

**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

MEMORANDUM ORDER

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 *in limine*:

- (1) American General’s First Motion *in Limine* (D.I. 192-2), which has been fully briefed (*see id.*);
- (2) American General’s Second Motion *in Limine* (D.I. 192-3), which has been fully briefed (*see id.*);
- (3) American General’s Third Motion *in Limine* (D.I. 192-4), which has been fully briefed (*see id.*);
- (4) Wilmington Trust’s First Motion *in Limine* (D.I. 192-5), which has been fully briefed (*see id.*);

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”).

- (5) Wilmington Trust's Second Motion *in Limine* (D.I. 192-6), which has been fully briefed (*see id.*); and
- (6) Wilmington Trust's Third Motion *in Limine* (D.I. 192-7), which has been fully briefed (*see id.*);

For the following reasons, the Court grants American General's First Motion *in Limine* (D.I. 192-2) and denies American General's Second and Third Motions *in Limine* (D.I. 192-3; D.I. 192-4) without prejudice. The Court denies Wilmington Trust's First Motion *in Limine* (D.I. 192-5), denies Wilmington Trust's Second Motion *in Limine* (D.I. 192-6) without prejudice, and grants-in-part and denies-in-part Wilmington Trust's Third Motion *in Limine* (D.I. 192-7).

I. LEGAL STANDARDS

"A motion *in limine* is designed to 'narrow the evidentiary issues for trial and to eliminate unnecessary trial interruptions.'" *Chervon (HK) Ltd. v. One World Techs., Inc.*, C.A. No. 19-1293, 2025 WL 2630480, at *1 (D. Del. Feb. 5, 2025) (quoting *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1069 (3d Cir. 1990)). "A motion *in limine* is appropriate for 'evidentiary submissions that clearly ought not be presented . . . because they clearly would be inadmissible for any purpose.'" *Id.* (alteration in original) (quoting *Evolved Wireless, LLC v. Apple Inc.*, C.A. No. 15-542-JFB-SRF, 2019 WL 1100471, at *1 (D. Del. Mar. 7, 2019)). While many motions *in limine* must be resolved before trial, "motions in limine often present issues for which final decision is best reserved for a specific trial situation." *Biogen Inc. & Biogen Ma Inc. v. Sandoz Inc.*, C.A. No. 22-1190-GBW, 2025 WL 1260954, at *2 (D. Del. May 1, 2025) (citation omitted).

II. DISCUSSION

The Court discusses each of the motions *in limine* below.

A. The Court Grants American General's First Motion *in Limine*²

American General's First Motion *in Limine* "moves to exclude all documents relied upon by Wilmington [Trust] to support the contention that Mr. Magid was born in 1921," except for the Policies' applications. D.I. 192-2 at 2. The documents specifically identified by American General include (1) an expired Florida driver's license, (2) an Experian credit report, (3) a veteran identification card, and (4) "any medical records, laboratory reports, life-expectancy certificates, underwriting forms, or other documents that record a birth date of August 22, 1921." *Id.* According to American General, "[t]he date of birth statements in these documents are inadmissible hearsay not subject to any exception." *Id.*

Pursuant to Rule 802 of the Federal Rules of Evidence, hearsay is inadmissible unless otherwise provided by a federal statute, the Federal Rules of Evidence, or "other rules prescribed by the Supreme Court." Fed. R. Evid. 802. "'Hearsay' means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c).

In response, Wilmington Trust asserts that "the date-of-birth documents in the record . . . *either cannot be authenticated or, even if they can, are inadmissible hearsay as to the date of birth.*"³ D.I. 192-2 at 6 (emphasis added). Wilmington Trust focuses its response on three categories of documents: (1) the Policies' applications, which were not challenged by American

² Unless otherwise indicated, reference to page numbers in D.I. 192-2 to D.I. 192-7 are the page numbers appearing in the headers of the cited document.

³ Wilmington Trust spends much of its opposition to this motion *in limine* arguing against the admissibility of documents that *American General* seeks to admit at trial. See D.I. 192-2 at 6-8. Given that Wilmington Trust has also filed three motions *in limine*, the Court will not permit Wilmington Trust to use its opposition as a fourth motion *in limine*. Unless otherwise addressed in this Memorandum Order, the Court denies this relief without prejudice to Wilmington Trust objecting to the admission of such documents during trial.

General to begin with; (2) “documents in American General’s underwriting file for the Policies”; and (3) “documents exchanged with death claim correspondence.” *Id.* However, even as to the latter two categories, Wilmington Trust contends that “the documents are hearsay as to the date of birth and cannot be used to prove the truth of that date.” *Id.*

Given the parties’ agreement that the documents in the record that have a birthdate stating 1921, except for the Policies’ applications, are inadmissible hearsay, the Court will grant American General’s First Motion *in Limine*. See *Menard v. Targa Res. LLC*, 523 F. Supp. 3d 882, 890 (M.D. La. 2021) (excluding evidence where the parties agreed the evidence was hearsay). By this ruling, the Court is not precluding all date of birth statements from ever being admitted into evidence during trial in this action for any purpose. This ruling is limited to the date of birth statements in the documents specifically identified by American General in its first motion *in limine*, including (1) the expired Florida driver’s license, (2) Experian credit report, (3) veteran identification card, and (4) medical records, laboratory reports, life-expectancy certificates, underwriting forms, or other documents identified by Wilmington Trust that record a birth date of August 22, 1921, are offered into evidence for the truth of the matter asserted in the date of birth statement, and do not have the necessary supporting testimony to authenticate the document and overcome the hearsay objection. The Court will defer its ruling on the admissibility of any other documents not offered for the truth of the matter asserted in the date of birth statement, other documents that allegedly are non-hearsay, and/or other documents that allegedly fall within one of the exceptions to the rule against hearsay until having heard the proffer in context during trial.

B. The Court Denies American General’s Second Motion *in Limine*

American General’s Second Motion *in Limine* “requests an Order precluding Wilmington from introducing extrinsic evidence or eliciting testimony regarding the meaning of the policies

and methods for calculating a death benefit that differ from the Court's interpretation of the policies' unambiguous text." D.I. 192-3 at 2. New Jersey courts "permit a broad use of extrinsic evidence to achieve the ultimate goal of discovering the intent of the parties. Extrinsic evidence may be used to uncover the true meaning of contractual terms." *Conway v. 287 Corp. Ctr. Assocs.*, 187 N.J. 259, 270 (2006).

American General acknowledges that it prepared its motion prior to the Court's resolution of the parties' "motions for summary judgment and *Daubert* motions." *Id.* at 2 n.1. Moreover, it appears that American General's Second Motion *in Limine* has largely been mooted by the Court's ruling on the parties' *Daubert* motions. *See* D.I. 189; D.I. 190. In that Memorandum Opinion, the Court granted American General's motion to exclude the opinions and testimony of Wilmington Trust's expert to the extent that he rendered legal conclusions regarding his interpretation of the Policies. *See* D.I. 189 at 7. The Court denied the motion to the extent it sought to exclude Wilmington Trust's expert's death benefit analysis. *See id.* at 9.

In opposition, Wilmington Trust responds that "[t]his motion *in limine* has been rendered moot by the Court's rulings on the parties' partial motions for summary judgment and *Daubert* motions." D.I. 192-3 at 6. In reply, American General again requests that the Court preclude Wilmington Trust's expert witness from "supplant[ing] the policies' clear and unambiguous terms with his opinions about the amount of death benefits owed under the policies[.]" *Id.* at 9. While the relief sought by American General appears to be subsumed by the Court's *Daubert* rulings, the Court will deny American General's Second Motion *in Limine* without prejudice to renew at an appropriate time during trial, such as if and when Wilmington Trust's expert attempts to testify inconsistently with the Court's rulings on the parties' motions for summary judgment and *Daubert*

motions, or if another Wilmington Trust witness attempts to offer extrinsic evidence regarding the meaning of the Policies that differs from the Court's prior rulings.

C. The Court Denies American General's Third Motion *in Limine*

American General's Third Motion *in Limine* "seeks an Order precluding Wilmington [Trust] from attempting to introduce evidence, eliciting testimony, or making arguments regarding the availability or existence of cost-of-insurance ('COI') rates for ages beyond 99 *under other insurance policies offered by American General*." D.I. 192-4 at 2 (emphasis added). According to American General, "Wilmington has failed to establish any foundation connecting hypothetical COI rates for age 100 and beyond to the policies." *Id.* Moreover, American General asserts that evidence of it having available COI rates for age 100 and beyond in other policies is irrelevant because the issue in this case is what the two policies at issue require. *Id.* Finally, American General asserts that this evidence should be excluded under Federal Rule of Evidence 403, allegedly because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. *See id.* at 3-4.

Wilmington Trust opposes, asserting that "American General can no longer argue that COI rates do not exist or cannot be calculated for an insured who dies after age 99" in light of the Court's opinion resolving the parties' cross motions for summary judgment. *Id.* at 6. As for relevancy, Wilmington Trust claims that the evidence surrounding American General's provision of COI rates for other policies is relevant because it (1) "impeaches American General's position that COI rates for ages beyond 99 cannot be calculated" and (2) "directly rebuts American General's contention that Mr. Stern's methods for extrapolating rates are speculative and actuarially unsound and goes towards Mr. Stern's credibility." *Id.* at 8. Wilmington Trust also

refutes that there is any basis to exclude such evidence under Federal Rule of Evidence 403. *See id.* at n.2.

The Court agrees with Wilmington Trust that, whether American General has COI rates for beyond age 99 in other insurance policies, is relevant, at least for the purpose to rebut American General's position that COI rates for ages beyond 99 cannot be calculated and/or to rebut an attack upon the credibility of Mr. Stern's calculations. Also, at this time, the Court is not persuaded that the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. Given that the above factors turn on how this issue presents itself at trial, the Court will deny American General's Third Motion *in Limine* without prejudice.

D. The Court Denies Wilmington Trust's First Motion *in Limine*

In its first motion *in limine*, Wilmington Trust seeks to preclude the testimony of American General's witnesses, Suhas Sarathy ("Mr. Sarathy") and Dr. Donna Magid ("Dr. Magid"), under Federal Rules of Civil Procedure 26 and 37. D.I. 192-5 at 2. Wilmington Trust contends that American General's Initial Disclosures and Supplemental Initial Disclosures fail to identify the proposed witnesses. *Id.* Therefore, according to Wilmington Trust, the witnesses must be excluded. *Id.* Wilmington Trust further contends that all the *Pennypack* factors favor exclusion. *Id.* at 3. *First*, Wilmington Trust contends that it would be "unquestionably prejudiced" because it "has not had the opportunity to depose these individuals." *Id.* *Second*, in Wilmington Trust's view, the prejudice cannot be cured because "American General has not disclosed the substance of the anticipated testimony, and even if it had, it is too late to depose them." *Id.* at 4 (cleaned up). *Third*, Wilmington Trust contends that "permitting these individuals to testify would necessarily disrupt trial by requiring last-minute discovery, motion practice, and a change in trial strategy."

Id. Fourth, Wilmington Trust contends that American General exhibited “bad faith” by “sneak[ing] in these witnesses through the proposed pretrial order, without conferring with opposing counsel or seeking leave of Court.” *Id.*

American General responds that the testimony of the witnesses has been “long known” to both parties. D.I. 192-5 at 5. American General contends that Mr. Sarathy was disclosed through sworn testimony “in the form of signed and verified interrogatory responses.” *Id.* American General further contends that Dr. Magid, the daughter of the Insured, “was identified in numerous documents produced in this action.” *Id.* Therefore, American General contends that Wilmington Trust had notice of these witnesses being potential trial witnesses. Moreover, American General claims that no late disclosure occurred because it listed “Corporate Representative(s) for American General” and “All individuals identified in documents exchanged between the parties” in its disclosure. *Id.* American General further claims that, even if Wilmington Trust’s accusations were accurate, any non-disclosure is harmless. *Id.* at 6.

American General also responds that it is not true that Wilmington Trust did not have the opportunity to depose Mr. Sarathy and/or Dr. Magid. American General notes the fact that, despite Mr. Sarathy signing American General’s interrogatory responses served in March 2024, Wilmington Trust never requested his deposition. *Id.* Also, American General responds that Dr. Magid is the daughter of Myer Magid, the insured whose age is disputed by Wilmington Trust, and was identified in numerous documents produced during discovery in this action, including but not limited to, in the obituary that Wilmington Trust itself provided to American General in support of its claims. *Id.* American General further responds that Wilmington Trust failed to take a single deposition in this action prior to the close of discovery. *Id.*

The Court agrees with American General that Wilmington Trust cannot credibly claim to be prejudiced or surprised by American General's identification of Mr. Sarathy and/or Dr. Magid as trial witnesses. Wilmington Trust had sufficient notice during discovery that these individuals were likely to have discoverable information and could potentially be trial witnesses. In fact, Mr. Sarathy provided signed interrogatory responses served on Wilmington Trust in March 2024. Dr. Magid is a non-party and is the only person identified by either side that knew Myer Magid. *Id.* at 7. Either side could have deposed Dr. Magid during the discovery period, and the fact that Wilmington Trust took no depositions in this action of any witnesses before the close of discovery belies its claim of prejudice with respect to these two witnesses which were identified in documents produced during discovery. Thus, the Court denies Wilmington Trust's first motion *in limine* and will allow Suhas Sarathy and Dr. Donna Magid to testify during trial.

E. The Court Denies Wilmington Trust's Second Motion in *Limine*

In its second motion in *limine*, Wilmington Trust seeks to preclude American General from "offering a new damages calculation or theory." D.I. 192-6 at 2. According to Wilmington Trust, Jim Toole's ("Mr. Toole") disclosed opinions were clear: "the amount of death benefit that can be purchased on the Policies beyond age 100 is zero" and "for attained ages 100 and over, there are no cost of insurance rates for these policies, and "it is not possible to purchase any death benefit." *Id.* Thus, in Wilmington Trust's view, "any non-zero calculation by Toole would be an untimely, new expert opinion subject to exclusion." *Id.* Wilmington Trust further contends that American General should be precluded from presenting a new calculation through a fact witness because the calculation relies on "actuarial assumptions," which Wilmington Trust characterizes as "quintessential expert testimony." *Id.* at 4. American General responds that Mr. Toole "will testify at trial consistent with his disclosure and within the legal landscape as altered by the Court's

summary judgment order” and “[s]o will American General’s fact witnesses.” *Id.* at 6. With respect to its lay witnesses, American General contends that the witnesses will offer testimony based on their own personal knowledge. *Id.* at 8.

On September 3, 2026, the Court entered a Memorandum Opinion granting Wilmington Trust’s Motion to Exclude Testimony of Jim Toole (D.I. 148). *See* D.I. 189. In the Memorandum Opinion, the Court held that “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.” D.I. 189 at 19. American General represents that Mr. Toole will not introduce a new theory or offer testimony inconsistent with his prior opinions. D.I. 196-6 at 6. Given the Court’s ruling in the Memorandum Opinion, American General is aware of the limitations governing Mr. Toole’s testimony and the boundaries within which Mr. Toole may properly testify. Under these circumstances, the Court declines to further exclude Mr. Toole’s testimony in advance. American General also represents that its fact witnesses will offer testimony based on their own personal knowledge. The Court expects American General to abide by that representation. To the extent that any witness testifies beyond the scope of his or her personal knowledge, an objection may be raised at that time. *See* Fed. R. Evid. 701. Thus, Wilmington Trust’s second motion *in limine* is denied without prejudice. Wilmington Trust may renew its motion if, during trial, Mr. Toole offers testimony that exceeds the scope permitted by the Court’s prior order, introduces a previously undisclosed theory, or otherwise falls outside the permissible scope.

F. The Court Grants-in-Part and Denies-in-Part Wilmington Trust's Third Motion in *Limine*

In its third motion *in limine*, Wilmington Trust seeks to exclude American General from presenting “evidence and argument about ‘STOLI’ (and related terms), the Policies’ ownership by Geronta, and transfer history” under Federal Rules of Civil Procedure 401 and 403. D.I. 192-7 at 2. Wilmington Trust contends that the topics are “irrelevant, highly prejudicial, and will confuse and mislead the jury” because STOLI has not been invoked in this case. *Id.* Wilmington Trust further contends that any probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, and wasting time. *Id.* at 3. American General responds that the evidence it seeks to present is relevant to its fraud in the presentment claim because it speaks to Wilmington Trust’s potential motives for submitting inaccurate information to American General. *Id.* at 6. American General contends that the history and ownership of the policies is relevant to whether Wilmington Trust intended to deceive American General. *Id.* According to American General, the jury must understand that Wilmington Trust owns the policies on behalf of a life settlement investor that purchased the policies for millions of dollars when the Insured was already in his nineties, and that the policies had been bought and sold before the life settlement investor’s acquisition. *Id.* American General further contends that this evidence is directly relevant to Wilmington Trust’s motives for dishonesty. *Id.* at 8.

The Court agrees that the history and ownership of the policies may be relevant to American General’s fraud claim. However, the relevance of that evidence does not require introducing “STOLI” terminology or suggesting that “STOLI” may be at issue in this case. As discussed in the Court’s September 3, 2026 Memorandum Opinion (D.I. 189), “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.” D.I. 189 at 16 n.4. To the extent

that evidence concerning the policies' history and ownership is otherwise admissible and relevant to Wilmington Trust's knowledge, intent, or alleged misrepresentations, American General may present that evidence. American General may not, however, characterize the transactions as "STOLI,"⁵ allude to "STOLI," or otherwise introduce "STOLI" as a theory that has not been pleaded or placed at issue.

Accordingly, Wilmington Trust's third motion *in limine* is granted-in-part and denied-in-part. References to STOLI as a theory or characterization of the policies are excluded, but American General may introduce otherwise admissible evidence concerning the history and ownership of the policies.

III. CONCLUSION

For the reasons set forth above, American General's First Motion *in Limine* (D.I. 192-2) is granted, American General's Second and Third Motions *in Limine* are denied without prejudice (D.I. 192-3; D.I. 192-4), Wilmington Trust's First Motion *in Limine* (D.I. 192-5) is denied, Wilmington Trust's Second Motion *in Limine* (D.I. 192-6) is denied without prejudice, and Wilmington Trust's Third Motion *in Limine* (D.I. 192-7) is granted-in-part and denied-in-part.

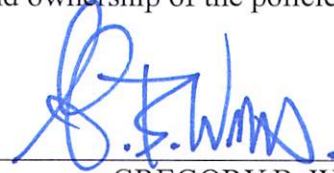
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WHEREFORE, at Wilmington this 9th day of September 2026, **IT IS HEREBY ORDERED** that:

1. American General's First Motion *in Limine* (D.I. 192-2) is GRANTED;

⁵ This includes terminology that expressly or implicitly invokes a "STOLI" or a wagering arrangement, including, but not limited to, references to "STOLI," "wagering," "betting," "bets," or similar terminology suggesting that the policies were acquired or maintained as a wager on the Insured's life.

2. American General's Second Motion *in Limine* (D.I. 192-3) is DENIED WITHOUT PREJUDICE;
3. American General's Third Motion *in Limine* (D.I. 192-4) is DENIED WITHOUT PREJUDICE;
4. Wilmington Trust's First Motion *in Limine* (D.I. 192-5) is DENIED;
5. Wilmington Trust's Second Motion *in Limine* (D.I. 192-6) is DENIED WITHOUT PREJUDICE; and
6. Wilmington Trust's Third Motion *in Limine* (D.I. 192-7) is GRANTED-IN-PART and DENIED-IN-PART. References to STOLI as a theory or characterization of the policies are excluded, but American General may introduce otherwise admissible evidence concerning the history and ownership of the policies.



GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE