also did not decrease its current assets***. Next, *Enterasys* involved a different legal theory – a claim of harm to the corporation's shareholders. *Id*. The court therefore never considered any accounting-based evidence (like AMC presents here) showing the payment harmed the corporation itself. Finally, *Enterasys* made illogical statements,

acknowledging there is "no substantive difference" between 1) paying a settlement with the cash proceeds from a stock sale (which everyone agrees is covered), and 2) paying that stock directly, but concluding (erroneously) that, "[i]n either case" there is no economic harm. *Id*. That simply cannot be true. In fact, the *Enterasys* court separately recognized that if new shares are sold, "the corporation's assets" would be "enhanced by the sale receipts." *Id*.[15] AMC lost that opportunity here.

Midvale's only other authority is an unpublished hearing transcript that actually supports AMC. *Interpublic Group of Cos., Inc. v. Lumbermens Mut. Cas. Co.*, No. 1:06-CV-00751-AKH (S.D.N.Y. Dec. 6, 2006). The *Lumbermens* court found (as Midvale concedes) that the policyholder "may have had an opportunity loss" by paying its shares in settlement. A1342 (20:9-13). It thus permitted the parties to prove the value of the "lost potential asset of the company." A1344 (22:1-4, 22:21-25); A1346 (24:6-10).[16]

Despite Midvale's claim (Mid.Br. at 38 n.9) that AMC offered "no evidence" of its lost opportunities beyond "pure speculation," AMC showed that it forfeited

---

[15] *Enterasys* fails to distinguish *UNR*. *Id.* at 34. *UNR* did not find coverage just because the settlement granted equity in a newly reorganized company; it was covered simply because it was a "judgment or settlement." 942 F.2d at 1104-05.

[16] On the accounting side, the *Interpublic* transcript assessed the removal of the contingent liability from the balance sheet, but never addressed the permanent loss inherent in an accumulated deficit, as AMC discusses here. *See* A1344 (22:5-20).

the chance to use the 6,897,018 Settlement Shares to raise capital and reduce its debt, as it had in other instances. B00672-74. Courts often award damages where (as here) a defendant deprived a plaintiff of valuable financial or business opportunities. *See*, *e.g.*, *Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1131 (Del. 2015) (allowing lost opportunity damages regarding sales of new drug not yet on market).[17]

Enforcing Midvale's Policy terms will not "invite mischief" or transform D&O insurers into investment banks. Mid.Br. at 38-39. Only claims (like AMC's) that fall within the "Loss" definition are subject to coverage; Midvale is free to exclude going forward any other hypothetical non-cash settlement scenarios it can dream up (like those it concocts here). *Id*.

Nor will covering AMC's stock-based Loss create an "endless cascade of valuation disputes." *Id.* at 39-40. Publicly-traded stock (like AMC's) has a readily discernible value – it is not a "blank check" defined by the "ipse dixit" of the insured. *Id*. at 40. Indeed, Midvale does not challenge AMC's accounting, which valued the Settlement Payment here as a $99.3 million Loss. Midvale also cannot complain

[17] Midvale's cited cases involved alleged hypothetical alternative investments, not actual shares with a discernable market price. *See In re Fuqua Indus., Inc.*, 2005 WL 1138744, at *8-9 (Del. Ch. May 6, 2005); *Manzo v. Rite Aid Corp.*, 2002 WL 31926606, at *5 (Del. Ch. Dec. 19, 2002), *aff'd*, 825 A.2d 239 (Del. 2003). That AMC does not seek ministerial costs, as Midvale notes (Mid.Br. at 38 n.9), is irrelevant.

that the Superior Court did not "assign[] any dollar value" to the Settlement. Mid.Br. at 40. At the hearing below, Midvale conceded that the court need not decide whether AMC's loss equaled the Shares' $99.3 million fair value, as all other proposed values exceeded Midvale's attachment point and limits. A1553; A1557.

In sum, granting coverage will not provide a "windfall" here; rather than seeking a "double recovery," AMC has "yet to receive a single recovery." *AT&T*, 931 A.2d at 419 n.24.

CONCLUSION

This Court should affirm the Superior Court's Order.

OF COUNSEL
(admitted *pro hac vice*):

Robin L. Cohen
Adam S. Ziffer
Michelle R. Migdon
William A. Harris
COHEN ZIFFER FRENCHMAN & MCKENNA LLP
1325 Avenue of the Americas
New York, New York 10019
Tel: (212) 584-1890
rcohen@cohenziffer.com
aziffer@cohenziffer.com
mmigdon@cohenziffer.com
wharris@cohenziffer.com

Dated: July 24, 2025

Respectfully submitted,

BERGER MCDERMOTT LLP

/s/ David J. Baldwin
David J. Baldwin (No. 1010)
Peter C. McGivney (No. 5779)
Periann Doko (No. 5476)
1105 N. Market Street, 11th Floor
Wilmington, DE 19801
(302) 655-1140 tel.
(302) 658-1131 fax
dbaldwin@bergermcdermott.com
pmcgivney@bergermcdermott.com
pdoko@bergermcdermott.com

Attorneys for Plaintiff-Below/Appellee AMC Entertainment Holdings, Inc.

Public Version Dated: August 7, 2025

CERTIFICATE OF SERVICE

I, David J. Baldwin, hereby certify that that on August 7, 2025, I caused a true and correct copy of the foregoing *Public Version of Appellee AMC Entertainment Holdings, Inc.'s Answering Brief on Appeal* to be served upon the following individuals in the manner indicated below:

VIA FILE AND SERVEXPRESS

John C. Phillips, Jr., Esq.
David A. Bilson, Esq.
Phillips Mclaughlin & Hall, P.A.
1200 North Broom Street
Wilmington, DE 19806

/s/ David J. Baldwin
David J. Baldwin (No. 1010)