

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

Plaintiff / Counter-Defendant,

v.

WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendant / Counter-Plaintiff.

Civil Action No. 22-1092-GBW

Sean J. Bellew, BELLEW LLC, Wilmington, DE; Christopher C. Frost, Braden T. Morell,
MAYNARD NEXSEN P.C., Birmingham, AL.

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Counsel for Defendant / Counter-Plaintiff

MEMORANDUM OPINION

August 28, 2026
Wilmington, Delaware

GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE

This action arises from two life insurance policies (the “Policies”) issued by American General¹ roughly two decades ago. Pending before the Court are two motions for partial summary judgment: (1) Wilmington Trust’s Motion for Partial Summary Judgment (“Wilmington Trust’s Motion”) (D.I. 146), which has been fully briefed (D.I. 147; D.I. 163; D.I. 172); and (2) American General’s Motion for Partial Summary Judgment (“American General’s Motion”) (D.I. 153), which has also been fully briefed (D.I. 154; D.I. 165; D.I. 170). For the reasons set forth below, Wilmington Trust’s Motion (D.I. 146) is granted-in-part and denied-in-part and American General’s Motion (D.I. 153) is denied.

I. BACKGROUND

A. Factual Background²

Meyer Magid (“Mr. Magid” or “the Insured”) applied to American General, in 2005 and 2006, for two life insurance policies. D.I. 155 ¶ 2; D.I. 166 ¶ 2 (not disputing). Each of the applications listed Mr. Magid’s birth date as August 22, 1921. D.I. 155 ¶ 3; D.I. 166 ¶ 2 (not

¹ The Plaintiff and Counterclaim Defendant is American General Life Insurance Company (“Plaintiff” or “American General”). The Defendant and Counterclaim Plaintiff is Wilmington Trust, National Association (“Defendant” or “Wilmington Trust”).

² In connection with their cross motions for summary judgment, the parties have provided statements of fact and also have responded to one another’s statements of fact. With respect to both motions, the Court notes that the vast majority of the parties’ “factual disputes” are arguments over contractual interpretation. “To the extent an allegation is disputed, not supported by the cited exhibit, an argument rather than a statement of fact, a legal interpretation of the [Policies], or not relevant or necessary to an understanding of the factual background of the present dispute, the Court disregards it.” *ATD-Am. Co. v. Krueger Int’l, Inc.*, No. CIV.A. 12-00032, 2013 WL 5544320, at *1 n.1 (E.D. Pa. Oct. 8, 2013).

disputing). The birthdate listed on Mr. Magid's death certificate is two years earlier, August 22, 1919. *See* D.I. 155 ¶ 26; D.I. 166 ¶ 26 (not disputing).

"American General issued two identical life insurance policies with effective dates [of] November 7, 2005 and February 20, 2006." D.I. 155 ¶ 4; D.I. 166 ¶ 4 (not disputing in relevant part). "The initial owner of each Policy was the Mike Magid Irrevocable Trust." D.I. 149 ¶ 5; D.I. 166 ¶ 5 (not disputing). The first policy, which issued on November 7, 2005, has a policy number of UM0039913L (the "13L Policy"). D.I. 147-1 at 1, 3.³ The second policy, which issued on February 20, 2006, has a policy number of UM0023684L (the "84L Policy"). *Id.* at 43, 45. Mr. Magid is named as the "Insured" on the 13L Policy and the 84L Policy. *Id.* at 3, 45. The "Maturity Date" specified in the 13L Policy was November 7, 2021, and the corresponding "Maturity Date" for the 84L Policy was February 20, 2022. *Id.* at 3, 45. "The Maturity Extension Rider was not purchased for these [P]olicies." D.I. 155 ¶ 17; D.I. 166 ¶ 17 (not disputing).

Three of the Policies' provisions are central to this dispute. *First*, both Policies provide that, "if the Insured dies prior to the Maturity Date and while this policy is in force," then American General would pay out the Death Benefit Proceeds to the Beneficiary. D.I. 147-1 at 1, 43. Conversely, if the Insured was living on the Maturity Date, then American General would pay out the Cash Surrender Value to the Beneficiary. *Id.* at 1, 43. *Second*, both Policies contain a "Misstatement of Age" or "MOA" provision that provides, in relevant part:

If the . . . age . . . of the Insured . . . has been misstated to [American General], [American General] will adjust the excess of the Death Benefit Amount over the Accumulation Value on the date of death to that which would have been purchased by the Monthly Deduction for the policy month of death at the correct cost of insurance rate. By age, We mean age nearest birthday as of the Date of Issue.

³ Citations to D.I. 147-1 are to its ECF pagination.

Id. at 15, 57. *Third*, both Policies contain a provision referencing the Internal Revenue Code (the “Reservation Provision”), which provides:

Rights Reserved By [American General]. Upon Notice to You, this policy may be modified by [American General], but only if such modification is necessary to make any changes as required by the Internal Revenue Code or by any other applicable law, regulation or interpretation in order to continue treatment of this policy as life insurance.

Id. at 17, 59.

In 2015, Geronta Funding purchased the Policies from EEA Life Settlements, Inc. D.I. 155 ¶ 21; D.I. 166 ¶ 21 (not disputing). “In 2020, Wilmington Trust owned the Policies as a “securities intermediary.” D.I. 155 ¶ 23; D.I. 166 ¶ 23 (not disputing).

On July 21, 2020, Mr. Magid passed away. D.I. 155 ¶ 25; D.I. 166 ¶ 25 (not disputing). On August 25, 2020, Wilmington Trust sought to collect on the Policies and made a claim for the Policies’ full death benefits. D.I. 155 ¶ 27; D.I. 166 ¶ 27 (not disputing). “In support of its claim, Wilmington [Trust] provided Mr. Magid’s death certificate, obituary, a driver’s license that expired in 2007, an undated ‘veteran identification card,’ and an ‘Experian report’ dated December 6, 2007.” D.I. 155 ¶ 28; D.I. 166 ¶ 28 (not disputing and instead stating that the package “speaks for itself”).

“American General refused payment of the full death benefits” under the Policies. *Compare* D.I. 155 ¶ 30 (asserting that the refusal was predicated on the Policies’ MOA provisions) *with* D.I. 166 ¶ 30 (disputing the basis for the refusal, but not disputing that American General refused to pay death benefits). Instead, American General returned premium payments to Wilmington Trust “in the amounts of: \$647,410.00 for the 13L Policy, and \$453,399.36 for the

84L Policy.” D.I. 155 ¶ 32; D.I. 166 ¶ 32 (not disputing).⁴ American General also paid out \$174,878.23 for the 13L Policy and \$134,138.26 for the 84L Policy. *Compare* D.I. 155 ¶ 31 (asserting that this amount constituted the “Cash Surrender Value” of each Policy); *with* D.I. 166 ¶ 31 (disputing that American General paid the Cash Surrender Value, but not explicitly disputing the amount that American General paid).

B. Procedural Background

American General’s First Amended Complaint (“FAC”) asserts five “counts.” D.I. 26. Count I seeks “a judicial declaration that under the Maturity Dates reflecting the Insured’s true age on the Date of Issue, American General has no further obligation to pay Wilmington Trust.” *Id.* ¶ 38. Count II seeks “a judicial declaration that under the Misstatement of Age provisions in the Policies, American General has no further obligation to pay Wilmington Trust.” *Id.* ¶ 46. Count III seeks a judicial declaration that its “modification of the Maturity Date of the 13L Policy to November 7, 2019, and its modification of the Maturity Date of the 84L Policy to February 20, 2020, to bring them into compliance with the Internal Revenue Code, was correct.” *Id.* ¶ 54. Count IV brings a claim for reformation of the Policies. *Id.* ¶¶ 55-62. Finally, Count V alleges that Wilmington Trust committed a form of “fraud in the presentment” in connection with its application for death benefits. *Id.* ¶¶ 63-71.

On November 17, 2023, Wilmington Trust filed a Motion for Partial Judgment on the Pleadings on the Amended Complaint (D.I. 36), seeking a partial judgment in favor of Wilmington Trust with respect to Counts I-IV of the FAC, but not Count V. *See id.*; D.I. 37 at 18. On June

⁴ In full, this paragraph states: “American General refunded premium payments made *after Mr. Magid’s 100th birthdays* [sic] in the amounts of: \$647,410.00 for the 13L Policy, and \$453,399.36 for the 84L Policy.” D.I. 155 ¶ 32 (emphasis added). Wilmington Trust’s response reads: “[u]ndisputed.” D.I. 166 ¶ 32. Given Wilmington Trust’s dispute elsewhere in the same document regarding Mr. Magid’s age, *see id.* ¶ 1, the Court assumes this to be an oversight.

13, 2024, the Court issued a Memorandum Order (the “June 2024 Memorandum Order”) (D.I. 47), which granted-in-part and denied-in-part Wilmington Trust’s Motion for Partial Judgment on the Pleadings on the Amended Complaint (D.I. 36). Specifically, the Court granted judgment on the pleadings in favor of Wilmington Trust on Counts I and IV of the FAC, but denied the motion as to Counts II and III of the FAC. D.I. 47 at 13.

In its Answer, Affirmative Defenses, and Counterclaim to First Amended Complaint (“Counterclaims”) (D.I. 27), Wilmington Trust asserts two causes of action against American General. Count I asserts breach of the 13L Policy. *Id.* ¶¶ 27-34. Count II asserts breach of the 84L Policy. *Id.* ¶¶ 35-42.

The parties have filed cross motions for partial summary judgment. D.I. 146; D.I. 153. Wilmington Trust’s Motion moves for partial summary judgment on Counts II and III of American General’s FAC and Counts I and II of Wilmington Trust’s Counterclaims. D.I. 146. American General’s Motion moves for partial summary judgment on the same counts. D.I. 153. Neither party has moved for summary judgment on Count V of American General’s FAC. The parties’ cross motions for partial summary judgment are fully briefed.

II. LEGAL STANDARD

A. Summary Judgment

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A genuine issue of material fact is one that could lead a reasonable jury to find in favor of the nonmoving party.” *Bletz v. Corrie*, 974 F.3d 306, 308 (3d Cir. 2020) (citing *Willis v. UPMC Children’s Hosp. of Pittsburgh*, 808 F.3d 638, 643 (3d Cir. 2015)). “The court must review the record as a whole, draw all reasonable inferences in favor of the nonmoving party, and must not ‘weigh the evidence or make credibility determinations.’” *Id.* at 308 (quoting *Parkell v.*

Danberg, 833 F.3d 313, 323 (3d Cir. 2016)). “[T]he Supreme Court has held that the nonmoving party need not ‘produce evidence in a form that would be admissible at trial in order to avoid summary judgment.’” *Zamichieli v. Andrews*, No. 21-2522, 2024 WL 3466241, at *2 (3d Cir. July 19, 2024) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)). “Instead, a court need only determine if the evidence is ‘capable of being admissible at trial.’” *Id.* (citations omitted).

The standard for summary judgment “does not change when the issue is presented in the context of cross-motions for summary judgment.” *Auto-Owners Ins. Co. v. Stevens & Ricci Inc.*, 835 F.3d 388, 402 (3d Cir. 2016) (citation omitted). “When both parties move for summary judgment, ‘[t]he court must rule on each party’s motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard.’” *Id.* (citation omitted). “The filing of cross-motions does not itself establish the absence of disputed issues of material fact.” *Resintech, Inc. v. AIG Specialty Ins. Co.*, No. CV 21-19843 (KMW) (AMD), 2026 WL 1878513, at *4 (D.N.J. June 30, 2026) (citing *Rains v. Cascade Indus., Inc.*, 402 F.2d 241, 245 (3d Cir. 1968)).

B. Life Insurance Contracts under New Jersey Law⁵

“An insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled.” *Flomerfelt v. Cardiello*, 202 N.J. 432, 441 (N.J. 2010). “Under New Jersey law, the interpretation of an insurance policy is a ‘question of law.’” *N&S Rest. LLC v. Cumberland Mut. Fire Ins. Co.*, 499 F. Supp. 3d 74, 78 (D.N.J. 2020) (quoting *Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med.*, 210

⁵ There is no dispute between the parties that New Jersey law governs interpretation of the Policies. *See, e.g.*, D.I. 147 at 9 (Wilmington Trust, applying New Jersey law); D.I. 163 at 5 (American General, applying New Jersey law); *cf.* D.I. 47 at 5-6 (applying New Jersey law when interpreting the Policies).

N.J. 597, 605 (N.J. 2012)). The language of an insurance policy is construed “according to its plain and ordinary meaning.” *Flomerfelt*, 202 N.J. at 441 (quoting *Voorhees v. Preferred Mut. Ins. Co.*, 128 N.J. 165, 175 (N.J. 1992)).

“If the terms are not clear, but instead are ambiguous, they are construed against the insurer and in favor of the insured, in order to give effect to the insured’s reasonable expectations.” *Id.* (citations omitted); *see also Zacarias v. Allstate Ins. Co.*, 168 N.J. 590, 595 (N.J. 2001) (“The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.” (citation omitted)); *cf. Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co.*, 229 N.J. 196, 208 (N.J. 2017) (explaining that New Jersey courts ordinarily “construe insurance contract ambiguities in favor of the insured via the doctrine of *contra proferentem*,” which is “related” to the “doctrine of reasonable expectations”). “Even so, when considering ambiguities and construing a policy, courts cannot ‘write for the insured a better policy of insurance than the one purchased.’” *Flomerfelt*, 202 N.J. at 441 (quoting *Walker Rogge, Inc. v. Chelsea Title & Guar. Co.*, 116 N.J. 517, 529 (N.J. 1989)).

III. DISCUSSION

The Court’s analysis proceeds in four subsections. First, the Court addresses the parties’ dispute over the Insured’s age. Next, the Court addresses the parties’ cross motions with respect to each count, mindful of the standards that apply when addressing cross motions for summary judgment.

A. The Parties’ Dispute of Fact Regarding the Insured’s Age

In opposing American General’s Motion (D.I. 153), Wilmington Trust maintains that there is a genuine issue of material fact as to whether the Insured misstated his age on the applications. D.I. 165 at 4. The parties’ dispute is whether the Insured was born on August 22, 1919, or instead

on August 22, 1921. On one hand, American General asserts that the Insured misstated his age, citing to several documents in the record that state that Insured's birthdate was August 22, 1919. *See* D.I. 154 at 11-13 (collecting sources); D.I. 155 ¶ 1 (same). On the other hand, Wilmington Trust cites a series of documents in the record that reflect a birthdate for Insured in 1921, not 1919. *See* D.I. 165 at 4; D.I. 166 ¶ 1.⁶

At the summary judgment stage, the Court must “view the evidence in the light most favorable to the nonmoving party,” “refrain from weighing the evidence[,] and draw all reasonable inferences in the nonmovant's favor.” *Fraternal Ord. of Police, Lodge 1 v. City of Camden*, 842 F.3d 231, 238 (3d Cir. 2016) (citations omitted). While American General claims that no jury would credit Wilmington Trust's cited documents over its own, *see* D.I. 170 at 4, it essentially asks the Court to weigh the credibility of these documents or draw inferences against Wilmington Trust, which is not proper at the summary judgment stage. *See Fraternal Ord. of Police, Lodge 1*, 842 F.3d at 238. Accordingly, the Court finds that there is a genuine issue of fact as to Mr. Magid's age with respect to American General's Motion (D.I. 153).

B. Count II of American General's FAC

Count II is a request for declaratory relief. D.I. 26 ¶¶ 39-46. Specifically, Count II seeks a declaration that, “under the Misstatement of Age provisions in the Policies, American General

⁶ Wilmington Trust correctly observes that, at the summary judgment stage, the non-movant need not present evidence in an admissible form, so long as the evidence is capable of being produced in an admissible manner at trial. *See* D.I. 165 at 5; *cf. Zamichieli*, 2024 WL 3466241, at *2. In reply, American General makes clear that it is not “contending that Wilmington's inconsistent records should be rejected as inadmissible.” D.I. 170 at 4. Given that American General has not objected to these materials as being inadmissible, the Court will consider them for the purpose of resolving the parties' summary judgment motions. *See, e.g.*, 10A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2722 (4th ed., April 2026 update) (explaining that, “as is true of other material introduced on a summary-judgment motion, documents inadmissible under the evidence rules may be considered by the court if not challenged”); *Est. of Fajge v. Dick Greenfield Dodge, Inc.*, No. 11-CV-04527, 2012 WL 2339723, at *12 n.12 (D.N.J. June 18, 2012).

has no further obligation to pay Wilmington Trust.” *Id.* ¶ 46. “The standard for granting summary judgment on a request for a declaratory judgment is the same as for any other type of relief.” *Cloverland-Green Spring Dairies, Inc. v. Pennsylvania Milk Mktg. Bd.*, 298 F.3d 201, 210 n.12 (3d Cir. 2002) (citations omitted).

The Court begins with contractual analysis of the Policies. Several portions of the Court’s contractual analysis of the Policies in its June 2024 Memorandum Order (D.I. 47) are pertinent to resolution of the parties’ contentions regarding Count II of the FAC. *First*, as the Court explained, “[t]he Maturity Dates of each of the Policies . . . are clearly stated as November 7, 2021 and February 20, 2022, respectively.” *Id.* at 5. *Second*, the Court recognized that, because Plaintiff was not permitted to adjust either Policy’s Maturity Date under that Policy’s MOA provision, “Plaintiff is therefore obligated under each policy to pay the Death Benefit Proceeds according to the terms of the Misstatement of Age provisions, and Plaintiff cannot claim that it satisfied this obligation by instead ‘correcting’ the Maturity Date of each policy and issuing the Cash Surrender Value.” *Id.* at 7. *Third*, “the Court agree[d] with Defendant that Plaintiff must calculate the adjusted death benefit for each Policy according to the terms of the Misstatement of Age provisions,” but did not resolve the question of whether the application of the provisions’ terms would result in a “Death Benefit Amount of zero.” *Id.* at 8.

Against this backdrop, the Court turns to the parties’ contentions regarding Count II of the FAC. In its Motion, Wilmington Trust first contends that American General must pay death benefits under the Policies, rather than the cash surrender value, whether or not Mr. Magid’s age was misstated in the application. D.I. 147 at 6. Wilmington Trust divides this contention into two main points: first, that the Policies require American General to pay Death Benefits Proceeds if the Insured died prior to the Maturity Date; and second, that, even if the Insured had misstated his

age, that American General would still be obligated to pay the Death Benefit Proceeds, but in an adjusted amount. *See id.* at 6-13. The Court agrees with Wilmington Trust on each of these points pursuant to the clear and unambiguous language of the Policies.

As for the first issue – whether the Policies require American General to pay Death Benefits Proceeds when the Insured dies prior to the Maturity Date – both Policies clearly provide that, “if the Insured dies prior to the Maturity Date and while this policy is in force,” then American General would pay out the Death Benefit Proceeds to the Beneficiary. D.I. 147-1 at 1, 43. As the Court previously recognized, these Maturity Dates are “clearly fixed and, absent modifications required ‘by applicable law . . . to continue treatment of the Policies as life insurance,’ the Policies do not permit Plaintiff to amend or correct the agreed-upon Maturity Dates.” D.I. 47 at 6 (cleaned up); *see also id.* (rejecting Plaintiff’s attempt “to introduce extrinsic evidence to counter the clear and unambiguous terms of the Misstatement of Age provisions”). The parties have provided the Court no reason to deviate from this determination at the summary judgment stage. Accordingly, the Court generally agrees with Wilmington Trust’s first point: because Mr. Magid died prior to the Maturity Date of the Policies, American General was obligated to pay out Death Benefit Proceeds, unless its modifications to the Policies’ Maturity Dates were otherwise required by applicable law to continue treatment of the Policies as life insurance.

The Court next considers the second issue raised by Wilmington Trust regarding Count II of the FAC – whether American General would still be obligated to pay the Death Benefit Proceeds in an adjusted amount if Mr. Magid had misstated his age. The parties agree that the MOA provisions require American General to make *some* adjustment to the Death Benefit Amount in the event of a misstatement. *See* D.I. 163 at 7 (recognizing the parties’ agreement “that the misstatement-of-age provisions in the policies ‘require[] American General to make an adjustment

to the Death Benefit Amount.” (quoting D.I. 154 at 14)). Thus, the Court again interprets the Policies to require, in the event of a misstatement, payment of death benefits, albeit in an adjusted amount.

Having addressed these preliminary issues, the Court next considers whether the Death Benefit Amount resulting from adjustment pursuant to the MOA provisions is zero. Wilmington Trust contends that the application of the MOA provisions leads to a non-zero Death Benefit Amount. *See, e.g.*, D.I. 147 at 13. In support of its Motion, Wilmington Trust claims that American General’s position is contrary to a New Jersey statute, N.J. Stat. Ann. § 17B:25-6, and unsupported by the language of the Policies. *See id.* at 10-11. American General, on the other hand, maintains that the proper application leads to a Death Benefit Amount of zero. *See, e.g.*, D.I. 163 at 7.

Having thoroughly considered the parties’ contentions, the Court agrees with Wilmington Trust’s interpretation of the MOA provisions that, assuming Mr. Magid’s age was misstated,⁷ that the application of the MOA provisions would not lead to a Death Benefit Amount of zero. The MOA provisions call for an adjustment of “the excess of the Death Benefit Amount over the Accumulation Value on the date of death to that which would have been purchased by the Monthly Deduction for the policy month of death at the correct cost of insurance rate.” D.I. 147-1 at 15, 57.

Assuming the Insured’s age was misstated in the applications, the adjustment would be based upon the “correct cost of insurance rate” had the Insured listed his proper age in the

⁷ For the purposes of its Motion (D.I. 146), Wilmington Trust asserts in its opening brief that it “*assumes* that the Insured’s birthdate was misstated on the policy applications.” D.I. 147 at 2 n.3 (emphasis in original). This is so despite Wilmington Trust’s factual assertion that Mr. Magid was 84 when he filled out the policy applications. *See* D.I. 149 ¶ 7 (“The applications for both Policies . . . list the Insured’s birthday as August 22, 1921, making his age 84 at that time.”).

applications. For example, if the Insured had stated his age to be 84, when his age was actually 75, then the proper Death Benefit Amount would be adjusted based upon a determination of how much insurance that the Insured would have purchased had he listed his age at 75 and paid the same premiums from the time the Policies issued. Pertinent secondary authority supports this interpretation. *See* 6 COUCH ON INSURANCE § 86:11 (3d ed., June 2026 update) (“When the age of the insured is misstated, the misstatement frequently does not avoid the policy but merely reduces the recovery to the amount that would be payable if the correct age had been stated, and the premiums paid were received on that basis.”); *cf. Templo Fuente De Vida Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 224 N.J. 189, 203 (N.J. 2016) (citing affirmatively to COUCH ON INSURANCE).

Moreover, this reading is consistent with New Jersey law, which requires that “[t]here shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium or benefit has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.” N.J. Stat. Ann. § 17B:25-6; *see also* N.J. Stat. Ann. § 17B:25-2(a) (providing that life insurance policies in New Jersey shall contain “in substance all of the applicable provisions specified in sections 17B:25-3 to 17B:25-14, inclusive, of this chapter or provisions which in the opinion of the commissioner are not less favorable to the insured or the owner if other than the insured”).⁸

Finally, even assuming that the MOA provisions were “not clear” or “ambiguous,” New Jersey law requires ambiguous provisions of insurance contracts to be “construed against the

⁸ Neither party appears to contend that the MOA provisions violate N.J. Stat. Ann. § 17B:25-6. For the avoidance of doubt, the Court emphasizes that its conclusions herein are tied to the specific language of the Policies’ MOA provisions under the present facts. Accordingly, the Court need not address the issue of whether N.J. Stat. Ann. § 17B:25-6 always requires a non-zero death benefit in the event of a misstatement of age.

insurer and in favor of the insured, in order to give effect to the insured's reasonable expectations.” *Flomerfelt*, 202 N.J. at 441. Applied to the present case, any ambiguity would be construed against American General. *Cf. Voorhees*, 128 N.J. at 175 (explaining that, “if an insured's ‘reasonable expectations’ contravene the plain meaning of a policy, even its plain meaning can be overcome”).

The Court has thoroughly considered American General's contentions but ultimately finds them unpersuasive. For example, American General acknowledges that the Policies state that they were to be “‘payable’ for 16 years” and list the guaranteed premium payment only to age 100. D.I. 163 at 8. American General also cites, *inter alia*, to the Tables of Guaranteed Cost of Insurance Rates provided in the Policies, which extend out to age 99, and the Maturity Extension Rider. *Id.* at 9. However, the Court finds that the provisions identified by American General do not provide American General sufficient support for the contractual interpretation it advances. American General's position effectively seeks an interpretation of the MOA provisions that automatically excludes coverage for a special subclass of misstatements of age, which cannot be squared with the clear and unambiguous language of the MOA provisions.

In assessing American General's position, the Court notes that there is no factual dispute as to whether the alleged misstatement of age would have placed the Insured above the “range of issuance ages for the Policies.” D.I. 149 ¶ 26; D.I. 162 ¶ 26 (not disputing); *see, e.g., Yang v. Farmers New World Life Ins. Co.*, 898 F.3d 825, 826-28 (8th Cir. 2018) (holding, under Minnesota law, that an insurance policy's incontestability provision did not necessarily preclude an adjustment of benefits that eliminated all payment of benefits, where the insured purchased an insurance policy that was “sold only to people under age sixty” and the record contained evidence that the insured had misstated her age such that she would have been “ineligible” for the policy under her allegedly misstated age); *see also* 44 AM. JUR. 2D INSURANCE § 1010 (2d ed., Aug. 2025

update) (“Even if a policy contains a provision for partial recovery in case of a misstatement of age, the provision is not available if the age of the applicant was beyond the age limit at which insurance would have been granted by the insurer.”). Nor do the parties dispute that American General applied cost of insurance rates that were different than those provided in the Tables of Guaranteed Cost of Insurance Rates provided in the Policies. D.I. 149 ¶ 27; D.I. 162 ¶ 27 (not disputing in relevant part). Indeed, the Policies specifically permitted American General to do so. *See* D.I. 147-1 at 9 (“A table of guaranteed monthly cost of insurance rates is included in this policy. We can use cost of insurance rates that are lower than the guaranteed rates.”), 51 (same). While the exact amount owed pursuant to the MOA provisions remains in dispute, no genuine issue of material fact precludes the Court from finding, as a matter of law, that the operation of the MOA provisions in this case would result in a Death Benefit Amount that is greater than zero for the purposes of Count II of American General’s FAC, since the Court has now rejected the interpretation of the Policies upon which that contention is based.

For the foregoing reasons, Wilmington Trust’s Motion (D.I. 146) is granted with respect to Count II of the FAC and American General’s Motion (D.I. 153) is denied with respect to Count II of the FAC.

C. Count III of American General’s FAC

Count III is a claim for declaratory judgment regarding the application of the Reservation Provision in both Policies in view of 26 U.S.C § 7702. *See* D.I. 26 ¶¶ 47-54. Specifically, Count III seeks “a judicial declaration that its modification of the Maturity Date of the 13L Policy to November 7, 2019, and its modification of the Maturity Date of the 84L Policy to February 20, 2020, to bring them into compliance with the Internal Revenue Code, was correct.” *Id.* ¶ 54.

Under the Policies, American General reserved its rights to modify each Policy “only if such modification is necessary to make any changes as required by the Internal Revenue Code . . .

in order to continue treatment of this policy as life insurance.” D.I. 147-1 at 17, 59. Thus, the relevant inquiry is whether the American General’s unilateral modification of Maturity Dates of the Policies was “necessary” for the continued treatment of the Policies as life insurance.

“Under section 7702(a), a policy will be treated as a ‘life insurance contract’ only if it satisfies either the ‘cash value accumulation’ test or both the ‘guideline premium’ test and the ‘cash value corridor’ test.” *Webber v. Comm’r*, 144 T.C. 324, 371 (2015); 26 U.S.C. § 7702(a); accord 11 MERTENS LAW OF FED. INCOME TAX’N § 44A:5 (May 2026 update). In its own Motion, American General references only one of these tests, the guideline premium test. *See* D.I. 154 at 18-24. Cutting through American General’s contention, however, is its representation that “American General believes that the [alleged] misstatement of age in the present case did not lead to an inadvertent failure to comply with the guideline-premium limitation” of Section 7702. *See id.* at 20. While American General cites numerous other reasons to justify modification, such as the avoidance of “inadvertent failures under the tax definition,” its general duty to comply with Internal Revenue Service guidance and procedures, or the desire to comply with other provisions of the Internal Revenue Code, (*see id.* at 18-22), the Court finds that these rationales do not fit within the narrow reservation of rights provided in the Reservation Provision in both Policies, since they were not “necessary” for the continued treatment of the Policies as life insurance.⁹ Thus, even assuming Mr. Magid’s age was misstated on the applications, American General was not entitled to modify the Policies pursuant to the Reservation Provision.

⁹ The Court notes that American General has not directed the Court to any authorities wherein a court has adopted its broad interpretation of 26 U.S.C § 7702 to require the modification of a life insurance contract under analogous circumstances.

For the foregoing reasons, the Court grants Wilmington Trust's Motion (D.I. 146) with respect to Count III of the FAC and denies American General's Motion (D.I. 153) with respect to Count III of the FAC.

D. Counts I and II of Wilmington Trust's Counterclaims

Count I of Wilmington Trust's Counterclaims alleges breach of the 13L Policy. D.I. 27 ¶¶ 27-34. Specifically, Count I of Wilmington Trust's Counterclaims alleges two related breaches by American General: (1) "[f]ailing to pay the Death Benefit Proceeds where the Insured died prior to the Maturity Date and while the 13L Policy was in force"; and (2) "[i]f the Insured's age was misstated, failing to adjust (and pay) the death benefit amount in accordance with the plain language of the Policy." *Id.* ¶ 33.

Count II of Wilmington Trust's Counterclaims alleges breach of the 84L Policy for the same reasons. *Id.* ¶¶ 35-42; *see also id.* ¶ 41 (alleging breach via American General's (1) "[f]ail[ure] to pay the Death Benefit Proceeds where the Insured died prior to the Maturity Date and while the 84L Policy was in force"; and (2) "[i]f the Insured's age was misstated, failing to adjust (and pay) the death benefit amount in accordance with the plain language of the Policy"). These alleged breaches turn on the operation of the same provisions discussed above.

"In New Jersey, the elements necessary to prove a breach of an insurance contract are the same elements necessary to prove a breach of contract." *Kimmel v. Massachusetts Bay Ins. Co.*, 787 F. Supp. 3d 18, 23 (D.N.J. 2025), *aff'd*, No. 25-2274, 2026 WL 1661947 (3d Cir. June 9, 2026). "Specifically, a plaintiff must show that there is: '(1) a contract between the parties; (2) a breach of that contract; (3) damages flowing therefrom; and (4) that the party stating the claim performed its own contractual obligations.'" *Id.* (quoting *Frederico v. Home Depot*, 507 F.3d 188, 203 (3d Cir. 2007)).

The parties' briefing focuses upon Counts II and III of American General's FAC, rather than Counts I and II of Wilmington Trust's Counterclaims. With respect to the first element, the parties do not appear to dispute that the Policies are valid contracts. With respect to the second element, the Court has already held that "[American General] is . . . obligated under each policy to pay the Death Benefit Proceeds according to the terms of the Misstatement of Age provisions, and [American General] cannot claim that it satisfied this obligation by instead 'correcting' the Maturity Date of each policy and issuing the Cash Surrender Value." D.I. 47 at 7. As stated above, American General did not pay out the Policies' Death Benefit Proceeds; instead, American General remitted certain premiums and its calculation of the Cash Surrender Value. Whether or not the Insured's age was misstated, he passed prior to the Maturity Dates of the respective Policies. Thus, American General's failure to pay Death Benefit Proceeds – or, in the case of a misstatement, adjusted Death Benefit Proceeds pursuant to the MOA provisions – constitutes breach. Accordingly, the Court will grant summary judgment on the issue of breach as it pertains to Counts I and II of Wilmington Trust's Counterclaims in favor of Wilmington Trust.

Ultimately, however, the Court declines to grant summary judgment on the issue of damages. Regarding both parties' motions, a genuine issue of material fact exists as to the amount of the damages flowing from the proper application of the MOA provision. Similarly, the Court will deny summary judgment as it pertains to the fourth element – whether Wilmington Trust performed its own contractual obligations – since neither party addressed this issue and Count V of the FAC will survive summary judgment.

For the foregoing reasons, the Court grants Wilmington Trust's Motion (D.I. 146) on the issue of breach of the Policies but otherwise denies Wilmington Trust's Motion with respect to

Counts I and II of Wilmington Trust's Counterclaims. Moreover, the Court denies American General's Motion (D.I. 153) with respect to Counts I and II of Wilmington Trust's Counterclaims.

IV. CONCLUSION

For the foregoing reasons, Wilmington Trust's Motion (D.I. 146) is granted as to Counts II and III of American General's FAC, and granted as to Counts I and II of Wilmington Trust's Counterclaims on the issue of breach, but is otherwise denied. American General's Motion (D.I. 153) is denied.