

**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

Pending before the Court is Wilmington Trust, National Association (“Wilmington Trust”) Renewed Motion to Strike Mr. Toole’s Supplement to Rebuttal Report and Preclude Testimony Consistent with the Supplement (“Renewed Motion”) (D.I. 219) seeking to exclude American General Life Insurance Company (“American General”) from offering a new damages calculation or theory because Mr. Toole’s testimony (1) exceeds the scope permitted by the Court’s September 9, 2026 Order; (2) introduces a previously undisclosed theory; and (3) otherwise falls outside the permissible scope. D.I. 219 at 1. American General opposes the Renewed Motion. D.I. 220. For the reasons set forth below, the Court denies Wilmington Trust’s Renewed Motion.

I. DISCUSSION¹

Wilmington Savings seeks to preclude Mr. Toole’s proposed testimony on a litany of grounds. At bottom, however, Wilmington Trust’s objection rests on a single premise: because Mr. Toole previously relied on a zero result for the correct adjustment to the Death Benefit Amount, Mr. Toole should be bound to that result notwithstanding the Court’s rulings establishing

¹ The Court writes for the benefit of the parties and assumes their familiarity with the case.

that the amount is greater than zero. At the September 9, 2026 Pre-Trial Conference, the Court rejected that argument. *See* D.I. 220 at 2-3 (citing to the Transcript of the September 9, 2026 Pre-trial Conference). Additionally, the Court cannot fully evaluate Mr. Toole's supplemental report because, despite the parties' arguments concerning its contents, neither party attached the report or deposition to its submission for the Court's review. Thus, given the record presented, the Court cannot conclusively determine whether Mr. Toole has advanced an entirely new theory, rather than an adjustment to the calculation to reflect the Court's ruling. The Court further notes that the improper exclusion of an expert witness providing a party's sole expert testimony on an element of its case ordinarily is not harmless. *See In re Unisys Sav. Plan Litg.*, 173 F.3d 145, 162 (3d Cir. 1999) ("While improper admission of evidence is usually harmless error in a bench trial, the improper exclusion of an expert witness who would have offered a party's sole expert testimony on an element of its case ordinarily is not harmless.").

Furthermore, several of Wilmington Trust's objections appear to concern issues that go to the weight of Mr. Toole's proposed testimony, rather than its admissibility. For example, Wilmington Trust challenges Mr. Toole's selection of the Correct COI Rate, the Original COI Rate, and the Original NAR. D.I. 219 at 7. These matters can be appropriately explored and tested through cross-examination at trial. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 596 (1993) ("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.").

II. CONCLUSION

For the reasons set forth above, Wilmington Trust's Renewed Motion to Strike Mr. Toole's Supplement to Rebuttal Report and Preclude Testimony Consistent with the Supplement (D.I. 219) is denied without prejudice.

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WHEREFORE, at Wilmington this 14th day of September 2026, **IT IS HEREBY ORDERED** that Wilmington Trust's Renewed Motion to Strike Mr. Toole's Supplement to Rebuttal Report and Preclude Testimony Consistent with the Supplement (D.I. 219) is DENIED WITHOUT PREJUDICE.



GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE