Blumenthal v New York Life

Exhibit 1

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

WORD FOR WORD REPORTING, LLC 3250 CHASE BANK BUILDING 100 N. BROADWAY OKLAHOMA CITY, OKLAHOMA 73102

CONDENSED

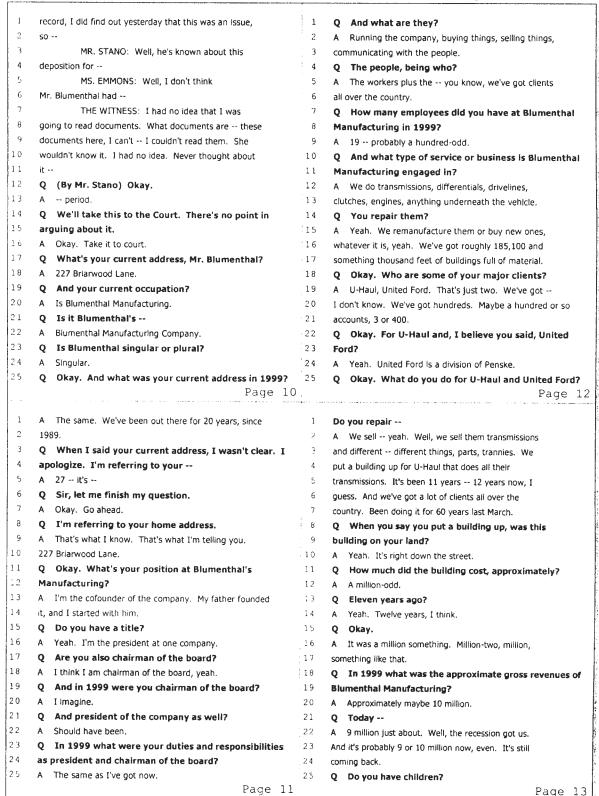
Reported by: Retta M. Brittain, CSR

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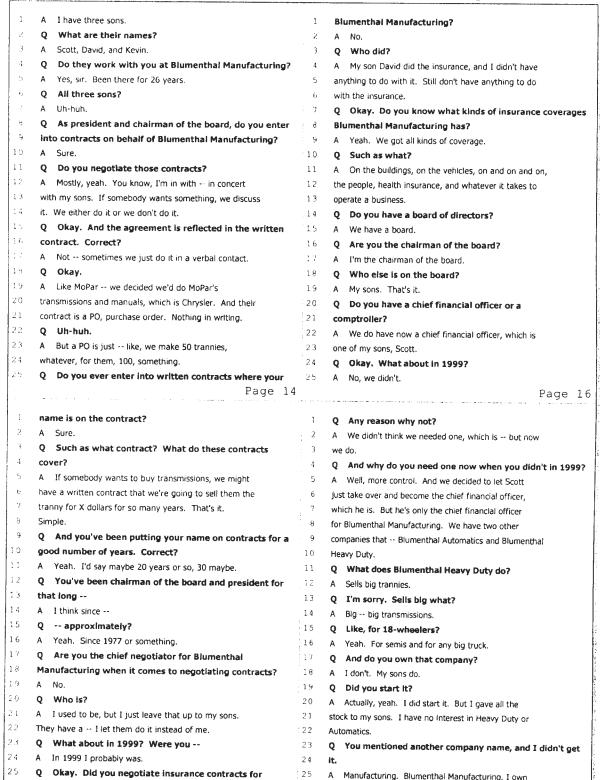
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4 (Pages 10 to 13)



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5 (Pages 14 to 17)



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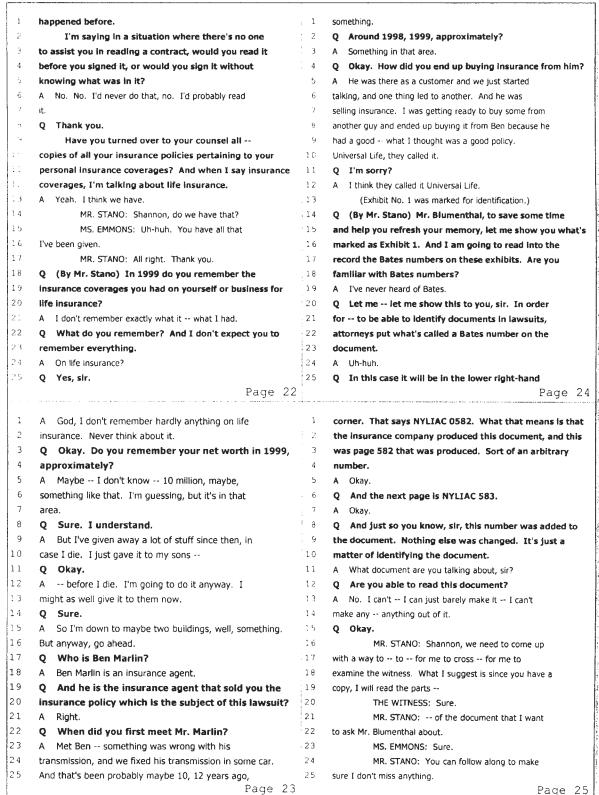
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7 (Pages 22 to 25)



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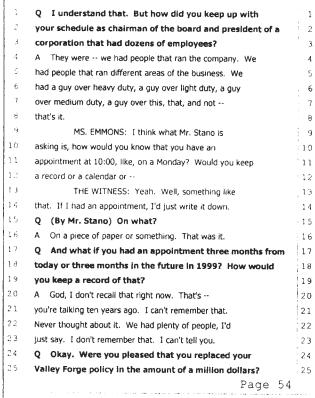
12 (Pages 42 to 45)



			12 (Pages 42 to 4
1	A No.	1	that you and Mr. Marlin discussed during the sales
2	Q Okay. Do you recall discussing this with Mr. Marlin	2	process?
3	in 1999?	3	A I can't recall any documents that we discussed. I
4	A No. Huh-uh.	4	can only recall what Ben told me. And I can recall that,
5	Q Sir, in your supplemental responses in discovery	5	but I can't recall any documents we discussed, none.
ô	I believe it was 5A you specifically refer to this	. 6	Q Sir, I'm curious. Are you saying that the document
7	document and this page number.	7	that don't support your position and we'll get to
8	A I did?	. 8	those you don't recall, but the one oral statement
9	Q Your attorneys did. But your testimony today is you	9	that purportedly supports your position, you do recall?
0	don't recall it. Correct?	10	Of all the of all the information thrown at
1	A Wait a minute.	11	you in the past ten years that was the point you mad
2	Q Now all of the sudden you remember it?	12	earlier
3	A No. I don't remember it.	13	A That
4	Q Okay.	14	Q is that your testimony today?
5	A Why would I remember It?	15	A My testimony is that I can't recall a ten-year-old
6	Q Sir, my question to you is, do you remember it or	16	•
7	not?	17	document.
8	A I don't, period.	18	Q But you can recall parts
9	Q Okay. Thank you.	19	A I can remember what Ben said, but I can't recall a
0	•		ten-year-old document.
1	Do you know who Mark Call Jack	20	Q Okay.
2	Do you know who Mark Cain is? A Sure.	21	A Yes. That is exactly right. I do not recall this
3		22	document
<i>3</i> 4	Q Who is Mark Cain?	2 3	Q Thank you.
5	A He's our CPA.	24	A period.
,	Q Was he your CPA in 1999? Page 42	25	Q Sir, let me show you what's marked as Exhibit 3, Page
	and the state of the	1	
2	A Yeah. Q Do you remember asking Mr. Marlin to discuss these	: 1	Bates No. NYLIAC 0160 through 0162,
3	figures with Mark Cain?	2	MR. STANO: And, Shannon, I suggest we go
1	A I don't remember it.	. 3	off the record while he has a chance to look at this.
5		. 4	MS. EMMONS: Okay, That's fine.
	Q Is it possible it happened	: 5	MR. STANO: And let me give you a copy.
5 }	A It could	. €	(Off the record.)
	Q but you just don't remember?	7	Q (By Mr. Stano) We had an off-the-record discussion
	A It could happen. I just don't recall it.	Ė	regarding Exhibit 3. Mr. Blumenthal, I believe you have
,	Q Is it possible that you reviewed this document and	9	stipulated that your signature is on page 160 and 162.
	you just don't recall it?	10	Is that correct?
	A Anything is possible. I don't recall this document,	11	A Absolutely.
	A Anything is possible. I don't recall this document, period.	11	A Absolutely. Q Do you recall signing this form?
			•
:	period.	. 12	Q Do you recall signing this form? A No.
3	period. Q Okay. Fair enough.	12	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999?
: : : :	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your	12 13 14	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period.
3	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999?	12 13 14	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with
3	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999? A He's not a comptroller. Mr. Cain has been our CPA	12 13 14 15	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you
33	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999? A He's not a comptroller. Mr. Cain has been our CPA for 30 years at least, 40 maybe.	12 13 14 15 16	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you signed various documents?
33 33 33 33 33 33 33 33 33 33 33 33 33	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999? A He's not a comptroller. Mr. Cain has been our CPA for 30 years at least, 40 maybe. Q Is he an outside CPA? A Yeah. And he's still our CPA.	12 13 14 15 16 17 18	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you signed various documents? A You know, I don't really recall that. But I'm sure
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	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999? A He's not a comptroller. Mr. Cain has been our CPA for 30 years at least, 40 maybe. Q Is he an outside CPA? A Yeah. And he's still our CPA. Q Having reviewed Exhibit 2, the document we just got through with discussing, it doesn't bring back or refresh your memory in any way?	12 13 14 15 16 17 18 19 20 21 22	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you signed various documents? A You know, I don't really recall that. But I'm sure I did, because there they are. I don't recall it. Q Did you read those documents before you A No.
	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999? A He's not a comptroller. Mr. Cain has been our CPA for 30 years at least, 40 maybe. Q Is he an outside CPA? A Yeah. And he's still our CPA. Q Having reviewed Exhibit 2, the document we just got through with discussing, it doesn't bring back or refresh your memory in any way? A Not one thing can I recall in this particular	12 13 14 15 16 17 18 19 20 21 22 23	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you signed various documents? A You know, I don't really recall that. But I'm sure I did, because there they are. I don't recall it. Q Did you read those documents before you A No. Q signed them? Sir, let me finish my question.
0	period. Q Okay. Fair enough. Was Mr. Marlin I'm sorry. Was Mr. Cain your CPA or comptroller in 1999? A He's not a comptroller. Mr. Cain has been our CPA for 30 years at least, 40 maybe. Q Is he an outside CPA? A Yeah. And he's still our CPA. Q Having reviewed Exhibit 2, the document we just got through with discussing, it doesn't bring back or refresh your memory in any way?	12 13 14 15 16 17 18 19 20 21 22	Q Do you recall signing this form? A No. Q And this form would is dated January 18th, 1999? A I have no recollection of that, period. Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you signed various documents? A You know, I don't really recall that. But I'm sure I did, because there they are. I don't recall it. Q Did you read those documents before you A No.

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15 (Pages 54 to 57)



Q I'm not -- that's not my question, sir. My question
to you is, do you have any allegations of wrongdoing
against New York Life Insurance and Annuity Corporation
with regard to the replacement of your Valley Forge life
insurance policy?
A Do I have any -Q Are you blaming New York Life Insurance and Annuity
Corporation?
A For what?
Q Are you -1 A No. I'm not --

14 A No.
15 Q Sir, let me finish. I'll try to be a little more
16 Clear. And I apologize.

With regard to the replacement of your Valley Forge life insurance policy, are you claiming that you were damaged in any way?

Q Sir, that's what I'm asking you. With regard to the

20 A No.

Q Okay. With regard to the replacement of any of your insurance policies in 1999, are you claiming that you

were damaged in any way?A No. Not by New York Life, no.

replacement of your --

Q By New York Life, we mean New York Life Insurance

Page 56

A I don't even recall Valley Forge as an insurer. I know -- I don't even recall them. 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 against NYLIAC making certain allegations, and one of 1.0 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 1.4 now, do you have any objections to the replacement of 15 this policy? 16 A Of the Valley Forge policy? 17 O Yes, sir. 18 A Do I have a what, now? 19 Q Do you have any objections or any accusations to

make against New York Life Insurance and Annuity

A It's never come up. I don't even -- I cannot even

I have something against Valley Forge?

follow what you're talking about in this case. Why would

Corporation with regard to the replacement of your Valley

20

21

2.2

24

23

Forge policy?

1 and Annuity Corporation. 2 A Yeah. Whoever it is. No. I haven't seen it. 3 Q Okay. 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 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 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.

Q -- what would happen, was he -- was he referring to a document as he explained it?

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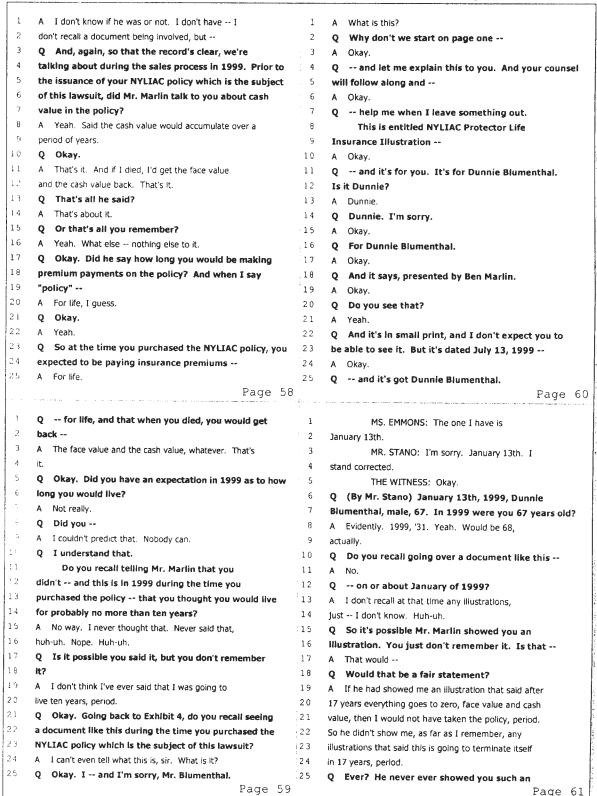
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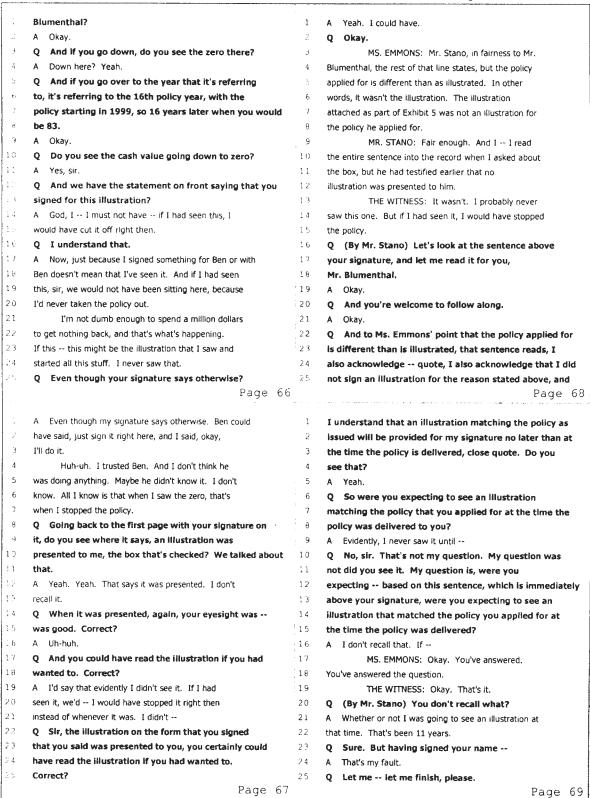
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16 (Pages 58 to 61)



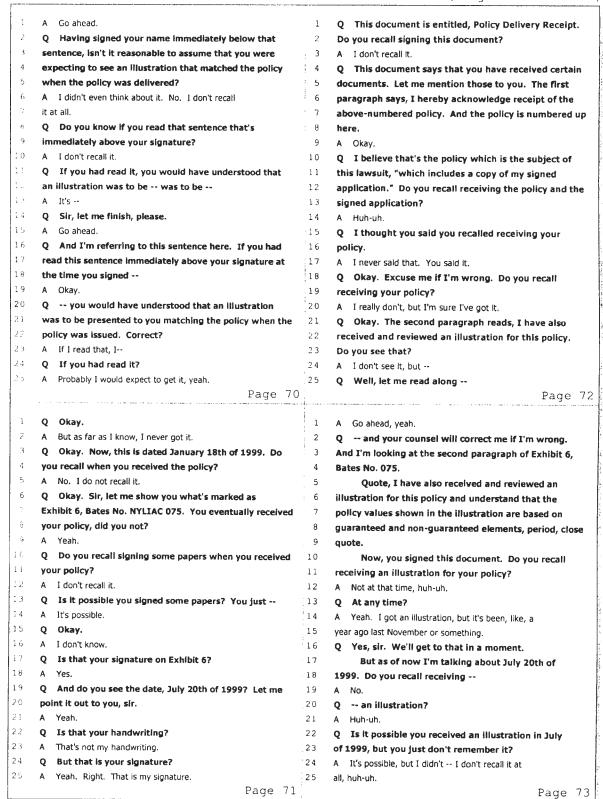
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18 (Pages 66 to 69)



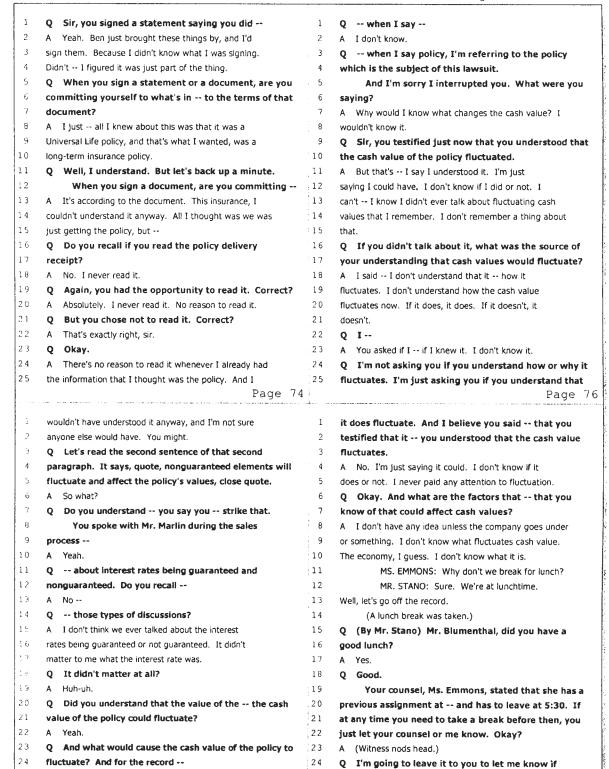
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19 (Pages 70 to 73)



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20 (Pages 74 to 77)



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you --

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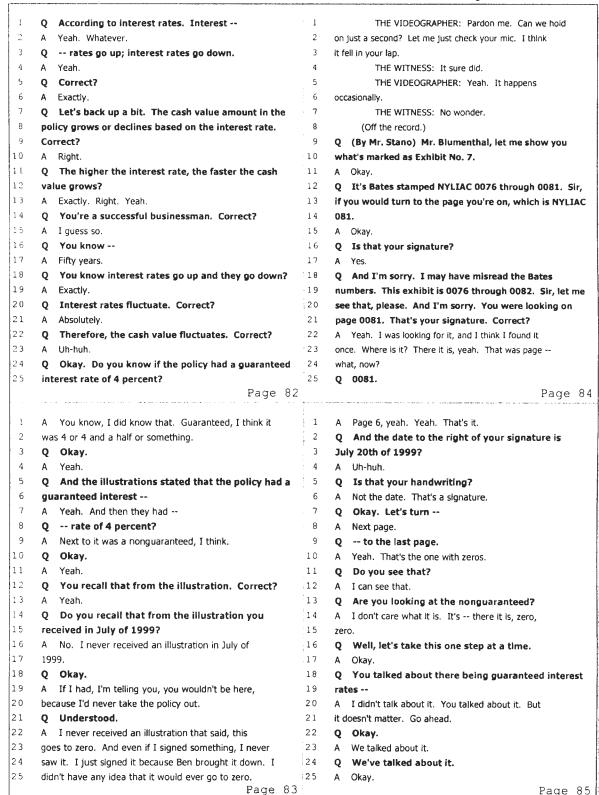


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A Interest rate?

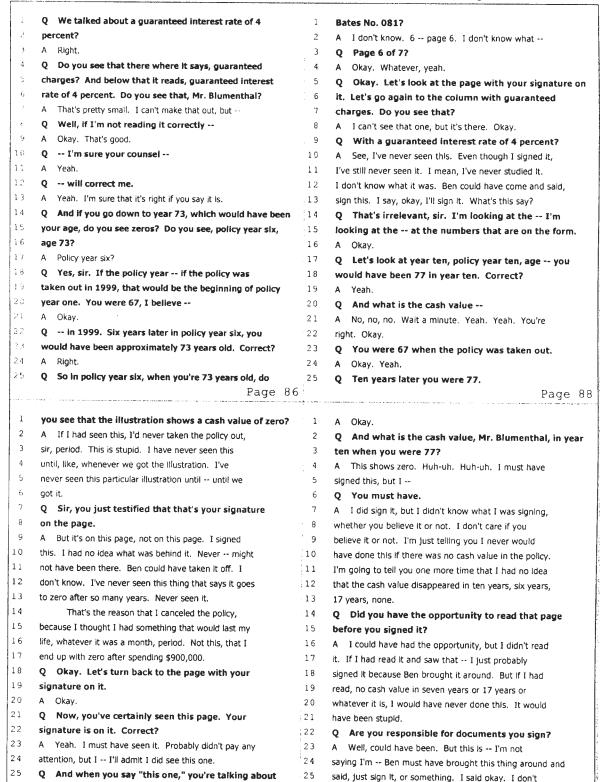
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22 (Pages 82 to 85)



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23 (Pages 86 to 89)



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20

21

22

23

24

25

Q Is it Dunnie?

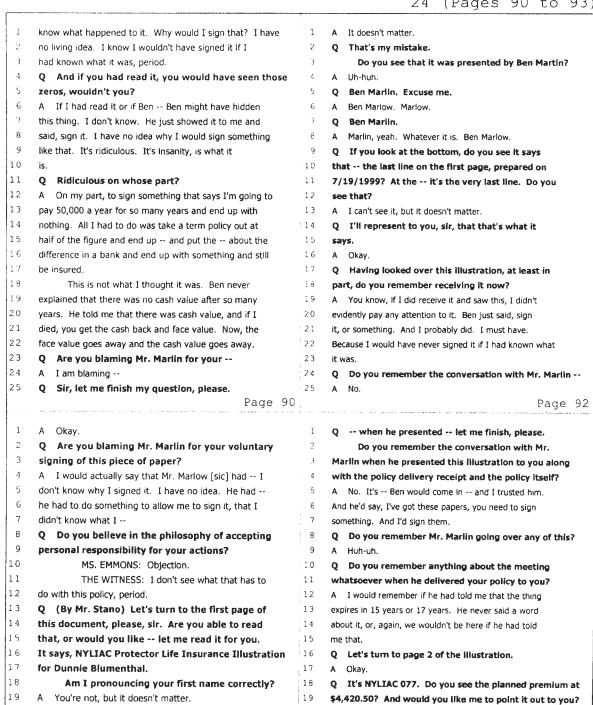
Q Okay.

A It's pronounced Dunnie.

apologize if I misstated it.

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24 (Pages 90 to 93)



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20

21

22

23

24

25

A Yeah. I can't see it.

Q \$4,420.50. Do you see that as the plan premium?

A No. I don't see it, but it probably was.

Q Right there.

O Right there.

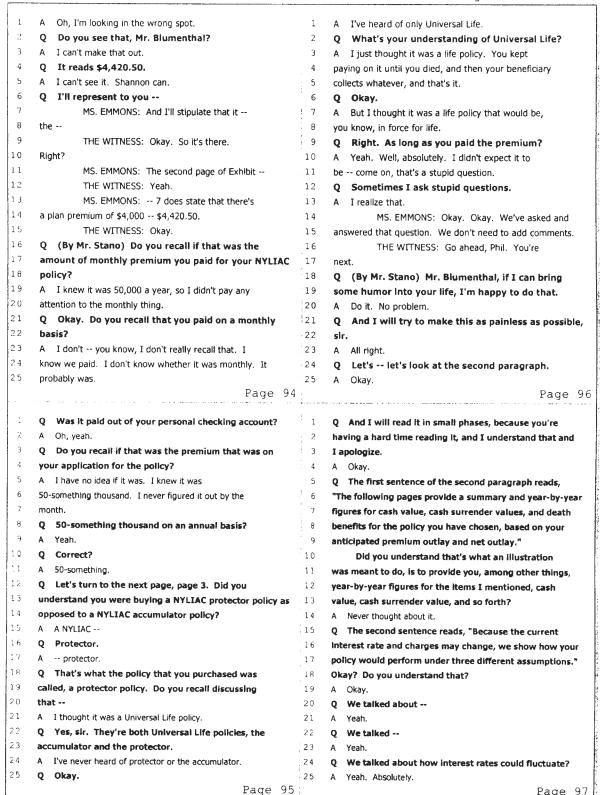
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A You can call me Dummy, would be more appropriate.

Q No, sir. I want to call your name properly, and I

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25 (Pages 94 to 97)



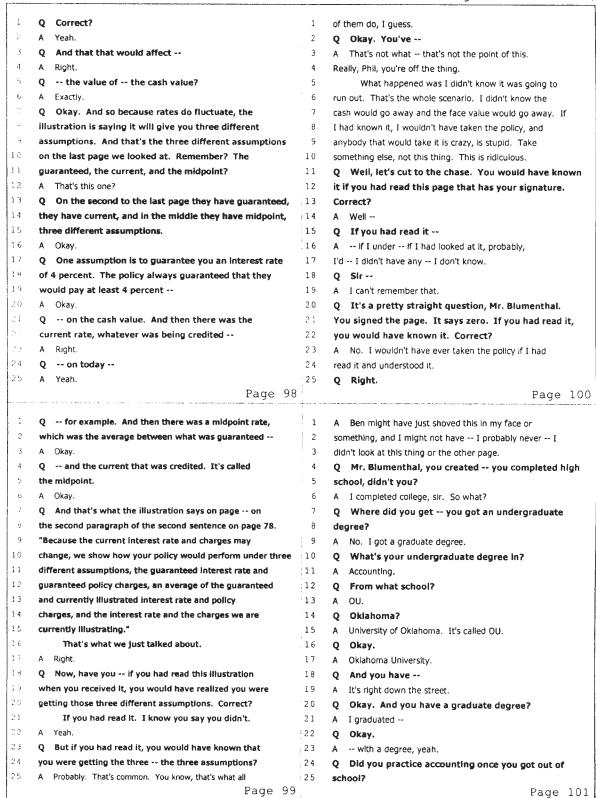
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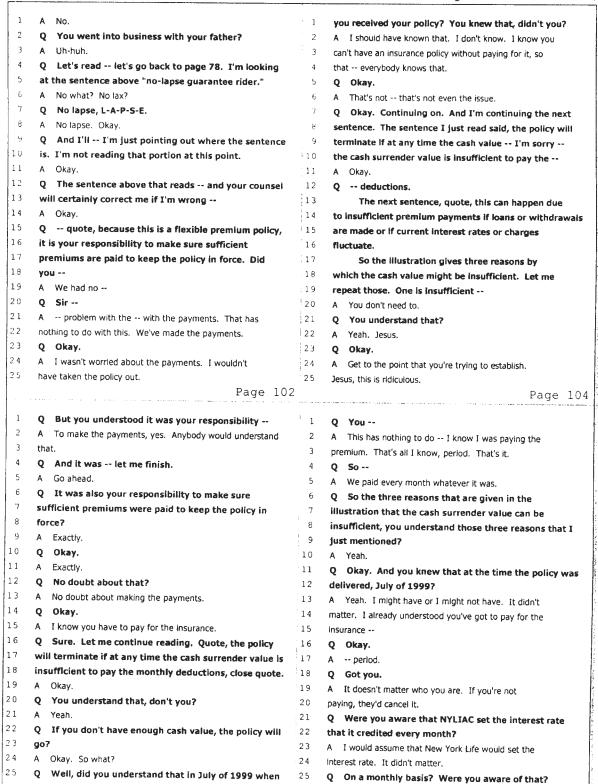
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26 (Pages 98 to 101)



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27 (Pages 102 to 105)



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28 (Pages 106 to 109)

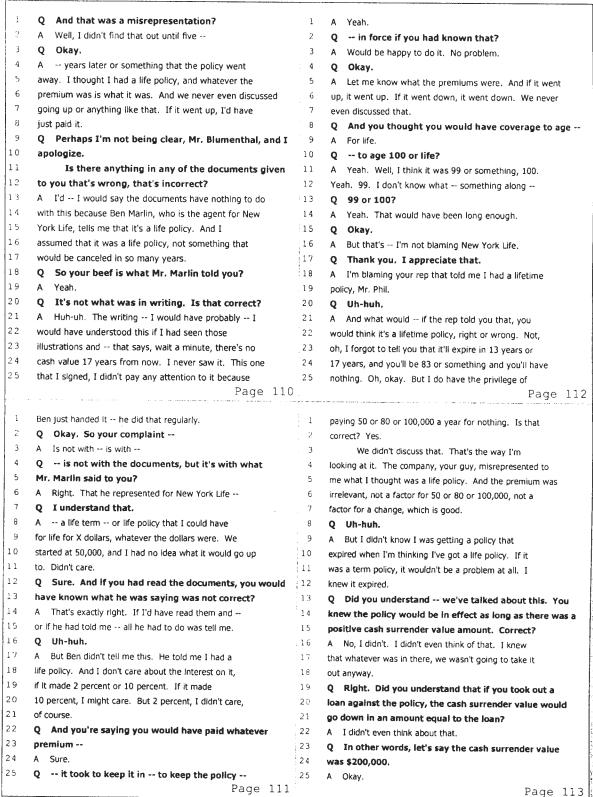


1	A I didn't know if it was a monthly basis. But what	1	with
2	difference does it make?	2	Q Okay.
3	Q Well, you understand that the amount of interest	3	A New York Life.
1	credited affected the cash value. So that does make a	4	Q All right. Let me restate the question this way.
	difference, doesn't it, as to when	5	Of all the documents Mr. Marlin gave to you, were the
á	A Not that much. 4 percent or something is not a big	6	any of the documents strike that.
7	deal. It wouldn't matter if they paid 1 percent or no	: 7	Did any of the documents contain
В	percent. I just wanted the coverage.	. 8	misrepresentations?
9	Q Sure.	. 9	A Well, they must have, or I wouldn't have signed
0	A Not the interest rate and whatever it was.	10	these things.
1	Q Looking at page 079, page 4 of 7, which I've turned	11	Q If you're saying there are misrepresentations in the
2	to, it says at the top under interest rates, quote,	12	
3	interest is credited based on our current rates, which	13	documents given to you by Mr. Marlin, I'd like you to
4	are not guaranteed, but will not be lower than 4 percent.	14	point those misrepresentations out to me.
5	A Right. Who cares? I didn't we're not discussing		A Well, he never showed never told me that this
6	•	15	would go away. I had the understanding that it was a
7	Interest rates. We're discussing misrepresentation.	16	life policy, and if the premiums went up, they went up.
8	Q Yes, sir. Did you understand that Interest rates	17	I didn't care if they went up to 100,000. If I wanted
	that current interest rates were not guaranteed?	18	the policy, I'd buy the policy.
9	A I didn't care if they were guaranteed or not. What	19	Q Okay.
0	difference does It make?	20	A It's as simple as that.
l	Q I'm not	2 1	Q Those are oral misrepresentations?
2	A I wasn't living off of the cash value	: 22	A Yeah. Oral.
3	Q Okay.	2 3	Q Those are statements he made?
4	A expecting to get whatever. Whatever the cash	2.4	A Right, Right.
5	value was is what it was. Page 106	2.5	Q Let's maybe I wasn't clear. Let's focus on the
	Page 106		Page 1
1	Page 106 Q You're saying you're saying you're talking not	1	Page 1 written misrepresentations.
1	Page 106 Q You're saying you're saying you're talking not Interest rates but misrepresentation. That's what you	1 2	Page 16 written misrepresentations. A As far as I know, I never got any information from
1 2 3	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right?	1 2 3	Page 16 written misrepresentations. A As far as I know, I never got any information from New York Life.
1 2 3	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my	1 2 3 4	Page 10 written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay.
1 2 3 4	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my mind, for a Universal Life policy. That's what I'm	1 2 3 4 5 5	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin.
1 2 3 4	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my mind, for a Universal Life policy. That's what I'm saying. Interest rates had nothing to do with this. I	1 2 3 4 5 5 6	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin. Q Of the written I'm sorry. I didn't mean to
1 1 2 3 4 5 7	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my mind, for a Universal Life policy. That's what I'm saying. Interest rates had nothing to do with this. I didn't need 4 percent of whatever it is, 200,000. It's	1 2 3 4 5 5 6 7	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin. Q Of the written I'm sorry. I didn't mean to interrupt.
1 2 3 4 5 6	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my mind, for a Universal Life policy. That's what I'm saying. Interest rates had nothing to do with this. I didn't need 4 percent of whatever it is, 200,000. It's \$8,000.	1 2 3 4 5 6 7 8	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin. Q Of the written I'm sorry. I didn't mean to interrupt. A That's all right.
11 2 3 4 5 6 7	Page 106 Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my mind, for a Universal Life policy. That's what I'm saying. Interest rates had nothing to do with this. I didn't need 4 percent of whatever it is, 200,000. It's \$8,000. Q Did NYLIAC make any misrepresentations to you?	3 4 5 6 7 8 9	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin. Q Of the written I'm sorry. I didn't mean to interrupt.
1 2 3 4 5 6 7	Q You're saying you're saying you're talking not Interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, in my mind, for a Universal Life policy. That's what I'm saying. Interest rates had nothing to do with this. I didn't need 4 percent of whatever it is, 200,000. It's \$8,000. Q Did NYLIAC make any misrepresentations to you? A No. I don't think New York didn't. Ben did.	1 2 3 4 5 6 7 8 9 10	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin. Q Of the written I'm sorry. I didn't mean to interrupt. A That's all right. Q Of the written information you received from
11 22 33 44 55 66 77 88 99	Q You're saying you're saying you're talking not interest rates but misrepresentation. That's what you just said. Right? A I just said that this was misrepresented, In my mind, for a Universal Life policy. That's what I'm saying. Interest rates had nothing to do with this. I didn't need 4 percent of whatever it is, 200,000. It's \$8,000. Q Did NYLIAC make any misrepresentations to you? A No. I don't think New York didn't. Ben did. Q When you say New York, you mean New York Life	1 2 3 4 5 1 6 7 8 9 10 11	written misrepresentations. A As far as I know, I never got any information from New York Life. Q Okay. A Only through Ben Marlin. Q Of the written I'm sorry. I didn't mean to interrupt. A That's all right. Q Of the written information you received from Mr. Marlin, whether it was from him, his agency, New York Life Insurance and Annuity Corporation
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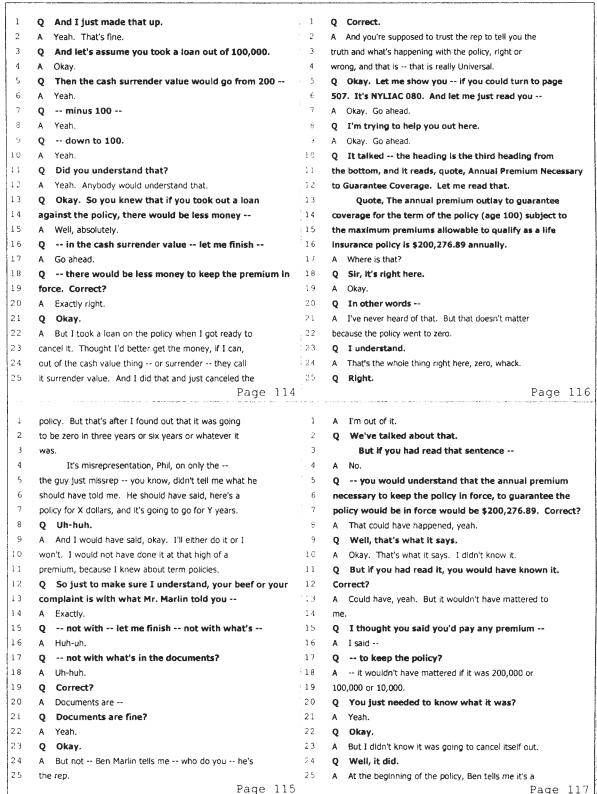
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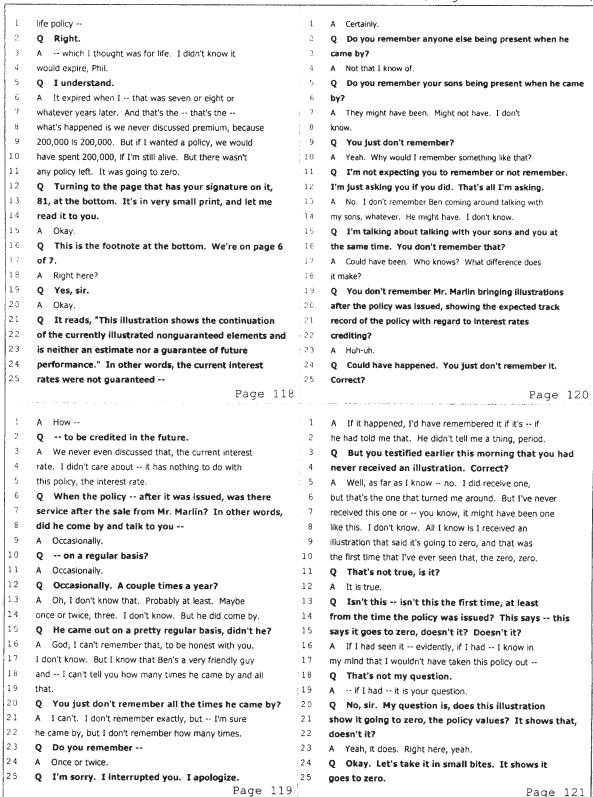
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30 (Pages 114 to 117)



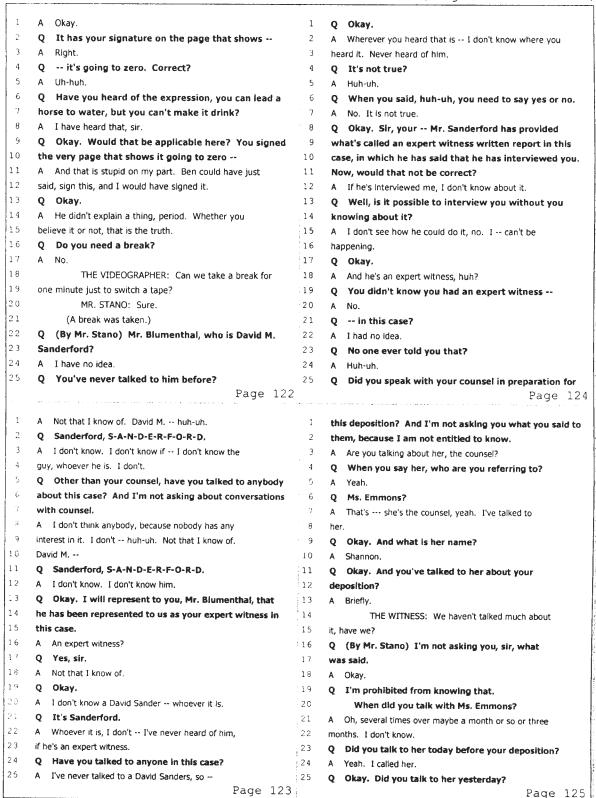
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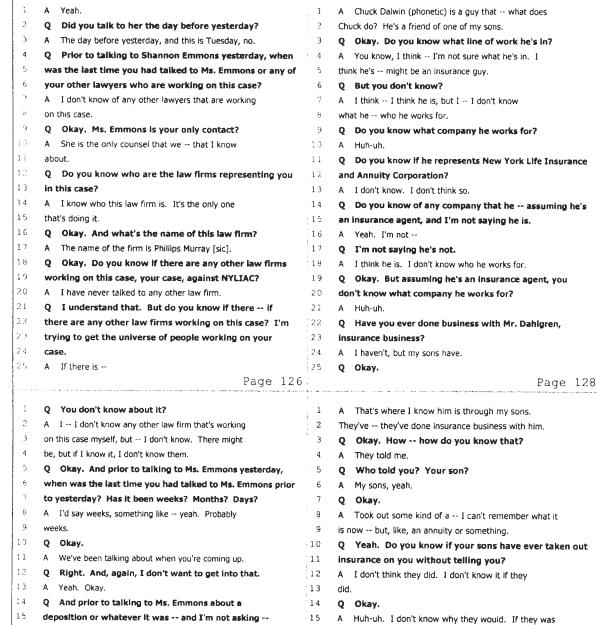
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16 when was the last time you had talked to Ms. Emmons 1.7 before that? 18 A Oh, God. I don't remember it. I can't remember 19 that. 20 21 A Maybe. Could be. I don't know. I can't remember 22 that, when we talked last before that, 23

Q Okay. Who is Chuck Dahlgren (phonetic)?

Q It's been a long time. Correct?

A I don't know. Can't remember it.

21 22 23 Q Okay. 24

.16

17

18

19

20 Q Have you ever consulted Mr. Dahlgren for insurance advice? And if I've asked you that, I apologize.

Q And I'm not saying they did or they didn't. I'm

going to take insurance out, I'm sure they'd tell me.

A No.

just asking.

A Yeah, No.

THE WITNESS: Shannon, do you got a

marker?

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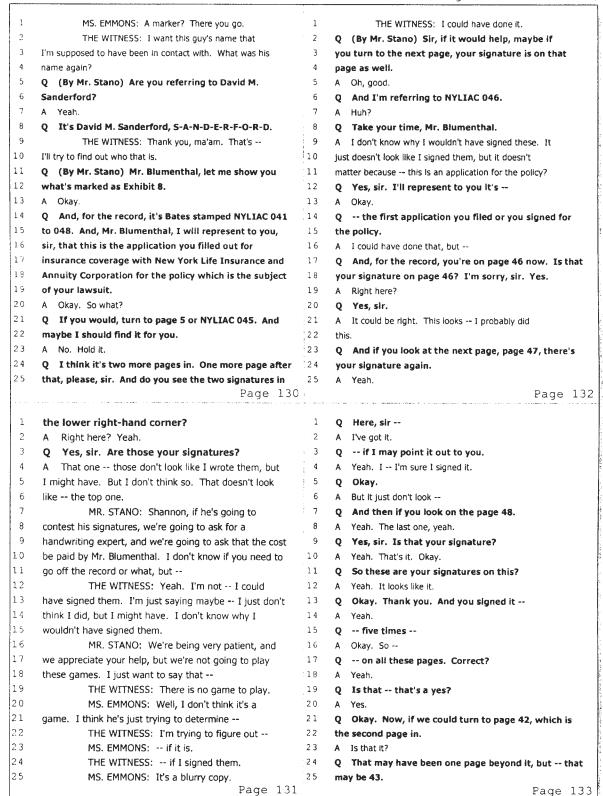


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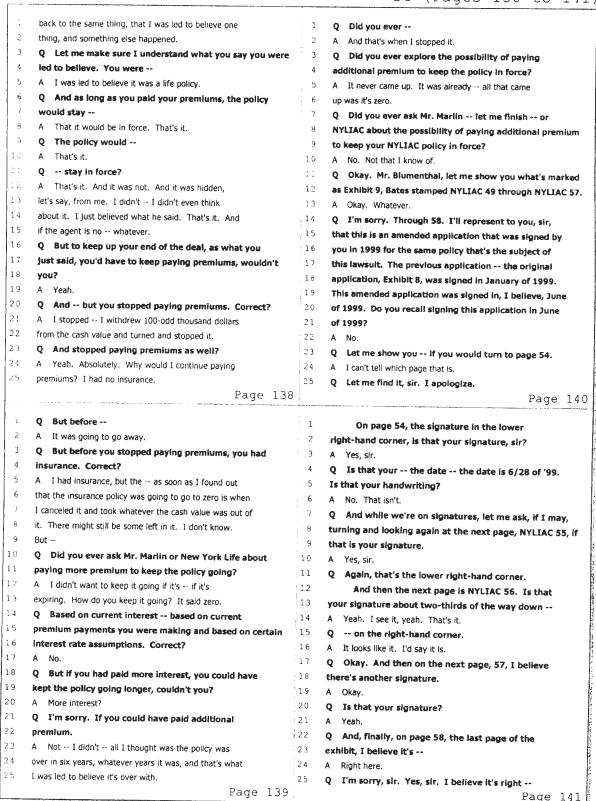
34 (Pages 130 to 133)

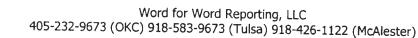


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36 (Pages 138 to 141)

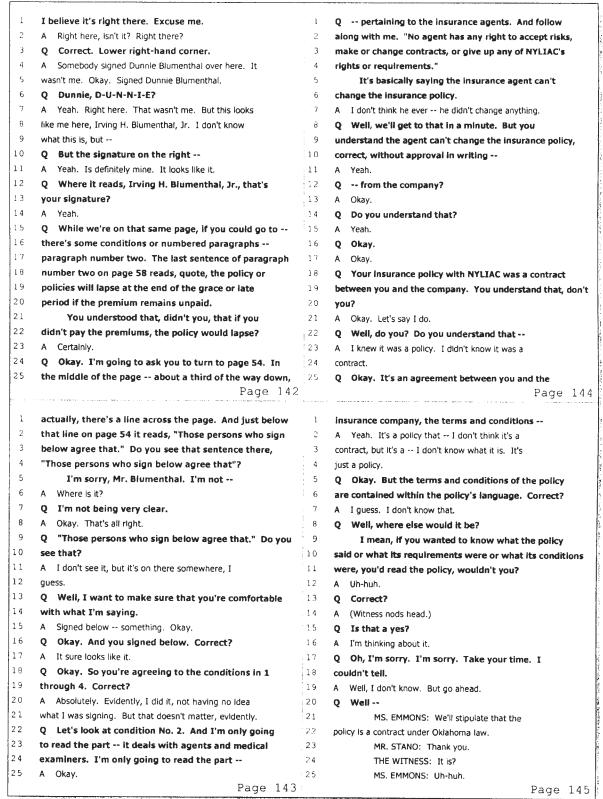






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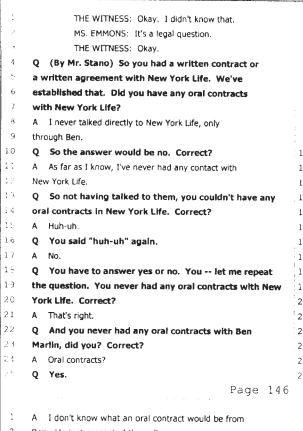
37 (Pages 142 to 145)



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the policy in

38 (Pages 146 to 149)



	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.
5		Page 14
		The state of the s

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 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

Q And as long as you paid the insurance premiums?

24

25

Page 148 Q When did he -- when did he say that to you? 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 know is I canceled the policy because it was going to go 6 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. 1.0 A Yeah. Q Did Mr. Marlin tell you this in a face-to-face 11 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 when this came up, that's when I canceled it, not because 15 16 of any payments. Payments had not -- had nothing to do 17 with it. 1.8 Q Would it have been around 2006? 19 A Could have been. Probably was. That might have 20 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?

A No. The policy would have expired later, like, in

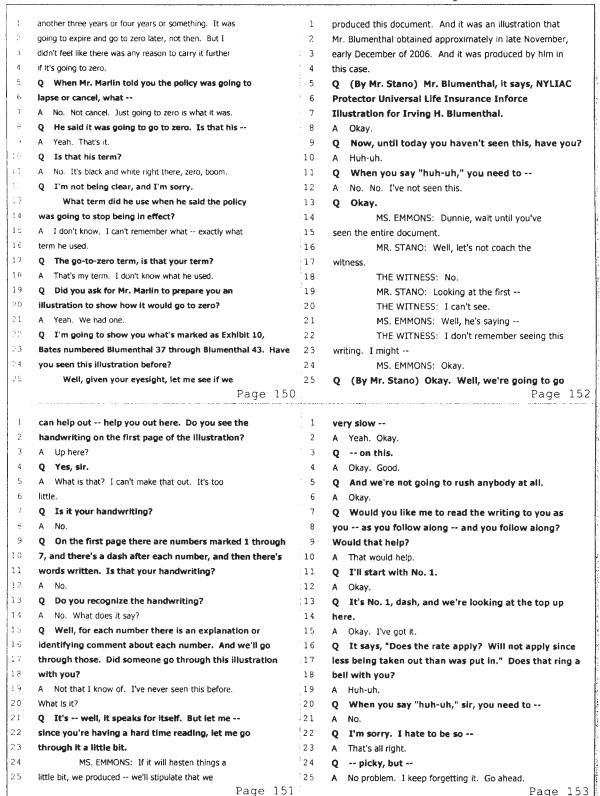
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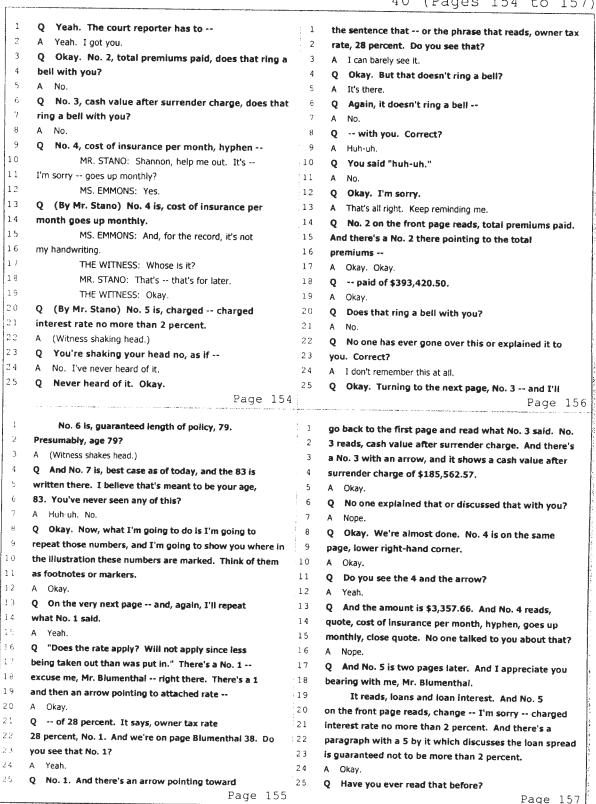
39 (Pages 150 to 153)



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(Pages 154 to 157)

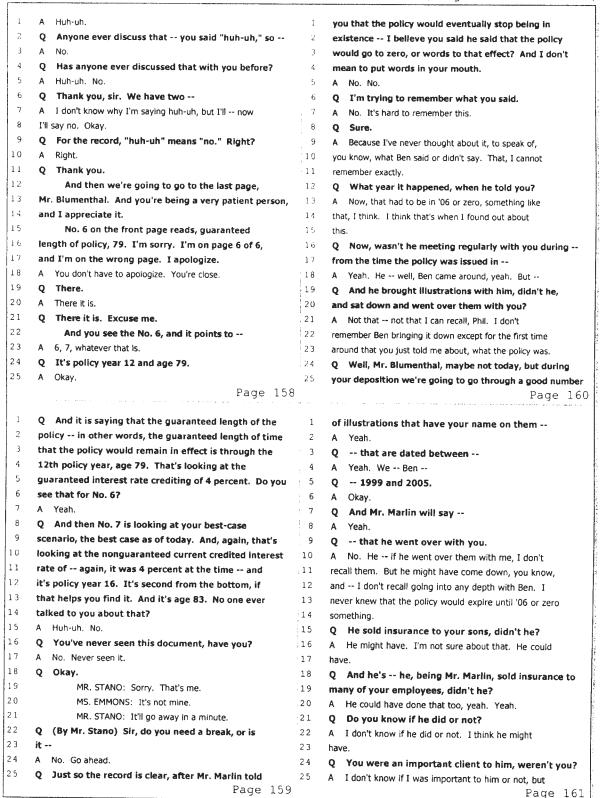






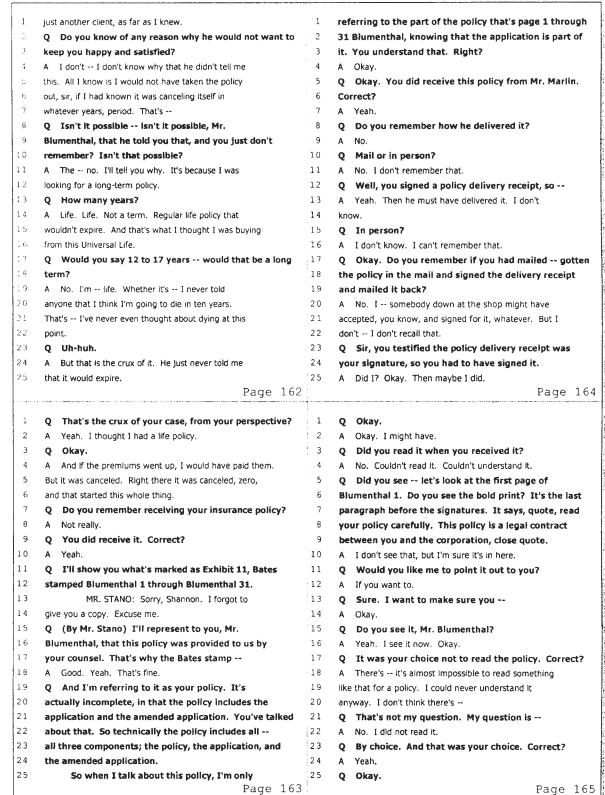
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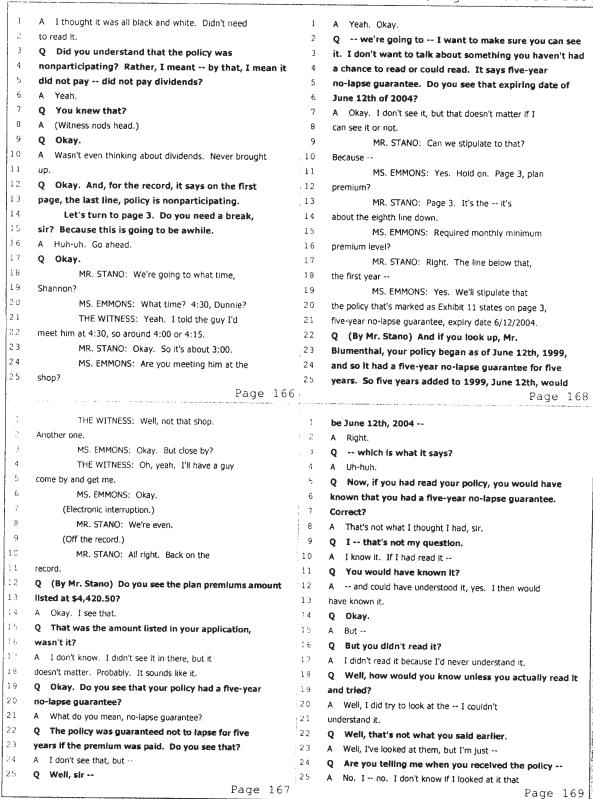
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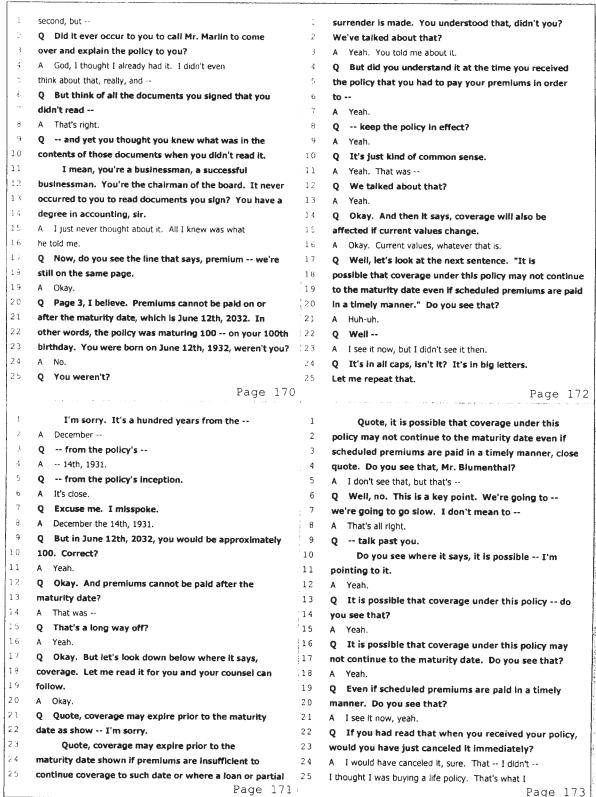
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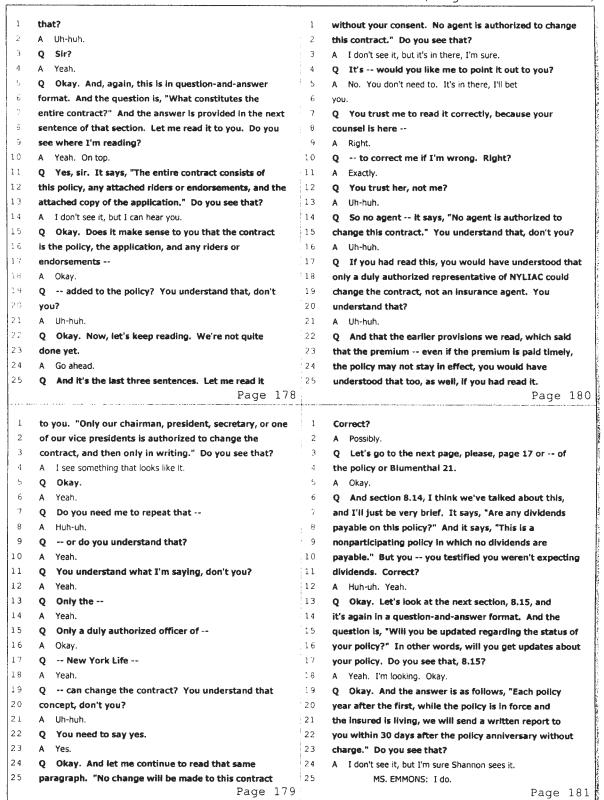
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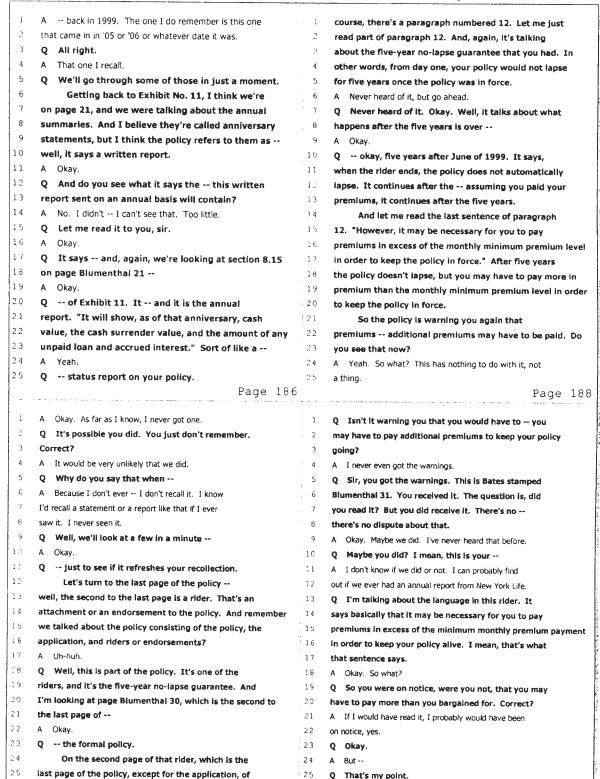
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49 (Pages 190 to 193)

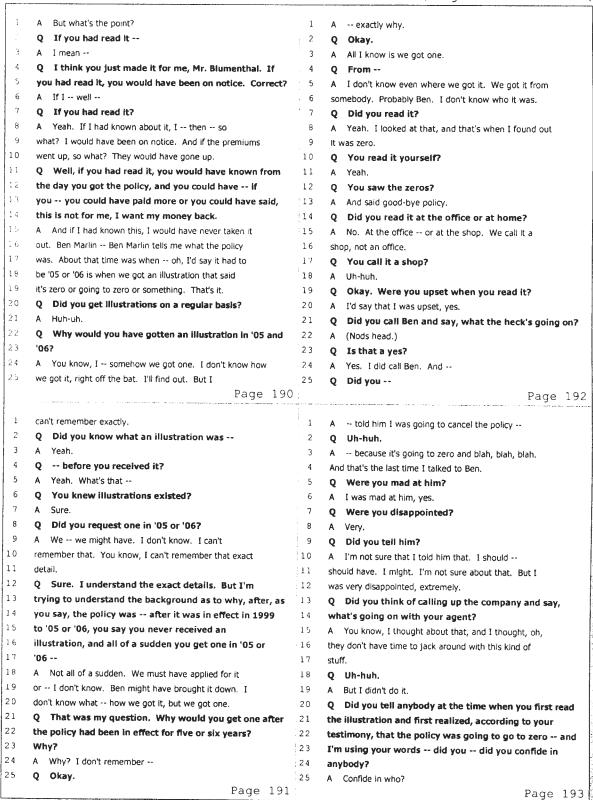


Exhibit 2

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

Page 1

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 WORD FOR WORD REPORTING, L.L.C. 3520 CHASE BANK BUILDING 100 NORTH BROADWAY OKLAHOMA CITY, OKLAHOMA 7310 CONDENSED

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

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TRANSCRIPT

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

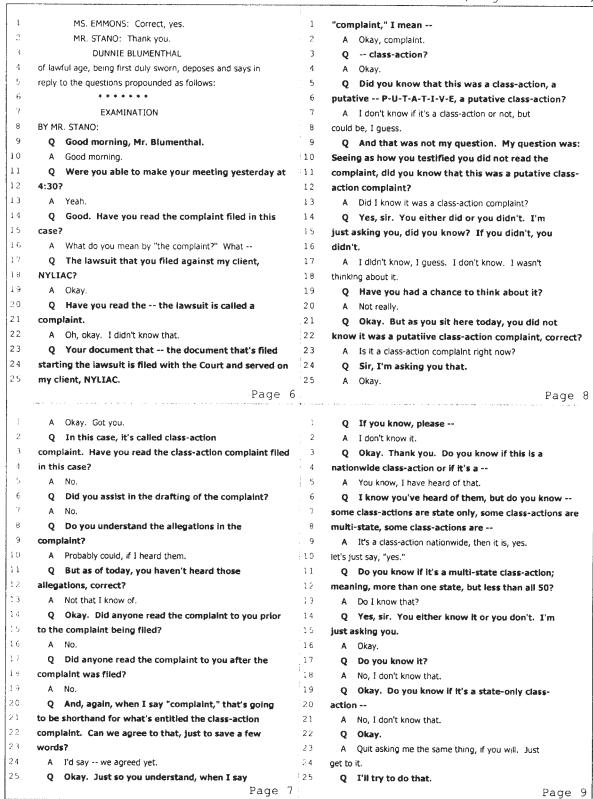
2 (Pages 2 to 5)

r				2 (rages 2 to 3)
1	APPEARANCES		. 1	EVUIDIT INDEV
2	For the Plaintiff:		. 1	EXHIBIT INDEX
3	Shannon Emmons			(Continued)
	Phillips Murrah		2	
4	101 North Robinson		3	
	Thirteenth Floor		4	Exhibit PAGE
5	Oklahoma City, Oklahoma 73102		5	25 109
6	Country Referedants		6	26 112
7	For the Defendant:		. 7	27 120
ĺ <i>'</i>	Phillip E. Stano		8	
8	Sutherland Asbill & Brennan			28 126
	1275 Pennsylvania Avenue, Northwe	st	9	
9	Washington, DC 20004-2415		10	
10	For the Defendant:		11	
11	Karen J. Lamp		12	
1.0	Attorney at Law		13	
12	New York Life Insurance Company		14	
13	51 Madison Avenue New York, New York 10010		15	
14	Also Present:		-	
15	Ben Savage, Videographer		16	
16			17	
	* * * * *		18	
17			19	
18			20	
19 20			21	
21			22	
22			23	
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24			2.4	
25			25	
		Page 2		Page 4
١,	T. D. E. O.E. CO. H. T. F. N.	T. C	: 1	CTIDULATIONS
1	TABLE OF CONTEN			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		7	
8	REPORTER'S CERTIFICATE			Oklahoma City, Oklahoma by Chrystal H. Vance, Certified
		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:
	Exhibit		.11	MS. EMMONS: The first stipulation is that
11	12	42	12	•
12	13	51		the parties have agreed to reserve all objections except
13	14	56	13	to form in the deposition. The second stipulation is that
14	15	58	14	the plaintiff has stipulated that the signature of Irving
15			15	Blumenthal on Pages 116 and 121 of Blumenthal 116 and 121,
1	16	60	16	are, in fact, his signature. And that at the time he
16	17	61	.17	signed his signature, he was attesting to the accuracy and
17	18	6 5	18	the truthfulness of the information provided by him and
18	19	67		• •
19	19	83	19	contained in the application for the Prudential Life
20	21	90	20	insurance policy.
21	22	93	21	MR. STANO: And, further, that all the
22	23	98	22	information contained in Blumenthal 110 through 125 was
23			2.3	true and accurate to the best of Mr. Blumenthal's
1	24	104	24	
24				knowledge and belief at the time he signed the
2.5		n	25	application.
I		Page 3		Page 5

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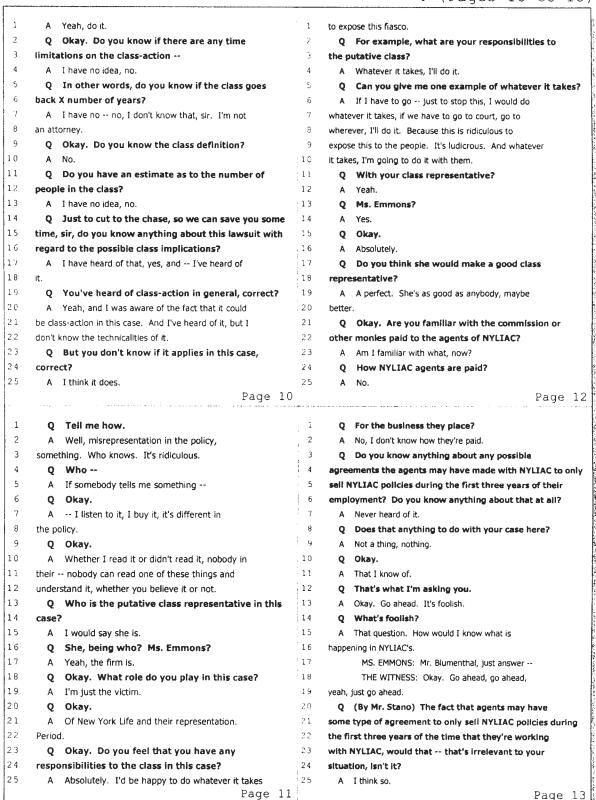
3 (Pages 6 to 9)



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

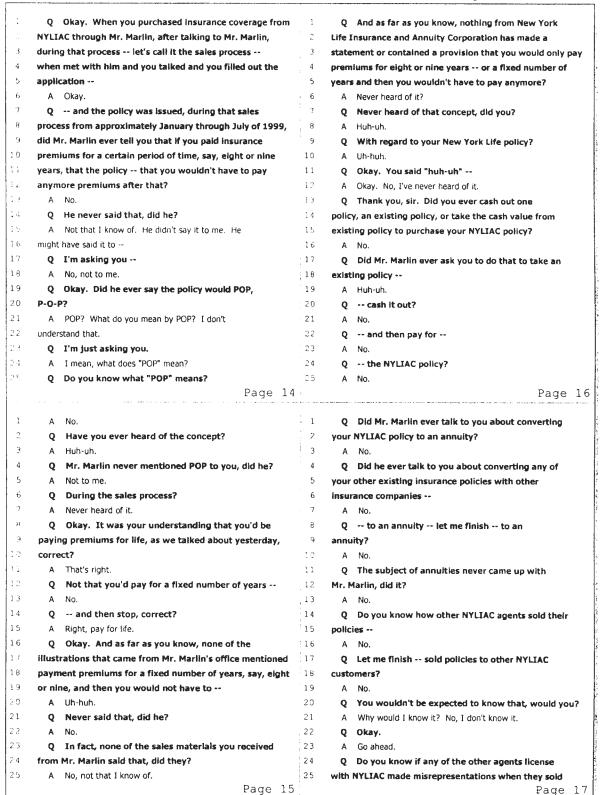
4 (Pages 10 to 13)



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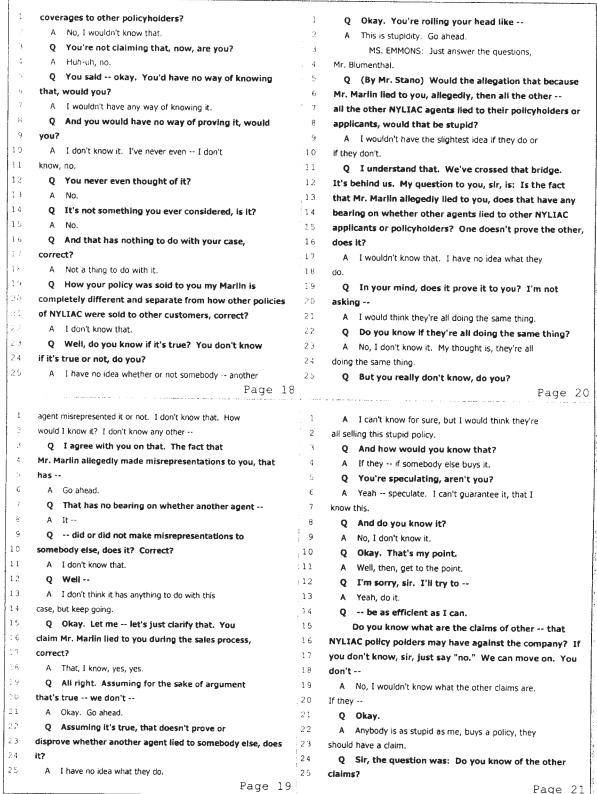
5 (Pages 14 to 17)



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

6 (Pages 18 to 21)

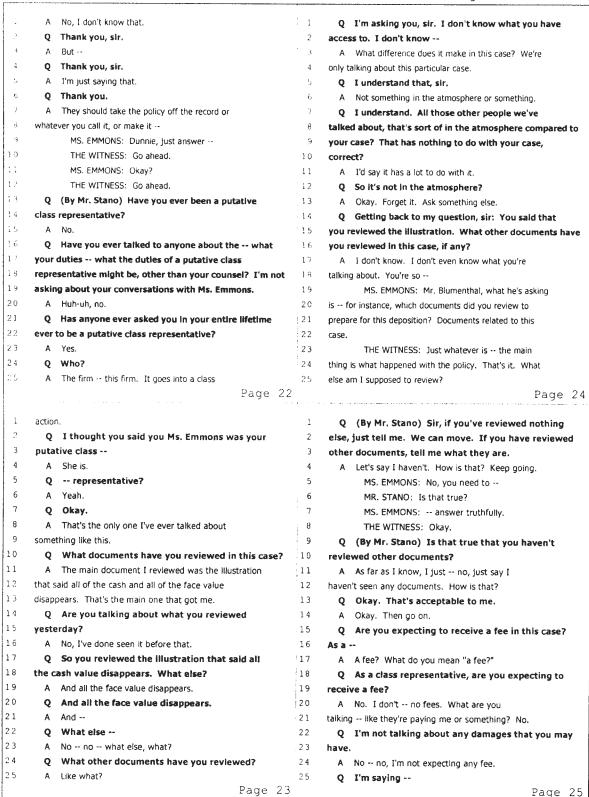


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7 (Pages 22 to 25)



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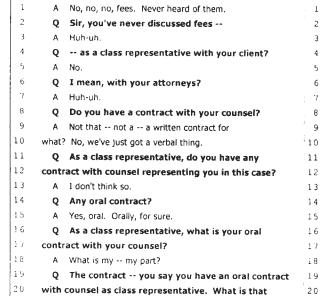
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25

with him.

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

8 (Pages 26 to 29)



A I never thought it was a contract. It's an

action. I'm going to participate in it. That's it. Just

agreement that -- that this Is -- goes into a class-

this is not a good policy to try to buy.

MR. STANO: Is there a contract as a class representative?

MS. EMMONS: No.

MR. STANO: I would like the contract you have with him to be produced. I'd like to review it.

MS. EMMONS: Well, and we've objected to that before.

MR. STANO: All right. We reserve. I'm not going to waste -MS. EMMONS: Sure.
[request]MR. STANO: -- deposition time here.
We're going to take that to the court.

Q (By Mr. Stano) So you have a contract,
Mr. Blumenthal, that you weren't aware of it until your
counsel just told you?

A That's right. I just -- you don't seem to understand, but my brain is turned around in the last few years, sir, and I cannot remember everything to the detail. Period.

Q I understand that --

A No, you don't understand it.

MS. EMMONS: Okay.

Q Is your, in your words, "brain turned around" so much that you may have signed contracts that you don't remember?

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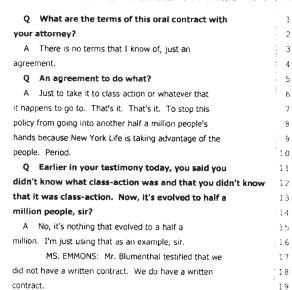
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THE WITNESS: We do? I didn't know it.

MS. EMMONS: -- have a written contract

MS. EMMONS: We do have a written contract

THE WITNESS: I didn't know that.

regarding his individual claims in this matter.

 $\ensuremath{\mathsf{A}}$. That could have happened, yes. That could have happened.

Q Is it only also possible that your -- in your words, your brained is turned around so much that you don't remember receiving illustrations that you received? Is that possible?

A $\;\;$ I'm not even going to answer that. Get on -- get on with it.

MS. EMMONS: No, Dunnie, you need to understand that he has asked a question and you answer it.

THE WITNESS: Okay. Repeat the question.

MR. STANO: Would you read the question back,

please.

(The last question was read back by the court

reporter.)

Q (By Mr. Stano) Do you understand question?
A Not really.

Q Just testified that your brain is so turned around that --

A No, I just said "my brain was turned around." I didn't say it was so turned around.

Q Okay. Using your words --

A Okay. Whatever.

Q -- that your brain was turned around --

A Whatever.

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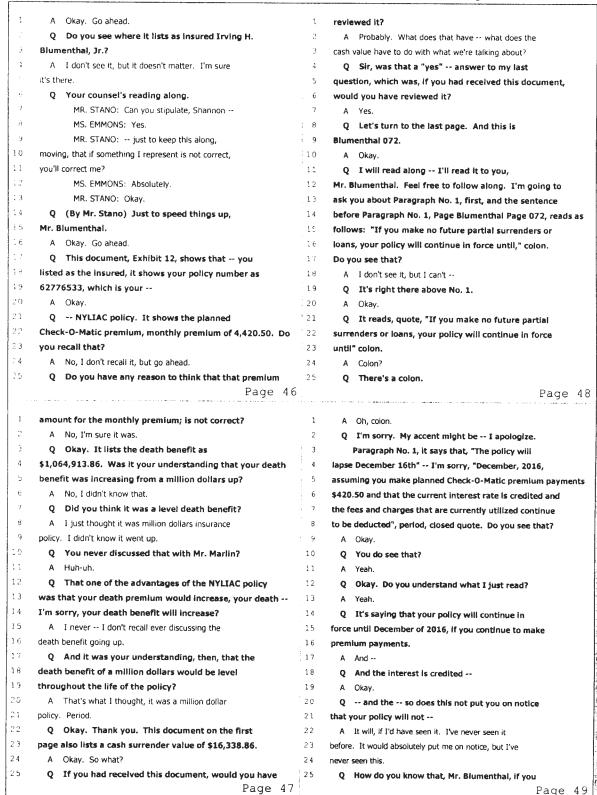
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Blumenthal vs. New York Life Case No. 5:08-CV-00456-F

13 (Pages 46 to 49)

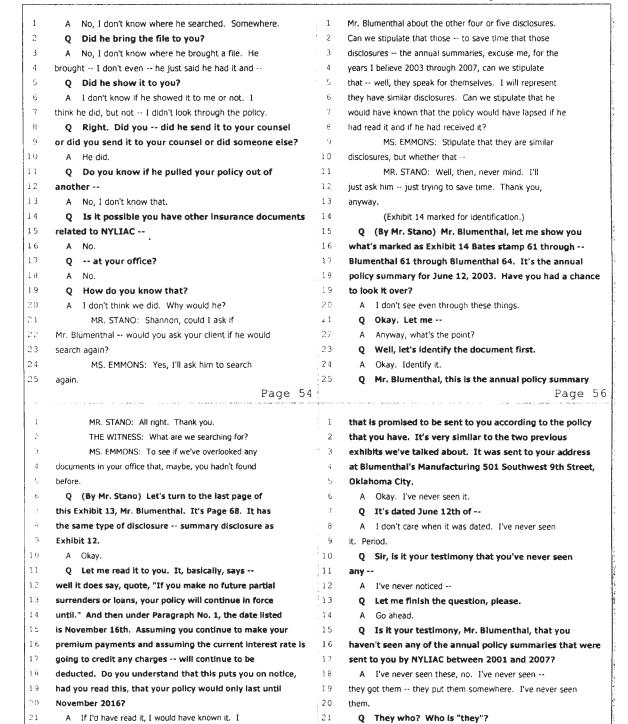


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15 (Pages 54 to 57)



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A Whoever --

Q Your staff?

A Yeah, whoever opened the mail or got the mail.

Q Filed it away or threw it away or whatever?

517475ea-3c98-47cb-b524-bd80323e82d3



didn't read it. Never seen it.

MR. STANO: Shannon, I'm going to ask

Q Never seen it?

A Huh-uh.

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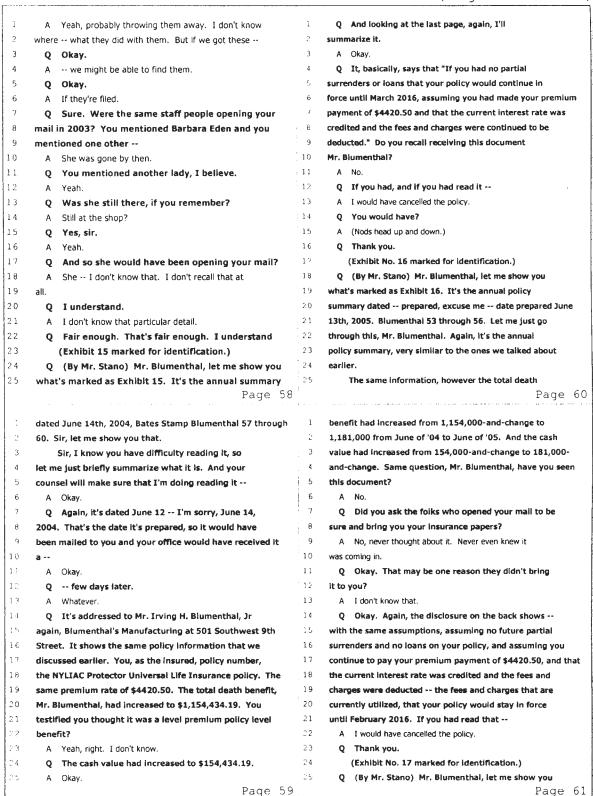
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16 (Pages 58 to 61)



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20 (Pages 74 to 77)



Q Was it your practice, you or the bookkeeper at	1	for a day-and-a-half, Mr. Blumenthal, correct?
Blumenthal's Manufacturing, to file annual financial	. 2	A I've never read those, that I know of. But even
A If they had them.	3	though I did sign it, that's I don't know how I signed
Q and keep records of them?	4	it without reading it.
A Nobody has ever seen these things. I've never	5	Q Given the existence of your signature on Exhibit
seen them, Debbie has never seen them, Scott's never seen	6	7, sir, how can you sit here today and say that if you had
them.	7	seen it you would have cancelled the policy?
Q Well, Debbie hasn't seen these exhibits, has she	7 B	A If I would have read it.
A No, I just asked her if we ever got any annual	9	Q Okay. That's different
report from New York Life on the insurance policy. She	10	A Yeah, yeah.
said, "No, not that I know of." Now, if she didn't see	11	Q That's different than saying if you had seen it.
them, I didn't see them I don't know where they went or	12	A Okay. Then as far as I know hell, I don't
where they were, because if I'd have seen those, I would	13	know. All I know is that
have cancelled the policy immediately. I'd have never	14	Q Well, you saw Exhibit 7, correct, because you
taken it out, if I knew it. That's not the policy that I	15	signed for it?
thought I was getting.	16	A I must have.
Q If you had read those reports?	17	Q Okay.
A If I had seen them. I didn't ever see	18	A But
	19	
Q Sir, you testified	20	Q That's my point, sir.
A Until well, let me correct that. I did see		A Okay.
that illustration. I did see an illustration in '06 or	- 21	Q Let's move on. Were you and Mr. Marlin persona
something, or '07.	22	friends
Q You're saying that if you had seen these annual	23	A No.
policy summaries, you would have cancelled the policy		Q Let me finish the question?
immediately, correct?	25	A Okay.
Page	741	Page
A Yeah.	1	Q Were you and Mr. Marlin personal friends between
Q Because you would have known it was going to	. 2	1999 and 2007?
zero, correct?	3	A No.
A Right.	4	Q Were you ever personal friends?
Q And that's your phrase for saying the policy	5	A No.
A Yeah.	6	Q Did you ever socialize with Mr. Marlin?
Q would have lapsed?	7	A No.
A Yeah.	8	Q Did you have any reason strike that.
Q Going back to Exhibit 7 from yesterday, sir,	. 9	Did you have any reason to see Mr. Marlin other
which has your name on it. We talked about that	10	than for business purposes?
A I know it. That's what's amazing.	11	A No.
Q Now, you saw	12	
	12	Q So stated differently, the only reason you would
A I signed that, I had to see it.		be seeing Mr. Marlin would be to discuss business,
Q But yet you but yet you didn't cancel,	. 14	correct?
correct?	15	A That would be it.
A Evidently, not	16	Q And the only business you discussed with
Q So the fact that you may have seen the annual	17	Mr. Marlin was the insurance business, correct?
policy summary doesn't mean you would have cancelled i	t, 18	A That would be it, yeah, but we never discussed
·	•	
the policy, unless you had read it, correct?	19	this.
·	19 20	



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insurance matters, correct? You said you weren't friends.

A Well, I don't know what -- you know, as far as I

Q But the main purpose in the meeting would have

been to discuss insurance matters, correct? You weren't

know, I don't recall that at all.

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Q So seeing it is not sufficient in your situation,

because you have to read it. And you've testified that

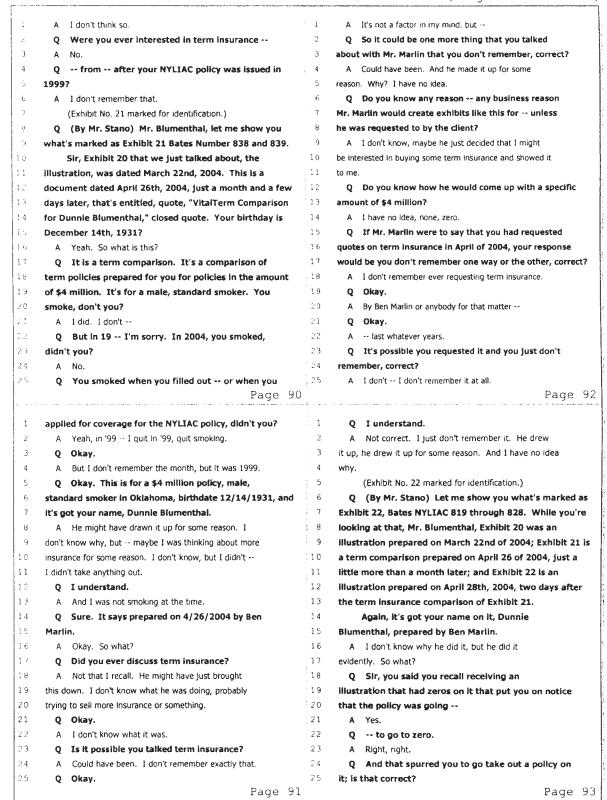
you don't read documents, correct? That you have a

practice of signing documents you don't read and not

reading documents, correct? That's been your testimony

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24 (Pages 90 to 93)



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25 (Pages 94 to 97)



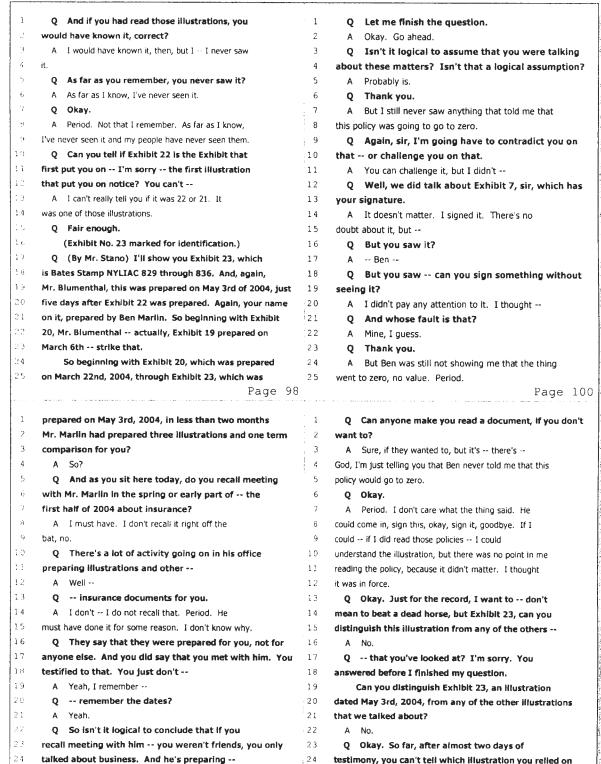
	A Take out a policy, loan, what are you talking	1	Q I'm not criticizing you, Mr. Blumenthal.
	about?	2	A I didn't say you were.
	Q Well, if	3	Q I'm saying, as you sit here today, you can't tell
	A I just I just withdrew the money out of the	4	which illustration it was that put you on notice,
	whatever it was value or something.	5	correct? Because I've asked you about every one of them
	Q How did you	6	and every one you say you can't tell, so I'm trying to
	A It wasn't a policy loan.	?	come to a
	Q How did you take the money out, if it wasn't a	۶	A I don't know which one it was.
	policy loan?	G	Q That's that's my question, sir.
	A I called Ben and he says I said, "I just would	1.0	A That's and I've answered, I don't know which
	like to take whatever I can get out of the out of cash	11	one it was. It was one of those illustrations.
!	value and close the policy down."	12	Q And you've been saying that for the past two
	Q Were you having cash flow problems at the time?	13	days. You've been telling me that for two days, correct?
	A No. That's that's why I wanted to cancel the	14	A That's that's it,
	policy.	15	
5		16	Q Okay. That was my question.
,	Q Did you tell Ben you wanted to take out a policy loan?	17	A Okay.
		18	Q Turning to Page NYLIAC 827 in this exhibit.
i	A No, I told him I wanted to withdraw the cash	19	Again, Exhibit 22.
	that's left in the account and close it down.		A Okay.
	(Cell phone rings.)	20	Q Let's go from left to right. The left columns as
	MS. EMMONS: We need to go off the record.	21	we've talked about earlier, relate to the guarantee
	(Off the record.)	22	charges and guaranteed interest rates.
3	THE WITNESS: The last question was?	23	A Okay.
	Q (By Mr. Stano) Yes, sir. The last question	24	Q And the guaranteed interest rate is 3 percent.
	was Page 94	25	And under the guaranteed column, the policy would lapse
1	Was Page 94 (The last question was read back by the court	25	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros
1	Page 94 (The last question was read back by the court reporter.)	. 25 1 2	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6?
1	(The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was	25 1 2	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay.
	(The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was	1 2 3 4	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns,
2	Page 94 (The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money.	25 1 2 3 4 5	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would
3	Page 94 (The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money. Q (By Mr. Stano) Okay. Exhibit 22, the	25 1 2 3 4 5	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would have lapsed the last column at Year 16 when you were
3	Page 94 (The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money. Q (By Mr. Stano) Okay. Exhibit 22, the illustration that we're talking about, now, could this	25 1 2 3 4 5 6 7	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would have lapsed the last column at Year 16 when you were age 88. If you look at the years and the policy.
3	Page 94 (The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money. Q (By Mr. Stano) Okay. Exhibit 22, the illustration that we're talking about, now, could this have been the illustration that put you on notice	25 1 2 3 4 5 6 7 8	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would have lapsed the last column at Year 16 when you were age 88. If you look at the years and the policy. A All right.
3	(The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money. Q (By Mr. Stano) Okay. Exhibit 22, the illustration that we're talking about, now, could this have been the illustration that put you on notice A I don't know if that's it or not. I can't teil	25 1 2 3 4 5 6 7 8	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would have lapsed the last column at Year 16 when you were age 88. If you look at the years and the policy. A All right. Q Do you see that?
3	(The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money. Q (By Mr. Stano) Okay. Exhibit 22, the illustration that we're talking about, now, could this have been the illustration that put you on notice A I don't know if that's it or not. I can't tell one from another. All I know, it	25 1 2 3 4 5 6 7 8 9	And under the guaranteed column, the policy would lapse Page Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would have lapsed the last column at Year 16 when you were age 88. If you look at the years and the policy. A All right. Q Do you see that? A Yeah.
3	(The last question was read back by the court reporter.) THE WITNESS: Yeah. No, I didn't it was not a policy loan. I withdrew the cash that was figured it was my money. Q (By Mr. Stano) Okay. Exhibit 22, the illustration that we're talking about, now, could this have been the illustration that put you on notice A I don't know if that's it or not. I can't tell one from another. All I know, it Q Fair enough.	25 1 2 3 4 5 6 7 8 9	Year 6 when you were 78. Do you see that? See the zeros start on Year 6? A Okay. Q And going all the way to the right-hand columns, under the non-guaranteed current charges, the policy would have lapsed the last column at Year 16 when you were age 88. If you look at the years and the policy. A All right. Q Do you see that? A Yeah. Q If you had read this illustration and known in
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or which illustration where you first saw that it was --