

**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.

Counsel for Plaintiff / Counter-Defendant

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Counsel for Defendant / Counter-Plaintiff

MEMORANDUM OPINION

September 3, 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 the following motions: (1) Wilmington Trust’s Motion to Exclude the Testimony and Report of Jim Toole (D.I. 78), which has been fully briefed (D.I. 79; D.I. 86; D.I. 95); (2) Wilmington Trust’s Motion to Exclude the Testimony of Jim Toole (D.I. 148), which has been fully briefed (D.I. 150; D.I. 161; D.I. 169); and (3) American General’s Motion to Exclude the Testimony of Larry N. Sheets (D.I. 156), which has also been fully briefed (D.I. 157; D.I. 164; D.I. 168).

For the reasons set forth below, Wilmington Trust’s Motion to Exclude Testimony and Report of Jim Toole (D.I. 78) is granted-in-part and denied-in-part, (2) Wilmington Trust’s Motion to Exclude Testimony of Jim Toole (D.I. 148) is granted, and American General’s Motion to Exclude the Testimony of Larry N. Stern (D.I. 156) is granted-in-part and denied-in-part.

I. BACKGROUND

American General’s First Amended Complaint (“FAC”) asserts five “counts.” D.I. 26. Count I seeks a “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 [(‘MOA’)] 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

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”).

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 connection with its application for death benefits. *Id.* ¶¶ 63-71.

On November 17, 2023, Wilmington Trust moved for Motion for Partial Judgment on the Pleadings on the Amended Complaint (D.I. 36), seeking partial judgment on the pleadings 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 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). *Am. Gen. Life Ins. Co. v. Wilmington Tr. Nat’l Ass’n*, C.A. No. 22-1092-GBW, 2024 WL 2975767 (D. Del. June 13, 2024). 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. *Id.* at *7.

In its Answer, Affirmative Defenses, and Counterclaim (“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.

Both parties’ proffered experts have submitted reports setting forth their opinions. On December 6, 2024, American General’s expert, Jim Toole (“Mr. Toole” or “Toole”) submitted his initial report (the “Toole Initial Report”). D.I. 151, Ex. A. On August 22, 2025, Wilmington Trust’s expert, Larry N. Stern (“Mr. Stern” or “Stern”), submitted his initial report (the “Stern Initial Report”). D.I. 157-1, Ex. A. On October 28, 2025, Mr. Stern submitted a supplemental report (the “Stern Supplemental Report”), which supplemented the Stern Initial Report. D.I. 157-2, Ex. B. On November 28, 2025, Mr. Toole submitted a rebuttal to Mr. Stern’s Initial Report and

Supplemental Report (the “Toole Rebuttal Report”). D.I. 157-4, Ex. D. On December 12, 2025, Mr. Stern submitted a reply to the Toole Rebuttal Report (the “Stern Reply Report”). D.I. 157-5, Ex. E.

II. LEGAL STANDARD

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the U.S. Supreme Court held that Federal Rule of Evidence 702 creates “a gatekeeping role for the [trial] judge” in order to “ensur[e] that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” 509 U.S. 579, 597 (1993). Rule 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702. As the Third Circuit has explained:

Rule 702 embodies a trilogy of restrictions on expert testimony: qualification, reliability and fit. Qualification refers to the requirement that the witness possess specialized expertise. We have . . . [held] that a broad range of knowledge, skills, and training qualify an expert. Secondly, the testimony must be reliable; it must be based on the methods and procedures of science rather than on subjective belief or unsupported speculation; the expert must have good grounds for his o[r] her belief. In sum, *Daubert* holds that an inquiry into the reliability of scientific evidence under Rule 702 requires a determination as to its scientific validity. Finally, Rule 702 requires that the expert testimony . . . must be relevant for the purposes of the case and must assist the trier of fact.

Schneider ex rel. Estate of Schneider v. Fried, 320 F.3d 396, 404 (3d Cir. 2003) (cleaned up); *Kuhar v. Petzl Co.*, No. 19-3900, 2022 WL 1101580, at *7 (3d Cir. Apr. 13, 2022) (acknowledging the same trilogy).

Rule 702 “has a liberal policy of admissibility,” *Pineda v. Ford Motor Co.*, 520 F.3d 237, 243 (3d Cir. 2008) (citation omitted); *see also United States v. Scripps*, 599 F. App’x 443, 447 (3d Cir. 2015) (same), as “the question of whether the expert is credible or the opinion is correct is generally a question for the fact finder, not the court,” *Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1296 (Fed. Cir. 2015). “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *Daubert*, 509 U.S. at 596; *see Karlo v. Pittsburgh Glass Works, LLC*, 849 F.3d 61, 83 (3d Cir. 2017) (quoting same).

III. DISCUSSION

American General moves to exclude the testimony of Mr. Stern. D.I. 156. Wilmington Trust moves to exclude the testimony of Mr. Toole. D.I. 78; D.I. 148. The Court analyzes each challenge in turn.

A. The Court Grants in Part American General’s Motion to Exclude the Testimony of Larry N. Stern (D.I. 156)

Mr. Stern is the “President of Canterbury Consulting, LLC, an actuarial consulting firm and licensed reinsurance intermediary in Charlotte, North Carolina.” D.I. 157-1, Ex. A at 1. Moreover, he is a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries. *Id.* Mr. Stern’s experience includes twenty years working for three insurance companies, nine years working at a global management and actuarial consulting firm, two years working at an international reinsurance company, and twenty-three years serving as the President of Canterbury Consulting, LLC. *Id.*

Mr. Stern was retained to render his opinion concerning “calculation of the death benefits” owed under the Policies. *See id.* at 1. As discussed above, Mr. Stern has provided three reports in this action: his Initial Report, Supplemental Report, and Reply Report.²

American General seeks to exclude Mr. Stern’s testimony and opinions for three main reasons. The Court addresses each in turn.

American General first seeks to exclude Mr. Stern from offering legal conclusions. D.I. 157 at 9-13. Specifically, American General seeks to exclude Mr. Stern from opining as to (1) the requirements of New Jersey law in the calculation of death benefits, *see id.* at 11 (citing D.I. 157-5, Ex. E ¶¶ 5, 12); or (2) the requirements of the Policies, *see id.* at 12 (citing D.I. 157-5, Ex. E ¶¶ 5, 15, 32-40), including with respect to the impact of the June 2024 Memorandum Order. *See id.* In opposition, Wilmington Trust does not dispute that an expert may not testify as to legal conclusions. *See* D.I. 164 at 6-7. According to Wilmington Trust, however, Mr. Stern’s opinions do not render legal conclusions and instead “provide[] expert analysis that assists the factfinder in determining the numerical result dictated by the policy’s formula.” *Id.* at 6.

² The Stern Initial Report is divided into the following sections: (I) Introduction; (II) Qualifications and Experience; (III) Summary of Opinions; (IV) Background; (V) Calculation of Death Benefits; and (VI) Conclusion. *See* D.I. 157-1, Ex. A. The Stern Supplemental Report contains the following sections: (I) Introduction; (II) Revised Summary of Opinions; (III) Revised Calculation of Death Benefits; and (IV) Revised Conclusion. *See* D.I. 157-2, Ex. B. The Stern Reply Report contains the following sections: (I) Introduction; (II) Summary of Opinions Associated with this Reply Report; (III) The Language and Purpose of the Policy Provision and New Jersey Law Support My Model to Calculated Adjusted NAR and Do Not Support Toole’s Ratio Model; (IV) Mr. Toole Mischaracterizes My Projection Model As Not Being Fit For Any Purpose; (V) Mr. Toole Improperly States I Incorrectly Calculate COI Charges and Credited Interest; (VI) Mr. Toole Says COI Charges and Credited Interest Are Not “Reproduced” in All Policy Years; (VII) Mr. Toole’s Claim the [sic] COI Rate for Policy Year 15 and 16 At Issue Age 86 is a Manufacture[d] COI Rate for an Attained Ages [sic] that Does Not Exist is Incorrect; and (VIII) Conclusion. *See* D.I. 157-5, Ex. E.

The Court generally agrees with American General that Mr. Stern may not render a legal opinion and agrees with both parties in part regarding the admissibility of Mr. Stern's opinions and testimony. In general, the Court "must ensure that an expert does not testify as to the governing law of the case." *Berkeley Inv. Grp., Ltd. v. Colkitt*, 455 F.3d 195, 217 (3d Cir. 2006). "Such testimony [rendering a legal opinion] is prohibited because it would usurp the District Court's pivotal role in explaining the law to the jury." *Id.* (citing *First National State Bank v. Reliance Elec. Co.*, 668 F.2d 725, 731 (3d Cir. 1981)).

Turning to the challenged paragraphs of the Stern Reply Report, the Court finds that at least some of the paragraphs render legal conclusions regarding what New Jersey law or the Policies require in the calculation of death benefits and make legal arguments regarding what is or is not required by New Jersey law or the Policies. For example, Paragraph 5 of the Stern Reply Report states that the MOA provision and New Jersey law "clearly and expressly require, in the event of a misstatement of age, [that] American General must pay the death benefits that could have been purchased at the correct age by the premiums actually paid." D.I. 157-5, Ex. E ¶ 5. In a similar manner, Paragraph 9 purports to state what the "plain language" of a New Jersey law "requires," *id.* ¶ 9, and Paragraph 12 states that the Policy's MOA provisions are "consistent with New Jersey law," *id.* ¶ 12. In the manner in which they are framed within the Stern Reply Report, these statements offer legal conclusions about the governing law and how that law applies in the instant case. To allow such testimony would usurp the Court's role and allow Mr. Stern to testify as to what the law requires and the scope and meaning of contractual terms, both of which exceed the scope of proper expert testimony. *See, e.g., In re Lincoln Nat'l COI Litig.*, 620 F. Supp. 3d 230, 248 (E.D. Pa. 2022) ("Experts may not offer legal opinions, and contract interpretation is a legal question for the Court to decide."); *Ameritas Life Ins. Corp. v. Wilmington Sav. Fund Soc'y*,

No. CV 23-236-GBW, 2025 WL 3141777, at *4 (D. Del. Nov. 10, 2025) (“It is well-established that experts may not testify as to what the law requires or testify as to the governing law.” (citation omitted)). Accordingly, Mr. Stern will be precluded from testifying as to what the Policies or New Jersey law “clearly and expressly require,” what New Jersey law “requires,” or whether the Policies are “consistent with New Jersey law.” However, Mr. Stern will be permitted to testify as to his death benefits analyses; “it is a common and acceptable method for experts to set forth their analysis within a legal framework that they are asked to assume is applicable, so long as the court has not ruled otherwise.” *Ameritas Life Ins. Corp.*, 2025 WL 3141777, at *4 (quoting *Wang v. Infective Labs Inc.*, No. 22-943, 2025 WL 1825571, at *14 (D. Del. June 26, 2025)).

Next, American General seeks to exclude Mr. Stern’s opinions regarding his death benefit calculations. D.I. 157 at 14. According to American General, Mr. Stern’s death benefit analysis is unreliable. *See id.* (contending that Mr. Stern’s death benefit estimation model “fails to clear *Daubert*’s ‘reliability threshold’” (citation omitted)). In general, the “reliability” inquiry “looks to whether the expert’s testimony is supported by ‘good grounds.’” *Cohen v. Cohen*, 125 F.4th 454, 462 (3d Cir. 2025) (quoting *UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres*, 949 F.3d 825, 834 (3d Cir. 2020)). “This inquiry applies to all aspects of an expert’s testimony: the methodology, the facts underlying the expert’s opinion, and the link between the facts and the conclusion.” *Id.* (cleaned up).³

³ While the Third Circuit has eschewed any “definitive checklist or test” for this analysis, *Cohen*, 125 F.4th at 462 (quoting *Daubert*, 509 U.S. at 593), it has set forth several factors, which the Court refers to herein as the “*Paoli* factors,” to guide the analysis. *Id.* (“(1) [W]hether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique’s operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.”); *cf. In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 742 n.8 (3d Cir. 1994) (same).

The Court begins with a summary of Mr. Stern's death benefit analysis. In the Stern Initial Report, Mr. Stern set forth his opinions as to the proper death benefit amount if Mr. Magid was born on August 22, 1921 and also the proper death benefit amount if Mr. Magid was born on August 22, 1919. D.I. 157-1, Ex. A at 3. Mr. Stern concluded that, "[i]f August 22, 1921 is the legal Date of Birth of Mr. Magid, the Death Benefit of each Policy is \$5,000,000 because Mr. Magid's Date of Death, July 21, 2020, is prior to the Maturity Date of November 7, 2021, for Policy 13L and is prior to the Maturity Date of February 21, 2022, for Policy 84L." *Id.*

Mr. Stern also attempted to "approximate" the correct death benefit for both Policies using two separate forms of actuarial analysis, assuming Mr. Magid was born on August 22, 1919: first, Mr. Stern provided a "Trend Analysis of the cost of insurance for the final policy year prior to the Date of Death" (the "Trend Analysis"); and second, Mr. Stern provided a "Comparison Analysis of the cost of insurance for the final Policy Year prior to the Date of Death" (the "Comparison Analysis"). *Id.* Mr. Stern utilized these two forms of analysis to extrapolate the cost of insurance rates for the last policy year prior to the Date of Death. *See id.* at 9; *see also id.* at 11-12 (explaining his Trend Analysis), 12-13 (explaining his Comparison Analysis). Mr. Stern made his calculations in light of the premiums paid under the Policies, the expense charges assessed, the interest credited, a determination of the monthly deduction, the policy year, and the attained age. *See id.* at 10. In the Stern Initial Report, Mr. Stern opined that the Death Benefit under the Trend Analysis was \$4,545,500 for the 13L Policy and \$4,446,000 for the 84L Policy. He further opined that the Death Benefit under the Comparison Analysis was \$4,561,600 for the 13L Policy and \$4,456,000 for the 84L Policy. *See* D.I. 157-1, Ex. A at 3. In the Stern Supplemental Report, Mr. Stern modified each of these figures. D.I. 157-2, Ex. B at 2. Again, in the Stern Reply Report, Mr. Stern modified each of these figures. D.I. 157-5, Ex. E at 4.

Having thoroughly considered Mr. Stern's qualifications, opinions, and deposition testimony, the Court will not exclude Mr. Stern's opinions or testimony concerning his death benefit analysis. It is true that Mr. Stern's analysis contains results based upon extrapolations of cost of insurance rates where the Policies did not explicitly provide them. However, "'trained experts commonly extrapolate from existing data,' and it is acceptable for them to do so, provided that there is not 'too great an analytical gap' between the data and the opinion proffered." *Rhoads Indus., Inc. v. Shoreline Found., Inc.*, No. CV 15-921, 2021 WL 2778562, at *7 (E.D. Pa. July 2, 2021) (quoting *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). Under the present circumstances, the Court is not persuaded that there is such a gap. Nor is the Court persuaded that the *Paoli* factors render Mr. Stern's death benefit analysis inadmissible, given that Mr. Stern's analyses included testable hypotheses and sought to apply actuarial techniques of extrapolation to the facts in the present case. "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert*, 509 U.S. at 596. For example, to the extent that American General takes issue with Mr. Stern's analysis due to calculation errors or because his model did not accurately reproduce certain historical policy values, the Court finds that these issues are best left for cross examination and do not undermine the admissibility of Mr. Stern's opinions. *See Karlo*, 849 F.3d at 83 ("The question of whether a study's results were properly calculated or interpreted ordinarily goes to the weight of the evidence, not to its admissibility." (citations omitted)). Moreover, to the extent that American General seeks to exclude Mr. Stern's opinions or testimony as unreliable because Mr. Stern's death benefits opinions are, in American General's view, contrary to the language of the Policies or improperly assume that a correct cost of insurance rate exists under the Policies, the Court finds that this dispute is primarily one of contractual

interpretation and disagrees for substantially the same reasons as expressed in its Memorandum Opinion resolving the parties' cross motions for summary judgment. For the foregoing reasons, the Court finds that Mr. Stern's death benefit analysis sufficiently satisfies the *Daubert* reliability bar and will not preclude Mr. Stern's opinions or testimony concerning his death benefit analysis.

American General also seeks to exclude Mr. Stern's background opinions as not being the right "fit" for the instant case. D.I. 157 at 23. "The 'fit' requirement ensures that the evidence or testimony 'helps the trier of fact to understand the evidence or to determine a fact in issue.'" *Karlo*, 849 F.3d at 81 (cleaned up). "This condition goes primarily to relevance." *Id.* (citation omitted).

American General contends that Mr. Stern's "remaining background opinions are simply not relevant." D.I. 157 at 23. The background opinions specifically addressed by American General are two subsections within the Stern Initial Report's "Background" section: (A) "The General Nature of Life Insurance"; and (B) "The Definition of Life Insurance for Purposes of Federal Income Taxation Purposes Contributes to the Age 100 Problem." *See* D.I. 157-1, Ex. A at 4-6. In the first of these background sections, Mr. Stern generally describes life insurance, life insurance companies, the function of an actuary, what a life insurance contract is, and the types of life insurance policies that have been sold over time. *Id.* at 4-5. In the second, Mr. Stern discusses actions taken by Congress to regulate the life insurance industry, summarizes his understanding of what is required for a life insurance policy to be considered a life insurance policy for the purposes of federal income taxation, and provides a brief paragraph describing changes in the insurance industry since the 1990s, focusing on what Mr. Stern understood to be the "Age 100 Problem." *Id.* at 5-6.

American General contends that these background opinions fail the "fit" test described above. D.I. 154 at 24. According to American General, Mr. Stern's background opinions "do not

relate to any issue in this case,” discuss life insurance policies that are unlike the ones in suit, and are unlikely to help the jury. *See id.* Wilmington Trust disagrees, countering that Mr. Stern “opine[s] on background principles that relate to this case” D.I. 164 at 13. Much of Wilmington Trust’s opposition is focused on Mr. Stern’s death benefit analysis or Wilmington Trust’s perceived shortcomings of Mr. Toole’s background opinions, as opposed to an explanation of how Mr. Stern’s background opinions are the proper “fit” for this action. *See id.* at 12-13 (discussing qualms with the background opinions of American General’s expert).

In assessing this issue, the Court finds its previous analysis in *Ameritas Life Ins. Corp.* instructive. *See Ameritas Life Ins. Corp.*, 2025 WL 3141777 (D. Del. Nov. 10, 2025). In *Ameritas Life Ins. Corp.*, one party moved to exclude an expert from “offering opinion testimony regarding the general historical overview and purposes of life insurance.” *Id.* at *2 (explaining that the expert’s report consisted of two sections: (1) “the evolution of life insurance” and (2) “there are many different kinds of reasonable, rationale, and legitimate uses of life insurance today”). The key issue for trial in *Ameritas Life Ins. Corp.* was whether the policies at issue were invalid for lack of insurable interest. *Id.* at *3. The Court granted the motion to exclude, reasoning that, while “[the expert’s] opinions may be relevant to the life insurance industry generally, . . . his opinions fail to assist a jury in determining the existence or absence of an insurable interest in this case.” *Id.* (citing *Daubert*, 509 U.S. at 591).

Having considered the parties’ briefing, the Court agrees with American General for similar reasons. The key issue remaining in this case is the proper death benefit amount owed under the MOA provisions. As in *Ameritas Life Ins. Corp.*, the Court fails to see how Mr. Stern’s first two background opinions will help the trier of fact. Nor has Wilmington General come forth with a persuasive explanation of how Mr. Stern’s first two background opinions will help the trier

of fact. Instead, Wilmington Trust makes conclusory statements that Mr. Stern “does opine on background principles that relate to this case—the nature of life insurance policies and particular considerations for policies involving age 100” D.I. 163 at 13; *cf. Pataki v. Walmart Inc.*, No. 24-3321, 2026 WL 1416524, at *2 (3d Cir. May 20, 2026) (explaining that the “party offering an expert’s testimony . . . bears the burden of establishing that it is admissible”). Such statements do not suffice, and the Court will grant American General’s motion to the extent it seeks to exclude Mr. Stern’s first two background opinions. Mr. Stern will be permitted to testify as to his other background opinions, to the extent that his testimony does not otherwise conflict with this Memorandum Opinion.

For the foregoing reasons, the Court grants-in-part and denies-in-part American General’s Motion to Exclude the Testimony of Larry N. Stern (D.I. 156).

B. The Court Grants-in-Part and Denies-in-Part Wilmington Trust’s Motion to Exclude the Testimony and Report of Jim Toole (D.I. 78)

Wilmington Trust moves to exclude Mr. Toole from offering expert testimony regarding the death benefits owed given the alleged age misstatements in the two insurance policies issued by American General. D.I. 79 at 1.

First, Wilmington Trust asserts that Mr. Toole’s opinions contradict prior findings of this Court and are beyond the scope of the remaining claims in this case. *Id.* Wilmington Trust contends that Mr. Toole’s opinion that American General may change the maturity dates on the Policies because they lack “Maturity Extension Riders” is inconsistent with the Court’s prior ruling. *Id.* at 5. According to Wilmington Trust, the Court has already determined that the maturity dates are “clearly fixed” in the Policies and that American General may not alter that dates based on the Insured’s “true age.” *Id.* (quoting D.I. 47 at 4-6). Therefore, in Wilmington Trust’s view, allowing Mr. Toole’s opinion will confuse, rather than assist, the trier of fact. *Id.* American

General disputes Wilmington Trust's characterization of Mr. Toole's opinion, contending that Mr. Toole merely explains that Maturity Extension Riders are the only mechanism in the policies for extending coverage beyond age 100. D.I. 86 at 14-15. American General further contends that this testimony will assist the jury in understanding the options available to an insured seeking coverage beyond his 100th birthday, thereby assisting the jury in resolving the primary issue of whether the Policies provided coverage beyond age 100. *Id.*

The Court agrees with Wilmington Trust. In his report, Mr. Toole summarizes his second opinion as follows:

There is no provision in the Policies to allow for the extension of maturity beyond age 100 without the purchase of a Maturity Extension Rider, which the investors chose not to do at various opportunities throughout the life of the policy. This benefit is valuable and costly. Misstating the issue age is not a free pass to obtain the Maturity Extension Rider.

D.I. 79-1 ¶ 16. In paragraphs 63-70 of Mr. Toole's report, Mr. Toole sets forth an overview of Maturity Extension Riders, including their formation, purpose, and American General's general policies governing such riders. *Id.* ¶¶ 63-70. As Wilmington Trust noted, the Court has already determined that the maturity dates are "clearly fixed" in the Policies. D.I. 47 at 4-6. Moreover, the Court has held "the operation of the MOA provisions in this case would result in a Death Benefit Amount that is greater than zero." D.I. 182 at 14. Thus, any discussion about Maturity Extension Riders, which operate to extend the maturity dates beyond age 100 when such riders are selected, is no longer relevant to the issues remaining in this case. The Court's rulings establish that the Policies' maturity dates are fixed and that the application of the MOA provisions would result in a Death Benefit Amount greater than zero. Whether and under what circumstances a Maturity Extension Rider may extend a maturity date has no bearing on the interpretation or application of the Policies at issue here. *See United States v. Ford*, 481 F.3d 215, 220 n.6 (3d Cir.

2007) (agreeing with the proposition that expert testimony needs to “speak[] clearly and directly to an issue in dispute in the case, and . . . not mislead the jury,” so that “district courts should tread carefully when evaluating proffered expert testimony, paying special attention to the relevance prong of *Daubert*”). Therefore, the Court finds that Mr. Toole’s opinions and testimony related to Maturity Extension Riders would likely confuse or mislead the jury by obscuring the relevant issue and failing to aid the jury’s understanding of the issues in dispute. Accordingly, the Court excludes the opinions and related testimony of Mr. Toole on Maturity Extension Riders.

Second, Wilmington Trust asserts that Mr. Toole sets forth opinions on life insurance topics that do not relate to the remaining claims in the case. D.I. 79 at 6. Wilmington Trust contends that Mr. Toole’s report includes abstract discussions about life insurance generally, the “old age insurance market,” and “unduly prejudicial suggestions that the Policies at issue are illegal ‘STOLI’ policies.” *Id.* In response, American General asserts that “there is no question” that Mr. Toole’s opinions fit the facts of this case. D.I. 86 at 16. American General contends that Mr. Toole “should be permitted to explain to the jury how different types of insurance policies work” so that the “jury can better understand the purposes and mechanics” of the policies at issue. *Id.* American General further contends that Mr. Toole’s opinions regarding stranger-owned life insurance (“STOLI”) policies and the reasons an investor may benefit from a misstatement of age are “relevant to each of American General’s claims, including its pending fraud claim.” *Id.*

Mr. Toole’s expert report is divided into four sections: (I) Introduction; (II) Summary of Opinions; (III) Overview of Life Insurance Products and Markets; and (IV) Misstatement of Age: Consequences and Remedies. D.I. 79-1. Section III, “Overview of Life Insurance Products and Markets,” provides a general overview of three general types of life insurance products, as well as the determination of policy maturity dates, the tax treatment of life insurance, life settlements and

STOLI, and the emergence of the older-age market. *Id.* at 5-9. The Court acknowledges that, in some cases, it might be important “for an expert to educate the factfinder about general principles, without ever attempting to apply these principles to the specific facts of the case” such as “instruct[ing] the factfinder on the principles of thermodynamics, or bloodclotting, or on how financial markets respond to corporate reports.” Advisory Committee’s Note on Fed. R. Evid. 702. However, this general testimony must “address a subject matter on which the factfinder can be assisted by an expert.” *Id.*

In this case, the Court fails to see how Mr. Toole’s discussion of term and whole life insurance, neither of which is at issue in this case, could assist the jury. *See Ford*, 481 F.3d at 220 n.6. While Mr. Toole’s opinions may be relevant to the life insurance industry generally, the Court finds that his opinions would not assist a jury in resolving the remaining issues in this case, namely: (1) the amount that American General owes Wilmington Trust under the MOA Provision; (2) Mr. Magid’s age when the Policies were applied for; and (3) whether Wilmington Trust committed fraud in applying for the Policies. *See Daubert*, 509 U.S. at 591 (explaining that a study of the phases of the moon may help the trier of fact determine whether a certain night was dark, but that it “will not assist the trier of fact in determining whether an individual was unusually likely to have behaved irrationally on that night”).

The Court further finds that Mr. Toole’s opinions concerning life insurance policy maturity dates, the tax treatment of life insurance, life settlements, STOLI, and the emergence of the older age market are not sufficiently connected to the facts of this case. As discussed above, the Court has resolved the issue of the Policies’ maturity dates. D.I. 47 at 4-6. Therefore, Mr. Toole’s discussion of the “treatment of the Policies at the maturity date” would not assist the jury in determining any issue remaining for its consideration. D.I. 79-1 ¶ 27. Mr. Toole’s opinions

concerning tax treatment of life insurance and the requirements of the Internal Revenue Code section 7702 are no longer relevant to the remaining issues in this case in light of the Court's recent holding concerning the Policies' compliance with Section 7702 of the Internal Revenue Code. D.I. 182 at 14-16. The Court granted Wilmington Trust's motion for summary judgment on Count III of American General's Amended Complaint, holding that American General's unilateral modification of the Policies was not necessary for the Policies to continue to qualify as life insurance policies under Section 7702. *Id.* Thus, Mr. Toole's opinions concerning tax treatment or tax codes are not relevant to the remaining issues in this case. The Court reaches the same conclusion regarding Mr. Toole's opinions on life settlements, STOLI⁴ and the emergence of the older-age market. None of these topics bear on the remaining issues in this case. *See Ameritas Life Ins. Corp.*, 2025 WL 3141777, at *3 (excluding an expert's opinion that would fail to assist a jury in determining the issues at trial). Therefore, Mr. Toole's opinions concerning these topics would not assist the jury in resolving the issues remaining for trial, and are excluded.

Wilmington Trust also seeks to exclude "derogatory mentions" that the Policies were assigned to third parties and changed to various life settlement companies over the years and that Wilmington Trust lacked adequate diligence when purchasing the policy. D.I. 79 at 6-7. In his report, Mr. Toole states that "[t]he Policies were subsequently assigned to third parties and changed hands among various life settlement companies over the years." D.I. 79-1 ¶ 2. The Court finds no basis for characterizing Mr. Toole's opinion as "derogatory," when the record reflects changes in ownership over the years. Experts are allowed to give opinions on facts. *See Sussex*

⁴ The Court makes clear that Mr. Toole may not testify concerning whether the Policies are STOLI. American General has not placed STOLI at issue in this case, nor does American General's First Amended Complaint (D.I. 26) allege that STOLI was the basis for its fraud claim. *See Golo, LLC v. Goli Nutrition Inc.*, No. 20-667, 2023 WL 4952576, at *4 (D. Del. Aug. 3, 2023) ("In order for an expert opinion to be admissible, it must fit the facts of the case.").

Auto Ctr., Inc. v. Optimum Choice, Inc., No. 99-376, 2001 WL 822329, at *8 n.35 (D. Del. July 20, 2001).

The Court also finds no basis for excluding Mr. Toole's opinion regarding Wilmington Trust's diligence. "The Third Circuit has established that an expert can testify as to industry custom and practice, if relevant, so long as the expert does not opine as to what was required under the law, or whether the defendant complied with the [law]." *Micron Tech., Inc. v. Rambus Inc.*, No. 00-792, 2007 WL 9771152, at *2 (D. Del. Aug. 29, 2007) (internal quotations omitted); *see also In re Columbia Pipeline Grp., Inc. Merger Litig.*, No. 2018-0484, 2022 WL 2902769, at *1 (Del. Ch. July 14, 2022) ("An expert can testify as to whether a party's actions (irrespective of the party's state of mind) complied with or were consistent with industry standards and procedures."). Mr. Toole opines that Wilmington Trust did not conduct adequate diligence in accordance with industry practices known at the time the Policies were purchased. D.I. 79-1 ¶ 79. The Court finds that Mr. Toole's opinion regarding whether Wilmington Trust's diligence was consistent with industry standards is admissible and may be relevant to American General's fraud claim.

To the extent that Mr. Toole's expert testimony addresses matters already decided by the Court, such testimony is neither relevant to the remaining issues in the case nor helpful to the jury in resolving those issues. Mr. Toole may rely on his opinions to the extent they do not conflict with the Court's ruling at D.I. 182. For the reasons discussed above, the Court grants-in-part and denies-in-part Wilmington Trust's Motion to Exclude the Testimony and Report of Jim Toole (D.I. 78).

C. The Court Grants Wilmington Trust's Motion to Exclude the Testimony of Jim Toole (D.I. 148)

Wilmington Trust again moves to exclude Mr. Toole's Initial Report and, in addition, moves to exclude Mr. Toole's Rebuttal Report. Wilmington Trust renews the arguments it

previously raised in connection with its prior motion. *See generally* D.I. 150. Therefore, the Court adheres to its rulings and reasoning above concerning Mr. Toole’s Initial Report. The Court now turns to Wilmington Trust’s request to exclude Mr. Toole’s Rebuttal Report.

Wilmington Trust asserts that Mr. Toole’s opinions concerning the amount of death benefits owed are not based on reliable methodology. *Id.* at 11. Wilmington Trust contends that Mr. Toole’s opinion that no death benefits are owed are unreliable because his opinion is based on “his say-so and subjective interpretation of the calculation required under the MOA Provision” and “his unverified adoption of opposing counsel’s legal theory that no correct cost of insurance rate exists for an attained age of 100.” *Id.* at 12-13. Wilmington Trust further contends that Mr. Toole’s opinions do not suggest they are generally accepted among others in the life insurance field. *Id.* at 14. As an example, Wilmington Trust asserts that Mr. Toole fails to explain the rationale behind the formula used to calculate zero death benefits. *Id.* Moreover, Wilmington Trust contends that Mr. Toole provides no reasoning for his reliance on a hypothetical model regulation offered by the National Association of Insurance Commissioners. *Id.* at 15.

American General responds that Mr. Toole never opines that “no death benefits are owed under the policies.” D.I. 161 at 17. Instead, Mr. Toole explains that “the amount of death benefit that can be purchased on the Policies beyond age 100 is zero.” *Id.* (quoting D.I. 151, Ex. B ¶ 19). American General contends that Mr. Toole “explains why, as an actuary, his calculation of an adjusted death benefit under these policies at age 100 in the manner prescribed by the policies’ misstatement-of age provisions, equal zero.” *Id.* at 17-19.

As previously discussed, the Court has held “the operation of the MOA provisions in this case would result in a Death Benefit Amount that is greater than zero.” D.I. 182 at 14. Federal Rule of Evidence 702 governs testimony by experts and requires that expert testimony “help the

trier of fact to understand the evidence or determine a fact in issue.” Fed. R. Evid. 702. Testimony that is contrary to the law is not admissible under Rule 702. *See VLSI Tech. LLC v. Intel Corp.*, 2022 WL 2304112, at *3 (D. Del. June 27, 2022) (“[A]n expert’s opinions that are incorrect as a matter of law are inadmissible as . . . unreliable under Rule 702.”). Thus, to the extent that Mr. Toole opines that the application of the Policies’ MOA provisions results in an adjusted death benefit of zero, the Court excludes that opinion. Mr. Toole may offer testimony based on his opinion only to the extent those opinions do not contradict or otherwise assume a legal determination contrary to the Court’s ruling. For the foregoing reasons, the Court excludes Mr. Toole’s opinion that the application of the Policies’ MOA provisions results in an adjusted death benefit of zero, and grants Wilmington Trust’s Motion to Exclude the Testimony of Jim Toole (D.I. 148).

IV. CONCLUSION

For the foregoing reasons, Wilmington Trust’s Motion to Exclude Testimony and Report of Jim Toole (D.I. 78) is granted-in-part and denied-in-part, (2) Wilmington Trust’s Motion to Exclude Testimony of Jim Toole (D.I. 148) is granted, and American General’s Motion to Exclude the Testimony of Larry N. Sheets (D.I. 156) is granted-in-part and denied-in-part.

**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

ORDER

AND NOW, this 3rd day of September 2026 and based on the reasons set forth in the accompanying Memorandum Opinion, **IT IS HEREBY ORDERED** that:

1. Wilmington Trust's Motion to Exclude Testimony and Report of Jim Toole (D.I. 78) is GRANTED-IN-PART and DENIED-IN-PART.
2. Wilmington Trust's Motion to Exclude Testimony of Jim Toole (D.I. 148) is GRANTED.
3. American General's Motion to Exclude the Testimony of Larry N. Sheets (D.I. 156) is GRANTED-IN-PART and DENIED-IN-PART.



GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE