

Blumenthal v New York Life

Exhibit 1

Irving Blumenthal, Vol. I
March 2, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

IRVING H. BLUMENTHAL, JR.,)	
individually and on behalf of all)	
similarly situated insureds of New)	
York Life Insurance and Annuity)	
Corporation,)	
)	
Plaintiff,)	
)	
v.)	No. 5:08-CV-00456-F
)	
NEW YORK LIFE INSURANCE AND)	
ANNUITY CORPORATION,)	
)	
Defendant.)	

* * * * *

VOLUME I

VIDEOTAPE DEPOSITION OF IRVING BLUMENTHAL, JR.

taken on behalf of the

Defendant

on March 2, 2010

in Oklahoma City, Oklahoma

* * * * *

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OKLAHOMA CITY, OKLAHOMA 73102

**CONDENSED
TRANSCRIPT**

Reported by: Retta M. Brittain, CSR

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4 (Pages 10 to 13)

1 record, I did find out yesterday that this was an issue,
2 so --
3 MR. STANO: Well, he's known about this
4 deposition for --
5 MS. EMMONS: Well, I don't think
6 Mr. Blumenthal had --
7 THE WITNESS: I had no idea that I was
8 going to read documents. What documents are -- these
9 documents here, I can't -- I couldn't read them. She
10 wouldn't know it. I had no idea. Never thought about
11 it --
12 **Q (By Mr. Stano) Okay.**
13 A -- period.
14 **Q We'll take this to the Court. There's no point in**
15 **arguing about it.**
16 A Okay. Take it to court.
17 **Q What's your current address, Mr. Blumenthal?**
18 A 227 Briarwood Lane.
19 **Q And your current occupation?**
20 A Is Blumenthal Manufacturing.
21 **Q Is it Blumenthal's --**
22 A Blumenthal Manufacturing Company.
23 **Q Is Blumenthal singular or plural?**
24 A Singular.
25 **Q Okay. And what was your current address in 1999?**

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1 A The same. We've been out there for 20 years, since
2 1989.
3 **Q When I said your current address, I wasn't clear. I**
4 **apologize. I'm referring to your --**
5 A 27 -- it's --
6 **Q Sir, let me finish my question.**
7 A Okay. Go ahead.
8 **Q I'm referring to your home address.**
9 A That's what I know. That's what I'm telling you.
10 227 Briarwood Lane.
11 **Q Okay. What's your position at Blumenthal's**
12 **Manufacturing?**
13 A I'm the cofounder of the company. My father founded
14 it, and I started with him.
15 **Q Do you have a title?**
16 A Yeah. I'm the president at one company.
17 **Q Are you also chairman of the board?**
18 A I think I am chairman of the board, yeah.
19 **Q And in 1999 were you chairman of the board?**
20 A I imagine.
21 **Q And president of the company as well?**
22 A Should have been.
23 **Q In 1999 what were your duties and responsibilities**
24 **as president and chairman of the board?**
25 A The same as I've got now.

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1 **Q And what are they?**
2 A Running the company, buying things, selling things,
3 communicating with the people.
4 **Q The people, being who?**
5 A The workers plus the -- you know, we've got clients
6 all over the country.
7 **Q How many employees did you have at Blumenthal**
8 **Manufacturing in 1999?**
9 A 19 -- probably a hundred-odd.
10 **Q And what type of service or business is Blumenthal**
11 **Manufacturing engaged in?**
12 A We do transmissions, differentials, drivelines,
13 clutches, engines, anything underneath the vehicle.
14 **Q You repair them?**
15 A Yeah. We remanufacture them or buy new ones,
16 whatever it is, yeah. We've got roughly 185,100 and
17 something thousand feet of buildings full of material.
18 **Q Okay. Who are some of your major clients?**
19 A U-Haul, United Ford. That's just two. We've got --
20 I don't know. We've got hundreds. Maybe a hundred or so
21 accounts, 3 or 400.
22 **Q Okay. For U-Haul and, I believe you said, United**
23 **Ford?**
24 A Yeah. United Ford is a division of Penske.
25 **Q Okay. What do you do for U-Haul and United Ford?**

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1 **Do you repair --**
2 A We sell -- yeah. Well, we sell them transmissions
3 and different -- different things, parts, trannies. We
4 put a building up for U-Haul that does all their
5 transmissions. It's been 11 years -- 12 years now, I
6 guess. And we've got a lot of clients all over the
7 country. Been doing it for 60 years last March.
8 **Q When you say you put a building up, was this**
9 **building on your land?**
10 A Yeah. It's right down the street.
11 **Q How much did the building cost, approximately?**
12 A A million-odd.
13 **Q Eleven years ago?**
14 A Yeah. Twelve years, I think.
15 **Q Okay.**
16 A It was a million something. Million-two, million,
17 something like that.
18 **Q In 1999 what was the approximate gross revenues of**
19 **Blumenthal Manufacturing?**
20 A Approximately maybe 10 million.
21 **Q Today --**
22 A 9 million just about. Well, the recession got us.
23 And it's probably 9 or 10 million now, even. It's still
24 coming back.
25 **Q Do you have children?**

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5 (Pages 14 to 17)

1 A I have three sons.
 2 **Q What are their names?**
 3 A Scott, David, and Kevin.
 4 **Q Do they work with you at Blumenthal Manufacturing?**
 5 A Yes, sir. Been there for 26 years.
 6 **Q All three sons?**
 7 A Uh-huh.
 8 **Q As president and chairman of the board, do you enter**
 9 **into contracts on behalf of Blumenthal Manufacturing?**
 10 A Sure.
 11 **Q Do you negotiate those contracts?**
 12 A Mostly, yeah. You know, I'm in with -- in concert
 13 with my sons. If somebody wants something, we discuss
 14 it. We either do it or we don't do it.
 15 **Q Okay. And the agreement is reflected in the written**
 16 **contract. Correct?**
 17 A Not -- sometimes we just do it in a verbal contact.
 18 **Q Okay.**
 19 A Like MoPar -- we decided we'd do MoPar's
 20 transmissions and manuals, which is Chrysler. And their
 21 contract is a PO, purchase order. Nothing in writing.
 22 **Q Uh-huh.**
 23 A But a PO is just -- like, we make 50 trannies,
 24 whatever, for them, 100, something.
 25 **Q Do you ever enter into written contracts where your**

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1 **name is on the contract?**
 2 A Sure.
 3 **Q Such as what contract? What do these contracts**
 4 **cover?**
 5 A If somebody wants to buy transmissions, we might
 6 have a written contract that we're going to sell them the
 7 tranny for X dollars for so many years. That's it.
 8 Simple.
 9 **Q And you've been putting your name on contracts for a**
 10 **good number of years. Correct?**
 11 A Yeah. I'd say maybe 20 years or so, 30 maybe.
 12 **Q You've been chairman of the board and president for**
 13 **that long --**
 14 A I think since --
 15 **Q -- approximately?**
 16 A Yeah. Since 1977 or something.
 17 **Q Are you the chief negotiator for Blumenthal**
 18 **Manufacturing when it comes to negotiating contracts?**
 19 A No.
 20 **Q Who is?**
 21 A I used to be, but I just leave that up to my sons.
 22 They have a -- I let them do it instead of me.
 23 **Q What about in 1999? Were you --**
 24 A In 1999 I probably was.
 25 **Q Okay. Did you negotiate insurance contracts for**

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1 **Blumenthal Manufacturing?**
 2 A No.
 3 **Q Who did?**
 4 A My son David did the insurance, and I didn't have
 5 anything to do with it. Still don't have anything to do
 6 with the insurance.
 7 **Q Okay. Do you know what kinds of insurance coverages**
 8 **Blumenthal Manufacturing has?**
 9 A Yeah. We got all kinds of coverage.
 10 **Q Such as what?**
 11 A On the buildings, on the vehicles, on and on and on,
 12 the people, health insurance, and whatever it takes to
 13 operate a business.
 14 **Q Do you have a board of directors?**
 15 A We have a board.
 16 **Q Are you the chairman of the board?**
 17 A I'm the chairman of the board.
 18 **Q Who else is on the board?**
 19 A My sons. That's it.
 20 **Q Do you have a chief financial officer or a**
 21 **comptroller?**
 22 A We do have now a chief financial officer, which is
 23 one of my sons, Scott.
 24 **Q Okay. What about in 1999?**
 25 A No, we didn't.

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1 **Q Any reason why not?**
 2 A We didn't think we needed one, which is -- but now
 3 we do.
 4 **Q And why do you need one now when you didn't in 1999?**
 5 A Well, more control. And we decided to let Scott
 6 just take over and become the chief financial officer,
 7 which he is. But he's only the chief financial officer
 8 for Blumenthal Manufacturing. We have two other
 9 companies that -- Blumenthal Automatics and Blumenthal
 10 Heavy Duty.
 11 **Q What does Blumenthal Heavy Duty do?**
 12 A Sells big trannies.
 13 **Q I'm sorry. Sells big what?**
 14 A Big -- big transmissions.
 15 **Q Like, for 18-wheelers?**
 16 A Yeah. For semis and for any big truck.
 17 **Q And do you own that company?**
 18 A I don't. My sons do.
 19 **Q Did you start it?**
 20 A Actually, yeah. I did start it. But I gave all the
 21 stock to my sons. I have no interest in Heavy Duty or
 22 Automatics.
 23 **Q You mentioned another company name, and I didn't get**
 24 **it.**
 25 A Manufacturing. Blumenthal Manufacturing, I own

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7 (Pages 22 to 25)

1 happened before.
2 I'm saying in a situation where there's no one
3 to assist you in reading a contract, would you read it
4 before you signed it, or would you sign it without
5 knowing what was in it?
6 A No. No. I'd never do that, no. I'd probably read
7 it.
8 Q Thank you.
9 Have you turned over to your counsel all --
10 copies of all your insurance policies pertaining to your
11 personal insurance coverages? And when I say insurance
12 coverages, I'm talking about life insurance.
13 A Yeah. I think we have.
14 MR. STANO: Shannon, do we have that?
15 MS. EMMONS: Uh-huh. You have all that
16 I've been given.
17 MR. STANO: All right. Thank you.
18 Q (By Mr. Stano) In 1999 do you remember the
19 insurance coverages you had on yourself or business for
20 life insurance?
21 A I don't remember exactly what it -- what I had.
22 Q What do you remember? And I don't expect you to
23 remember everything.
24 A On life insurance?
25 Q Yes, sir.

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1 A God, I don't remember hardly anything on life
2 insurance. Never think about it.
3 Q Okay. Do you remember your net worth in 1999,
4 approximately?
5 A Maybe -- I don't know -- 10 million, maybe,
6 something like that. I'm guessing, but it's in that
7 area.
8 Q Sure. I understand.
9 A But I've given away a lot of stuff since then, in
10 case I die. I just gave it to my sons --
11 Q Okay.
12 A -- before I die. I'm going to do it anyway. I
13 might as well give it to them now.
14 Q Sure.
15 A So I'm down to maybe two buildings, well, something.
16 But anyway, go ahead.
17 Q Who is Ben Marlin?
18 A Ben Marlin is an insurance agent.
19 Q And he is the insurance agent that sold you the
20 insurance policy which is the subject of this lawsuit?
21 A Right.
22 Q When did you first meet Mr. Marlin?
23 A Met Ben -- something was wrong with his
24 transmission, and we fixed his transmission in some car.
25 And that's been probably maybe 10, 12 years ago,

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1 something.
2 Q Around 1998, 1999, approximately?
3 A Something in that area.
4 Q Okay. How did you end up buying insurance from him?
5 A He was there as a customer and we just started
6 talking, and one thing led to another. And he was
7 selling insurance. I was getting ready to buy some from
8 another guy and ended up buying it from Ben because he
9 had a good -- what I thought was a good policy.
10 Universal Life, they called it.
11 Q I'm sorry?
12 A I think they called it Universal Life.
13 (Exhibit No. 1 was marked for identification.)
14 Q (By Mr. Stano) Mr. Blumenthal, to save some time
15 and help you refresh your memory, let me show you what's
16 marked as Exhibit 1. And I am going to read into the
17 record the Bates numbers on these exhibits. Are you
18 familiar with Bates numbers?
19 A I've never heard of Bates.
20 Q Let me -- let me show this to you, sir. In order
21 for -- to be able to identify documents in lawsuits,
22 attorneys put what's called a Bates number on the
23 document.
24 A Uh-huh.
25 Q In this case it will be in the lower right-hand

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1 corner. That says NYLIAC 0582. What that means is that
2 the insurance company produced this document, and this
3 was page 582 that was produced. Sort of an arbitrary
4 number.
5 A Okay.
6 Q And the next page is NYLIAC 583.
7 A Okay.
8 Q And just so you know, sir, this number was added to
9 the document. Nothing else was changed. It's just a
10 matter of identifying the document.
11 A What document are you talking about, sir?
12 Q Are you able to read this document?
13 A No. I can't -- I can just barely make it -- I can't
14 make any -- anything out of it.
15 Q Okay.
16 MR. STANO: Shannon, we need to come up
17 with a way to -- to -- for me to cross -- for me to
18 examine the witness. What I suggest is since you have a
19 copy, I will read the parts --
20 THE WITNESS: Sure.
21 MR. STANO: -- of the document that I want
22 to ask Mr. Blumenthal about.
23 MS. EMMONS: Sure.
24 MR. STANO: You can follow along to make
25 sure I don't miss anything.

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12 (Pages 42 to 45)

1 A No.
 2 Q Okay. Do you recall discussing this with Mr. Marlin
 3 in 1999?
 4 A No. Huh-uh.
 5 Q Sir, in your supplemental responses in discovery --
 6 I believe it was 5A -- you specifically refer to this
 7 document and this page number.
 8 A I did?
 9 Q Your attorneys did. But your testimony today is you
 10 don't recall it. Correct?
 11 A Wait a minute.
 12 Q Now all of the sudden you remember it?
 13 A No. I don't remember it.
 14 Q Okay.
 15 A Why would I remember it?
 16 Q Sir, my question to you is, do you remember it or
 17 not?
 18 A I don't, period.
 19 Q Okay. Thank you.
 20 Do you remember asking -- well, strike that.
 21 Do you know who Mark Cain is?
 22 A Sure.
 23 Q Who is Mark Cain?
 24 A He's our CPA.
 25 Q Was he your CPA in 1999?

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1 A Yeah.
 2 Q Do you remember asking Mr. Marlin to discuss these
 3 figures with Mark Cain?
 4 A I don't remember it.
 5 Q Is it possible it happened --
 6 A It could --
 7 Q -- but you just don't remember?
 8 A It could happen. I just don't recall it.
 9 Q Is it possible that you reviewed this document and
 10 you just don't recall it?
 11 A Anything is possible. I don't recall this document,
 12 period.
 13 Q Okay. Fair enough.
 14 Was Mr. Marlin -- I'm sorry. Was Mr. Cain your
 15 CPA or comptroller in 1999?
 16 A He's not a comptroller. Mr. Cain has been our CPA
 17 for 30 years at least, 40 maybe.
 18 Q Is he an outside CPA?
 19 A Yeah. And he's still our CPA.
 20 Q Having reviewed Exhibit 2, the document we just got
 21 through with discussing, it doesn't bring back or refresh
 22 your memory in any way?
 23 A Not one thing can I recall in this particular
 24 document.
 25 Q As you sit here today, do you recall any documents

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1 that you and Mr. Marlin discussed during the sales
 2 process?
 3 A I can't recall any documents that we discussed. I
 4 can only recall what Ben told me. And I can recall that,
 5 but I can't recall any documents we discussed, none.
 6 Q Sir, I'm curious. Are you saying that the documents
 7 that don't support your position -- and we'll get to
 8 those -- you don't recall, but the one oral statement
 9 that purportedly supports your position, you do recall?
 10 Of all the -- of all the information thrown at
 11 you in the past ten years -- that was the point you made
 12 earlier --
 13 A That --
 14 Q -- is that your testimony today?
 15 A My testimony is that I can't recall a ten-year-old
 16 document.
 17 Q But you can recall parts --
 18 A I can remember what Ben said, but I can't recall a
 19 ten-year-old document.
 20 Q Okay.
 21 A Yes. That is exactly right. I do not recall this
 22 document --
 23 Q Thank you.
 24 A -- period.
 25 Q Sir, let me show you what's marked as Exhibit 3,

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1 Bates No. NYLIAC 0160 through 0162.
 2 MR. STANO: And, Shannon, I suggest we go
 3 off the record while he has a chance to look at this.
 4 MS. EMMONS: Okay. That's fine.
 5 MR. STANO: And let me give you a copy.
 6 (Off the record.)
 7 Q (By Mr. Stano) We had an off-the-record discussion
 8 regarding Exhibit 3. Mr. Blumenthal, I believe you have
 9 stipulated that your signature is on page 160 and 162.
 10 Is that correct?
 11 A Absolutely.
 12 Q Do you recall signing this form?
 13 A No.
 14 Q And this form would -- is dated January 18th, 1999?
 15 A I have no recollection of that, period.
 16 Q Do you recall when you applied for coverage with
 17 NYLIAC with Mr. Marlin in January of 1999, that you
 18 signed various documents?
 19 A You know, I don't really recall that. But I'm sure
 20 I did, because there they are. I don't recall it.
 21 Q Did you read those documents before you --
 22 A No.
 23 Q -- signed them? Sir, let me finish my question.
 24 A Go ahead.
 25 Q Did you read those documents before you signed them?

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15 (Pages 54 to 57)

1 Q I understand that. But how did you keep up with
2 your schedule as chairman of the board and president of a
3 corporation that had dozens of employees?
4 A They were -- we had people that ran the company. We
5 had people that ran different areas of the business. We
6 had a guy over heavy duty, a guy over light duty, a guy
7 over medium duty, a guy over this, that, and not --
8 that's it.
9 MS. EMMONS: I think what Mr. Stano is
10 asking is, how would you know that you have an
11 appointment at 10:00, like, on a Monday? Would you keep
12 a record or a calendar or --
13 THE WITNESS: Yeah. Well, something like
14 that. If I had an appointment, I'd just write it down.
15 Q (By Mr. Stano) On what?
16 A On a piece of paper or something. That was it.
17 Q And what if you had an appointment three months from
18 today or three months in the future in 1999? How would
19 you keep a record of that?
20 A God, I don't recall that right now. That's --
21 you're talking ten years ago. I can't remember that.
22 Never thought about it. We had plenty of people, I'd
23 just say. I don't remember that. I can't tell you.
24 Q Okay. Were you pleased that you replaced your
25 Valley Forge policy in the amount of a million dollars?

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1 A I don't even recall Valley Forge as an insurer. I
2 know -- I don't even recall them.
3 Q So you don't know if you were happy or unhappy about
4 if the policy was replaced, do you, as you sit here
5 today?
6 A I didn't even think about it, and I -- why would I
7 think about that? No. I didn't think about it, period.
8 Q I understand that, sir. But you filed a suit
9 against NYLIAC making certain allegations, and one of
10 those allegations involves the replacement of your
11 insurance coverages.
12 Now, this document shows that you replaced an
13 insurance policy. And I'm asking you, as you sit here
14 now, do you have any objections to the replacement of
15 this policy?
16 A Of the Valley Forge policy?
17 Q Yes, sir.
18 A Do I have a what, now?
19 Q Do you have any objections or any accusations to
20 make against New York Life Insurance and Annuity
21 Corporation with regard to the replacement of your Valley
22 Forge policy?
23 A It's never come up. I don't even -- I cannot even
24 follow what you're talking about in this case. Why would
25 I have something against Valley Forge?

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1 Q I'm not -- that's not my question, sir. My question
2 to you is, do you have any allegations of wrongdoing
3 against New York Life Insurance and Annuity Corporation
4 with regard to the replacement of your Valley Forge life
5 Insurance policy?
6 A Do I have any --
7 Q Are you blaming New York Life Insurance and Annuity
8 Corporation?
9 A For what?
10 Q Are you --
11 A No. I'm not --
12 Q Sir, that's what I'm asking you. With regard to the
13 replacement of your --
14 A No.
15 Q Sir, let me finish. I'll try to be a little more
16 clear. And I apologize.
17 With regard to the replacement of your Valley
18 Forge life insurance policy, are you claiming that you
19 were damaged in any way?
20 A No.
21 Q Okay. With regard to the replacement of any of your
22 insurance policies in 1999, are you claiming that you
23 were damaged in any way?
24 A No. Not by New York Life, no.
25 Q By New York Life, we mean New York Life Insurance

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1 and Annuity Corporation.
2 A Yeah. Whoever it is. No. I haven't seen it.
3 Q Okay.
4 A Haven't seen any damage that I know of.
5 Q Thank you. And I'm sorry if my question wasn't
6 clear.
7 A It wasn't.
8 Q Let me show you what's marked as Exhibit 4. Sir,
9 this is Bates stamped NYLIAC 068 through NYLIAC 074.
10 Let me explain this a little bit, Mr.
11 Blumenthal, because of your -- your impaired eyesight.
12 This is a NYLIAC life insurance illustration.
13 A Okay.
14 Q When you purchased the NYLIAC policy which is the
15 subject of this lawsuit, do you recall discussing with
16 Mr. Marlin illustrations?
17 A No. Well, I say no. Yeah. He explained what would
18 happen over a period of years with the cash value and the
19 face value and on and on and on, but he never mentioned
20 that it would disappear.
21 Q Let's -- let me back up a little bit. When you say
22 he explained the cash value and --
23 A Well, yeah.
24 Q -- what would happen, was he -- was he referring to
25 a document as he explained it?

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16 (Pages 58 to 61)

1 A I don't know if he was or not. I don't have -- I
2 don't recall a document being involved, but --
3 **Q And, again, so that the record's clear, we're**
4 **talking about during the sales process in 1999. Prior to**
5 **the issuance of your NYLIAC policy which is the subject**
6 **of this lawsuit, did Mr. Marlin talk to you about cash**
7 **value in the policy?**
8 A Yeah. Said the cash value would accumulate over a
9 period of years.
10 **Q Okay.**
11 A That's it. And if I died, I'd get the face value
12 and the cash value back. That's it.
13 **Q That's all he said?**
14 A That's about it.
15 **Q Or that's all you remember?**
16 A Yeah. What else -- nothing else to it.
17 **Q Okay. Did he say how long you would be making**
18 **premium payments on the policy? And when I say**
19 **"policy" --**
20 A For life, I guess.
21 **Q Okay.**
22 A Yeah.
23 **Q So at the time you purchased the NYLIAC policy, you**
24 **expected to be paying insurance premiums --**
25 A For life.

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1 **Q -- for life, and that when you died, you would get**
2 **back --**
3 A The face value and the cash value, whatever. That's
4 it.
5 **Q Okay. Did you have an expectation in 1999 as to how**
6 **long you would live?**
7 A Not really.
8 **Q Did you --**
9 A I couldn't predict that. Nobody can.
10 **Q I understand that.**
11 **Do you recall telling Mr. Marlin that you**
12 **didn't -- and this is in 1999 during the time you**
13 **purchased the policy -- that you thought you would live**
14 **for probably no more than ten years?**
15 A No way. I never thought that. Never said that,
16 huh-uh. Nope. Huh-uh.
17 **Q Is it possible you said it, but you don't remember**
18 **it?**
19 A I don't think I've ever said that I was going to
20 live ten years, period.
21 **Q Okay. Going back to Exhibit 4, do you recall seeing**
22 **a document like this during the time you purchased the**
23 **NYLIAC policy which is the subject of this lawsuit?**
24 A I can't even tell what this is, sir. What is it?
25 **Q Okay. I -- and I'm sorry, Mr. Blumenthal.**

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1 A What is this?
2 **Q Why don't we start on page one --**
3 A Okay.
4 **Q -- and let me explain this to you. And your counsel**
5 **will follow along and --**
6 A Okay.
7 **Q -- help me when I leave something out.**
8 **This is entitled NYLIAC Protector Life**
9 **Insurance Illustration --**
10 A Okay.
11 **Q -- and it's for you. It's for Dinnie Blumenthal.**
12 **Is it Dinnie?**
13 A Dinnie.
14 **Q Dinnie. I'm sorry.**
15 A Okay.
16 **Q For Dinnie Blumenthal.**
17 A Okay.
18 **Q And it says, presented by Ben Marlin.**
19 A Okay.
20 **Q Do you see that?**
21 A Yeah.
22 **Q And it's in small print, and I don't expect you to**
23 **be able to see it. But it's dated July 13, 1999 --**
24 A Okay.
25 **Q -- and it's got Dinnie Blumenthal.**

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1 MS. EMMONS: The one I have is
2 January 13th.
3 MR. STANO: I'm sorry. January 13th. I
4 stand corrected.
5 THE WITNESS: Okay.
6 **Q (By Mr. Stano) January 13th, 1999, Dinnie**
7 **Blumenthal, male, 67. In 1999 were you 67 years old?**
8 A Evidently. 1999, '31. Yeah. Would be 68,
9 actually.
10 **Q Do you recall going over a document like this --**
11 A No.
12 **Q -- on or about January of 1999?**
13 A I don't recall at that time any illustrations,
14 just -- I don't know. Huh-uh.
15 **Q So it's possible Mr. Marlin showed you an**
16 **illustration. You just don't remember it. Is that --**
17 A That would --
18 **Q Would that be a fair statement?**
19 A If he had showed me an illustration that said after
20 17 years everything goes to zero, face value and cash
21 value, then I would not have taken the policy, period.
22 So he didn't show me, as far as I remember, any
23 illustrations that said this is going to terminate itself
24 in 17 years, period.
25 **Q Ever? He never ever showed you such an**

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Irving Blumenthal, Vol. I
March 2, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

18 (Pages 66 to 69)

1 **Blumenthal?**
2 A Okay.
3 **Q And if you go down, do you see the zero there?**
4 A Down here? Yeah.
5 **Q And if you go over to the year that it's referring**
6 **to, it's referring to the 16th policy year, with the**
7 **policy starting in 1999, so 16 years later when you would**
8 **be 83.**
9 A Okay.
10 **Q Do you see the cash value going down to zero?**
11 A Yes, sir.
12 **Q And we have the statement on front saying that you**
13 **signed for this illustration?**
14 A God, I -- I must not have -- if I had seen this, I
15 would have cut it off right then.
16 **Q I understand that.**
17 A Now, just because I signed something for Ben or with
18 Ben doesn't mean that I've seen it. And if I had seen
19 this, sir, we would not have been sitting here, because
20 I'd never taken the policy out.
21 I'm not dumb enough to spend a million dollars
22 to get nothing back, and that's what's happening.
23 If this -- this might be the illustration that I saw and
24 started all this stuff. I never saw that.
25 **Q Even though your signature says otherwise?**

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1 A Even though my signature says otherwise. Ben could
2 have said, just sign it right here, and I said, okay,
3 I'll do it.
4 Huh-uh. I trusted Ben. And I don't think he
5 was doing anything. Maybe he didn't know it. I don't
6 know. All I know is that when I saw the zero, that's
7 when I stopped the policy.
8 **Q Going back to the first page with your signature on**
9 **it, do you see where it says, an illustration was**
10 **presented to me, the box that's checked? We talked about**
11 **that.**
12 A Yeah. Yeah. That says it was presented. I don't
13 recall it.
14 **Q When it was presented, again, your eyesight was --**
15 **was good. Correct?**
16 A Uh-huh.
17 **Q And you could have read the illustration if you had**
18 **wanted to. Correct?**
19 A I'd say that evidently I didn't see it. If I had
20 seen it, we'd -- I would have stopped it right then
21 instead of whenever it was. I didn't --
22 **Q Sir, the illustration on the form that you signed**
23 **that you said was presented to you, you certainly could**
24 **have read the illustration if you had wanted to.**
25 **Correct?**

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1 A Yeah. I could have.
2 **Q Okay.**
3 MS. EMMONS: Mr. Stano, in fairness to Mr.
4 Blumenthal, the rest of that line states, but the policy
5 applied for is different than as illustrated. In other
6 words, it wasn't the illustration. The illustration
7 attached as part of Exhibit 5 was not an illustration for
8 the policy he applied for.
9 MR. STANO: Fair enough. And I -- I read
10 the entire sentence into the record when I asked about
11 the box, but he had testified earlier that no
12 illustration was presented to him.
13 THE WITNESS: It wasn't. I probably never
14 saw this one. But if I had seen it, I would have stopped
15 the policy.
16 **Q (By Mr. Stano) Let's look at the sentence above**
17 **your signature, and let me read it for you,**
18 **Mr. Blumenthal.**
19 A Okay.
20 **Q And you're welcome to follow along.**
21 A Okay.
22 **Q And to Ms. Emmons' point that the policy applied for**
23 **is different than is illustrated, that sentence reads, I**
24 **also acknowledge -- quote, I also acknowledge that I did**
25 **not sign an illustration for the reason stated above, and**

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1 **I understand that an illustration matching the policy as**
2 **issued will be provided for my signature no later than at**
3 **the time the policy is delivered, close quote. Do you**
4 **see that?**
5 A Yeah.
6 **Q So were you expecting to see an illustration**
7 **matching the policy that you applied for at the time the**
8 **policy was delivered to you?**
9 A Evidently, I never saw it until --
10 **Q No, sir. That's not my question. My question was**
11 **not did you see it. My question is, were you**
12 **expecting -- based on this sentence, which is immediately**
13 **above your signature, were you expecting to see an**
14 **illustration that matched the policy you applied for at**
15 **the time the policy was delivered?**
16 A I don't recall that. If --
17 MS. EMMONS: Okay. You've answered.
18 You've answered the question.
19 THE WITNESS: Okay. That's it.
20 **Q (By Mr. Stano) You don't recall what?**
21 A Whether or not I was going to see an illustration at
22 that time. That's been 11 years.
23 **Q Sure. But having signed your name --**
24 A That's my fault.
25 **Q Let me -- let me finish, please.**

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19 (Pages 70 to 73)

1 A Go ahead.
 2 Q Having signed your name immediately below that
 3 sentence, isn't it reasonable to assume that you were
 4 expecting to see an illustration that matched the policy
 5 when the policy was delivered?
 6 A I didn't even think about it. No. I don't recall
 7 it at all.
 8 Q Do you know if you read that sentence that's
 9 immediately above your signature?
 10 A I don't recall it.
 11 Q If you had read it, you would have understood that
 12 an illustration was to be -- was to be --
 13 A It's --
 14 Q Sir, let me finish, please.
 15 A Go ahead.
 16 Q And I'm referring to this sentence here. If you had
 17 read this sentence immediately above your signature at
 18 the time you signed --
 19 A Okay.
 20 Q -- you would have understood that an illustration
 21 was to be presented to you matching the policy when the
 22 policy was issued. Correct?
 23 A If I read that, I--
 24 Q If you had read it?
 25 A Probably I would expect to get it, yeah.

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1 Q Okay.
 2 A But as far as I know, I never got it.
 3 Q Okay. Now, this is dated January 18th of 1999. Do
 4 you recall when you received the policy?
 5 A No. I do not recall it.
 6 Q Okay. Sir, let me show you what's marked as
 7 Exhibit 6, Bates No. NYLIAC 075. You eventually received
 8 your policy, did you not?
 9 A Yeah.
 10 Q Do you recall signing some papers when you received
 11 your policy?
 12 A I don't recall it.
 13 Q Is it possible you signed some papers? You just --
 14 A It's possible.
 15 Q Okay.
 16 A I don't know.
 17 Q Is that your signature on Exhibit 6?
 18 A Yes.
 19 Q And do you see the date, July 20th of 1999? Let me
 20 point it out to you, sir.
 21 A Yeah.
 22 Q Is that your handwriting?
 23 A That's not my handwriting.
 24 Q But that is your signature?
 25 A Yeah. Right. That is my signature.

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1 Q This document is entitled, Policy Delivery Receipt.
 2 Do you recall signing this document?
 3 A I don't recall it.
 4 Q This document says that you have received certain
 5 documents. Let me mention those to you. The first
 6 paragraph says, I hereby acknowledge receipt of the
 7 above-numbered policy. And the policy is numbered up
 8 here.
 9 A Okay.
 10 Q I believe that's the policy which is the subject of
 11 this lawsuit, "which includes a copy of my signed
 12 application." Do you recall receiving the policy and the
 13 signed application?
 14 A Huh-uh.
 15 Q I thought you said you recalled receiving your
 16 policy.
 17 A I never said that. You said it.
 18 Q Okay. Excuse me if I'm wrong. Do you recall
 19 receiving your policy?
 20 A I really don't, but I'm sure I've got it.
 21 Q Okay. The second paragraph reads, I have also
 22 received and reviewed an illustration for this policy.
 23 Do you see that?
 24 A I don't see it, but --
 25 Q Well, let me read along --

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1 A Go ahead, yeah.
 2 Q -- and your counsel will correct me if I'm wrong.
 3 And I'm looking at the second paragraph of Exhibit 6,
 4 Bates No. 075.
 5 Quote, I have also received and reviewed an
 6 illustration for this policy and understand that the
 7 policy values shown in the illustration are based on
 8 guaranteed and non-guaranteed elements, period, close
 9 quote.
 10 Now, you signed this document. Do you recall
 11 receiving an illustration for your policy?
 12 A Not at that time, huh-uh.
 13 Q At any time?
 14 A Yeah. I got an illustration, but it's been, like, a
 15 year ago last November or something.
 16 Q Yes, sir. We'll get to that in a moment.
 17 But as of now I'm talking about July 20th of
 18 1999. Do you recall receiving --
 19 A No.
 20 Q -- an illustration?
 21 A Huh-uh.
 22 Q Is it possible you received an illustration in July
 23 of 1999, but you just don't remember it?
 24 A It's possible, but I didn't -- I don't recall it at
 25 all, huh-uh.

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20 (Pages 74 to 77)

1 **Q Sir, you signed a statement saying you did --**
2 A Yeah. Ben just brought these things by, and I'd
3 sign them. Because I didn't know what I was signing.
4 Didn't -- I figured it was just part of the thing.
5 **Q When you sign a statement or a document, are you**
6 **committing yourself to what's in -- to the terms of that**
7 **document?**
8 A I just -- all I knew about this was that it was a
9 Universal Life policy, and that's what I wanted, was a
10 long-term insurance policy.
11 **Q Well, I understand. But let's back up a minute.**
12 **When you sign a document, are you committing --**
13 A It's according to the document. This insurance, I
14 couldn't understand it anyway. All I thought was we was
15 just getting the policy, but --
16 **Q Do you recall if you read the policy delivery**
17 **receipt?**
18 A No. I never read it.
19 **Q Again, you had the opportunity to read it. Correct?**
20 A Absolutely. I never read it. No reason to read it.
21 **Q But you chose not to read it. Correct?**
22 A That's exactly right, sir.
23 **Q Okay.**
24 A There's no reason to read it whenever I already had
25 the information that I thought was the policy. And I

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1 wouldn't have understood it anyway, and I'm not sure
2 anyone else would have. You might.
3 **Q Let's read the second sentence of that second**
4 **paragraph. It says, quote, nonguaranteed elements will**
5 **fluctuate and affect the policy's values, close quote.**
6 A So what?
7 **Q Do you understand -- you say you -- strike that.**
8 **You spoke with Mr. Marlin during the sales**
9 **process --**
10 A Yeah.
11 **Q -- about interest rates being guaranteed and**
12 **nonguaranteed. Do you recall --**
13 A No --
14 **Q -- those types of discussions?**
15 A I don't think we ever talked about the interest
16 rates being guaranteed or not guaranteed. It didn't
17 matter to me what the interest rate was.
18 **Q It didn't matter at all?**
19 A Huh-uh.
20 **Q Did you understand that the value of the -- the cash**
21 **value of the policy could fluctuate?**
22 A Yeah.
23 **Q And what would cause the cash value of the policy to**
24 **fluctuate? And for the record --**
25 A Interest rate?

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1 **Q -- when I say --**
2 A I don't know.
3 **Q -- when I say policy, I'm referring to the policy**
4 **which is the subject of this lawsuit.**
5 **And I'm sorry I interrupted you. What were you**
6 **saying?**
7 A Why would I know what changes the cash value? I
8 wouldn't know it.
9 **Q Sir, you testified just now that you understood that**
10 **the cash value of the policy fluctuated.**
11 A But that's -- I say I understood it. I'm just
12 saying I could have. I don't know if I did or not. I
13 can't -- I know I didn't ever talk about fluctuating cash
14 values that I remember. I don't remember a thing about
15 that.
16 **Q If you didn't talk about it, what was the source of**
17 **your understanding that cash values would fluctuate?**
18 A I said -- I don't understand that it -- how it
19 fluctuates. I don't understand how the cash value
20 fluctuates now. If it does, it does. If it doesn't, it
21 doesn't.
22 **Q I --**
23 A You asked if I -- if I knew it. I don't know it.
24 **Q I'm not asking you if you understand how or why it**
25 **fluctuates. I'm just asking you if you understand that**

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1 **it does fluctuate. And I believe you said -- that you**
2 **testified that it -- you understood that the cash value**
3 **fluctuates.**
4 A No. I'm just saying it could. I don't know if it
5 does or not. I never paid any attention to fluctuation.
6 **Q Okay. And what are the factors that -- that you**
7 **know of that could affect cash values?**
8 A I don't have any idea unless the company goes under
9 or something. I don't know what fluctuates cash value.
10 The economy, I guess. I don't know what it is.
11 MS. EMMONS: Why don't we break for lunch?
12 MR. STANO: Sure. We're at lunchtime.
13 Well, let's go off the record.
14 (A lunch break was taken.)
15 **Q (By Mr. Stano) Mr. Blumenthal, did you have a**
16 **good lunch?**
17 A Yes.
18 **Q Good.**
19 **Your counsel, Ms. Emmons, stated that she has a**
20 **previous assignment at -- and has to leave at 5:30. If**
21 **at any time you need to take a break before then, you**
22 **just let your counsel or me know. Okay?**
23 A (Witness nods head.)
24 **Q I'm going to leave it to you to let me know if**
25 **you --**

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22 (Pages 82 to 85)

1 **Q According to interest rates. Interest --**
2 A Yeah. Whatever.
3 **Q -- rates go up; interest rates go down.**
4 A Yeah.
5 **Q Correct?**
6 A Exactly.
7 **Q Let's back up a bit. The cash value amount in the**
8 **policy grows or declines based on the interest rate.**
9 **Correct?**
10 A Right.
11 **Q The higher the interest rate, the faster the cash**
12 **value grows?**
13 A Exactly. Right. Yeah.
14 **Q You're a successful businessman. Correct?**
15 A I guess so.
16 **Q You know --**
17 A Fifty years.
18 **Q You know interest rates go up and they go down?**
19 A Exactly.
20 **Q Interest rates fluctuate. Correct?**
21 A Absolutely.
22 **Q Therefore, the cash value fluctuates. Correct?**
23 A Uh-huh.
24 **Q Okay. Do you know if the policy had a guaranteed**
25 **interest rate of 4 percent?**

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1 A You know, I did know that. Guaranteed, I think it
2 was 4 or 4 and a half or something.
3 **Q Okay.**
4 A Yeah.
5 **Q And the illustrations stated that the policy had a**
6 **guaranteed interest --**
7 A Yeah. And then they had --
8 **Q -- rate of 4 percent?**
9 A Next to it was a nonguaranteed, I think.
10 **Q Okay.**
11 A Yeah.
12 **Q You recall that from the illustration. Correct?**
13 A Yeah.
14 **Q Do you recall that from the illustration you**
15 **received in July of 1999?**
16 A No. I never received an illustration in July of
17 1999.
18 **Q Okay.**
19 A If I had, I'm telling you, you wouldn't be here,
20 because I'd never take the policy out.
21 **Q Understood.**
22 A I never received an illustration that said, this
23 goes to zero. And even if I signed something, I never
24 saw it. I just signed it because Ben brought it down. I
25 didn't have any idea that it would ever go to zero.

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1 THE VIDEOGRAPHER: Pardon me. Can we hold
2 on just a second? Let me just check your mic. I think
3 it fell in your lap.
4 THE WITNESS: It sure did.
5 THE VIDEOGRAPHER: Yeah. It happens
6 occasionally.
7 THE WITNESS: No wonder.
8 (Off the record.)
9 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**
10 **what's marked as Exhibit No. 7.**
11 A Okay.
12 **Q It's Bates stamped NYLIAC 0076 through 0081. Sir,**
13 **if you would turn to the page you're on, which is NYLIAC**
14 **081.**
15 A Okay.
16 **Q Is that your signature?**
17 A Yes.
18 **Q And I'm sorry. I may have misread the Bates**
19 **numbers. This exhibit is 0076 through 0082. Sir, let me**
20 **see that, please. And I'm sorry. You were looking on**
21 **page 0081. That's your signature. Correct?**
22 A Yeah. I was looking for it, and I think I found it
23 once. Where is it? There it is, yeah. That was page --
24 what, now?
25 **Q 0081.**

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1 A Page 6, yeah. Yeah. That's it.
2 **Q And the date to the right of your signature is**
3 **July 20th of 1999?**
4 A Uh-huh.
5 **Q Is that your handwriting?**
6 A Not the date. That's a signature.
7 **Q Okay. Let's turn --**
8 A Next page.
9 **Q -- to the last page.**
10 A Yeah. That's the one with zeros.
11 **Q Do you see that?**
12 A I can see that.
13 **Q Are you looking at the nonguaranteed?**
14 A I don't care what it is. It's -- there it is, zero,
15 zero.
16 **Q Well, let's take this one step at a time.**
17 A Okay.
18 **Q You talked about there being guaranteed interest**
19 **rates --**
20 A I didn't talk about it. You talked about it. But
21 it doesn't matter. Go ahead.
22 **Q Okay.**
23 A We talked about it.
24 **Q We've talked about it.**
25 A Okay.

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23 (Pages 86 to 89)

1 **Q We talked about a guaranteed interest rate of 4**
2 **percent?**
3 A Right.
4 **Q Do you see that there where it says, guaranteed**
5 **charges? And below that it reads, guaranteed interest**
6 **rate of 4 percent. Do you see that, Mr. Blumenthal?**
7 A That's pretty small. I can't make that out, but --
8 **Q Well, if I'm not reading it correctly --**
9 A Okay. That's good.
10 **Q -- I'm sure your counsel --**
11 A Yeah.
12 **Q -- will correct me.**
13 A Yeah. I'm sure that it's right if you say it is.
14 **Q And if you go down to year 73, which would have been**
15 **your age, do you see zeros? Do you see, policy year six,**
16 **age 73?**
17 A Policy year six?
18 **Q Yes, sir. If the policy year -- if the policy was**
19 **taken out in 1999, that would be the beginning of policy**
20 **year one. You were 67, I believe --**
21 A Okay.
22 **Q -- in 1999. Six years later in policy year six, you**
23 **would have been approximately 73 years old. Correct?**
24 A Right.
25 **Q So in policy year six, when you're 73 years old, do**

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1 **you see that the illustration shows a cash value of zero?**
2 A If I had seen this, I'd never taken the policy out,
3 sir, period. This is stupid. I have never seen this
4 until, like, whenever we got the illustration. I've
5 never seen this particular illustration until -- until we
6 got it.
7 **Q Sir, you just testified that that's your signature**
8 **on the page.**
9 A But it's on this page, not on this page. I signed
10 this. I had no idea what was behind it. Never -- might
11 not have been there. Ben could have taken it off. I
12 don't know. I've never seen this thing that says it goes
13 to zero after so many years. Never seen it.
14 That's the reason that I canceled the policy,
15 because I thought I had something that would last my
16 life, whatever it was a month, period. Not this, that I
17 end up with zero after spending \$900,000.
18 **Q Okay. Let's turn back to the page with your**
19 **signature on it.**
20 A Okay.
21 **Q Now, you've certainly seen this page. Your**
22 **signature is on it. Correct?**
23 A Yeah. I must have seen it. Probably didn't pay any
24 attention, but I -- I'll admit I did see this one.
25 **Q And when you say "this one," you're talking about**

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1 **Bates No. 0817**
2 A I don't know. 6 -- page 6. I don't know what --
3 **Q Page 6 of 77**
4 A Okay. Whatever, yeah.
5 **Q Okay. Let's look at the page with your signature on**
6 **it. Let's go again to the column with guaranteed**
7 **charges. Do you see that?**
8 A I can't see that one, but it's there. Okay.
9 **Q With a guaranteed interest rate of 4 percent?**
10 A See, I've never seen this. Even though I signed it,
11 I've still never seen it. I mean, I've never studied it.
12 I don't know what it was. Ben could have come and said,
13 sign this. I say, okay, I'll sign it. What's this say?
14 **Q That's irrelevant, sir. I'm looking at the -- I'm**
15 **looking at the -- at the numbers that are on the form.**
16 A Okay.
17 **Q Let's look at year ten, policy year ten, age -- you**
18 **would have been 77 in year ten. Correct?**
19 A Yeah.
20 **Q And what is the cash value --**
21 A No, no, no. Wait a minute. Yeah. Yeah. You're
22 right. Okay.
23 **Q You were 67 when the policy was taken out.**
24 A Okay. Yeah.
25 **Q Ten years later you were 77.**

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1 A Okay.
2 **Q And what is the cash value, Mr. Blumenthal, in year**
3 **ten when you were 77?**
4 A This shows zero. Huh-uh. Huh-uh. I must have
5 signed this, but I --
6 **Q You must have.**
7 A I did sign it, but I didn't know what I was signing,
8 whether you believe it or not. I don't care if you
9 believe it or not. I'm just telling you I never would
10 have done this if there was no cash value in the policy.
11 I'm going to tell you one more time that I had no idea
12 that the cash value disappeared in ten years, six years,
13 17 years, none.
14 **Q Did you have the opportunity to read that page**
15 **before you signed it?**
16 A I could have had the opportunity, but I didn't read
17 it. If I had read it and saw that -- I just probably
18 signed it because Ben brought it around. But if I had
19 read, no cash value in seven years or 17 years or
20 whatever it is, I would have never done this. It would
21 have been stupid.
22 **Q Are you responsible for documents you sign?**
23 A Well, could have been. But this is -- I'm not
24 saying I'm -- Ben must have brought this thing around and
25 said, just sign it, or something. I said okay. I don't

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24 (Pages 90 to 93)

1 know what happened to it. Why would I sign that? I have
 2 no living idea. I know I wouldn't have signed it if I
 3 had known what it was, period.
 4 **Q And if you had read it, you would have seen those**
 5 **zeros, wouldn't you?**
 6 A If I had read it or if Ben -- Ben might have hidden
 7 this thing. I don't know. He just showed it to me and
 8 said, sign it. I have no idea why I would sign something
 9 like that. It's ridiculous. It's insanity, is what it
 10 is.
 11 **Q Ridiculous on whose part?**
 12 A On my part, to sign something that says I'm going to
 13 pay 50,000 a year for so many years and end up with
 14 nothing. All I had to do was take a term policy out at
 15 half of the figure and end up -- and put the -- about the
 16 difference in a bank and end up with something and still
 17 be insured.
 18 This is not what I thought it was. Ben never
 19 explained that there was no cash value after so many
 20 years. He told me that there was cash value, and if I
 21 died, you get the cash back and face value. Now, the
 22 face value goes away and the cash value goes away.
 23 **Q Are you blaming Mr. Marlin for your --**
 24 A I am blaming --
 25 **Q Sir, let me finish my question, please.**

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1 A Okay.
 2 **Q Are you blaming Mr. Marlin for your voluntary**
 3 **signing of this piece of paper?**
 4 A I would actually say that Mr. Marlow [sic] had -- I
 5 don't know why I signed it. I have no idea. He had --
 6 he had to do something to allow me to sign it, that I
 7 didn't know what I --
 8 **Q Do you believe in the philosophy of accepting**
 9 **personal responsibility for your actions?**
 10 MS. EMMONS: Objection.
 11 THE WITNESS: I don't see what that has to
 12 do with this policy, period.
 13 **Q (By Mr. Stano) Let's turn to the first page of**
 14 **this document, please, sir. Are you able to read**
 15 **that, or would you like -- let me read it for you.**
 16 **It says, NYLIAC Protector Life Insurance Illustration**
 17 **for Dinnie Blumenthal.**
 18 **Am I pronouncing your first name correctly?**
 19 A You're not, but it doesn't matter.
 20 **Q Is it Dinnie?**
 21 A It's pronounced Dinnie.
 22 **Q Okay.**
 23 A You can call me Dummy, would be more appropriate.
 24 **Q No, sir. I want to call your name properly, and I**
 25 **apologize if I misstated it.**

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1 A It doesn't matter.
 2 **Q That's my mistake.**
 3 **Do you see that it was presented by Ben Martin?**
 4 A Uh-huh.
 5 **Q Ben Marlin. Excuse me.**
 6 A Ben Marlow. Marlow.
 7 **Q Ben Marlin.**
 8 A Marlin, yeah. Whatever it is. Ben Marlow.
 9 **Q If you look at the bottom, do you see it says**
 10 **that -- the last line on the first page, prepared on**
 11 **7/19/1999? At the -- it's the very last line. Do you**
 12 **see that?**
 13 A I can't see it, but it doesn't matter.
 14 **Q I'll represent to you, sir, that that's what it**
 15 **says.**
 16 A Okay.
 17 **Q Having looked over this illustration, at least in**
 18 **part, do you remember receiving it now?**
 19 A You know, if I did receive it and saw this, I didn't
 20 evidently pay any attention to it. Ben just said, sign
 21 it, or something. And I probably did. I must have.
 22 Because I would have never signed it if I had known what
 23 it was.
 24 **Q Do you remember the conversation with Mr. Marlin --**
 25 A No.

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1 **Q -- when he presented -- let me finish, please.**
 2 **Do you remember the conversation with Mr.**
 3 **Marlin when he presented this illustration to you along**
 4 **with the policy delivery receipt and the policy itself?**
 5 A No. It's -- Ben would come in -- and I trusted him.
 6 And he'd say, I've got these papers, you need to sign
 7 something. And I'd sign them.
 8 **Q Do you remember Mr. Marlin going over any of this?**
 9 A Huh-uh.
 10 **Q Do you remember anything about the meeting**
 11 **whatsoever when he delivered your policy to you?**
 12 A I would remember if he had told me that the thing
 13 expires in 15 years or 17 years. He never said a word
 14 about it, or, again, we wouldn't be here if he had told
 15 me that.
 16 **Q Let's turn to page 2 of the illustration.**
 17 A Okay.
 18 **Q It's NYLIAC 077. Do you see the planned premium at**
 19 **\$4,420.50? And would you like me to point it out to you?**
 20 A Yeah. I can't see it.
 21 **Q Right there.**
 22 A Okay.
 23 **Q \$4,420.50. Do you see that as the plan premium?**
 24 A No. I don't see it, but it probably was.
 25 **Q Right there.**

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Irving Blumenthal, Vol. I
March 2, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

25 (Pages 94 to 97)

<p>1 A Oh, I'm looking in the wrong spot.</p> <p>2 Q Do you see that, Mr. Blumenthal?</p> <p>3 A I can't make that out.</p> <p>4 Q It reads \$4,420.50.</p> <p>5 A I can't see it. Shannon can.</p> <p>6 Q I'll represent to you --</p> <p>7 MS. EMMONS: And I'll stipulate that it --</p> <p>8 the --</p> <p>9 THE WITNESS: Okay. So it's there.</p> <p>10 Right?</p> <p>11 MS. EMMONS: The second page of Exhibit --</p> <p>12 THE WITNESS: Yeah.</p> <p>13 MS. EMMONS: -- 7 does state that there's</p> <p>14 a plan premium of \$4,000 -- \$4,420.50.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q (By Mr. Stano) Do you recall if that was the</p> <p>17 amount of monthly premium you paid for your NYLIAC</p> <p>18 policy?</p> <p>19 A I knew it was 50,000 a year, so I didn't pay any</p> <p>20 attention to the monthly thing.</p> <p>21 Q Okay. Do you recall that you paid on a monthly</p> <p>22 basis?</p> <p>23 A I don't -- you know, I don't really recall that. I</p> <p>24 know we paid. I don't know whether it was monthly. It</p> <p>25 probably was.</p> <p style="text-align: right;">Page 94</p>	<p>1 A I've heard of only Universal Life.</p> <p>2 Q What's your understanding of Universal Life?</p> <p>3 A I just thought it was a life policy. You kept</p> <p>4 paying on it until you died, and then your beneficiary</p> <p>5 collects whatever, and that's it.</p> <p>6 Q Okay.</p> <p>7 A But I thought it was a life policy that would be,</p> <p>8 you know, in force for life.</p> <p>9 Q Right. As long as you paid the premium?</p> <p>10 A Yeah. Well, absolutely. I didn't expect it to</p> <p>11 be -- come on, that's a stupid question.</p> <p>12 Q Sometimes I ask stupid questions.</p> <p>13 A I realize that.</p> <p>14 MS. EMMONS: Okay. Okay. We've asked and</p> <p>15 answered that question. We don't need to add comments.</p> <p>16 THE WITNESS: Go ahead, Phil. You're</p> <p>17 next.</p> <p>18 Q (By Mr. Stano) Mr. Blumenthal, if I can bring</p> <p>19 some humor into your life, I'm happy to do that.</p> <p>20 A Do it. No problem.</p> <p>21 Q And I will try to make this as painless as possible,</p> <p>22 sir.</p> <p>23 A All right.</p> <p>24 Q Let's -- let's look at the second paragraph.</p> <p>25 A Okay.</p> <p style="text-align: right;">Page 96</p>
<p>1 Q Was it paid out of your personal checking account?</p> <p>2 A Oh, yeah.</p> <p>3 Q Do you recall if that was the premium that was on</p> <p>4 your application for the policy?</p> <p>5 A I have no idea if it was. I knew it was</p> <p>6 50-something thousand. I never figured it out by the</p> <p>7 month.</p> <p>8 Q 50-something thousand on an annual basis?</p> <p>9 A Yeah.</p> <p>10 Q Correct?</p> <p>11 A 50-something.</p> <p>12 Q Let's turn to the next page, page 3. Did you</p> <p>13 understand you were buying a NYLIAC protector policy as</p> <p>14 opposed to a NYLIAC accumulator policy?</p> <p>15 A A NYLIAC --</p> <p>16 Q Protector.</p> <p>17 A -- protector.</p> <p>18 Q That's what the policy that you purchased was</p> <p>19 called, a protector policy. Do you recall discussing</p> <p>20 that --</p> <p>21 A I thought it was a Universal Life policy.</p> <p>22 Q Yes, sir. They're both Universal Life policies, the</p> <p>23 accumulator and the protector.</p> <p>24 A I've never heard of protector or the accumulator.</p> <p>25 Q Okay.</p> <p style="text-align: right;">Page 95</p>	<p>1 Q And I will read it in small phases, because you're</p> <p>2 having a hard time reading it, and I understand that and</p> <p>3 I apologize.</p> <p>4 A Okay.</p> <p>5 Q The first sentence of the second paragraph reads,</p> <p>6 "The following pages provide a summary and year-by-year</p> <p>7 figures for cash value, cash surrender values, and death</p> <p>8 benefits for the policy you have chosen, based on your</p> <p>9 anticipated premium outlay and net outlay."</p> <p>10 Did you understand that's what an illustration</p> <p>11 was meant to do, is to provide you, among other things,</p> <p>12 year-by-year figures for the items I mentioned, cash</p> <p>13 value, cash surrender value, and so forth?</p> <p>14 A Never thought about it.</p> <p>15 Q The second sentence reads, "Because the current</p> <p>16 interest rate and charges may change, we show how your</p> <p>17 policy would perform under three different assumptions."</p> <p>18 Okay? Do you understand that?</p> <p>19 A Okay.</p> <p>20 Q We talked about --</p> <p>21 A Yeah.</p> <p>22 Q We talked --</p> <p>23 A Yeah.</p> <p>24 Q We talked about how interest rates could fluctuate?</p> <p>25 A Yeah. Absolutely.</p> <p style="text-align: right;">Page 97</p>

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26 (Pages 98 to 101)

1 Q Correct?
2 A Yeah.
3 Q And that that would affect --
4 A Right.
5 Q -- the value of -- the cash value?
6 A Exactly.
7 Q Okay. And so because rates do fluctuate, the
8 illustration is saying it will give you three different
9 assumptions. And that's the three different assumptions
10 on the last page we looked at. Remember? The
11 guaranteed, the current, and the midpoint?
12 A That's this one?
13 Q On the second to the last page they have guaranteed,
14 they have current, and in the middle they have midpoint,
15 three different assumptions.
16 A Okay.
17 Q One assumption is to guarantee you an interest rate
18 of 4 percent. The policy always guaranteed that they
19 would pay at least 4 percent --
20 A Okay.
21 Q -- on the cash value. And then there was the
22 current rate, whatever was being credited --
23 A Right.
24 Q -- on today --
25 A Yeah.

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1 Q -- for example. And then there was a midpoint rate,
2 which was the average between what was guaranteed --
3 A Okay.
4 Q -- and the current that was credited. It's called
5 the midpoint.
6 A Okay.
7 Q And that's what the illustration says on page -- on
8 the second paragraph of the second sentence on page 78.
9 "Because the current interest rate and charges may
10 change, we show how your policy would perform under three
11 different assumptions, the guaranteed interest rate and
12 guaranteed policy charges, an average of the guaranteed
13 and currently illustrated interest rate and policy
14 charges, and the interest rate and the charges we are
15 currently illustrating."
16 That's what we just talked about.
17 A Right.
18 Q Now, have you -- if you had read this illustration
19 when you received it, you would have realized you were
20 getting those three different assumptions. Correct?
21 If you had read it. I know you say you didn't.
22 A Yeah.
23 Q But if you had read it, you would have known that
24 you were getting the three -- the three assumptions?
25 A Probably. That's common. You know, that's what all

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1 of them do, I guess.
2 Q Okay. You've --
3 A That's not what -- that's not the point of this.
4 Really, Phil, you're off the thing.
5 What happened was I didn't know it was going to
6 run out. That's the whole scenario. I didn't know the
7 cash would go away and the face value would go away. If
8 I had known it, I wouldn't have taken the policy, and
9 anybody that would take it is crazy, is stupid. Take
10 something else, not this thing. This is ridiculous.
11 Q Well, let's cut to the chase. You would have known
12 it if you had read this page that has your signature.
13 Correct?
14 A Well --
15 Q If you had read it --
16 A -- If I under -- If I had looked at it, probably,
17 I'd -- I didn't have any -- I don't know.
18 Q Sir --
19 A I can't remember that.
20 Q It's a pretty straight question, Mr. Blumenthal.
21 You signed the page. It says zero. If you had read it,
22 you would have known it. Correct?
23 A No. I wouldn't have ever taken the policy if I had
24 read it and understood it.
25 Q Right.

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1 A Ben might have just shoved this in my face or
2 something, and I might not have -- I probably never -- I
3 didn't look at this thing or the other page.
4 Q Mr. Blumenthal, you created -- you completed high
5 school, didn't you?
6 A I completed college, sir. So what?
7 Q Where did you get -- you got an undergraduate
8 degree?
9 A No. I got a graduate degree.
10 Q What's your undergraduate degree in?
11 A Accounting.
12 Q From what school?
13 A OU.
14 Q Oklahoma?
15 A University of Oklahoma. It's called OU.
16 Q Okay.
17 A Oklahoma University.
18 Q And you have --
19 A It's right down the street.
20 Q Okay. And you have a graduate degree?
21 A I graduated --
22 Q Okay.
23 A -- with a degree, yeah.
24 Q Did you practice accounting once you got out of
25 school?

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27 (Pages 102 to 105)

1 A No.
 2 **Q You went into business with your father?**
 3 A Uh-huh.
 4 **Q Let's read -- let's go back to page 78. I'm looking**
 5 **at the sentence above "no-lapse guarantee rider."**
 6 A No what? No lax?
 7 **Q No lapse, L-A-P-S-E.**
 8 A No lapse. Okay.
 9 **Q And I'll -- I'm just pointing out where the sentence**
 10 **is. I'm not reading that portion at this point.**
 11 A Okay.
 12 **Q The sentence above that reads -- and your counsel**
 13 **will certainly correct me if I'm wrong --**
 14 A Okay.
 15 **Q -- quote, because this is a flexible premium policy,**
 16 **it is your responsibility to make sure sufficient**
 17 **premiums are paid to keep the policy in force. Did**
 18 **you --**
 19 A We had no --
 20 **Q Sir --**
 21 A -- problem with the -- with the payments. That has
 22 nothing to do with this. We've made the payments.
 23 **Q Okay.**
 24 A I wasn't worried about the payments. I wouldn't
 25 have taken the policy out.

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1 **Q But you understood it was your responsibility --**
 2 A To make the payments, yes. Anybody would understand
 3 that.
 4 **Q And it was -- let me finish.**
 5 A Go ahead.
 6 **Q It was also your responsibility to make sure**
 7 **sufficient premiums were paid to keep the policy in**
 8 **force?**
 9 A Exactly.
 10 **Q Okay.**
 11 A Exactly.
 12 **Q No doubt about that?**
 13 A No doubt about making the payments.
 14 **Q Okay.**
 15 A I know you have to pay for the insurance.
 16 **Q Sure. Let me continue reading. Quote, the policy**
 17 **will terminate if at any time the cash surrender value is**
 18 **insufficient to pay the monthly deductions, close quote.**
 19 A Okay.
 20 **Q You understand that, don't you?**
 21 A Yeah.
 22 **Q If you don't have enough cash value, the policy will**
 23 **go?**
 24 A Okay. So what?
 25 **Q Well, did you understand that in July of 1999 when**

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1 **you received your policy? You knew that, didn't you?**
 2 A I should have known that. I don't know. I know you
 3 can't have an insurance policy without paying for it, so
 4 that -- everybody knows that.
 5 **Q Okay.**
 6 A That's not -- that's not even the issue.
 7 **Q Okay. Continuing on. And I'm continuing the next**
 8 **sentence. The sentence I just read said, the policy will**
 9 **terminate if at any time the cash value -- I'm sorry --**
 10 **the cash surrender value is insufficient to pay the --**
 11 A Okay.
 12 **Q -- deductions.**
 13 **The next sentence, quote, this can happen due**
 14 **to insufficient premium payments if loans or withdrawals**
 15 **are made or if current interest rates or charges**
 16 **fluctuate.**
 17 **So the illustration gives three reasons by**
 18 **which the cash value might be insufficient. Let me**
 19 **repeat those. One is insufficient --**
 20 A You don't need to.
 21 **Q You understand that?**
 22 A Yeah. Jesus.
 23 **Q Okay.**
 24 A Get to the point that you're trying to establish.
 25 Jesus, this is ridiculous.

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1 **Q You --**
 2 A This has nothing to do -- I know I was paying the
 3 premium. That's all I know, period. That's it.
 4 **Q So --**
 5 A We paid every month whatever it was.
 6 **Q So the three reasons that are given in the**
 7 **illustration that the cash surrender value can be**
 8 **insufficient, you understand those three reasons that I**
 9 **just mentioned?**
 10 A Yeah.
 11 **Q Okay. And you knew that at the time the policy was**
 12 **delivered, July of 1999?**
 13 A Yeah. I might have or I might not have. It didn't
 14 matter. I already understood you've got to pay for the
 15 insurance --
 16 **Q Okay.**
 17 A -- period.
 18 **Q Got you.**
 19 A It doesn't matter who you are. If you're not
 20 paying, they'd cancel it.
 21 **Q Were you aware that NYLIAC set the interest rate**
 22 **that it credited every month?**
 23 A I would assume that New York Life would set the
 24 interest rate. It didn't matter.
 25 **Q On a monthly basis? Were you aware of that?**

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28 (Pages 106 to 109)

1 A I didn't know if it was a monthly basis. But what
2 difference does it make?
3 **Q Well, you understand that the amount of interest**
4 **credited affected the cash value. So that does make a**
5 **difference, doesn't it, as to when --**
6 A Not that much. 4 percent or something is not a big
7 deal. It wouldn't matter if they paid 1 percent or no
8 percent. I just wanted the coverage.
9 **Q Sure.**
10 A Not the interest rate and whatever it was.
11 **Q Looking at page 079, page 4 of 7, which I've turned**
12 **to, it says at the top under interest rates, quote,**
13 **interest is credited based on our current rates, which**
14 **are not guaranteed, but will not be lower than 4 percent.**
15 A Right. Who cares? I didn't -- we're not discussing
16 interest rates. We're discussing misrepresentation.
17 **Q Yes, sir. Did you understand that interest rates --**
18 **that current interest rates were not guaranteed?**
19 A I didn't care if they were guaranteed or not. What
20 difference does it make?
21 **Q I'm not --**
22 A I wasn't living off of the cash value --
23 **Q Okay.**
24 A -- expecting to get whatever. Whatever the cash
25 value was is what it was.

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1 with --
2 **Q Okay.**
3 A -- New York Life.
4 **Q All right. Let me restate the question this way.**
5 **Of all the documents Mr. Marlin gave to you, were there**
6 **any of the documents -- strike that.**
7 **Did any of the documents contain**
8 **misrepresentations?**
9 A Well, they must have, or I wouldn't have signed
10 these things.
11 **Q If you're saying there are misrepresentations in the**
12 **documents given to you by Mr. Marlin, I'd like you to**
13 **point those misrepresentations out to me.**
14 A Well, he never showed -- never told me that this
15 would go away. I had the understanding that it was a
16 life policy, and if the premiums went up, they went up.
17 I didn't care if they went up to 100,000. If I wanted
18 the policy, I'd buy the policy.
19 **Q Okay.**
20 A It's as simple as that.
21 **Q Those are oral misrepresentations?**
22 A Yeah. Oral.
23 **Q Those are statements he made?**
24 A Right. Right.
25 **Q Let's -- maybe I wasn't clear. Let's focus on the**

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1 **Q You're saying -- you're saying -- you're talking not**
2 **interest rates but misrepresentation. That's what you**
3 **just said. Right?**
4 A I just said that this was misrepresented, in my
5 mind, for a Universal Life policy. That's what I'm
6 saying. Interest rates had nothing to do with this. I
7 didn't need 4 percent of whatever it is, 200,000. It's
8 \$8,000.
9 **Q Did NYLIAC make any misrepresentations to you?**
10 A No. I don't think -- New York didn't. Ben did.
11 **Q When you say New York, you mean New York Life**
12 **Insurance and Annuity Corporation, the company?**
13 A The company. As far -- I never talked to anyone but
14 Ben.
15 **Q Okay.**
16 A So I didn't have -- I'm not saying New York Life in
17 New York City did it. I'm saying Ben didn't tell me
18 enough, or I would not have taken the policy, Phil,
19 period.
20 **Q Okay. Are there any misrepresentations that you**
21 **know of -- as you sit here today, are there any**
22 **misrepresentations in any of the documents given to you**
23 **by New York Life Insurance and Annuity Corporation or Ben**
24 **Marlin?**
25 A Ben Marlin -- Ben Marlin's the only contact I had

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1 **written misrepresentations.**
2 A As far as I know, I never got any information from
3 New York Life.
4 **Q Okay.**
5 A Only through Ben Marlin.
6 **Q Of the written -- I'm sorry. I didn't mean to**
7 **interrupt.**
8 A That's all right.
9 **Q Of the written information you received from**
10 **Mr. Marlin, whether it was from him, his agency, New York**
11 **Life Insurance and Annuity Corporation --**
12 A It wasn't the agency. It was just Ben.
13 **Q Okay. Wherever -- whatever the source of the -- of**
14 **the written information Mr. Marlin gave you, did any of**
15 **it contain misrepresentations? And if so --**
16 A Yeah.
17 **Q -- point them out to me.**
18 A Okay. I've already pointed them out. I'll re-point
19 them.
20 **Q Okay.**
21 A That I had the understanding from Ben Marlow or
22 Merlin that this would be a life policy. Life is -- what
23 I'm thinking, is for life.
24 **Q Was that something he told you?**
25 A Yeah.

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29 (Pages 110 to 113)

1 **Q And that was a misrepresentation?**
2 A Well, I didn't find that out until five --
3 **Q Okay.**
4 A -- years later or something that the policy went
5 away. I thought I had a life policy, and whatever the
6 premium was is what it was. And we never even discussed
7 going up or anything like that. If it went up, I'd have
8 just paid it.
9 **Q Perhaps I'm not being clear, Mr. Blumenthal, and I**
10 **apologize.**
11 **Is there anything in any of the documents given**
12 **to you that's wrong, that's incorrect?**
13 A I'd -- I would say the documents have nothing to do
14 with this because Ben Marlin, who is the agent for New
15 York Life, tells me that it's a life policy. And I
16 assumed that it was a life policy, not something that
17 would be canceled in so many years.
18 **Q So your beef is what Mr. Marlin told you?**
19 A Yeah.
20 **Q It's not what was in writing. Is that correct?**
21 A Huh-uh. The writing -- I would have probably -- I
22 would have understood this if I had seen those
23 illustrations and -- that says, wait a minute, there's no
24 cash value 17 years from now. I never saw it. This one
25 that I signed, I didn't pay any attention to it because

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1 Ben just handed it -- he did that regularly.
2 **Q Okay. So your complaint --**
3 A Is not with -- is with --
4 **Q -- is not with the documents, but it's with what**
5 **Mr. Marlin said to you?**
6 A Right. That he represented for New York Life --
7 **Q I understand that.**
8 A -- a life term -- or life policy that I could have
9 for life for X dollars, whatever the dollars were. We
10 started at 50,000, and I had no idea what it would go up
11 to. Didn't care.
12 **Q Sure. And if you had read the documents, you would**
13 **have known what he was saying was not correct?**
14 A That's exactly right. If I'd have read them and --
15 or if he had told me -- all he had to do was tell me.
16 **Q Uh-huh.**
17 A But Ben didn't tell me this. He told me I had a
18 life policy. And I don't care about the interest on it,
19 if it made 2 percent or 10 percent. If it made
20 10 percent, I might care. But 2 percent, I didn't care,
21 of course.
22 **Q And you're saying you would have paid whatever**
23 **premium --**
24 A Sure.
25 **Q -- it took to keep it in -- to keep the policy --**

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1 A Yeah.
2 **Q -- in force if you had known that?**
3 A Would be happy to do it. No problem.
4 **Q Okay.**
5 A Let me know what the premiums were. And if it went
6 up, it went up. If it went down, it went down. We never
7 even discussed that.
8 **Q And you thought you would have coverage to age --**
9 A For life.
10 **Q -- to age 100 or life?**
11 A Yeah. Well, I think it was 99 or something, 100.
12 Yeah. 99. I don't know what -- something along --
13 **Q 99 or 100?**
14 A Yeah. That would have been long enough.
15 **Q Okay.**
16 A But that's -- I'm not blaming New York Life.
17 **Q Thank you. I appreciate that.**
18 A I'm blaming your rep that told me I had a lifetime
19 policy, Mr. Phil.
20 **Q Uh-huh.**
21 A And what would -- if the rep told you that, you
22 would think it's a lifetime policy, right or wrong. Not,
23 oh, I forgot to tell you that it'll expire in 13 years or
24 17 years, and you'll be 83 or something and you'll have
25 nothing. Oh, okay. But I do have the privilege of

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1 paying 50 or 80 or 100,000 a year for nothing. Is that
2 correct? Yes.
3 We didn't discuss that. That's the way I'm
4 looking at it. The company, your guy, misrepresented to
5 me what I thought was a life policy. And the premium was
6 irrelevant, not a factor for 50 or 80 or 100,000, not a
7 factor for a change, which is good.
8 **Q Uh-huh.**
9 A But I didn't know I was getting a policy that
10 expired when I'm thinking I've got a life policy. If it
11 was a term policy, it wouldn't be a problem at all. I
12 knew it expired.
13 **Q Did you understand -- we've talked about this. You**
14 **knew the policy would be in effect as long as there was a**
15 **positive cash surrender value amount. Correct?**
16 A No, I didn't. I didn't even think of that. I knew
17 that whatever was in there, we wasn't going to take it
18 out anyway.
19 **Q Right. Did you understand that if you took out a**
20 **loan against the policy, the cash surrender value would**
21 **go down in an amount equal to the loan?**
22 A I didn't even think about that.
23 **Q In other words, let's say the cash surrender value**
24 **was \$200,000.**
25 A Okay.

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30 (Pages 114 to 117)

<p>1 Q And I just made that up.</p> <p>2 A Yeah. That's fine.</p> <p>3 Q And let's assume you took a loan out of 100,000.</p> <p>4 A Okay.</p> <p>5 Q Then the cash surrender value would go from 200 --</p> <p>6 A Yeah.</p> <p>7 Q -- minus 100 --</p> <p>8 A Yeah.</p> <p>9 Q -- down to 100.</p> <p>10 A Yeah.</p> <p>11 Q Did you understand that?</p> <p>12 A Yeah. Anybody would understand that.</p> <p>13 Q Okay. So you knew that if you took out a loan</p> <p>14 against the policy, there would be less money --</p> <p>15 A Well, absolutely.</p> <p>16 Q -- in the cash surrender value -- let me finish --</p> <p>17 A Go ahead.</p> <p>18 Q -- there would be less money to keep the premium in</p> <p>19 force. Correct?</p> <p>20 A Exactly right.</p> <p>21 Q Okay.</p> <p>22 A But I took a loan on the policy when I got ready to</p> <p>23 cancel it. Thought I'd better get the money, if I can,</p> <p>24 out of the cash value thing -- or surrender -- they call</p> <p>25 it surrender value. And I did that and just canceled the</p>	<p>1 Q Correct.</p> <p>2 A And you're supposed to trust the rep to tell you the</p> <p>3 truth and what's happening with the policy, right or</p> <p>4 wrong, and that is -- that is really Universal.</p> <p>5 Q Okay. Let me show you -- if you could turn to page</p> <p>6 507. It's NYLIAC 080. And let me just read you --</p> <p>7 A Okay. Go ahead.</p> <p>8 Q I'm trying to help you out here.</p> <p>9 A Okay. Go ahead.</p> <p>10 Q It talked -- the heading is the third heading from</p> <p>11 the bottom, and it reads, quote, Annual Premium Necessary</p> <p>12 to Guarantee Coverage. Let me read that.</p> <p>13 Quote, The annual premium outlay to guarantee</p> <p>14 coverage for the term of the policy (age 100) subject to</p> <p>15 the maximum premiums allowable to qualify as a life</p> <p>16 insurance policy is \$200,276.89 annually.</p> <p>17 A Where is that?</p> <p>18 Q Sir, it's right here.</p> <p>19 A Okay.</p> <p>20 Q In other words --</p> <p>21 A I've never heard of that. But that doesn't matter</p> <p>22 because the policy went to zero.</p> <p>23 Q I understand.</p> <p>24 A That's the whole thing right here, zero, whack.</p> <p>25 Q Right.</p>
<p style="text-align: right;">Page 114</p> <p>1 policy. But that's after I found out that it was going</p> <p>2 to be zero in three years or six years or whatever it</p> <p>3 was.</p> <p>4 It's misrepresentation, Phil, on only the --</p> <p>5 the guy just misrep -- you know, didn't tell me what he</p> <p>6 should have told me. He should have said, here's a</p> <p>7 policy for X dollars, and it's going to go for Y years.</p> <p>8 Q Uh-huh.</p> <p>9 A And I would have said, okay. I'll either do it or I</p> <p>10 won't. I would not have done it at that high of a</p> <p>11 premium, because I knew about term policies.</p> <p>12 Q So just to make sure I understand, your beef or your</p> <p>13 complaint is with what Mr. Marlin told you --</p> <p>14 A Exactly.</p> <p>15 Q -- not with -- let me finish -- not with what's --</p> <p>16 A Huh-uh.</p> <p>17 Q -- not with what's in the documents?</p> <p>18 A Uh-huh.</p> <p>19 Q Correct?</p> <p>20 A Documents are --</p> <p>21 Q Documents are fine?</p> <p>22 A Yeah.</p> <p>23 Q Okay.</p> <p>24 A But not -- Ben Marlin tells me -- who do you -- he's</p> <p>25 the rep.</p>	<p style="text-align: right;">Page 116</p> <p>1 A I'm out of it.</p> <p>2 Q We've talked about that.</p> <p>3 But if you had read that sentence --</p> <p>4 A No.</p> <p>5 Q -- you would understand that the annual premium</p> <p>6 necessary to keep the policy in force, to guarantee the</p> <p>7 policy would be in force would be \$200,276.89. Correct?</p> <p>8 A That could have happened, yeah.</p> <p>9 Q Well, that's what it says.</p> <p>10 A Okay. That's what it says. I didn't know it.</p> <p>11 Q But if you had read it, you would have known it.</p> <p>12 Correct?</p> <p>13 A Could have, yeah. But it wouldn't have mattered to</p> <p>14 me.</p> <p>15 Q I thought you said you'd pay any premium --</p> <p>16 A I said --</p> <p>17 Q -- to keep the policy?</p> <p>18 A -- it wouldn't have mattered if it was 200,000 or</p> <p>19 100,000 or 10,000.</p> <p>20 Q You just needed to know what it was?</p> <p>21 A Yeah.</p> <p>22 Q Okay.</p> <p>23 A But I didn't know it was going to cancel itself out.</p> <p>24 Q Well, it did.</p> <p>25 A At the beginning of the policy, Ben tells me it's a</p>
<p style="text-align: right;">Page 115</p>	<p style="text-align: right;">Page 117</p>

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31 (Pages 118 to 121)

1 life policy --
2 **Q Right.**
3 A -- which I thought was for life. I didn't know it
4 would expire, Phil.
5 **Q I understand.**
6 A It expired when I -- that was seven or eight or
7 whatever years later. And that's the -- that's the --
8 what's happened is we never discussed premium, because
9 200,000 is 200,000. But if I wanted a policy, we would
10 have spent 200,000, if I'm still alive. But there wasn't
11 any policy left. It was going to zero.
12 **Q Turning to the page that has your signature on it,**
13 **81, at the bottom. It's in very small print, and let me**
14 **read it to you.**
15 A Okay.
16 **Q This is the footnote at the bottom. We're on page 6**
17 **of 7.**
18 A Right here?
19 **Q Yes, sir.**
20 A Okay.
21 **Q It reads, "This illustration shows the continuation**
22 **of the currently illustrated nonguaranteed elements and**
23 **is neither an estimate nor a guarantee of future**
24 **performance." In other words, the current interest**
25 **rates were not guaranteed --**

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1 A How --
2 **Q -- to be credited in the future.**
3 A We never even discussed that, the current interest
4 rate. I didn't care about -- it has nothing to do with
5 this policy, the interest rate.
6 **Q When the policy -- after it was issued, was there**
7 **service after the sale from Mr. Marlin? In other words,**
8 **did he come by and talk to you --**
9 A Occasionally.
10 **Q -- on a regular basis?**
11 A Occasionally.
12 **Q Occasionally. A couple times a year?**
13 A Oh, I don't know that. Probably at least. Maybe
14 once or twice, three. I don't know. But he did come by.
15 **Q He came out on a pretty regular basis, didn't he?**
16 A God, I can't remember that, to be honest with you.
17 I don't know. But I know that Ben's a very friendly guy
18 and -- I can't tell you how many times he came by and all
19 that.
20 **Q You just don't remember all the times he came by?**
21 A I can't. I don't remember exactly, but -- I'm sure
22 he came by, but I don't remember how many times.
23 **Q Do you remember --**
24 A Once or twice.
25 **Q I'm sorry. I interrupted you. I apologize.**

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1 A Certainly.
2 **Q Do you remember anyone else being present when he**
3 **came by?**
4 A Not that I know of.
5 **Q Do you remember your sons being present when he came**
6 **by?**
7 A They might have been. Might not have. I don't
8 know.
9 **Q You just don't remember?**
10 A Yeah. Why would I remember something like that?
11 **Q I'm not expecting you to remember or not remember.**
12 **I'm just asking you if you did. That's all I'm asking.**
13 A No. I don't remember Ben coming around talking with
14 my sons, whatever. He might have. I don't know.
15 **Q I'm talking about talking with your sons and you at**
16 **the same time. You don't remember that?**
17 A Could have been. Who knows? What difference does
18 it make?
19 **Q You don't remember Mr. Marlin bringing illustrations**
20 **after the policy was issued, showing the expected track**
21 **record of the policy with regard to interest rates**
22 **crediting?**
23 A Huh-uh.
24 **Q Could have happened. You just don't remember it.**
25 **Correct?**

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1 A If it happened, I'd have remembered it if it's -- if
2 he had told me that. He didn't tell me a thing, period.
3 **Q But you testified earlier this morning that you had**
4 **never received an illustration. Correct?**
5 A Well, as far as I know -- no. I did receive one,
6 but that's the one that turned me around. But I've never
7 received this one or -- you know, it might have been one
8 like this. I don't know. All I know is I received an
9 illustration that said it's going to zero, and that was
10 the first time that I've ever seen that, the zero, zero.
11 **Q That's not true, is it?**
12 A It is true.
13 **Q Isn't this -- isn't this the first time, at least**
14 **from the time the policy was issued? This says -- this**
15 **says it goes to zero, doesn't it? Doesn't it?**
16 A If I had seen it -- evidently, if I had -- I know in
17 my mind that I wouldn't have taken this policy out --
18 **Q That's not my question.**
19 A -- If I had -- it is your question.
20 **Q No, sir. My question is, does this illustration**
21 **show it going to zero, the policy values? It shows that,**
22 **doesn't it?**
23 A Yeah, it does. Right here, yeah.
24 **Q Okay. Let's take it in small bites. It shows it**
25 **goes to zero.**

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32 (Pages 122 to 125)

1 A Okay.

2 **Q It has your signature on the page that shows --**

3 A Right.

4 **Q -- it's going to zero. Correct?**

5 A Uh-huh.

6 **Q Have you heard of the expression, you can lead a**
horse to water, but you can't make it drink?

7 A I have heard that, sir.

8 **Q Okay. Would that be applicable here? You signed**
the very page that shows it going to zero --

9 A And that is stupid on my part. Ben could have just
10 said, sign this, and I would have signed it.

11 **Q Okay.**

12 A He didn't explain a thing, period. Whether you
13 believe it or not, that is the truth.

14 **Q Do you need a break?**

15 A No.

16 THE VIDEOGRAPHER: Can we take a break for
17 one minute just to switch a tape?

18 MR. STANO: Sure.

19 (A break was taken.)

20 **Q (By Mr. Stano) Mr. Blumenthal, who is David M.**
Sanderford?

21 A I have no idea.

22 **Q You've never talked to him before?**

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1 A Not that I know of. David M. -- huh-uh.

2 **Q Sanderford, S-A-N-D-E-R-F-O-R-D.**

3 A I don't know. I don't know if -- I don't know the
4 guy, whoever he is. I don't.

5 **Q Other than your counsel, have you talked to anybody**
about this case? And I'm not asking about conversations
with counsel.

6 A I don't think anybody, because nobody has any
7 interest in it. I don't -- huh-uh. Not that I know of.

8 David M. --

9 **Q Sanderford, S-A-N-D-E-R-F-O-R-D.**

10 A I don't know. I don't know him.

11 **Q Okay. I will represent to you, Mr. Blumenthal, that**
he has been represented to us as your expert witness in
this case.

12 A An expert witness?

13 **Q Yes, sir.**

14 A Not that I know of.

15 **Q Okay.**

16 A I don't know a David Sander -- whoever it is.

17 **Q It's Sanderford.**

18 A Whoever it is, I don't -- I've never heard of him,
19 if he's an expert witness.

20 **Q Have you talked to anyone in this case?**

21 A I've never talked to a David Sanders, so --

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1 **Q Okay.**

2 A Wherever you heard that is -- I don't know where you
3 heard it. Never heard of him.

4 **Q It's not true?**

5 A Huh-uh.

6 **Q When you said, huh-uh, you need to say yes or no.**

7 A No. It is not true.

8 **Q Okay. Sir, your -- Mr. Sanderford has provided**
what's called an expert witness written report in this
case, in which he has said that he has interviewed you.
Now, would that not be correct?

9 A If he's interviewed me, I don't know about it.

10 **Q Well, is it possible to interview you without you**
knowing about it?

11 A I don't see how he could do it, no. I -- can't be
12 happening.

13 **Q Okay.**

14 A And he's an expert witness, huh?

15 **Q You didn't know you had an expert witness --**

16 A No.

17 **Q -- in this case?**

18 A I had no idea.

19 **Q No one ever told you that?**

20 A Huh-uh.

21 **Q Did you speak with your counsel in preparation for**
this deposition? And I'm not asking you what you said to
them, because I am not entitled to know.

22 A Are you talking about her, the counsel?

23 **Q When you say her, who are you referring to?**

24 A Yeah.

25 **Q Ms. Emmons?**

1 A That's --- she's the counsel, yeah. I've talked to
2 her.

3 **Q Okay. And what is her name?**

4 A Shannon.

5 **Q Okay. And you've talked to her about your**
deposition?

6 A Briefly.

7 THE WITNESS: We haven't talked much about
8 it, have we?

9 **Q (By Mr. Stano) I'm not asking you, sir, what**
was said.

10 A Okay.

11 **Q I'm prohibited from knowing that.**
When did you talk with Ms. Emmons?

12 A Oh, several times over maybe a month or so or three
13 months. I don't know.

14 **Q Did you talk to her today before your deposition?**

15 A Yeah. I called her.

16 **Q Okay. Did you talk to her yesterday?**

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33 (Pages 126 to 129)

<p>1 A Yeah.</p> <p>2 Q Did you talk to her the day before yesterday?</p> <p>3 A The day before yesterday, and this is Tuesday, no.</p> <p>4 Q Prior to talking to Shannon Emmons yesterday, when 5 was the last time you had talked to Ms. Emmons or any of 6 your other lawyers who are working on this case?</p> <p>7 A I don't know of any other lawyers that are working 8 on this case.</p> <p>9 Q Okay. Ms. Emmons is your only contact?</p> <p>10 A She is the only counsel that we -- that I know 11 about.</p> <p>12 Q Do you know who are the law firms representing you 13 in this case?</p> <p>14 A I know who this law firm is. It's the only one 15 that's doing it.</p> <p>16 Q Okay. And what's the name of this law firm?</p> <p>17 A The name of the firm is Phillips Murray [sic].</p> <p>18 Q Okay. Do you know if there are any other law firms 19 working on this case, your case, against NYLIAC?</p> <p>20 A I have never talked to any other law firm.</p> <p>21 Q I understand that. But do you know if there -- if 22 there are any other law firms working on this case? I'm 23 trying to get the universe of people working on your 24 case.</p> <p>25 A If there is --</p>	<p>1 A Chuck Dalwin (phonetic) is a guy that -- what does 2 Chuck do? He's a friend of one of my sons.</p> <p>3 Q Okay. Do you know what line of work he's in?</p> <p>4 A You know, I think -- I'm not sure what he's in. I 5 think he's -- might be an insurance guy.</p> <p>6 Q But you don't know?</p> <p>7 A I think -- I think he is, but I -- I don't know 8 what he -- who he works for.</p> <p>9 Q Do you know what company he works for?</p> <p>10 A Huh-uh.</p> <p>11 Q Do you know if he represents New York Life Insurance 12 and Annuity Corporation?</p> <p>13 A I don't know. I don't think so.</p> <p>14 Q Do you know of any company that he -- assuming he's 15 an insurance agent, and I'm not saying he is.</p> <p>16 A Yeah. I'm not --</p> <p>17 Q I'm not saying he's not.</p> <p>18 A I think he is. I don't know who he works for.</p> <p>19 Q Okay. But assuming he's an insurance agent, you 20 don't know what company he works for?</p> <p>21 A Huh-uh.</p> <p>22 Q Have you ever done business with Mr. Dahlgren, 23 insurance business?</p> <p>24 A I haven't, but my sons have.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 126</p> <p>1 Q You don't know about it?</p> <p>2 A I -- I don't know any other law firm that's working 3 on this case myself, but -- I don't know. There might 4 be, but if I know it, I don't know them.</p> <p>5 Q Okay. And prior to talking to Ms. Emmons yesterday, 6 when was the last time you had talked to Ms. Emmons prior 7 to yesterday? Has it been weeks? Months? Days?</p> <p>8 A I'd say weeks, something like -- yeah. Probably 9 weeks.</p> <p>10 Q Okay.</p> <p>11 A We've been talking about when you're coming up.</p> <p>12 Q Right. And, again, I don't want to get into that.</p> <p>13 A Yeah. Okay.</p> <p>14 Q And prior to talking to Ms. Emmons about a 15 deposition or whatever it was -- and I'm not asking -- 16 when was the last time you had talked to Ms. Emmons 17 before that?</p> <p>18 A Oh, God. I don't remember it. I can't remember 19 that.</p> <p>20 Q Months?</p> <p>21 A Maybe. Could be. I don't know. I can't remember 22 that, when we talked last before that.</p> <p>23 Q It's been a long time. Correct?</p> <p>24 A I don't know. Can't remember it.</p> <p>25 Q Okay. Who is Chuck Dahlgren (phonetic)?</p>	<p style="text-align: right;">Page 128</p> <p>1 A That's where I know him is through my sons. 2 They've -- they've done insurance business with him.</p> <p>3 Q Okay. How -- how do you know that?</p> <p>4 A They told me.</p> <p>5 Q Who told you? Your son?</p> <p>6 A My sons, yeah.</p> <p>7 Q Okay.</p> <p>8 A Took out some kind of a -- I can't remember what it 9 is now -- but, like, an annuity or something.</p> <p>10 Q Yeah. Do you know if your sons have ever taken out 11 insurance on you without telling you?</p> <p>12 A I don't think they did. I don't know it if they 13 did.</p> <p>14 Q Okay.</p> <p>15 A Huh-uh. I don't know why they would. If they was 16 going to take insurance out, I'm sure they'd tell me.</p> <p>17 Q And I'm not saying they did or they didn't. I'm 18 just asking.</p> <p>19 A Yeah. No.</p> <p>20 Q Have you ever consulted Mr. Dahlgren for insurance 21 advice? And if I've asked you that, I apologize.</p> <p>22 A No.</p> <p>23 Q Okay.</p> <p>24 THE WITNESS: Shannon, do you got a 25 marker?</p>
<p style="text-align: right;">Page 127</p>	<p style="text-align: right;">Page 129</p>

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34 (Pages 130 to 133)

<p>1 MS. EMMONS: A marker? There you go. 2 THE WITNESS: I want this guy's name that 3 I'm supposed to have been in contact with. What was his 4 name again? 5 Q (By Mr. Stano) Are you referring to David M. 6 Sanderford? 7 A Yeah. 8 Q It's David M. Sanderford, S-A-N-D-E-R-F-O-R-D. 9 THE WITNESS: Thank you, ma'am. That's -- 10 I'll try to find out who that is. 11 Q (By Mr. Stano) Mr. Blumenthal, let me show you 12 what's marked as Exhibit 8. 13 A Okay. 14 Q And, for the record, it's Bates stamped NYLIAC 041 15 to 048. And, Mr. Blumenthal, I will represent to you, 16 sir, that this is the application you filled out for 17 insurance coverage with New York Life Insurance and 18 Annuity Corporation for the policy which is the subject 19 of your lawsuit. 20 A Okay. So what? 21 Q If you would, turn to page 5 or NYLIAC 045. And 22 maybe I should find it for you. 23 A No. Hold it. 24 Q I think it's two more pages in. One more page after 25 that, please, sir. And do you see the two signatures in</p>	<p>1 THE WITNESS: I could have done it. 2 Q (By Mr. Stano) Sir, if it would help, maybe if 3 you turn to the next page, your signature is on that 4 page as well. 5 A Oh, good. 6 Q And I'm referring to NYLIAC 046. 7 A Huh? 8 Q Take your time, Mr. Blumenthal. 9 A I don't know why I wouldn't have signed these. It 10 just doesn't look like I signed them, but it doesn't 11 matter because -- this is an application for the policy? 12 Q Yes, sir. I'll represent to you it's -- 13 A Okay. 14 Q -- the first application you filed or you signed for 15 the policy. 16 A I could have done that, but -- 17 Q And, for the record, you're on page 46 now. Is that 18 your signature on page 46? I'm sorry, sir. Yes. 19 A Right here? 20 Q Yes, sir. 21 A It could be right. This looks -- I probably did 22 this. 23 Q And if you look at the next page, page 47, there's 24 your signature again. 25 A Yeah.</p>
Page 130	Page 132
<p>1 the lower right-hand corner? 2 A Right here? Yeah. 3 Q Yes, sir. Are those your signatures? 4 A That one -- those don't look like I wrote them, but 5 I might have. But I don't think so. That doesn't look 6 like -- the top one. 7 MR. STANO: Shannon, if he's going to 8 contest his signatures, we're going to ask for a 9 handwriting expert, and we're going to ask that the cost 10 be paid by Mr. Blumenthal. I don't know if you need to 11 go off the record or what, but -- 12 THE WITNESS: Yeah. I'm not -- I could 13 have signed them. I'm just saying maybe -- I just don't 14 think I did, but I might have. I don't know why I 15 wouldn't have signed them. 16 MR. STANO: We're being very patient, and 17 we appreciate your help, but we're not going to play 18 these games. I just want to say that -- 19 THE WITNESS: There is no game to play. 20 MS. EMMONS: Well, I don't think it's a 21 game. I think he's just trying to determine -- 22 THE WITNESS: I'm trying to figure out -- 23 MS. EMMONS: -- if it is. 24 THE WITNESS: -- if I signed them. 25 MS. EMMONS: It's a blurry copy.</p>	<p>1 Q Here, sir -- 2 A I've got it. 3 Q -- if I may point it out to you. 4 A Yeah. I -- I'm sure I signed it. 5 Q Okay. 6 A But it just don't look -- 7 Q And then if you look on the page 48. 8 A Yeah. The last one, yeah. 9 Q Yes, sir. Is that your signature? 10 A Yeah. That's it. Okay. 11 Q So these are your signatures on this? 12 A Yeah. It looks like it. 13 Q Okay. Thank you. And you signed it -- 14 A Yeah. 15 Q -- five times -- 16 A Okay. So -- 17 Q -- on all these pages. Correct? 18 A Yeah. 19 Q Is that -- that's a yes? 20 A Yes. 21 Q Okay. Now, if we could turn to page 42, which is 22 the second page in. 23 A Is that it? 24 Q That may have been one page beyond it, but -- that 25 may be 43.</p>
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36 (Pages 138 to 141)

1 back to the same thing, that I was led to believe one
 2 thing, and something else happened.
 3 **Q Let me make sure I understand what you say you were**
 4 **led to believe. You were --**
 5 A I was led to believe it was a life policy.
 6 **Q And as long as you paid your premiums, the policy**
 7 **would stay --**
 8 A That it would be in force. That's it.
 9 **Q The policy would --**
 10 A That's it.
 11 **Q -- stay in force?**
 12 A That's it. And it was not. And it was hidden,
 13 let's say, from me. I didn't -- I didn't even think
 14 about it. I just believed what he said. That's it. And
 15 if the agent is no -- whatever.
 16 **Q But to keep up your end of the deal, as what you**
 17 **just said, you'd have to keep paying premiums, wouldn't**
 18 **you?**
 19 A Yeah.
 20 **Q And -- but you stopped paying premiums. Correct?**
 21 A I stopped -- I withdrew 100-odd thousand dollars
 22 from the cash value and turned and stopped it.
 23 **Q And stopped paying premiums as well?**
 24 A Yeah. Absolutely. Why would I continue paying
 25 premiums? I had no insurance.

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1 **Q But before --**
 2 A It was going to go away.
 3 **Q But before you stopped paying premiums, you had**
 4 **insurance. Correct?**
 5 A I had insurance, but the -- as soon as I found out
 6 that the insurance policy was going to go to zero is when
 7 I canceled it and took whatever the cash value was out of
 8 it. There might still be some left in it. I don't know.
 9 But --
 10 **Q Did you ever ask Mr. Marlin or New York Life about**
 11 **paying more premium to keep the policy going?**
 12 A I didn't want to keep it going if it's -- if it's
 13 expiring. How do you keep it going? It said zero.
 14 **Q Based on current interest -- based on current**
 15 **premium payments you were making and based on certain**
 16 **interest rate assumptions. Correct?**
 17 A No.
 18 **Q But if you had paid more interest, you could have**
 19 **kept the policy going longer, couldn't you?**
 20 A More interest?
 21 **Q I'm sorry. If you could have paid additional**
 22 **premium.**
 23 A Not -- I didn't -- all I thought was the policy was
 24 over in six years, whatever years it was, and that's what
 25 I was led to believe it's over with.

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1 **Q Did you ever --**
 2 A And that's when I stopped it.
 3 **Q Did you ever explore the possibility of paying**
 4 **additional premium to keep the policy in force?**
 5 A It never came up. It was already -- all that came
 6 up was it's zero.
 7 **Q Did you ever ask Mr. Marlin -- let me finish -- or**
 8 **NYLIAC about the possibility of paying additional premium**
 9 **to keep your NYLIAC policy in force?**
 10 A No. Not that I know of.
 11 **Q Okay. Mr. Blumenthal, let me show you what's marked**
 12 **as Exhibit 9, Bates stamped NYLIAC 49 through NYLIAC 57.**
 13 A Okay. Whatever.
 14 **Q I'm sorry. Through 58. I'll represent to you, sir,**
 15 **that this is an amended application that was signed by**
 16 **you in 1999 for the same policy that's the subject of**
 17 **this lawsuit. The previous application -- the original**
 18 **application, Exhibit 8, was signed in January of 1999.**
 19 **This amended application was signed in, I believe, June**
 20 **of 1999. Do you recall signing this application in June**
 21 **of 1999?**
 22 A No.
 23 **Q Let me show you -- if you would turn to page 54.**
 24 A I can't tell which page that is.
 25 **Q Let me find it, sir. I apologize.**

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1 **On page 54, the signature in the lower**
 2 **right-hand corner, is that your signature, sir?**
 3 A Yes, sir.
 4 **Q Is that your -- the date -- the date is 6/28 of '99.**
 5 **Is that your handwriting?**
 6 A No. That isn't.
 7 **Q And while we're on signatures, let me ask, if I may,**
 8 **turning and looking again at the next page, NYLIAC 55, if**
 9 **that is your signature.**
 10 A Yes, sir.
 11 **Q Again, that's the lower right-hand corner.**
 12 **And then the next page is NYLIAC 56. Is that**
 13 **your signature about two-thirds of the way down --**
 14 A Yeah. I see it, yeah. That's it.
 15 **Q -- on the right-hand corner.**
 16 A It looks like it. I'd say it is.
 17 **Q Okay. And then on the next page, 57, I believe**
 18 **there's another signature.**
 19 A Okay.
 20 **Q Is that your signature?**
 21 A Yeah.
 22 **Q And, finally, on page 58, the last page of the**
 23 **exhibit, I believe it's --**
 24 A Right here.
 25 **Q I'm sorry, sir. Yes, sir. I believe it's right --**

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37 (Pages 142 to 145)

1 I believe it's right there. Excuse me.
 2 A Right here, isn't it? Right there?
 3 Q Correct. Lower right-hand corner.
 4 A Somebody signed Dunnle Blumenthal over here. It
 5 wasn't me. Okay. Signed Dunnle Blumenthal.
 6 Q Dunnle, D-U-N-N-I-E?
 7 A Yeah. Right here. That wasn't me. But this looks
 8 like me here, Irving H. Blumenthal, Jr. I don't know
 9 what this is, but --
 10 Q But the signature on the right --
 11 A Yeah. Is definitely mine. It looks like it.
 12 Q Where it reads, Irving H. Blumenthal, Jr., that's
 13 your signature?
 14 A Yeah.
 15 Q While we're on that same page, if you could go to --
 16 there's some conditions or numbered paragraphs --
 17 paragraph number two. The last sentence of paragraph
 18 number two on page 58 reads, quote, the policy or
 19 policies will lapse at the end of the grace or late
 20 period if the premium remains unpaid.
 21 You understood that, didn't you, that if you
 22 didn't pay the premlums, the policy would lapse?
 23 A Certainly.
 24 Q Okay. I'm going to ask you to turn to page 54. In
 25 the middle of the page -- about a third of the way down,

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1 actually, there's a line across the page. And just below
 2 that line on page 54 it reads, "Those persons who sign
 3 below agree that." Do you see that sentence there,
 4 "Those persons who sign below agree that"?
 5 I'm sorry, Mr. Blumenthal. I'm not --
 6 A Where is it?
 7 Q I'm not being very clear.
 8 A Okay. That's all right.
 9 Q "Those persons who sign below agree that." Do you
 10 see that?
 11 A I don't see it, but it's on there somewhere, I
 12 guess.
 13 Q Well, I want to make sure that you're comfortable
 14 with what I'm saying.
 15 A Signed below -- something. Okay.
 16 Q Okay. And you signed below. Correct?
 17 A It sure looks like it.
 18 Q Okay. So you're agreeing to the conditions in 1
 19 through 4. Correct?
 20 A Absolutely. Evidently, I did it, not having no idea
 21 what I was signing. But that doesn't matter, evidently.
 22 Q Let's look at condition No. 2. And I'm only going
 23 to read the part -- it deals with agents and medical
 24 examiners. I'm only going to read the part --
 25 A Okay.

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1 Q -- pertaining to the insurance agents. And follow
 2 along with me. "No agent has any right to accept risks,
 3 make or change contracts, or give up any of NYLIAC's
 4 rights or requirements."
 5 It's basically saying the insurance agent can't
 6 change the insurance policy.
 7 A I don't think he ever -- he didn't change anything.
 8 Q Well, we'll get to that in a minute. But you
 9 understand the agent can't change the insurance policy,
 10 correct, without approval in writing --
 11 A Yeah.
 12 Q -- from the company?
 13 A Okay.
 14 Q Do you understand that?
 15 A Yeah.
 16 Q Okay.
 17 A Okay.
 18 Q Your insurance policy with NYLIAC was a contract
 19 between you and the company. You understand that, don't
 20 you?
 21 A Okay. Let's say I do.
 22 Q Well, do you? Do you understand that --
 23 A I knew it was a policy. I didn't know it was a
 24 contract.
 25 Q Okay. It's an agreement between you and the

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1 insurance company, the terms and conditions --
 2 A Yeah. It's a policy that -- I don't think it's a
 3 contract, but it's a -- I don't know what it is. It's
 4 just a policy.
 5 Q Okay. But the terms and conditions of the policy
 6 are contained within the policy's language. Correct?
 7 A I guess. I don't know that.
 8 Q Well, where else would it be?
 9 I mean, if you wanted to know what the policy
 10 said or what its requirements were or what its conditions
 11 were, you'd read the policy, wouldn't you?
 12 A Uh-huh.
 13 Q Correct?
 14 A (Witness nods head.)
 15 Q Is that a yes?
 16 A I'm thinking about it.
 17 Q Oh, I'm sorry. I'm sorry. Take your time. I
 18 couldn't tell.
 19 A Well, I don't know. But go ahead.
 20 Q Well --
 21 MS. EMMONS: We'll stipulate that the
 22 policy is a contract under Oklahoma law.
 23 MR. STANO: Thank you.
 24 THE WITNESS: It is?
 25 MS. EMMONS: Uh-huh.

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38 (Pages 146 to 149)

1 THE WITNESS: Okay. I didn't know that.
 2 MS. EMMONS: It's a legal question.
 3 THE WITNESS: Okay.
 4 **Q (By Mr. Stano) So you had a written contract or**
 5 **a written agreement with New York Life. We've**
 6 **established that. Did you have any oral contracts**
 7 **with New York Life?**
 8 A I never talked directly to New York Life, only
 9 through Ben.
 10 **Q So the answer would be no. Correct?**
 11 A As far as I know, I've never had any contact with
 12 New York Life.
 13 **Q So not having talked to them, you couldn't have any**
 14 **oral contracts in New York Life. Correct?**
 15 A Huh-uh.
 16 **Q You said "huh-uh" again.**
 17 A No.
 18 **Q You have to answer yes or no. You -- let me repeat**
 19 **the question. You never had any oral contracts with New**
 20 **York Life. Correct?**
 21 A That's right.
 22 **Q And you never had any oral contracts with Ben**
 23 **Marlin, did you? Correct?**
 24 A Oral contracts?
 25 **Q Yes.**

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1 A I don't know what an oral contract would be from
 2 Ben. He just presented the policy.
 3 **Q Well, as we sit here today, are you claiming that**
 4 **you had an oral contract with Mr. Marlin? If you're not,**
 5 **we can move on.**
 6 A Well, I would say that I never thought about it as a
 7 contract so much as -- as he was representing the company
 8 and just telling me what the policy was --
 9 **Q Okay.**
 10 A -- and what it done, what it's supposed to do.
 11 **Q But as you sit here today, are you claiming you had**
 12 **an oral contract with Ben Marlin?**
 13 A I'd say that would be true, yeah.
 14 **Q And what were the terms of the oral contract?**
 15 A Just the policy was supposed to be a life policy.
 16 **Q And by that, you mean it was supposed to last as**
 17 **long as you lived?**
 18 A Until 99 or something.
 19 **Q 99, 100, whatever it is?**
 20 A Yeah.
 21 **Q It was supposed to last until whatever age it is, 99**
 22 **or 100?**
 23 A Just a -- a life policy. Whatever the age is was
 24 something --
 25 **Q And as long as you paid the insurance premiums?**

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1 A Yeah. Right.
 2 **Q And as long as the premiums were adequate --**
 3 A Exactly right. If you paid the premiums, you've got
 4 a policy.
 5 **Q If the premiums were adequate to keep the policy in**
 6 **force. Correct?**
 7 A Yeah.
 8 **Q Okay. And there were other conditions as well, the**
 9 **amount of interest credited, loans --**
 10 A That's right.
 11 **Q -- charges?**
 12 A Something -- it doesn't matter about that.
 13 It's all -- that's minor. What matters is the policy
 14 went to zero --
 15 **Q Uh-huh.**
 16 A -- and that's why I canceled it, period.
 17 **Q You helped the policy along to get to zero, didn't**
 18 **you, when you took the loan out?**
 19 A No. It was over -- when I took that loan out, I
 20 took the loan to stop the policy completely. I just took
 21 the money out instead of letting it sit there being eaten
 22 up. It was going to go away anyway.
 23 **Q And you knew that because of what?**
 24 A Because I saw it in the illustration, and Ben said
 25 it was going to go away.

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1 **Q When did he -- when did he say that to you?**
 2 A Oh, whenever -- a year and a half, two years ago, or
 3 something.
 4 **Q How did the issue come up?**
 5 A Hell, I don't know now. I can't remember it. All I
 6 know is I canceled the policy because it was going to go
 7 to zero in a few years. That's it.
 8 **Q Was -- did Ben tell you this -- when I say Ben, I**
 9 **mean Mr. Marlin.**
 10 A Yeah.
 11 **Q Did Mr. Marlin tell you this in a face-to-face**
 12 **meeting?**
 13 A You know, I think we -- I'm not sure, now that --
 14 whether it was face to face or over the telephone. But
 15 when this came up, that's when I canceled it, not because
 16 of any payments. Payments had not -- had nothing to do
 17 with it.
 18 **Q Would it have been around 2006?**
 19 A Could have been. Probably was. That might have
 20 been it.
 21 **Q Did you cancel it immediately?**
 22 A I canceled it as quick as possible, which is
 23 probably a few weeks later, a month maybe or so, yeah.
 24 **Q Okay. So the policy would have expired in 2006?**
 25 A No. The policy would have expired later, like, in

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39 (Pages 150 to 153)

1 another three years or four years or something. It was
 2 going to expire and go to zero later, not then. But I
 3 didn't feel like there was any reason to carry it further
 4 if it's going to zero.
 5 **Q When Mr. Marlin told you the policy was going to**
 6 **lapse or cancel, what --**
 7 A No. Not cancel. Just going to zero is what it was.
 8 **Q He said it was going to go to zero. Is that his --**
 9 A Yeah. That's it.
 10 **Q Is that his term?**
 11 A No. It's black and white right there, zero, boom.
 12 **Q I'm not being clear, and I'm sorry.**
 13 **What term did he use when he said the policy**
 14 **was going to stop being in effect?**
 15 A I don't know. I can't remember what -- exactly what
 16 term he used.
 17 **Q The go-to-zero term, is that your term?**
 18 A That's my term. I don't know what he used.
 19 **Q Did you ask for Mr. Marlin to prepare you an**
 20 **illustration to show how it would go to zero?**
 21 A Yeah. We had one.
 22 **Q I'm going to show you what's marked as Exhibit 10,**
 23 **Bates numbered Blumenthal 37 through Blumenthal 43. Have**
 24 **you seen this illustration before?**
 25 **Well, given your eyesight, let me see if we**

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1 **can help out -- help you out here. Do you see the**
 2 **handwriting on the first page of the illustration?**
 3 A Up here?
 4 **Q Yes, sir.**
 5 A What is that? I can't make that out. It's too
 6 little.
 7 **Q Is it your handwriting?**
 8 A No.
 9 **Q On the first page there are numbers marked 1 through**
 10 **7, and there's a dash after each number, and then there's**
 11 **words written. Is that your handwriting?**
 12 A No.
 13 **Q Do you recognize the handwriting?**
 14 A No. What does it say?
 15 **Q Well, for each number there is an explanation or**
 16 **identifying comment about each number. And we'll go**
 17 **through those. Did someone go through this illustration**
 18 **with you?**
 19 A Not that I know of. I've never seen this before.
 20 What is it?
 21 **Q It's -- well, it speaks for itself. But let me --**
 22 **since you're having a hard time reading, let me go**
 23 **through it a little bit.**
 24 MS. EMMONS: If it will hasten things a
 25 little bit, we produced -- we'll stipulate that we

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1 produced this document. And it was an illustration that
 2 Mr. Blumenthal obtained approximately in late November,
 3 early December of 2006. And it was produced by him in
 4 this case.
 5 **Q (By Mr. Stano) Mr. Blumenthal, it says, NYLIAC**
 6 **Protector Universal Life Insurance Inforce**
 7 **Illustration for Irving H. Blumenthal.**
 8 A Okay.
 9 **Q Now, until today you haven't seen this, have you?**
 10 A Huh-uh.
 11 **Q When you say "huh-uh," you need to --**
 12 A No. No. I've not seen this.
 13 **Q Okay.**
 14 MS. EMMONS: Dunny, wait until you've
 15 seen the entire document.
 16 MR. STANO: Well, let's not coach the
 17 witness.
 18 THE WITNESS: No.
 19 MR. STANO: Looking at the first --
 20 THE WITNESS: I can't see.
 21 MS. EMMONS: Well, he's saying --
 22 THE WITNESS: I don't remember seeing this
 23 writing. I might --
 24 MS. EMMONS: Okay.
 25 **Q (By Mr. Stano) Okay. Well, we're going to go**

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1 **very slow --**
 2 A Yeah. Okay.
 3 **Q -- on this.**
 4 A Okay. Good.
 5 **Q And we're not going to rush anybody at all.**
 6 A Okay.
 7 **Q Would you like me to read the writing to you as**
 8 **you -- as you follow along -- and you follow along?**
 9 **Would that help?**
 10 A That would help.
 11 **Q I'll start with No. 1.**
 12 A Okay.
 13 **Q It's No. 1, dash, and we're looking at the top up**
 14 **here.**
 15 A Okay. I've got it.
 16 **Q It says, "Does the rate apply? Will not apply since**
 17 **less being taken out than was put in." Does that ring a**
 18 **bell with you?**
 19 A Huh-uh.
 20 **Q When you say "huh-uh," sir, you need to --**
 21 A No.
 22 **Q I'm sorry. I hate to be so --**
 23 A That's all right.
 24 **Q -- picky, but --**
 25 A No problem. I keep forgetting it. Go ahead.

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40 (Pages 154 to 157)

<p>1 Q Yeah. The court reporter has to --</p> <p>2 A Yeah. I got you.</p> <p>3 Q Okay. No. 2, total premiums paid, does that ring a bell with you?</p> <p>4 A No.</p> <p>5 Q No. 3, cash value after surrender charge, does that ring a bell with you?</p> <p>6 A No.</p> <p>7 Q No. 4, cost of insurance per month, hyphen --</p> <p>8 MR. STANO: Shannon, help me out. It's --</p> <p>9 I'm sorry -- goes up monthly?</p> <p>10 MS. EMMONS: Yes.</p> <p>11 Q (By Mr. Stano) No. 4 is, cost of insurance per month goes up monthly.</p> <p>12 MS. EMMONS: And, for the record, it's not my handwriting.</p> <p>13 THE WITNESS: Whose is it?</p> <p>14 MR. STANO: That's -- that's for later.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q (By Mr. Stano) No. 5 is, charged -- charged interest rate no more than 2 percent.</p> <p>17 A (Witness shaking head.)</p> <p>18 Q You're shaking your head no, as if --</p> <p>19 A No. I've never heard of it.</p> <p>20 Q Never heard of it. Okay.</p>	<p>1 the sentence that -- or the phrase that reads, owner tax rate, 28 percent. Do you see that?</p> <p>2 A I can barely see it.</p> <p>3 Q Okay. But that doesn't ring a bell?</p> <p>4 A It's there.</p> <p>5 Q Again, it doesn't ring a bell --</p> <p>6 A No.</p> <p>7 Q -- with you. Correct?</p> <p>8 A Huh-uh.</p> <p>9 Q You said "huh-uh."</p> <p>10 A No.</p> <p>11 Q Okay. I'm sorry.</p> <p>12 A That's all right. Keep reminding me.</p> <p>13 Q No. 2 on the front page reads, total premiums paid. And there's a No. 2 there pointing to the total premiums --</p> <p>14 A Okay. Okay.</p> <p>15 Q -- paid of \$393,420.50.</p> <p>16 A Okay.</p> <p>17 Q Does that ring a bell with you?</p> <p>18 A No.</p> <p>19 Q No one has ever gone over this or explained it to you. Correct?</p> <p>20 A I don't remember this at all.</p> <p>21 Q Okay. Turning to the next page, No. 3 -- and I'll</p>
Page 154	Page 156
<p>1 No. 6 is, guaranteed length of policy, 79. Presumably, age 79?</p> <p>2 A (Witness shakes head.)</p> <p>3 Q And No. 7 is, best case as of today, and the 83 is written there. I believe that's meant to be your age, 83. You've never seen any of this?</p> <p>4 A Huh-uh. No.</p> <p>5 Q Okay. Now, what I'm going to do is I'm going to repeat those numbers, and I'm going to show you where in the illustration these numbers are marked. Think of them as footnotes or markers.</p> <p>6 A Okay.</p> <p>7 Q On the very next page -- and, again, I'll repeat what No. 1 said.</p> <p>8 A Yeah.</p> <p>9 Q "Does the rate apply? Will not apply since less being taken out than was put in." There's a No. 1 -- excuse me, Mr. Blumenthal -- right there. There's a 1 and then an arrow pointing to attached rate --</p> <p>10 A Okay.</p> <p>11 Q -- of 28 percent. It says, owner tax rate 28 percent, No. 1. And we're on page Blumenthal 38. Do you see that No. 1?</p> <p>12 A Yeah.</p> <p>13 Q No. 1. And there's an arrow pointing toward</p>	<p>1 go back to the first page and read what No. 3 said. No. 3 reads, cash value after surrender charge. And there's a No. 3 with an arrow, and it shows a cash value after surrender charge of \$185,562.57.</p> <p>2 A Okay.</p> <p>3 Q No one explained that or discussed that with you?</p> <p>4 A Nope.</p> <p>5 Q Okay. We're almost done. No. 4 is on the same page, lower right-hand corner.</p> <p>6 A Okay.</p> <p>7 Q Do you see the 4 and the arrow?</p> <p>8 A Yeah.</p> <p>9 Q And the amount is \$3,357.66. And No. 4 reads, quote, cost of insurance per month, hyphen, goes up monthly, close quote. No one talked to you about that?</p> <p>10 A Nope.</p> <p>11 Q And No. 5 is two pages later. And I appreciate you bearing with me, Mr. Blumenthal.</p> <p>12 It reads, loans and loan interest. And No. 5 on the front page reads, change -- I'm sorry -- charged interest rate no more than 2 percent. And there's a paragraph with a 5 by it which discusses the loan spread is guaranteed not to be more than 2 percent.</p> <p>13 A Okay.</p> <p>14 Q Have you ever read that before?</p>
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41 (Pages 158 to 161)

1 A Huh-uh.
 2 Q Anyone ever discuss that -- you said "huh-uh," so --
 3 A No.
 4 Q Has anyone ever discussed that with you before?
 5 A Huh-uh. No.
 6 Q Thank you, sir. We have two --
 7 A I don't know why I'm saying huh-uh, but I'll -- now
 8 I'll say no. Okay.
 9 Q For the record, "huh-uh" means "no." Right?
 10 A Right.
 11 Q Thank you.
 12 And then we're going to go to the last page,
 13 Mr. Blumenthal. And you're being a very patient person,
 14 and I appreciate it.
 15 No. 6 on the front page reads, guaranteed
 16 length of policy, 79. I'm sorry. I'm on page 6 of 6,
 17 and I'm on the wrong page. I apologize.
 18 A You don't have to apologize. You're close.
 19 Q There.
 20 A There it is.
 21 Q There it is. Excuse me.
 22 And you see the No. 6, and it points to --
 23 A 6, 7, whatever that is.
 24 Q It's policy year 12 and age 79.
 25 A Okay.

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1 Q And it is saying that the guaranteed length of the
 2 policy -- in other words, the guaranteed length of time
 3 that the policy would remain in effect is through the
 4 12th policy year, age 79. That's looking at the
 5 guaranteed interest rate crediting of 4 percent. Do you
 6 see that for No. 6?
 7 A Yeah.
 8 Q And then No. 7 is looking at your best-case
 9 scenario, the best case as of today. And, again, that's
 10 looking at the nonguaranteed current credited interest
 11 rate of -- again, it was 4 percent at the time -- and
 12 it's policy year 16. It's second from the bottom, if
 13 that helps you find it. And it's age 83. No one ever
 14 talked to you about that?
 15 A Huh-uh. No.
 16 Q You've never seen this document, have you?
 17 A No. Never seen it.
 18 Q Okay.
 19 MR. STANO: Sorry. That's me.
 20 MS. EMMONS: It's not mine.
 21 MR. STANO: It'll go away in a minute.
 22 Q (By Mr. Stano) Sir, do you need a break, or is
 23 it --
 24 A No. Go ahead.
 25 Q Just so the record is clear, after Mr. Marlin told

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1 you that the policy would eventually stop being in
 2 existence -- I believe you said he said that the policy
 3 would go to zero, or words to that effect? And I don't
 4 mean to put words in your mouth.
 5 A No. No.
 6 Q I'm trying to remember what you said.
 7 A No. It's hard to remember this.
 8 Q Sure.
 9 A Because I've never thought about it, to speak of,
 10 you know, what Ben said or didn't say. That, I cannot
 11 remember exactly.
 12 Q What year it happened, when he told you?
 13 A Now, that had to be in '06 or zero, something like
 14 that, I think. I think that's when I found out about
 15 this.
 16 Q Now, wasn't he meeting regularly with you during --
 17 from the time the policy was issued in --
 18 A Yeah. He -- well, Ben came around, yeah. But --
 19 Q And he brought illustrations with him, didn't he,
 20 and sat down and went over them with you?
 21 A Not that -- not that I can recall, Phil. I don't
 22 remember Ben bringing it down except for the first time
 23 around that you just told me about, what the policy was.
 24 Q Well, Mr. Blumenthal, maybe not today, but during
 25 your deposition we're going to go through a good number

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1 of illustrations that have your name on them --
 2 A Yeah.
 3 Q -- that are dated between --
 4 A Yeah. We -- Ben --
 5 Q -- 1999 and 2005.
 6 A Okay.
 7 Q And Mr. Marlin will say --
 8 A Yeah.
 9 Q -- that he went over with you.
 10 A No. He -- if he went over them with me, I don't
 11 recall them. But he might have come down, you know,
 12 and -- I don't recall going into any depth with Ben. I
 13 never knew that the policy would expire until '06 or zero
 14 something.
 15 Q He sold insurance to your sons, didn't he?
 16 A He might have. I'm not sure about that. He could
 17 have.
 18 Q And he's -- he, being Mr. Marlin, sold insurance to
 19 many of your employees, didn't he?
 20 A He could have done that too, yeah. Yeah.
 21 Q Do you know if he did or not?
 22 A I don't know if he did or not. I think he might
 23 have.
 24 Q You were an important client to him, weren't you?
 25 A I don't know if I was important to him or not, but

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42 (Pages 162 to 165)

1 just another client, as far as I knew.
 2 **Q Do you know of any reason why he would not want to**
 3 **keep you happy and satisfied?**
 4 A I don't -- I don't know why that he didn't tell me
 5 this. All I know is I would not have taken the policy
 6 out, sir, if I had known it was canceling itself in
 7 whatever years, period. That's --
 8 **Q Isn't it possible -- Isn't it possible, Mr.**
 9 **Blumenthal, that he told you that, and you just don't**
 10 **remember? Isn't that possible?**
 11 A The -- no. I'll tell you why. It's because I was
 12 looking for a long-term policy.
 13 **Q How many years?**
 14 A Life. Life. Not a term. Regular life policy that
 15 wouldn't expire. And that's what I thought I was buying
 16 from this Universal Life.
 17 **Q Would you say 12 to 17 years -- would that be a long**
 18 **term?**
 19 A No. I'm -- life. Whether it's -- I never told
 20 anyone that I think I'm going to die in ten years.
 21 That's -- I've never even thought about dying at this
 22 point.
 23 **Q Uh-huh.**
 24 A But that is the crux of it. He just never told me
 25 that it would expire.

1 **Q That's the crux of your case, from your perspective?**
 2 A Yeah. I thought I had a life policy.
 3 **Q Okay.**
 4 A And if the premiums went up, I would have paid them.
 5 But it was canceled. Right there it was canceled, zero,
 6 and that started this whole thing.
 7 **Q Do you remember receiving your insurance policy?**
 8 A Not really.
 9 **Q You did receive it. Correct?**
 10 A Yeah.
 11 **Q I'll show you what's marked as Exhibit 11, Bates**
 12 **stamped Blumenthal 1 through Blumenthal 31.**
 13 MR. STANO: Sorry, Shannon. I forgot to
 14 give you a copy. Excuse me.
 15 **Q (By Mr. Stano) I'll represent to you, Mr.**
 16 **Blumenthal, that this policy was provided to us by**
 17 **your counsel. That's why the Bates stamp --**
 18 A Good. Yeah. That's fine.
 19 **Q And I'm referring to it as your policy. It's**
 20 **actually incomplete, in that the policy includes the**
 21 **application and the amended application. You've talked**
 22 **about that. So technically the policy includes all --**
 23 **all three components; the policy, the application, and**
 24 **the amended application.**
 25 **So when I talk about this policy, I'm only**

1 referring to the part of the policy that's page 1 through
 2 31 Blumenthal, knowing that the application is part of
 3 it. You understand that. Right?
 4 A Okay.
 5 **Q Okay. You did receive this policy from Mr. Marlin.**
 6 **Correct?**
 7 A Yeah.
 8 **Q Do you remember how he delivered it?**
 9 A No.
 10 **Q Mail or in person?**
 11 A No. I don't remember that.
 12 **Q Well, you signed a policy delivery receipt, so --**
 13 A Yeah. Then he must have delivered it. I don't
 14 know.
 15 **Q In person?**
 16 A I don't know. I can't remember that.
 17 **Q Okay. Do you remember if you had mailed -- gotten**
 18 **the policy in the mail and signed the delivery receipt**
 19 **and mailed it back?**
 20 A No. I -- somebody down at the shop might have
 21 accepted, you know, and signed for it, whatever. But I
 22 don't -- I don't recall that.
 23 **Q Sir, you testified the policy delivery receipt was**
 24 **your signature, so you had to have signed it.**
 25 A Did I? Okay. Then maybe I did.

1 **Q Okay.**
 2 A Okay. I might have.
 3 **Q Did you read it when you received it?**
 4 A No. Couldn't read it. Couldn't understand it.
 5 **Q Did you see -- let's look at the first page of**
 6 **Blumenthal 1. Do you see the bold print? It's the last**
 7 **paragraph before the signatures. It says, quote, read**
 8 **your policy carefully. This policy is a legal contract**
 9 **between you and the corporation, close quote.**
 10 A I don't see that, but I'm sure it's in here.
 11 **Q Would you like me to point it out to you?**
 12 A If you want to.
 13 **Q Sure. I want to make sure you --**
 14 A Okay.
 15 **Q Do you see it, Mr. Blumenthal?**
 16 A Yeah. I see it now. Okay.
 17 **Q It was your choice not to read the policy. Correct?**
 18 A There's -- it's almost impossible to read something
 19 like that for a policy. I could never understand it
 20 anyway. I don't think there's --
 21 **Q That's not my question. My question is --**
 22 A No. I did not read it.
 23 **Q By choice. And that was your choice. Correct?**
 24 A Yeah.
 25 **Q Okay.**

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43 (Pages 166 to 169)

<p>1 A I thought it was all black and white. Didn't need 2 to read it. 3 Q Did you understand that the policy was 4 nonparticipating? Rather, I meant -- by that, I mean it 5 did not pay -- did not pay dividends? 6 A Yeah. 7 Q You knew that? 8 A (Witness nods head.) 9 Q Okay. 10 A Wasn't even thinking about dividends. Never brought 11 up. 12 Q Okay. And, for the record, it says on the first 13 page, the last line, policy is nonparticipating. 14 Let's turn to page 3. Do you need a break, 15 sir? Because this is going to be awhile. 16 A Huh-uh. Go ahead. 17 Q Okay. 18 MR. STANO: We're going to what time, 19 Shannon? 20 MS. EMMONS: What time? 4:30, Dunnye? 21 THE WITNESS: Yeah. I told the guy I'd 22 meet him at 4:30, so around 4:00 or 4:15. 23 MR. STANO: Okay. So it's about 3:00. 24 MS. EMMONS: Are you meeting him at the 25 shop?</p> <p style="text-align: right;">Page 166</p>	<p>1 A Yeah. Okay. 2 Q -- we're going to -- I want to make sure you can see 3 it. I don't want to talk about something you haven't had 4 a chance to read or could read. It says five-year 5 no-lapse guarantee. Do you see that expiring date of 6 June 12th of 2004? 7 A Okay. I don't see it, but that doesn't matter if I 8 can see it or not. 9 MR. STANO: Can we stipulate to that? 10 Because -- 11 MS. EMMONS: Yes. Hold on. Page 3, plan 12 premium? 13 MR. STANO: Page 3. It's the -- it's 14 about the eighth line down. 15 MS. EMMONS: Required monthly minimum 16 premium level? 17 MR. STANO: Right. The line below that, 18 the first year -- 19 MS. EMMONS: Yes. We'll stipulate that 20 the policy that's marked as Exhibit 11 states on page 3, 21 five-year no-lapse guarantee, expiry date 6/12/2004. 22 Q (By Mr. Stano) And if you look up, Mr. 23 Blumenthal, your policy began as of June 12th, 1999, 24 and so it had a five-year no-lapse guarantee for five 25 years. So five years added to 1999, June 12th, would</p> <p style="text-align: right;">Page 168</p>
<p>1 THE WITNESS: Well, not that shop. 2 Another one. 3 MS. EMMONS: Okay. But close by? 4 THE WITNESS: Oh, yeah. I'll have a guy 5 come by and get me. 6 MS. EMMONS: Okay. 7 (Electronic interruption.) 8 MR. STANO: We're even. 9 (Off the record.) 10 MR. STANO: All right. Back on the 11 record. 12 Q (By Mr. Stano) Do you see the plan premiums amount 13 listed at \$4,420.50? 14 A Okay. I see that. 15 Q That was the amount listed in your application, 16 wasn't it? 17 A I don't know. I didn't see it in there, but it 18 doesn't matter. Probably. It sounds like it. 19 Q Okay. Do you see that your policy had a five-year 20 no-lapse guarantee? 21 A What do you mean, no-lapse guarantee? 22 Q The policy was guaranteed not to lapse for five 23 years if the premium was paid. Do you see that? 24 A I don't see that, but -- 25 Q Well, sir --</p> <p style="text-align: right;">Page 167</p>	<p>1 be June 12th, 2004 -- 2 A Right. 3 Q -- which is what it says? 4 A Uh-huh. 5 Q Now, if you had read your policy, you would have 6 known that you had a five-year no-lapse guarantee. 7 Correct? 8 A That's not what I thought I had, sir. 9 Q I -- that's not my question. 10 A I know it. If I had read it -- 11 Q You would have known it? 12 A -- and could have understood it, yes. I then would 13 have known it. 14 Q Okay. 15 A But -- 16 Q But you didn't read it? 17 A I didn't read it because I'd never understand it. 18 Q Well, how would you know unless you actually read it 19 and tried? 20 A Well, I did try to look at the -- I couldn't 21 understand it. 22 Q Well, that's not what you said earlier. 23 A Well, I've looked at them, but I'm just -- 24 Q Are you telling me when you received the policy -- 25 A No. I -- no. I don't know if I looked at it that</p> <p style="text-align: right;">Page 169</p>

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44 (Pages 170 to 173)

<p>1 second, but --</p> <p>2 Q Did it ever occur to you to call Mr. Marlin to come</p> <p>3 over and explain the policy to you?</p> <p>4 A God, I thought I already had it. I didn't even</p> <p>5 think about that, really, and --</p> <p>6 Q But think of all the documents you signed that you</p> <p>7 didn't read --</p> <p>8 A That's right.</p> <p>9 Q -- and yet you thought you knew what was in the</p> <p>10 contents of those documents when you didn't read it.</p> <p>11 I mean, you're a businessman, a successful</p> <p>12 businessman. You're the chairman of the board. It never</p> <p>13 occurred to you to read documents you sign? You have a</p> <p>14 degree in accounting, sir.</p> <p>15 A I just never thought about it. All I knew was what</p> <p>16 he told me.</p> <p>17 Q Now, do you see the line that says, premium -- we're</p> <p>18 still on the same page.</p> <p>19 A Okay.</p> <p>20 Q Page 3, I believe. Premiums cannot be paid on or</p> <p>21 after the maturity date, which is June 12th, 2032. In</p> <p>22 other words, the policy was maturing 100 -- on your 100th</p> <p>23 birthday. You were born on June 12th, 1932, weren't you?</p> <p>24 A No.</p> <p>25 Q You weren't?</p> <p style="text-align: right;">Page 170</p> <p>1 I'm sorry. It's a hundred years from the --</p> <p>2 A December --</p> <p>3 Q -- from the policy's --</p> <p>4 A -- 14th, 1931.</p> <p>5 Q -- from the policy's inception.</p> <p>6 A It's close.</p> <p>7 Q Excuse me. I misspoke.</p> <p>8 A December the 14th, 1931.</p> <p>9 Q But in June 12th, 2032, you would be approximately</p> <p>10 100. Correct?</p> <p>11 A Yeah.</p> <p>12 Q Okay. And premiums cannot be paid after the</p> <p>13 maturity date?</p> <p>14 A That was --</p> <p>15 Q That's a long way off?</p> <p>16 A Yeah.</p> <p>17 Q Okay. But let's look down below where it says,</p> <p>18 coverage. Let me read it for you and your counsel can</p> <p>19 follow.</p> <p>20 A Okay.</p> <p>21 Q Quote, coverage may expire prior to the maturity</p> <p>22 date as show -- I'm sorry.</p> <p>23 Quote, coverage may expire prior to the</p> <p>24 maturity date shown if premiums are insufficient to</p> <p>25 continue coverage to such date or where a loan or partial</p> <p style="text-align: right;">Page 171</p>	<p>1 surrender is made. You understood that, didn't you?</p> <p>2 We've talked about that?</p> <p>3 A Yeah. You told me about it.</p> <p>4 Q But did you understand it at the time you received</p> <p>5 the policy that you had to pay your premiums in order</p> <p>6 to --</p> <p>7 A Yeah.</p> <p>8 Q -- keep the policy in effect?</p> <p>9 A Yeah.</p> <p>10 Q It's just kind of common sense.</p> <p>11 A Yeah. That was --</p> <p>12 Q We talked about that?</p> <p>13 A Yeah.</p> <p>14 Q Okay. And then it says, coverage will also be</p> <p>15 affected if current values change.</p> <p>16 A Okay. Current values, whatever that is.</p> <p>17 Q Well, let's look at the next sentence. "It is</p> <p>18 possible that coverage under this policy may not continue</p> <p>19 to the maturity date even if scheduled premiums are paid</p> <p>20 in a timely manner." Do you see that?</p> <p>21 A Huh-uh.</p> <p>22 Q Well --</p> <p>23 A I see it now, but I didn't see it then.</p> <p>24 Q It's in all caps, isn't it? It's in big letters.</p> <p>25 Let me repeat that.</p> <p style="text-align: right;">Page 172</p> <p>1 Quote, it is possible that coverage under this</p> <p>2 policy may not continue to the maturity date even if</p> <p>3 scheduled premiums are paid in a timely manner, close</p> <p>4 quote. Do you see that, Mr. Blumenthal?</p> <p>5 A I don't see that, but that's --</p> <p>6 Q Well, no. This is a key point. We're going to --</p> <p>7 we're going to go slow. I don't mean to --</p> <p>8 A That's all right.</p> <p>9 Q -- talk past you.</p> <p>10 Do you see where it says, it is possible -- I'm</p> <p>11 pointing to it.</p> <p>12 A Yeah.</p> <p>13 Q It is possible that coverage under this policy -- do</p> <p>14 you see that?</p> <p>15 A Yeah.</p> <p>16 Q It is possible that coverage under this policy may</p> <p>17 not continue to the maturity date. Do you see that?</p> <p>18 A Yeah.</p> <p>19 Q Even if scheduled premiums are paid in a timely</p> <p>20 manner. Do you see that?</p> <p>21 A I see it now, yeah.</p> <p>22 Q If you had read that when you received your policy,</p> <p>23 would you have just canceled it immediately?</p> <p>24 A I would have canceled it, sure. That -- I didn't --</p> <p>25 I thought I was buying a life policy. That's what I</p> <p style="text-align: right;">Page 173</p>
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46 (Pages 178 to 181)

1 that?
 2 A Uh-huh.
 3 Q Sir?
 4 A Yeah.
 5 Q Okay. And, again, this is in question-and-answer
 6 format. And the question is, "What constitutes the
 7 entire contract?" And the answer is provided in the next
 8 sentence of that section. Let me read it to you. Do you
 9 see where I'm reading?
 10 A Yeah. On top.
 11 Q Yes, sir. It says, "The entire contract consists of
 12 this policy, any attached riders or endorsements, and the
 13 attached copy of the application." Do you see that?
 14 A I don't see it, but I can hear you.
 15 Q Okay. Does it make sense to you that the contract
 16 is the policy, the application, and any riders or
 17 endorsements --
 18 A Okay.
 19 Q -- added to the policy? You understand that, don't
 20 you?
 21 A Uh-huh.
 22 Q Okay. Now, let's keep reading. We're not quite
 23 done yet.
 24 A Go ahead.
 25 Q And it's the last three sentences. Let me read it

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1 to you. "Only our chairman, president, secretary, or one
 2 of our vice presidents is authorized to change the
 3 contract, and then only in writing." Do you see that?
 4 A I see something that looks like it.
 5 Q Okay.
 6 A Yeah.
 7 Q Do you need me to repeat that --
 8 Huh-uh.
 9 Q -- or do you understand that?
 10 A Yeah.
 11 Q You understand what I'm saying, don't you?
 12 A Yeah.
 13 Q Only the --
 14 A Yeah.
 15 Q Only a duly authorized officer of --
 16 A Okay.
 17 Q -- New York Life --
 18 A Yeah.
 19 Q -- can change the contract? You understand that
 20 concept, don't you?
 21 A Uh-huh.
 22 Q You need to say yes.
 23 A Yes.
 24 Q Okay. And let me continue to read that same
 25 paragraph. "No change will be made to this contract

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1 without your consent. No agent is authorized to change
 2 this contract." Do you see that?
 3 A I don't see it, but it's in there, I'm sure.
 4 Q It's -- would you like me to point it out to you?
 5 A No. You don't need to. It's in there, I'll bet
 6 you.
 7 Q You trust me to read it correctly, because your
 8 counsel is here --
 9 A Right.
 10 Q -- to correct me if I'm wrong. Right?
 11 A Exactly.
 12 Q You trust her, not me?
 13 A Uh-huh.
 14 Q So no agent -- it says, "No agent is authorized to
 15 change this contract." You understand that, don't you?
 16 A Uh-huh.
 17 Q If you had read this, you would have understood that
 18 only a duly authorized representative of NYLIAC could
 19 change the contract, not an insurance agent. You
 20 understand that?
 21 A Uh-huh.
 22 Q And that the earlier provisions we read, which said
 23 that the premium -- even if the premium is paid timely,
 24 the policy may not stay in effect, you would have
 25 understood that too, as well, if you had read it.

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1 Correct?
 2 A Possibly.
 3 Q Let's go to the next page, please, page 17 or -- of
 4 the policy or Blumenthal 21.
 5 A Okay.
 6 Q And section 8.14, I think we've talked about this,
 7 and I'll just be very brief. It says, "Are any dividends
 8 payable on this policy?" And it says, "This is a
 9 nonparticipating policy in which no dividends are
 10 payable." But you -- you testified you weren't expecting
 11 dividends. Correct?
 12 A Huh-uh. Yeah.
 13 Q Okay. Let's look at the next section, 8.15, and
 14 it's again in a question-and-answer format. And the
 15 question is, "Will you be updated regarding the status of
 16 your policy?" In other words, will you get updates about
 17 your policy. Do you see that, 8.15?
 18 A Yeah. I'm looking. Okay.
 19 Q Okay. And the answer is as follows, "Each policy
 20 year after the first, while the policy is in force and
 21 the insured is living, we will send a written report to
 22 you within 30 days after the policy anniversary without
 23 charge." Do you see that?
 24 A I don't see it, but I'm sure Shannon sees it.
 25 MS. EMMONS: I do.

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48 (Pages 186 to 189)

<p>1 A -- back in 1999. The one I do remember is this one 2 that came in in '05 or '06 or whatever date it was. 3 Q All right. 4 A That one I recall. 5 Q We'll go through some of those in just a moment. 6 Getting back to Exhibit No. 11, I think we're 7 on page 21, and we were talking about the annual 8 summaries. And I believe they're called anniversary 9 statements, but I think the policy refers to them as -- 10 well, it says a written report. 11 A Okay. 12 Q And do you see what it says the -- this written 13 report sent on an annual basis will contain? 14 A No. I didn't -- I can't see that. Too little. 15 Q Let me read it to you, sir. 16 A Okay. 17 Q It says -- and, again, we're looking at section 8.15 18 on page Blumenthal 21 -- 19 A Okay. 20 Q -- of Exhibit 11. It -- and it is the annual 21 report. "It will show, as of that anniversary, cash 22 value, the cash surrender value, and the amount of any 23 unpaid loan and accrued interest." Sort of like a -- 24 A Yeah. 25 Q -- status report on your policy.</p>	<p>1 course, there's a paragraph numbered 12. Let me just 2 read part of paragraph 12. And, again, it's talking 3 about the five-year no-lapse guarantee that you had. In 4 other words, from day one, your policy would not lapse 5 for five years once the policy was in force. 6 A Never heard of it, but go ahead. 7 Q Never heard of it. Okay. Well, it talks about what 8 happens after the five years is over -- 9 A Okay. 10 Q -- okay, five years after June of 1999. It says, 11 when the rider ends, the policy does not automatically 12 lapse. It continues after the -- assuming you paid your 13 premiums, it continues after the five years. 14 And let me read the last sentence of paragraph 15 12. "However, it may be necessary for you to pay 16 premiums in excess of the monthly minimum premium level 17 in order to keep the policy in force." After five years 18 the policy doesn't lapse, but you may have to pay more in 19 premium than the monthly minimum premium level in order 20 to keep the policy in force. 21 So the policy is warning you again that 22 premiums -- additional premiums may have to be paid. Do 23 you see that now? 24 A Yeah. So what? This has nothing to do with it, not 25 a thing.</p>
<p style="text-align: right;">Page 186</p> <p>1 A Okay. As far as I know, I never got one. 2 Q It's possible you did. You just don't remember. 3 Correct? 4 A It would be very unlikely that we did. 5 Q Why do you say that when -- 6 A Because I don't ever -- I don't recall it. I know 7 I'd recall a statement or a report like that if I ever 8 saw it. I never seen it. 9 Q Well, we'll look at a few in a minute -- 10 A Okay. 11 Q -- just to see if it refreshes your recollection. 12 Let's turn to the last page of the policy -- 13 well, the second to the last page is a rider. That's an 14 attachment or an endorsement to the policy. And remember 15 we talked about the policy consisting of the policy, the 16 application, and riders or endorsements? 17 A Uh-huh. 18 Q Well, this is part of the policy. It's one of the 19 riders, and it's the five-year no-lapse guarantee. And 20 I'm looking at page Blumenthal 30, which is the second to 21 the last page of -- 22 A Okay. 23 Q -- the formal policy. 24 On the second page of that rider, which is the 25 last page of the policy, except for the application, of</p> <p style="text-align: right;">Page 187</p>	<p style="text-align: right;">Page 188</p> <p>1 Q Isn't it warning you that you would have to -- you 2 may have to pay additional premiums to keep your policy 3 going? 4 A I never even got the warnings. 5 Q Sir, you got the warnings. This is Bates stamped 6 Blumenthal 31. You received it. The question is, did 7 you read it? But you did receive it. There's no -- 8 there's no dispute about that. 9 A Okay. Maybe we did. I've never heard that before. 10 Q Maybe you did? I mean, this is your -- 11 A I don't know if we did or not. I can probably find 12 out if we ever had an annual report from New York Life. 13 Q I'm talking about the language in this rider. It 14 says basically that it may be necessary for you to pay 15 premiums in excess of the minimum monthly premium payment 16 in order to keep your policy alive. I mean, that's what 17 that sentence says. 18 A Okay. So what? 19 Q So you were on notice, were you not, that you may 20 have to pay more than you bargained for. Correct? 21 A If I would have read it, I probably would have been 22 on notice, yes. 23 Q Okay. 24 A But -- 25 Q That's my point.</p> <p style="text-align: right;">Page 189</p>

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49 (Pages 190 to 193)

1 A But what's the point?
2 **Q If you had read it --**
3 A I mean --
4 **Q I think you just made it for me, Mr. Blumenthal. If**
5 **you had read it, you would have been on notice. Correct?**
6 A If I -- well --
7 **Q If you had read it?**
8 A Yeah. If I had known about it, I -- then -- so
9 what? I would have been on notice. And if the premiums
10 went up, so what? They would have gone up.
11 **Q Well, if you had read it, you would have known from**
12 **the day you got the policy, and you could have -- If**
13 **you -- you could have paid more or you could have said,**
14 **this is not for me, I want my money back.**
15 A And if I had known this, I would have never taken it
16 out. Ben Marlin -- Ben Marlin tells me what the policy
17 was. About that time was when -- oh, I'd say it had to
18 be '05 or '06 is when we got an illustration that said
19 it's zero or going to zero or something. That's it.
20 **Q Did you get illustrations on a regular basis?**
21 A Huh-uh.
22 **Q Why would you have gotten an illustration in '05 and**
23 **'06?**
24 A You know, I -- somehow we got one. I don't know how
25 we got it, right off the bat. I'll find out. But I

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1 can't remember exactly.
2 **Q Did you know what an illustration was --**
3 A Yeah.
4 **Q -- before you received it?**
5 A Yeah. What's that --
6 **Q You knew illustrations existed?**
7 A Sure.
8 **Q Did you request one in '05 or '06?**
9 A We -- we might have. I don't know. I can't
10 remember that. You know, I can't remember that exact
11 detail.
12 **Q Sure. I understand the exact details. But I'm**
13 **trying to understand the background as to why, after, as**
14 **you say, the policy was -- after it was in effect in 1999**
15 **to '05 or '06, you say you never received an**
16 **illustration, and all of a sudden you get one in '05 or**
17 **'06 --**
18 A Not all of a sudden. We must have applied for it
19 or -- I don't know. Ben might have brought it down. I
20 don't know what -- how we got it, but we got one.
21 **Q That was my question. Why would you get one after**
22 **the policy had been in effect for five or six years?**
23 **Why?**
24 A Why? I don't remember --
25 **Q Okay.**

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1 A -- exactly why.
2 **Q Okay.**
3 A All I know is we got one.
4 **Q From --**
5 A I don't know even where we got it. We got it from
6 somebody. Probably Ben. I don't know who it was.
7 **Q Did you read it?**
8 A Yeah. I looked at that, and that's when I found out
9 it was zero.
10 **Q You read it yourself?**
11 A Yeah.
12 **Q You saw the zeros?**
13 A And said good-bye policy.
14 **Q Did you read it at the office or at home?**
15 A No. At the office -- or at the shop. We call it a
16 shop, not an office.
17 **Q You call it a shop?**
18 A Uh-huh.
19 **Q Okay. Were you upset when you read it?**
20 A I'd say that I was upset, yes.
21 **Q Did you call Ben and say, what the heck's going on?**
22 A (Nods head.)
23 **Q Is that a yes?**
24 A Yes. I did call Ben. And --
25 **Q Did you --**

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1 A -- told him I was going to cancel the policy --
2 **Q Uh-huh.**
3 A -- because it's going to zero and blah, blah, blah.
4 And that's the last time I talked to Ben.
5 **Q Were you mad at him?**
6 A I was mad at him, yes.
7 **Q Were you disappointed?**
8 A Very.
9 **Q Did you tell him?**
10 A I'm not sure that I told him that. I should --
11 should have. I might. I'm not sure about that. But I
12 was very disappointed, extremely.
13 **Q Did you think of calling up the company and say,**
14 **what's going on with your agent?**
15 A You know, I thought about that, and I thought, oh,
16 they don't have time to jack around with this kind of
17 stuff.
18 **Q Uh-huh.**
19 A But I didn't do it.
20 **Q Did you tell anybody at the time when you first read**
21 **the illustration and first realized, according to your**
22 **testimony, that the policy was going to go to zero -- and**
23 **I'm using your words -- did you -- did you confide in**
24 **anybody?**
25 A Confide in who?

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Exhibit 2

Dunnie Blumenthal, Vol. II
March 3, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

IN THE UNITED STATE DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

IRVING H. BLUMENTHAL, JR.,)	
individually and on behalf of all)	
similarly situated insureds of New)	
York Life Insurance and Annuity)	
Corporation,)	
)	
Plaintiff,)	No. 5:08-CV-00456-F
)	
V.)	
)	
NEW YORK LIFE INSURANCE AND)	
ANNUITY CORPORATION,)	
)	
Defendant.)	

* * * * *

VOLUME II

VIDEOTAPE DEPOSITION OF DUNNIE BLUMENTHAL

Taken of behalf of the
Defendant

On March 3, 2010

In Oklahoma City, Oklahoma

* * * * *

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OKLAHOMA CITY, OKLAHOMA 73102

**CONDENSED
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Reported By: Chrystal H. Vance, C.S.R.

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Dunnie Blumenthal, Vol. II
 March 3, 2010

Blumenthal vs. New York Life
 Case No. 5:08-CV-00456-F

2 (Pages 2 to 5)

1	APPEARANCES	1	EXHIBIT INDEX
2	For the Plaintiff:		(Continued)
3	Shannon Emmons	2	
4	Phillips Murrah	3	
5	101 North Robinson	4	Exhibit PAGE
6	Thirteenth Floor	5	25 109
	Oklahoma City, Oklahoma 73102	6	26 112
7	For the Defendant:	7	27 120
8	Phillip E. Stano	8	28 126
9	Sutherland Asbill & Brennan	9	
10	1275 Pennsylvania Avenue, Northwest	10	
11	Washington, DC 20004-2415	11	
12	For the Defendant:	12	
13	Karen J. Lamp	13	
14	Attorney at Law	14	
15	New York Life Insurance Company	15	
16	51 Madison Avenue	16	
17	New York, New York 10010	17	
18	Also Present:	18	
19	Ben Savage, Videographer	19	
20	*****	20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 2		Page 4
1	TABLE OF CONTENTS	1	STIPULATIONS
2	PAGE	2	
3	STIPULATIONS.....4	3	It is hereby stipulated and agreed by and
4	EXAMINATION BY MR. STANO.....5	4	between the parties hereto, through their respective
5		5	attorneys, that the deposition of DUNNIE BLUMENTHAL may be
6	JURAT.....131	6	taken on behalf of the Defendants on March 3, 2010 in
7	ERRATA SHEET.....132	7	Oklahoma City, Oklahoma by Chrystal H. Vance, Certified
8	REPORTER'S CERTIFICATE.....133	8	Shorthand Reporter for the State of Oklahoma, pursuant to
9	EXHIBIT INDEX	9	the Federal Rules of Civil Procedure.
10	PAGE	10	It is further hereby stipulated:
11	Exhibit	11	MS. EMMONS: The first stipulation is that
12	12 42	12	the parties have agreed to reserve all objections except
13	13 51	13	to form in the deposition. The second stipulation is that
14	14 56	14	the plaintiff has stipulated that the signature of Irving
15	15 58	15	Blumenthal on Pages 116 and 121 of Blumenthal 116 and 121,
16	16 60	16	are, in fact, his signature. And that at the time he
17	17 61	17	signed his signature, he was attesting to the accuracy and
18	18 65	18	the truthfulness of the information provided by him and
19	19 67	19	contained in the application for the Prudential Life
20	20 83	20	insurance policy.
21	21 90	21	MR. STANO: And, further, that all the
22	22 93	22	information contained in Blumenthal 110 through 125 was
23	23 98	23	true and accurate to the best of Mr. Blumenthal's
24	24 104	24	knowledge and belief at the time he signed the
25		25	application.
	Page 3		Page 5

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3 (Pages 6 to 9)

<p>1 MS. EMMONS: Correct, yes. 2 MR. STANO: Thank you. 3 DUNNIE BLUMENTHAL 4 of lawful age, being first duly sworn, deposes and says in 5 reply to the questions propounded as follows: 6 ***** 7 EXAMINATION 8 BY MR. STANO: 9 Q Good morning, Mr. Blumenthal. 10 A Good morning. 11 Q Were you able to make your meeting yesterday at 12 4:30? 13 A Yeah. 14 Q Good. Have you read the complaint filed in this 15 case? 16 A What do you mean by "the complaint?" What -- 17 Q The lawsuit that you filed against my client, 18 NYLIAC? 19 A Okay. 20 Q Have you read the -- the lawsuit is called a 21 complaint. 22 A Oh, okay. I didn't know that. 23 Q Your document that -- the document that's filed 24 starting the lawsuit is filed with the Court and served on 25 my client, NYLIAC.</p>	<p>1 "complaint," I mean -- 2 A Okay, complaint. 3 Q -- class-action? 4 A Okay. 5 Q Did you know that this was a class-action, a 6 putative -- P-U-T-A-T-I-V-E, a putative class-action? 7 A I don't know if it's a class-action or not, but 8 could be, I guess. 9 Q And that was not my question. My question was: 10 Seeing as how you testified you did not read the 11 complaint, did you know that this was a putative class- 12 action complaint? 13 A Did I know it was a class-action complaint? 14 Q Yes, sir. You either did or you didn't. I'm 15 just asking you, did you know? If you didn't, you 16 didn't. 17 A I didn't know, I guess. I don't know. I wasn't 18 thinking about it. 19 Q Have you had a chance to think about it? 20 A Not really. 21 Q Okay. But as you sit here today, you did not 22 know it was a putative class-action complaint, correct? 23 A Is it a class-action complaint right now? 24 Q Sir, I'm asking you that. 25 A Okay.</p>
<p style="text-align: right;">Page 6</p> <p>1 A Okay. Got you. 2 Q In this case, it's called class-action 3 complaint. Have you read the class-action complaint filed 4 in this case? 5 A No. 6 Q Did you assist in the drafting of the complaint? 7 A No. 8 Q Do you understand the allegations in the 9 complaint? 10 A Probably could, if I heard them. 11 Q But as of today, you haven't heard those 12 allegations, correct? 13 A Not that I know of. 14 Q Okay. Did anyone read the complaint to you prior 15 to the complaint being filed? 16 A No. 17 Q Did anyone read the complaint to you after the 18 complaint was filed? 19 A No. 20 Q And, again, when I say "complaint," that's going 21 to be shorthand for what's entitled the class-action 22 complaint. Can we agree to that, just to save a few 23 words? 24 A I'd say -- we agreed yet. 25 Q Okay. Just so you understand, when I say</p>	<p style="text-align: right;">Page 8</p> <p>1 Q If you know, please -- 2 A I don't know it. 3 Q Okay. Thank you. Do you know if this is a 4 nationwide class-action or if it's a -- 5 A You know, I have heard of that. 6 Q I know you've heard of them, but do you know -- 7 some class-actions are state only, some class-actions are 8 multi-state, some class-actions are -- 9 A It's a class-action nationwide, then it is, yes. 10 let's just say, "yes." 11 Q Do you know if it's a multi-state class-action; 12 meaning, more than one state, but less than all 50? 13 A Do I know that? 14 Q Yes, sir. You either know it or you don't. I'm 15 just asking you. 16 A Okay. 17 Q Do you know it? 18 A No, I don't know that. 19 Q Okay. Do you know if it's a state-only class- 20 action -- 21 A No, I don't know that. 22 Q Okay. 23 A Quit asking me the same thing, if you will. Just 24 get to it. 25 Q I'll try to do that.</p> <p style="text-align: right;">Page 9</p>

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4 (Pages 10 to 13)

1 A Yeah, do it.
 2 **Q Okay. Do you know if there are any time**
 3 **limitations on the class-action --**
 4 A I have no idea, no.
 5 **Q In other words, do you know if the class goes**
 6 **back X number of years?**
 7 A I have no -- no, I don't know that, sir. I'm not
 8 an attorney.
 9 **Q Okay. Do you know the class definition?**
 10 A No.
 11 **Q Do you have an estimate as to the number of**
 12 **people in the class?**
 13 A I have no idea, no.
 14 **Q Just to cut to the chase, so we can save you some**
 15 **time, sir, do you know anything about this lawsuit with**
 16 **regard to the possible class implications?**
 17 A I have heard of that, yes, and -- I've heard of
 18 it.
 19 **Q You've heard of class-action in general, correct?**
 20 A Yeah, and I was aware of the fact that it could
 21 be class-action in this case. And I've heard of it, but I
 22 don't know the technicalities of it.
 23 **Q But you don't know if it applies in this case,**
 24 **correct?**
 25 A I think it does.

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1 **Q Tell me how.**
 2 A Well, misrepresentation in the policy,
 3 something. Who knows. It's ridiculous.
 4 **Q Who --**
 5 A If somebody tells me something --
 6 **Q Okay.**
 7 A -- I listen to it, I buy it, it's different in
 8 the policy.
 9 **Q Okay.**
 10 A Whether I read it or didn't read it, nobody in
 11 their -- nobody can read one of these things and
 12 understand it, whether you believe it or not.
 13 **Q Who is the putative class representative in this**
 14 **case?**
 15 A I would say she is.
 16 **Q She, being who? Ms. Emmons?**
 17 A Yeah, the firm is.
 18 **Q Okay. What role do you play in this case?**
 19 A I'm just the victim.
 20 **Q Okay.**
 21 A Of New York Life and their representation.
 22 Period.
 23 **Q Okay. Do you feel that you have any**
 24 **responsibilities to the class in this case?**
 25 A Absolutely. I'd be happy to do whatever it takes

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1 to expose this fiasco.
 2 **Q For example, what are your responsibilities to**
 3 **the putative class?**
 4 A Whatever it takes, I'll do it.
 5 **Q Can you give me one example of whatever it takes?**
 6 A If I have to go -- just to stop this, I would do
 7 whatever it takes, if we have to go to court, go to
 8 wherever, I'll do it. Because this is ridiculous to
 9 expose this to the people. It's ludicrous. And whatever
 10 it takes, I'm going to do it with them.
 11 **Q With your class representative?**
 12 A Yeah.
 13 **Q Ms. Emmons?**
 14 A Yes.
 15 **Q Okay.**
 16 A Absolutely.
 17 **Q Do you think she would make a good class**
 18 **representative?**
 19 A A perfect. She's as good as anybody, maybe
 20 better.
 21 **Q Okay. Are you familiar with the commission or**
 22 **other monies paid to the agents of NYLIAC?**
 23 A Am I familiar with what, now?
 24 **Q How NYLIAC agents are paid?**
 25 A No.

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1 **Q For the business they place?**
 2 A No, I don't know how they're paid.
 3 **Q Do you know anything about any possible**
 4 **agreements the agents may have made with NYLIAC to only**
 5 **sell NYLIAC policies during the first three years of their**
 6 **employment? Do you know anything about that at all?**
 7 A Never heard of it.
 8 **Q Does that anything to do with your case here?**
 9 A Not a thing, nothing.
 10 **Q Okay.**
 11 A That I know of.
 12 **Q That's what I'm asking you.**
 13 A Okay. Go ahead. It's foolish.
 14 **Q What's foolish?**
 15 A That question. How would I know what is
 16 happening in NYLIAC's.
 17 MS. EMMONS: Mr. Blumenthal, just answer --
 18 THE WITNESS: Okay. Go ahead, go ahead,
 19 yeah, just go ahead.
 20 **Q (By Mr. Stano) The fact that agents may have**
 21 **some type of agreement to only sell NYLIAC policies during**
 22 **the first three years of the time that they're working**
 23 **with NYLIAC, would that -- that's irrelevant to your**
 24 **situation, isn't it?**
 25 A I think so.

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5 (Pages 14 to 17)

1 Q Okay. When you purchased insurance coverage from
 2 NYLIAC through Mr. Marlin, after talking to Mr. Marlin,
 3 during that process -- let's call it the sales process --
 4 when met with him and you talked and you filled out the
 5 application --
 6 A Okay.
 7 Q -- and the policy was issued, during that sales
 8 process from approximately January through July of 1999,
 9 did Mr. Marlin ever tell you that if you paid insurance
 10 premiums for a certain period of time, say, eight or nine
 11 years, that the policy -- that you wouldn't have to pay
 12 anymore premiums after that?
 13 A No.
 14 Q He never said that, did he?
 15 A Not that I know of. He didn't say it to me. He
 16 might have said it to --
 17 Q I'm asking you --
 18 A No, not to me.
 19 Q Okay. Did he ever say the policy would POP,
 20 P-O-P?
 21 A POP? What do you mean by POP? I don't
 22 understand that.
 23 Q I'm just asking you.
 24 A I mean, what does "POP" mean?
 25 Q Do you know what "POP" means?

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1 A No.
 2 Q Have you ever heard of the concept?
 3 A Huh-uh.
 4 Q Mr. Marlin never mentioned POP to you, did he?
 5 A Not to me.
 6 Q During the sales process?
 7 A Never heard of it.
 8 Q Okay. It was your understanding that you'd be
 9 paying premiums for life, as we talked about yesterday,
 10 correct?
 11 A That's right.
 12 Q Not that you'd pay for a fixed number of years --
 13 A No.
 14 Q -- and then stop, correct?
 15 A Right, pay for life.
 16 Q Okay. And as far as you know, none of the
 17 illustrations that came from Mr. Marlin's office mentioned
 18 payment premiums for a fixed number of years, say, eight
 19 or nine, and then you would not have to --
 20 A Uh-huh.
 21 Q Never said that, did he?
 22 A No.
 23 Q In fact, none of the sales materials you received
 24 from Mr. Marlin said that, did they?
 25 A No, not that I know of.

Page 15

1 Q And as far as you know, nothing from New York
 2 Life Insurance and Annuity Corporation has made a
 3 statement or contained a provision that you would only pay
 4 premiums for eight or nine years -- or a fixed number of
 5 years and then you wouldn't have to pay anymore?
 6 A Never heard of it?
 7 Q Never heard of that concept, did you?
 8 A Huh-uh.
 9 Q With regard to your New York Life policy?
 10 A Uh-huh.
 11 Q Okay. You said "huh-uh" --
 12 A Okay. No, I've never heard of it.
 13 Q Thank you, sir. Did you ever cash out one
 14 policy, an existing policy, or take the cash value from
 15 existing policy to purchase your NYLIAC policy?
 16 A No.
 17 Q Did Mr. Marlin ever ask you to do that to take an
 18 existing policy --
 19 A Huh-uh.
 20 Q -- cash it out?
 21 A No.
 22 Q -- and then pay for --
 23 A No.
 24 Q -- the NYLIAC policy?
 25 A No.

Page 16

1 Q Did Mr. Marlin ever talk to you about converting
 2 your NYLIAC policy to an annuity?
 3 A No.
 4 Q Did he ever talk to you about converting any of
 5 your other existing insurance policies with other
 6 insurance companies --
 7 A No.
 8 Q -- to an annuity -- let me finish -- to an
 9 annuity?
 10 A No.
 11 Q The subject of annuities never came up with
 12 Mr. Marlin, did it?
 13 A No.
 14 Q Do you know how other NYLIAC agents sold their
 15 policies --
 16 A No.
 17 Q Let me finish -- sold policies to other NYLIAC
 18 customers?
 19 A No.
 20 Q You wouldn't be expected to know that, would you?
 21 A Why would I know it? No, I don't know it.
 22 Q Okay.
 23 A Go ahead.
 24 Q Do you know if any of the other agents license
 25 with NYLIAC made misrepresentations when they sold

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6 (Pages 18 to 21)

1 coverages to other policyholders?
 2 A No, I wouldn't know that.
 3 Q You're not claiming that, now, are you?
 4 A Huh-uh, no.
 5 Q You said -- okay. You'd have no way of knowing
 6 that, would you?
 7 A I wouldn't have any way of knowing it.
 8 Q And you would have no way of proving it, would
 9 you?
 10 A I don't know it. I've never even -- I don't
 11 know, no.
 12 Q You never even thought of it?
 13 A No.
 14 Q It's not something you ever considered, is it?
 15 A No.
 16 Q And that has nothing to do with your case,
 17 correct?
 18 A Not a thing to do with it.
 19 Q How your policy was sold to you my Marlin is
 20 completely different and separate from how other policies
 21 of NYLIAC were sold to other customers, correct?
 22 A I don't know that.
 23 Q Well, do you know if it's true? You don't know
 24 if it's true or not, do you?
 25 A I have no idea whether or not somebody -- another

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1 agent misrepresented it or not. I don't know that. How
 2 would I know it? I don't know any other --
 3 Q I agree with you on that. The fact that
 4 Mr. Marlin allegedly made misrepresentations to you, that
 5 has --
 6 A Go ahead.
 7 Q That has no bearing on whether another agent --
 8 A It --
 9 Q -- did or did not make misrepresentations to
 10 somebody else, does it? Correct?
 11 A I don't know that.
 12 Q Well --
 13 A I don't think it has anything to do with this
 14 case, but keep going.
 15 Q Okay. Let me -- let's just clarify that. You
 16 claim Mr. Marlin lied to you during the sales process,
 17 correct?
 18 A That, I know, yes, yes.
 19 Q All right. Assuming for the sake of argument
 20 that's true -- we don't --
 21 A Okay. Go ahead.
 22 Q Assuming it's true, that doesn't prove or
 23 disprove whether another agent lied to somebody else, does
 24 it?
 25 A I have no idea what they do.

Page 19

1 Q Okay. You're rolling your head like --
 2 A This is stupidity. Go ahead.
 3 MS. EMMONS: Just answer the questions,
 4 Mr. Blumenthal.
 5 Q (By Mr. Stano) Would the allegation that because
 6 Mr. Marlin lied to you, allegedly, then all the other --
 7 all the other NYLIAC agents lied to their policyholders or
 8 applicants, would that be stupid?
 9 A I wouldn't have the slightest idea if they do or
 10 if they don't.
 11 Q I understand that. We've crossed that bridge.
 12 It's behind us. My question to you, sir, is: Is the fact
 13 that Mr. Marlin allegedly lied to you, does that have any
 14 bearing on whether other agents lied to other NYLIAC
 15 applicants or policyholders? One doesn't prove the other,
 16 does it?
 17 A I wouldn't know that. I have no idea what they
 18 do.
 19 Q In your mind, does it prove it to you? I'm not
 20 asking --
 21 A I would think they're all doing the same thing.
 22 Q Do you know if they're all doing the same thing?
 23 A No, I don't know it. My thought is, they're all
 24 doing the same thing.
 25 Q But you really don't know, do you?

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1 A I can't know for sure, but I would think they're
 2 all selling this stupid policy.
 3 Q And how would you know that?
 4 A If they -- if somebody else buys it.
 5 Q You're speculating, aren't you?
 6 A Yeah -- speculate. I can't guarantee it, that I
 7 know this.
 8 Q And do you know it?
 9 A No, I don't know it.
 10 Q Okay. That's my point.
 11 A Well, then, get to the point.
 12 Q I'm sorry, sir. I'll try to --
 13 A Yeah, do it.
 14 Q -- be as efficient as I can.
 15 Do you know what are the claims of other -- that
 16 NYLIAC policy holders may have against the company? If
 17 you don't know, sir, just say "no." We can move on. You
 18 don't --
 19 A No, I wouldn't know what the other claims are.
 20 If they --
 21 Q Okay.
 22 A Anybody is as stupid as me, buys a policy, they
 23 should have a claim.
 24 Q Sir, the question was: Do you know of the other
 25 claims?

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7 (Pages 22 to 25)

1 A No, I don't know that.
2 **Q Thank you, sir.**
3 A But --
4 **Q Thank you, sir.**
5 A I'm just saying that.
6 **Q Thank you.**
7 A They should take the policy off the record or
8 whatever you call it, or make it --
9 MS. EMMONS: Dunnie, just answer --
10 THE WITNESS: Go ahead.
11 MS. EMMONS: Okay?
12 THE WITNESS: Go ahead.
13 **Q (By Mr. Stano) Have you ever been a putative**
14 **class representative?**
15 A No.
16 **Q Have you ever talked to anyone about the -- what**
17 **your duties -- what the duties of a putative class**
18 **representative might be, other than your counsel? I'm not**
19 **asking about your conversations with Ms. Emmons.**
20 A Huh-uh, no.
21 **Q Has anyone ever asked you in your entire lifetime**
22 **ever to be a putative class representative?**
23 A Yes.
24 **Q Who?**
25 A The firm -- this firm. It goes into a class

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1 action.
2 **Q I thought you said you Ms. Emmons was your**
3 **putative class --**
4 A She is.
5 **Q -- representative?**
6 A Yeah.
7 **Q Okay.**
8 A That's the only one I've ever talked about
9 something like this.
10 **Q What documents have you reviewed in this case?**
11 A The main document I reviewed was the illustration
12 that said all of the cash and all of the face value
13 disappears. That's the main one that got me.
14 **Q Are you talking about what you reviewed**
15 **yesterday?**
16 A No, I've done seen it before that.
17 **Q So you reviewed the illustration that said all**
18 **the cash value disappears. What else?**
19 A And all the face value disappears.
20 **Q And all the face value disappears.**
21 A And --
22 **Q What else --**
23 A No -- no -- what else, what?
24 **Q What other documents have you reviewed?**
25 A Like what?

Page 23

1 **Q I'm asking you, sir. I don't know what you have**
2 **access to. I don't know --**
3 A What difference does it make in this case? We're
4 only talking about this particular case.
5 **Q I understand that, sir.**
6 A Not something in the atmosphere or something.
7 **Q I understand. All those other people we've**
8 **talked about, that's sort of in the atmosphere compared to**
9 **your case? That has nothing to do with your case,**
10 **correct?**
11 A I'd say it has a lot to do with it.
12 **Q So it's not in the atmosphere?**
13 A Okay. Forget it. Ask something else.
14 **Q Getting back to my question, sir: You said that**
15 **you reviewed the illustration. What other documents have**
16 **you reviewed in this case, if any?**
17 A I don't know. I don't even know what you're
18 talking about. You're so --
19 MS. EMMONS: Mr. Blumenthal, what he's asking
20 is -- for instance, which documents did you review to
21 prepare for this deposition? Documents related to this
22 case.
23 THE WITNESS: Just whatever is -- the main
24 thing is what happened with the policy. That's it. What
25 else am I supposed to review?

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1 **Q (By Mr. Stano) Sir, if you've reviewed nothing**
2 **else, just tell me. We can move. If you have reviewed**
3 **other documents, tell me what they are.**
4 A Let's say I haven't. How is that? Keep going.
5 MS. EMMONS: No, you need to --
6 MR. STANO: Is that true?
7 MS. EMMONS: -- answer truthfully.
8 THE WITNESS: Okay.
9 **Q (By Mr. Stano) Is that true that you haven't**
10 **reviewed other documents?**
11 A As far as I know, I just -- no, just say I
12 haven't seen any documents. How is that?
13 **Q Okay. That's acceptable to me.**
14 A Okay. Then go on.
15 **Q Are you expecting to receive a fee in this case?**
16 **As a --**
17 A A fee? What do you mean "a fee?"
18 **Q As a class representative, are you expecting to**
19 **receive a fee?**
20 A No. I don't -- no fees. What are you
21 talking -- like they're paying me or something? No.
22 **Q I'm not talking about any damages that you may**
23 **have.**
24 A No -- no, I'm not expecting any fee.
25 **Q I'm saying --**

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8 (Pages 26 to 29)

1 A No, no, no, fees. Never heard of them.
 2 **Q Sir, you've never discussed fees --**
 3 A Huh-uh.
 4 **Q -- as a class representative with your client?**
 5 A No.
 6 **Q I mean, with your attorneys?**
 7 A Huh-uh.
 8 **Q Do you have a contract with your counsel?**
 9 A Not that -- not a -- a written contract for
 10 what? No, we've just got a verbal thing.
 11 **Q As a class representative, do you have any**
 12 **contract with counsel representing you in this case?**
 13 A I don't think so.
 14 **Q Any oral contract?**
 15 A Yes, oral. Orally, for sure.
 16 **Q As a class representative, what is your oral**
 17 **contract with your counsel?**
 18 A What is my -- my part?
 19 **Q The contract -- you say you have an oral contract**
 20 **with counsel as class representative. What is that**
 21 **contract?**
 22 A I never thought it was a contract. It's an
 23 agreement that -- that this is -- goes into a class-
 24 action. I'm going to participate in it. That's it. Just
 25 this is not a good policy to try to buy.

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1 **Q What are the terms of this oral contract with**
 2 **your attorney?**
 3 A There is no terms that I know of, just an
 4 agreement.
 5 **Q An agreement to do what?**
 6 A Just to take it to class-action or whatever that
 7 it happens to go to. That's it. That's it. To stop this
 8 policy from going into another half a million people's
 9 hands because New York Life is taking advantage of the
 10 people. Period.
 11 **Q Earlier in your testimony today, you said you**
 12 **didn't know what class-action was and that you didn't know**
 13 **that it was class-action. Now, it's evolved to half a**
 14 **million people, sir?**
 15 A No, it's nothing that evolved to a half a
 16 million. I'm just using that as an example, sir.
 17 MS. EMMONS: Mr. Blumenthal testified that we
 18 did not have a written contract. We do have a written
 19 contract.
 20 THE WITNESS: We do? I didn't know it.
 21 MS. EMMONS: -- have a written contract
 22 regarding his individual claims in this matter.
 23 THE WITNESS: I didn't know that.
 24 MS. EMMONS: We do have a written contract
 25 with him.

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1 MR. STANO: Is there a contract as a class
 2 representative?
 3 MS. EMMONS: No.
 4 MR. STANO: I would like the contract you
 5 have with him to be produced. I'd like to review it.
 6 MS. EMMONS: Well, and we've objected to that
 7 before.
 8 MR. STANO: All right. We reserve. I'm not
 9 going to waste --
 10 MS. EMMONS: Sure.
 11 [request]MR. STANO: -- deposition time here.
 12 We're going to take that to the court.
 13 MS. EMMONS: Okay.
 14 **Q (By Mr. Stano) So you have a contract,**
 15 **Mr. Blumenthal, that you weren't aware of it until your**
 16 **counsel just told you?**
 17 A That's right. I just -- you don't seem to
 18 understand, but my brain is turned around in the last few
 19 years, sir, and I cannot remember everything to the
 20 detail. Period.
 21 **Q I understand that --**
 22 A No, you don't understand it.
 23 **Q Is your, in your words, "brain turned around" so**
 24 **much that you may have signed contracts that you don't**
 25 **remember?**

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1 A That could have happened, yes. That could have
 2 happened.
 3 **Q Is it only also possible that your -- in your**
 4 **words, your brain is turned around so much that you**
 5 **don't remember receiving illustrations that you received?**
 6 **Is that possible?**
 7 A I'm not even going to answer that. Get on -- get
 8 on with it.
 9 MS. EMMONS: No, Dunnie, you need to
 10 understand that he has asked a question and you answer it.
 11 THE WITNESS: Okay. Repeat the question.
 12 MR. STANO: Would you read the question back,
 13 please.
 14 (The last question was read back by the court
 15 reporter.)
 16 **Q (By Mr. Stano) Do you understand question?**
 17 A Not really.
 18 **Q Just testified that your brain is so turned**
 19 **around that --**
 20 A No, I just said "my brain was turned around." I
 21 didn't say it was so turned around.
 22 **Q Okay. Using your words --**
 23 A Okay. Whatever.
 24 **Q -- that your brain was turned around --**
 25 A Whatever.

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Dunnie Blumenthal, Vol. II
March 3, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

13 (Pages 46 to 49)

<p>1 A Okay. Go ahead.</p> <p>2 Q Do you see where it lists as insured Irving H.</p> <p>3 Blumenthal, Jr.?</p> <p>4 A I don't see it, but it doesn't matter. I'm sure</p> <p>5 it's there.</p> <p>6 Q Your counsel's reading along.</p> <p>7 MR. STANO: Can you stipulate, Shannon --</p> <p>8 MS. EMMONS: Yes.</p> <p>9 MR. STANO: -- just to keep this along,</p> <p>10 moving, that if something I represent is not correct,</p> <p>11 you'll correct me?</p> <p>12 MS. EMMONS: Absolutely.</p> <p>13 MR. STANO: Okay.</p> <p>14 Q (By Mr. Stano) Just to speed things up,</p> <p>15 Mr. Blumenthal.</p> <p>16 A Okay. Go ahead.</p> <p>17 Q This document, Exhibit 12, shows that -- you</p> <p>18 listed as the insured, it shows your policy number as</p> <p>19 62776533, which is your --</p> <p>20 A Okay.</p> <p>21 Q -- NYLIAC policy. It shows the planned</p> <p>22 Check-O-Matic premium, monthly premium of 4,420.50. Do</p> <p>23 you recall that?</p> <p>24 A No, I don't recall it, but go ahead.</p> <p>25 Q Do you have any reason to think that that premium</p>	<p>1 reviewed it?</p> <p>2 A Probably. What does that have -- what does the</p> <p>3 cash value have to do with what we're talking about?</p> <p>4 Q Sir, was that a "yes" -- answer to my last</p> <p>5 question, which was, if you had received this document,</p> <p>6 would you have reviewed it?</p> <p>7 A Yes.</p> <p>8 Q Let's turn to the last page. And this is</p> <p>9 Blumenthal 072.</p> <p>10 A Okay.</p> <p>11 Q I will read along -- I'll read it to you,</p> <p>12 Mr. Blumenthal. Feel free to follow along. I'm going to</p> <p>13 ask you about Paragraph No. 1, first, and the sentence</p> <p>14 before Paragraph No. 1, Page Blumenthal Page 072, reads as</p> <p>15 follows: "If you make no future partial surrenders or</p> <p>16 loans, your policy will continue in force until," colon.</p> <p>17 Do you see that?</p> <p>18 A I don't see it, but I can't --</p> <p>19 Q It's right there above No. 1.</p> <p>20 A Okay.</p> <p>21 Q It reads, quote, "If you make no future partial</p> <p>22 surrenders or loans, your policy will continue in force</p> <p>23 until" colon.</p> <p>24 A Colon?</p> <p>25 Q There's a colon.</p>
Page 46	Page 48
<p>1 amount for the monthly premium; is not correct?</p> <p>2 A No, I'm sure it was.</p> <p>3 Q Okay. It lists the death benefit as</p> <p>4 \$1,064,913.86. Was it your understanding that your death</p> <p>5 benefit was increasing from a million dollars up?</p> <p>6 A No, I didn't know that.</p> <p>7 Q Did you think it was a level death benefit?</p> <p>8 A I just thought it was million dollars insurance</p> <p>9 policy. I didn't know it went up.</p> <p>10 Q You never discussed that with Mr. Marlin?</p> <p>11 A Huh-uh.</p> <p>12 Q That one of the advantages of the NYLIAC policy</p> <p>13 was that your death premium would increase, your death --</p> <p>14 I'm sorry, your death benefit will increase?</p> <p>15 A I never -- I don't recall ever discussing the</p> <p>16 death benefit going up.</p> <p>17 Q And it was your understanding, then, that the</p> <p>18 death benefit of a million dollars would be level</p> <p>19 throughout the life of the policy?</p> <p>20 A That's what I thought, it was a million dollar</p> <p>21 policy. Period.</p> <p>22 Q Okay. Thank you. This document on the first</p> <p>23 page also lists a cash surrender value of \$16,338.86.</p> <p>24 A Okay. So what?</p> <p>25 Q If you had received this document, would you have</p>	<p>1 A Oh, colon.</p> <p>2 Q I'm sorry. My accent might be -- I apologize.</p> <p>3 Paragraph No. 1, it says that, "The policy will</p> <p>4 lapse December 16th" -- I'm sorry, "December, 2016,</p> <p>5 assuming you make planned Check-O-Matic premium payments</p> <p>6 \$420.50 and that the current interest rate is credited and</p> <p>7 the fees and charges that are currently utilized continue</p> <p>8 to be deducted", period, closed quote. Do you see that?</p> <p>9 A Okay.</p> <p>10 Q You do see that?</p> <p>11 A Yeah.</p> <p>12 Q Okay. Do you understand what I just read?</p> <p>13 A Yeah.</p> <p>14 Q It's saying that your policy will continue in</p> <p>15 force until December of 2016, if you continue to make</p> <p>16 premium payments.</p> <p>17 A And --</p> <p>18 Q And the interest is credited --</p> <p>19 A Okay.</p> <p>20 Q -- and the -- so does this not put you on notice</p> <p>21 that your policy will not --</p> <p>22 A It will, if I'd have seen it. I've never seen it</p> <p>23 before. It would absolutely put me on notice, but I've</p> <p>24 never seen this.</p> <p>25 Q How do you know that, Mr. Blumenthal, if you</p>
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Dunnie Blumenthal, Vol. II
March 3, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

15 (Pages 54 to 57)

<p>1 A No, I don't know where he searched. Somewhere.</p> <p>2 Q Did he bring the file to you?</p> <p>3 A No, I don't know where he brought a file. He</p> <p>4 brought -- I don't even -- he just said he had it and --</p> <p>5 Q Did he show it to you?</p> <p>6 A I don't know if he showed it to me or not. I</p> <p>7 think he did, but not -- I didn't look through the policy.</p> <p>8 Q Right. Did you -- did he send it to your counsel</p> <p>9 or did you send it to your counsel or did someone else?</p> <p>10 A He did.</p> <p>11 Q Do you know if he pulled your policy out of</p> <p>12 another --</p> <p>13 A No, I don't know that.</p> <p>14 Q Is it possible you have other insurance documents</p> <p>15 related to NYLIAC --</p> <p>16 A No.</p> <p>17 Q -- at your office?</p> <p>18 A No.</p> <p>19 Q How do you know that?</p> <p>20 A I don't think we did. Why would he?</p> <p>21 MR. STANO: Shannon, could I ask if</p> <p>22 Mr. Blumenthal -- would you ask your client if he would</p> <p>23 search again?</p> <p>24 MS. EMMONS: Yes, I'll ask him to search</p> <p>25 again.</p> <p style="text-align: right;">Page 54</p>	<p>1 Mr. Blumenthal about the other four or five disclosures.</p> <p>2 Can we stipulate that those -- to save time that those</p> <p>3 disclosures -- the annual summaries, excuse me, for the</p> <p>4 years I believe 2003 through 2007, can we stipulate</p> <p>5 that -- well, they speak for themselves. I will represent</p> <p>6 they have similar disclosures. Can we stipulate that he</p> <p>7 would have known that the policy would have lapsed if he</p> <p>8 had read it and if he had received it?</p> <p>9 MS. EMMONS: Stipulate that they are similar</p> <p>10 disclosures, but whether that --</p> <p>11 MR. STANO: Well, then, never mind. I'll</p> <p>12 just ask him -- just trying to save time. Thank you,</p> <p>13 anyway.</p> <p>14 (Exhibit 14 marked for identification.)</p> <p>15 Q (By Mr. Stano) Mr. Blumenthal, let me show you</p> <p>16 what's marked as Exhibit 14 Bates stamp 61 through --</p> <p>17 Blumenthal 61 through Blumenthal 64. It's the annual</p> <p>18 policy summary for June 12, 2003. Have you had a chance</p> <p>19 to look it over?</p> <p>20 A I don't see even through these things.</p> <p>21 Q Okay. Let me --</p> <p>22 A Anyway, what's the point?</p> <p>23 Q Well, let's identify the document first.</p> <p>24 A Okay. Identify it.</p> <p>25 Q Mr. Blumenthal, this is the annual policy summary</p> <p style="text-align: right;">Page 56</p>
<p>1 MR. STANO: All right. Thank you.</p> <p>2 THE WITNESS: What are we searching for?</p> <p>3 MS. EMMONS: To see if we've overlooked any</p> <p>4 documents in your office that, maybe, you hadn't found</p> <p>5 before.</p> <p>6 Q (By Mr. Stano) Let's turn to the last page of</p> <p>7 this Exhibit 13, Mr. Blumenthal. It's Page 68. It has</p> <p>8 the same type of disclosure -- summary disclosure as</p> <p>9 Exhibit 12.</p> <p>10 A Okay.</p> <p>11 Q Let me read it to you. It, basically, says --</p> <p>12 well it does say, quote, "If you make no future partial</p> <p>13 surrenders or loans, your policy will continue in force</p> <p>14 until." And then under Paragraph No. 1, the date listed</p> <p>15 is November 16th. Assuming you continue to make your</p> <p>16 premium payments and assuming the current interest rate is</p> <p>17 going to credit any charges -- will continue to be</p> <p>18 deducted. Do you understand that this puts you on notice,</p> <p>19 had you read this, that your policy would only last until</p> <p>20 November 2016?</p> <p>21 A If I'd have read it, I would have known it. I</p> <p>22 didn't read it. Never seen it.</p> <p>23 Q Never seen it?</p> <p>24 A Huh-uh.</p> <p>25 MR. STANO: Shannon, I'm going to ask</p> <p style="text-align: right;">Page 55</p>	<p>1 that is promised to be sent to you according to the policy</p> <p>2 that you have. It's very similar to the two previous</p> <p>3 exhibits we've talked about. It was sent to your address</p> <p>4 at Blumenthal's Manufacturing 501 Southwest 9th Street,</p> <p>5 Oklahoma City.</p> <p>6 A Okay. I've never seen it.</p> <p>7 Q It's dated June 12th of --</p> <p>8 A I don't care when it was dated. I've never seen</p> <p>9 it. Period.</p> <p>10 Q Sir, is it your testimony that you've never seen</p> <p>11 any --</p> <p>12 A I've never noticed --</p> <p>13 Q Let me finish the question, please.</p> <p>14 A Go ahead.</p> <p>15 Q Is it your testimony, Mr. Blumenthal, that you</p> <p>16 haven't seen any of the annual policy summaries that were</p> <p>17 sent to you by NYLIAC between 2001 and 2007?</p> <p>18 A I've never seen these, no. I've never seen --</p> <p>19 they got them -- they put them somewhere. I've never seen</p> <p>20 them.</p> <p>21 Q They who? Who is "they"?</p> <p>22 A Whoever --</p> <p>23 Q Your staff?</p> <p>24 A Yeah, whoever opened the mail or got the mail.</p> <p>25 Q Filed it away or threw it away or whatever?</p> <p style="text-align: right;">Page 57</p>

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Dunnie Blumenthal, Vol. II
March 3, 2010

Blumenthal vs. New York Life
Case No. 5:08-CV-00456-F

16 (Pages 58 to 61)

1 A Yeah, probably throwing them away. I don't know
 2 where -- what they did with them. But if we got these --
 3 **Q Okay.**
 4 A -- we might be able to find them.
 5 **Q Okay.**
 6 A If they're filed.
 7 **Q Sure. Were the same staff people opening your**
 8 **mail in 2003? You mentioned Barbara Eden and you**
 9 **mentioned one other --**
 10 A She was gone by then.
 11 **Q You mentioned another lady, I believe.**
 12 A Yeah.
 13 **Q Was she still there, if you remember?**
 14 A Still at the shop?
 15 **Q Yes, sir.**
 16 A Yeah.
 17 **Q And so she would have been opening your mail?**
 18 A She -- I don't know that. I don't recall that at
 19 all.
 20 **Q I understand.**
 21 A I don't know that particular detail.
 22 **Q Fair enough. That's fair enough. I understand**
 23 **(Exhibit 15 marked for identification.)**
 24 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**
 25 **what's marked as Exhibit 15. It's the annual summary**

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1 dated June 14th, 2004, Bates Stamp Blumenthal 57 through
 2 60. Sir, let me show you that.
 3 Sir, I know you have difficulty reading it, so
 4 let me just briefly summarize what it is. And your
 5 counsel will make sure that I'm doing reading it --
 6 A Okay.
 7 **Q Again, it's dated June 12 -- I'm sorry, June 14,**
 8 **2004. That's the date it's prepared, so it would have**
 9 **been mailed to you and your office would have received it**
 10 **a --**
 11 A Okay.
 12 **Q -- few days later.**
 13 A Whatever.
 14 **Q It's addressed to Mr. Irving H. Blumenthal, Jr**
 15 **again, Blumenthal's Manufacturing at 501 Southwest 9th**
 16 **Street. It shows the same policy information that we**
 17 **discussed earlier. You, as the insured, policy number,**
 18 **the NYLIAC Protector Universal Life Insurance policy. The**
 19 **same premium rate of \$4420.50. The total death benefit,**
 20 **Mr. Blumenthal, had increased to \$1,154,434.19. You**
 21 **testified you thought it was a level premium policy level**
 22 **benefit?**
 23 A Yeah, right. I don't know.
 24 **Q The cash value had increased to \$154,434.19.**
 25 A Okay.

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1 **Q And looking at the last page, again, I'll**
 2 **summarize it.**
 3 A Okay.
 4 **Q It, basically, says that "If you had no partial**
 5 **surrenders or loans that your policy would continue in**
 6 **force until March 2016, assuming you had made your premium**
 7 **payment of \$4420.50 and that the current interest rate was**
 8 **credited and the fees and charges were continued to be**
 9 **deducted." Do you recall receiving this document**
 10 **Mr. Blumenthal?**
 11 A No.
 12 **Q If you had, and if you had read it --**
 13 A I would have cancelled the policy.
 14 **Q You would have?**
 15 A (Nods head up and down.)
 16 **Q Thank you.**
 17 (Exhibit No. 16 marked for identification.)
 18 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**
 19 **what's marked as Exhibit 16. It's the annual policy**
 20 **summary dated -- prepared, excuse me -- date prepared June**
 21 **13th, 2005. Blumenthal 53 through 56. Let me just go**
 22 **through this, Mr. Blumenthal. Again, it's the annual**
 23 **policy summary, very similar to the ones we talked about**
 24 **earlier.**
 25 The same information, however the total death

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1 benefit had increased from 1,154,000-and-change to
 2 1,181,000 from June of '04 to June of '05. And the cash
 3 value had increased from 154,000-and-change to 181,000-
 4 and-change. Same question, Mr. Blumenthal, have you seen
 5 this document?
 6 A No.
 7 **Q Did you ask the folks who opened your mail to be**
 8 **sure and bring you your insurance papers?**
 9 A No, never thought about it. Never even knew it
 10 was coming in.
 11 **Q Okay. That may be one reason they didn't bring**
 12 **it to you?**
 13 A I don't know that.
 14 **Q Okay. Again, the disclosure on the back shows --**
 15 **with the same assumptions, assuming no future partial**
 16 **surrenders and no loans on your policy, and assuming you**
 17 **continue to pay your premium payment of \$4420.50, and that**
 18 **the current interest rate was credited and the fees and**
 19 **charges were deducted -- the fees and charges that are**
 20 **currently utilized, that your policy would stay in force**
 21 **until February 2016. If you had read that --**
 22 A I would have cancelled the policy.
 23 **Q Thank you.**
 24 (Exhibit No. 17 marked for identification.)
 25 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**

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Dunnie Blumenthal, Vol. II
March 3, 2010

Blumenthal vs. New York Life
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20 (Pages 74 to 77)

1 Q Was it your practice, you or the bookkeeper at
2 Blumenthal's Manufacturing, to file annual financial --
3 A If they had them.
4 Q -- and keep records of them?
5 A Nobody has ever seen these things. I've never
6 seen them, Debbie has never seen them, Scott's never seen
7 them.
8 Q Well, Debbie hasn't seen these exhibits, has she?
9 A No, I just asked her if we ever got any annual
10 report from New York Life on the insurance policy. She
11 said, "No, not that I know of." Now, if she didn't see
12 them, I didn't see them -- I don't know where they went or
13 where they were, because if I'd have seen those, I would
14 have cancelled the policy immediately. I'd have never
15 taken it out, if I knew it. That's not the policy that I
16 thought I was getting.
17 Q If you had read those reports?
18 A If I had seen them. I didn't ever see --
19 Q Sir, you testified --
20 A Until -- well, let me correct that. I did see
21 that illustration. I did see an illustration in '06 or
22 something, or '07.
23 Q You're saying that if you had seen these annual
24 policy summaries, you would have cancelled the policy
25 immediately, correct?

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1 A Yeah.
2 Q Because you would have known it was going to
3 zero, correct?
4 A Right.
5 Q And that's your phrase for saying the policy --
6 A Yeah.
7 Q -- would have lapsed?
8 A Yeah.
9 Q Going back to Exhibit 7 from yesterday, sir,
10 which has your name on it. We talked about that --
11 A I know it. That's what's amazing.
12 Q Now, you saw --
13 A I signed that, I had to see it.
14 Q But yet you -- but yet you didn't cancel,
15 correct?
16 A Evidently, not --
17 Q So the fact that you may have seen the annual
18 policy summary doesn't mean you would have cancelled it,
19 the policy, unless you had read it, correct?
20 A Right. And I didn't -- you know, did not --
21 Q So seeing it is not sufficient in your situation,
22 because you have to read it. And you've testified that
23 you don't read documents, correct? That you have a
24 practice of signing documents you don't read and not
25 reading documents, correct? That's been your testimony

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1 for a day-and-a-half, Mr. Blumenthal, correct?
2 A I've never read those, that I know of. But even
3 though I did sign it, that's -- I don't know how I signed
4 it without reading it.
5 Q Given the existence of your signature on Exhibit
6 7, sir, how can you sit here today and say that if you had
7 seen it you would have cancelled the policy?
8 A If I would have read it.
9 Q Okay. That's different --
10 A Yeah, yeah.
11 Q That's different than saying if you had seen it.
12 A Okay. Then as far as I know -- hell, I don't
13 know. All I know is that --
14 Q Well, you saw Exhibit 7, correct, because you
15 signed for it?
16 A I must have.
17 Q Okay.
18 A But --
19 Q That's my point, sir.
20 A Okay.
21 Q Let's move on. Were you and Mr. Marlin personal
22 friends --
23 A No.
24 Q Let me finish the question?
25 A Okay.

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1 Q Were you and Mr. Marlin personal friends between
2 1999 and 2007?
3 A No.
4 Q Were you ever personal friends?
5 A No.
6 Q Did you ever socialize with Mr. Marlin?
7 A No.
8 Q Did you have any reason -- strike that.
9 Did you have any reason to see Mr. Marlin other
10 than for business purposes?
11 A No.
12 Q So stated differently, the only reason you would
13 be seeing Mr. Marlin would be to discuss business,
14 correct?
15 A That would be it.
16 Q And the only business you discussed with
17 Mr. Marlin was the insurance business, correct?
18 A That would be it, yeah, but we never discussed
19 this.
20 Q So when you saw Mr. Marlin, you only discussed
21 insurance matters, correct? You said you weren't friends.
22 A Well, I don't know what -- you know, as far as I
23 know, I don't recall that at all.
24 Q But the main purpose in the meeting would have
25 been to discuss insurance matters, correct? You weren't

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Dunnie Blumenthal, Vol. II
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Blumenthal vs. New York Life
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24 (Pages 90 to 93)

1 A I don't think so.

2 Q Were you ever interested in term insurance --

3 A No.

4 Q -- from -- after your NYLIAC policy was issued in

5 1999?

6 A I don't remember that.

7 (Exhibit No. 21 marked for identification.)

8 Q (By Mr. Stano) Mr. Blumenthal, let me show you

9 what's marked as Exhibit 21 Bates Number 838 and 839.

10 Sir, Exhibit 20 that we just talked about, the

11 illustration, was dated March 22nd, 2004. This is a

12 document dated April 26th, 2004, just a month and a few

13 days later, that's entitled, quote, "VitalTerm Comparison

14 for Dunnie Blumenthal," closed quote. Your birthday is

15 December 14th, 1931?

16 A Yeah. So what is this?

17 Q It is a term comparison. It's a comparison of

18 term policies prepared for you for policies in the amount

19 of \$4 million. It's for a male, standard smoker. You

20 smoke, don't you?

21 A I did. I don't --

22 Q But in 19 -- I'm sorry. In 2004, you smoked,

23 didn't you?

24 A No.

25 Q You smoked when you filled out -- or when you

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1 applied for coverage for the NYLIAC policy, didn't you?

2 A Yeah, in '99 -- I quit in '99, quit smoking.

3 Q Okay.

4 A But I don't remember the month, but it was 1999.

5 Q Okay. This is for a \$4 million policy, male,

6 standard smoker in Oklahoma, birthdate 12/14/1931, and

7 it's got your name, Dunnie Blumenthal.

8 A He might have drawn it up for some reason. I

9 don't know why, but -- maybe I was thinking about more

10 insurance for some reason. I don't know, but I didn't --

11 I didn't take anything out.

12 Q I understand.

13 A And I was not smoking at the time.

14 Q Sure. It says prepared on 4/26/2004 by Ben

15 Marlin.

16 A Okay. So what?

17 Q Did you ever discuss term insurance?

18 A Not that I recall. He might have just brought

19 this down. I don't know what he was doing, probably

20 trying to sell more insurance or something.

21 Q Okay.

22 A I don't know what it was.

23 Q Is it possible you talked term insurance?

24 A Could have been. I don't remember exactly that.

25 Q Okay.

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1 A It's not a factor in my mind, but --

2 Q So it could be one more thing that you talked

3 about with Mr. Marlin that you don't remember, correct?

4 A Could have been. And he made it up for some

5 reason. Why? I have no idea.

6 Q Do you know any reason -- any business reason

7 Mr. Marlin would create exhibits like this for -- unless

8 he was requested to by the client?

9 A I don't know, maybe he just decided that I might

10 be interested in buying some term insurance and showed it

11 to me.

12 Q Do you know how he would come up with a specific

13 amount of \$4 million?

14 A I have no idea, none, zero.

15 Q If Mr. Marlin were to say that you had requested

16 quotes on term insurance in April of 2004, your response

17 would be you don't remember one way or the other, correct?

18 A I don't remember ever requesting term insurance.

19 Q Okay.

20 A By Ben Marlin or anybody for that matter --

21 Q Okay.

22 A -- last whatever years.

23 Q It's possible you requested it and you just don't

24 remember, correct?

25 A I don't -- I don't remember it at all.

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1 Q I understand.

2 A Not correct. I just don't remember it. He drew

3 it up, he drew it up for some reason. And I have no idea

4 why.

5 (Exhibit No. 22 marked for identification.)

6 Q (By Mr. Stano) Let me show you what's marked as

7 Exhibit 22, Bates NYLIAC 819 through 828. While you're

8 looking at that, Mr. Blumenthal, Exhibit 20 was an

9 illustration prepared on March 22nd of 2004; Exhibit 21 is

10 a term comparison prepared on April 26 of 2004, just a

11 little more than a month later; and Exhibit 22 is an

12 illustration prepared on April 28th, 2004, two days after

13 the term insurance comparison of Exhibit 21.

14 Again, it's got your name on it, Dunnie

15 Blumenthal, prepared by Ben Marlin.

16 A I don't know why he did it, but he did it

17 evidently. So what?

18 Q Sir, you said you recall receiving an

19 illustration that had zeros on it that put you on notice

20 that the policy was going --

21 A Yes.

22 Q -- to go to zero.

23 A Right, right.

24 Q And that spurred you to go take out a policy on

25 it; is that correct?

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25 (Pages 94 to 97)

1 A Take out a policy, loan, what are you talking
2 about?
3 Q Well, if --
4 A I just -- I just withdrew the money out of the --
5 whatever it was -- value or something.
6 Q How did you --
7 A It wasn't a policy loan.
8 Q How did you take the money out, if it wasn't a
9 policy loan?
10 A I called Ben and he says -- I said, "I just would
11 like to take whatever I can get out of the -- out of cash
12 value and close the policy down."
13 Q Were you having cash flow problems at the time?
14 A No. That's -- that's why I wanted to cancel the
15 policy.
16 Q Did you tell Ben you wanted to take out a policy
17 loan?
18 A No, I told him I wanted to withdraw the cash
19 that's left in the account and close it down.
20 (Cell phone rings.)
21 MS. EMMONS: We need to go off the record.
22 (Off the record.)
23 THE WITNESS: The last question was?
24 Q (By Mr. Stano) Yes, sir. The last question
25 was --

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1 (The last question was read back by the court
2 reporter.)
3 THE WITNESS: Yeah. No, I didn't -- it was
4 not a policy loan. I withdrew the cash that was --
5 figured it was my money.
6 Q (By Mr. Stano) Okay. Exhibit 22, the
7 illustration that we're talking about, now, could this
8 have been the illustration that put you on notice --
9 A I don't know if that's it or not. I can't tell
10 one from another. All I know, it --
11 Q Fair enough.
12 A -- had zeros in it and it put me on alert.
13 Q So you don't know which illustration it was,
14 correct?
15 A It had to be one of those illustrations.
16 Q Yes, sir, we know it had to be one of them --
17 A And I don't know which one it is, no.
18 Q Fair enough. And you have no -- as you sit here
19 today, you have no way of telling which one it is, do you?
20 A I wouldn't -- it's only an illustration, sir.
21 Q I understand. I'm not --
22 A And that's all I'm telling you. I can't tell one
23 from another and no one --
24 Q I'm not --
25 A -- else can.

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1 Q I'm not criticizing you, Mr. Blumenthal.
2 A I didn't say you were.
3 Q I'm saying, as you sit here today, you can't tell
4 which illustration it was that put you on notice,
5 correct? Because I've asked you about every one of them
6 and every one you say you can't tell, so I'm trying to
7 come to a --
8 A I don't know which one it was.
9 Q That's -- that's my question, sir.
10 A That's -- and I've answered, I don't know which
11 one it was. It was one of those illustrations.
12 Q And you've been saying that for the past two
13 days. You've been telling me that for two days, correct?
14 A That's -- that's it.
15 Q Okay. That was my question.
16 A Okay.
17 Q Turning to Page NYLIAC 827 in this exhibit.
18 Again, Exhibit 22.
19 A Okay.
20 Q Let's go from left to right. The left columns as
21 we've talked about earlier, relate to the guarantee
22 charges and guaranteed interest rates.
23 A Okay.
24 Q And the guaranteed interest rate is 3 percent.
25 And under the guaranteed column, the policy would lapse in

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1 Year 6 when you were 78. Do you see that? See the zeros
2 start on Year 6?
3 A Okay.
4 Q And going all the way to the right-hand columns,
5 under the non-guaranteed current charges, the policy would
6 have lapsed -- the last column -- at Year 16 when you were
7 age 88. If you look at the years and the policy.
8 A All right.
9 Q Do you see that?
10 A Yeah.
11 Q If you had read this illustration and known in
12 April of 2004, the information we just talked about, would
13 you have cancelled the policy?
14 A Absolutely, yes.
15 Q Would that be true for all the illustrations --
16 A Exactly right.
17 Q -- we talked about? Let me finish. Would that
18 be true for --
19 A Yes.
20 Q -- all the illustrations we've talked about?
21 A Yes.
22 Q Okay. In terms of knowing that the policy went
23 to zero, you would have cancelled it --
24 A I'd have never taken it out, if I'd have known
25 it.

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26 (Pages 98 to 101)

<p>1 Q And if you had read those illustrations, you 2 would have known it, correct? 3 A I would have known it, then, but I -- I never saw 4 it. 5 Q As far as you remember, you never saw it? 6 A As far as I know, I've never seen it. 7 Q Okay. 8 A Period. Not that I remember. As far as I know, 9 I've never seen it and my people have never seen them. 10 Q Can you tell if Exhibit 22 is the Exhibit that 11 first put you on -- I'm sorry -- the first illustration 12 that put you on notice? You can't -- 13 A I can't really tell you if it was 22 or 21. It 14 was one of those illustrations. 15 Q Fair enough. 16 (Exhibit No. 23 marked for identification.) 17 Q (By Mr. Stano) I'll show you Exhibit 23, which 18 is Bates Stamp NYLIAC 829 through 836. And, again, 19 Mr. Blumenthal, this was prepared on May 3rd of 2004, just 20 five days after Exhibit 22 was prepared. Again, your name 21 on it, prepared by Ben Marlin. So beginning with Exhibit 22 20, Mr. Blumenthal -- actually, Exhibit 19 prepared on 23 March 6th -- strike that. 24 So beginning with Exhibit 20, which was prepared 25 on March 22nd, 2004, through Exhibit 23, which was</p> <p style="text-align: right;">Page 98</p>	<p>1 Q Let me finish the question. 2 A Okay. Go ahead. 3 Q Isn't it logical to assume that you were talking 4 about these matters? Isn't that a logical assumption? 5 A Probably is. 6 Q Thank you. 7 A But I still never saw anything that told me that 8 this policy was going to go to zero. 9 Q Again, sir, I'm going have to contradict you on 10 that -- or challenge you on that. 11 A You can challenge it, but I didn't -- 12 Q Well, we did talk about Exhibit 7, sir, which has 13 your signature. 14 A It doesn't matter. I signed it. There's no 15 doubt about it, but -- 16 Q But you saw it? 17 A -- Ben -- 18 Q But you saw -- can you sign something without 19 seeing it? 20 A I didn't pay any attention to it. I thought -- 21 Q And whose fault is that? 22 A Mine, I guess. 23 Q Thank you. 24 A But Ben was still not showing me that the thing 25 went to zero, no value. Period.</p> <p style="text-align: right;">Page 100</p>
<p>1 prepared on May 3rd, 2004, in less than two months 2 Mr. Marlin had prepared three illustrations and one term 3 comparison for you? 4 A So? 5 Q And as you sit here today, do you recall meeting 6 with Mr. Marlin in the spring or early part of -- the 7 first half of 2004 about insurance? 8 A I must have. I don't recall it right off the 9 bat, no. 10 Q There's a lot of activity going on in his office 11 preparing illustrations and other -- 12 A Well -- 13 Q -- insurance documents for you. 14 A I don't -- I do not recall that. Period. He 15 must have done it for some reason. I don't know why. 16 Q They say that they were prepared for you, not for 17 anyone else. And you did say that you met with him. You 18 testified to that. You just don't -- 19 A Yeah, I remember -- 20 Q -- remember the dates? 21 A Yeah. 22 Q So isn't it logical to conclude that if you 23 recall meeting with him -- you weren't friends, you only 24 talked about business. And he's preparing -- 25 A Preparing --</p> <p style="text-align: right;">Page 99</p>	<p>1 Q Can anyone make you read a document, if you don't 2 want to? 3 A Sure, if they wanted to, but it's -- there's -- 4 God, I'm just telling you that Ben never told me that this 5 policy would go to zero. 6 Q Okay. 7 A Period. I don't care what the thing said. He 8 could come in, sign this, okay, sign it, goodbye. If I 9 could -- if I did read those policies -- I could 10 understand the illustration, but there was no point in me 11 reading the policy, because it didn't matter. I thought 12 it was in force. 13 Q Okay. Just for the record, I want to -- don't 14 mean to beat a dead horse, but Exhibit 23, can you 15 distinguish this illustration from any of the others -- 16 A No. 17 Q -- that you've looked at? I'm sorry. You 18 answered before I finished my question. 19 Can you distinguish Exhibit 23, an illustration 20 dated May 3rd, 2004, from any of the other illustrations 21 that we talked about? 22 A No. 23 Q Okay. So far, after almost two days of 24 testimony, you can't tell which illustration you relied on 25 or which illustration where you first saw that it was --</p> <p style="text-align: right;">Page 101</p>

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