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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO

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CEDRIC BRADY, DR. CHARLES HOVDEN, )  
MARION HOVDEN, DR. EUGENE KREPS, )  
DR. JOHN McNAMARA, DR. HISAJI )  
SAKAI, and JEAN SAKAI, )  
Individually and on Behalf of )  
All Others Similarly Situated, )  
Plaintiffs, )  
vs. )  
CONSECO LIFE INSURANCE COMPANY, )  
Defendant. )

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No. 3:08-CV-05746-SI

VIDEOTAPED DEPOSITION OF R. EUGENE KREPS, M.D.  
SUNDAY, JANUARY 10, 2010

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DEPOSITION OF R. EUGENE KREPS, M.D.,  
taken at Four Embarcadero Center,  
Suite 3800, San Francisco, California,  
commencing at 10:08 a.m., Sunday,  
January 10, 2010, before Janis Jennings,  
CSR No. 3942, CLR, CRP.

1 SAN FRANCISCO, CALIFORNIA; SUNDAY, JANUARY 10, 2010:  
2 10:08 a.m.  
3 --o0o--  
4 THE VIDEOGRAPHER: Good morning. We are  
5 on the record, ladies and gentlemen. at 10:08 a.m. 10:08AM  
6 on January 10th, 2010.  
7 This is the videotaped deposition of  
8 Eugene Kreps, M.D.  
9 My name is Benjamin Gerald here with our  
10 court reporter Janis Jennings. We are here from 10:08AM  
11 Veritext National Deposition & Litigation Services  
12 at the request of counsel for defendant.  
13 This deposition is being held at Four  
14 Embarcadero Center, in the City of San Francisco,  
15 California. 10:09AM  
16 The caption of this case is Cedric Brady,  
17 et al., versus Conseco Life Insurance Company. The  
18 case number is 3:08-CV-05746-SI.  
19 The time is 10:09 a.m. and we are off the  
20 record. 10:09AM  
21 (Off the record.)  
22 THE VIDEOGRAPHER: The time is 10:11 a.m.  
23 and we are back on the record.  
24 Please note that audio and video recording  
25 will take place unless all parties agree to go off 10:11AM

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APPEARANCES OF COUNSEL:  
  
FOR THE PLAINTIFF:  
MILLSTEIN & ASSOCIATES  
BY: DAVID J. MILLSTEIN, ESQ.  
100 The Embarcadero, Suite 200  
San Francisco, California 94105  
415.348.0348  
dmillstein@millstein-law.com  
  
FOR THE DEFENDANT:  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
BY: CHRISTOPHER A. LISY, ESQ.  
One Beacon Street  
Boston, Massachusetts 02108  
617.573.4883  
christopher.lisy@skadden.com  
  
ALSO PRESENT:  
BENJAMIN GERALD, VIDEOGRAPHER

1 the record. Microphones are sensitive and may pick  
2 up whispers, private conversations and cellular  
3 interference.  
4 At this time will counsel please identify  
5 themselves and state whom they represent. 10:11AM  
6 MR. LISY: Christopher Lisy for Defendant  
7 Conseco Life Insurance Company.  
8 MR. MILLSTEIN: David Millstein for  
9 plaintiffs.  
10 THE VIDEOGRAPHER: Thank you. 10:12AM  
11 Will the reporter please swear the  
12 witness.  
13  
14 R. EUGENE KREPS, M.D.,  
15 The deponent herein, was sworn and  
16 testified as follows:  
17  
18 THE VIDEOGRAPHER: Thank you.  
19 Please proceed.  
20  
21 EXAMINATION  
22 BY MR. LISY:  
23 Q. Good morning, Dr. Kreps.  
24 A. Good morning.  
25 Q. My name is Christopher Lisy. I represent 10:12AM

1 Conseco Life Insurance Company and I introduced  
 2 myself off the record.  
 3 Would you please state your full name for  
 4 the record, please.  
 5 A. Ralph Eugene Kreps. 10:12AM  
 6 Q. What's your address, sir?  
 7 A. My current address is 5520 Lanai Court,  
 8 Discovery Bay, California.  
 9 Q. Have you ever been deposed before?  
 10 A. Yes. 10:12AM  
 11 Q. When was that?  
 12 A. Numerous times during the period when I  
 13 was in active practice.  
 14 Q. Active practice for what?  
 15 A. I practiced neurosurgery until 1993. 10:13AM  
 16 Q. In what capacity were you deposed numerous  
 17 times?  
 18 A. I saw a lot of trauma cases which resulted  
 19 in personal injury litigations, I had a lot of  
 20 Workman's Compensation patients which resulted in 10:13AM  
 21 numerous depositions, I also gave depositions in  
 22 murder cases when I would see patients deceased  
 23 or otherwise in the emergency rooms.  
 24 Q. You were deposed both as a treating  
 25 witness and as an expert witness? 10:13AM

1 Q. If you don't understand a question that  
 2 I've asked you, please ask me to rephrase it or  
 3 repeat it and I'll do my best to make it agreeable  
 4 and understandable to you.  
 5 Is that agreeable? 10:15AM  
 6 A. Yes.  
 7 Q. Okay. If you need to take a break at any  
 8 time today, please let me know. We have water and  
 9 coffee here in the room. I'll probably go about an  
 10 hour between breaks, but if you need to take one 10:15AM  
 11 sooner, just ask.  
 12 A. Fine.  
 13 Q. And the only thing I'd ask is that you not  
 14 ask for a break while a question is pending, which  
 15 means while I've asked you a question but before 10:15AM  
 16 you've given me an answer.  
 17 Is that okay?  
 18 A. Correct.  
 19 Q. Okay. If there's any reason that you need  
 20 to amend an answer that you've given earlier in the 10:15AM  
 21 day, please let me know and we'll be happy to do  
 22 that. And if you need to reference any documents  
 23 over the course of the day, please let me know that  
 24 as well.  
 25 A. Could I ask that those curtains be drawn? 10:15AM

1 A. Usually as a treating witness, sometimes  
 2 as an expert.  
 3 Q. Approximately how many times have you been  
 4 deposed?  
 5 A. Oh, goodness. Somewhere between 25 and 10:14AM  
 6 50 times.  
 7 Q. Well, you may be even more familiar with  
 8 the process than I am, but let me go over a few  
 9 ground rules that you've probably heard before.  
 10 Hopefully they'll make our day go a little bit more 10:14AM  
 11 smoothly today.  
 12 You understand that you've been -- that  
 13 you've taken an oath and that oath has the same  
 14 force and effect as if you were testifying in a  
 15 court of law? 10:14AM  
 16 A. Yes.  
 17 Q. You understand that you're obligated  
 18 to give full, complete and truthful answers to  
 19 my questions?  
 20 A. Yes. 10:14AM  
 21 Q. Okay. For the benefit of the court  
 22 reporter, you'll need to speak up and give oral  
 23 answers rather than shaking your head or giving  
 24 a nonverbal response.  
 25 A. Of course. 10:14AM

1 The glare is overwhelming.  
 2 Q. Certainly.  
 3 A. You can probably just pull it. Thank you.  
 4 The sun hitting that fog just is atrocious  
 5 as far as glare is concerned. 10:16AM  
 6 Q. I understand.  
 7 Are you taking any medication or drugs  
 8 today that would impair your ability to remember or  
 9 to otherwise testify accurately?  
 10 A. No. 10:16AM  
 11 Q. Is there any other reason that you can  
 12 think of that would prevent you from giving full,  
 13 complete and truthful answers to my questions?  
 14 A. Only a lack of recall.  
 15 Q. What did you do to prepare for your 10:16AM  
 16 deposition today?  
 17 A. I simply met with Mr. Millstein on Friday  
 18 and then I made sure that I had reviewed some  
 19 documents in making sure that they were in  
 20 chronological order. 10:17AM  
 21 Q. You met with Mr. Millstein this past  
 22 Friday?  
 23 A. Yes.  
 24 Q. Two days ago?  
 25 A. Two days ago, correct. 10:17AM

1 Q. How long did that meeting last?  
 2 A. Probably somewhere in the -- 45 minutes  
 3 to an hour.  
 4 Q. Where did that meeting occur?  
 5 A. In Mr. Millstein's office. 10:17AM  
 6 Q. Who was present?  
 7 A. Mr. Millstein and myself for most of the  
 8 time and then my wife returned from a shopping trip  
 9 and sat in the room.  
 10 Q. Was anyone else present? 10:17AM  
 11 A. No.  
 12 Q. Did anyone participate by telephone?  
 13 A. No.  
 14 Q. Did you review documents at that meeting?  
 15 A. Yes. To some degree. 10:17AM  
 16 Q. Okay. Which documents?  
 17 MR. MILLSTEIN: Counsel, I'll represent  
 18 that the documents that were produced was the set  
 19 that he was given.  
 20 You can answer the question if you... 10:18AM  
 21 THE WITNESS: What documents were there?  
 22 Primarily reports that I had received from Conseco.  
 23 BY MR. LISY:  
 24 Q. Okay. What else?  
 25 A. That was all. 10:18AM

1 A. A gentleman by the name of Lynn Pierce who  
 2 wanted to meet with me today. I think that's about  
 3 all.  
 4 Q. Who's Mr. Pierce?  
 5 A. He's a friend of mine. We were meeting 10:20AM  
 6 relative to some church problems.  
 7 Q. To matters not related to this lawsuit?  
 8 A. Oh, no, not at all.  
 9 Q. Have you ever spoken with any of the other  
 10 plaintiffs in this matter? 10:20AM  
 11 A. No.  
 12 Q. Have you ever met any of the other  
 13 plaintiffs?  
 14 A. No.  
 15 Q. I'd like to take a bit of time and talk 10:20AM  
 16 about your background, educational and employment.  
 17 What's the highest level of schooling that you've  
 18 completed?  
 19 A. An MD degree.  
 20 Q. When did you receive that? 10:20AM  
 21 A. I believe 1957.  
 22 Q. From what institution?  
 23 A. University of Illinois.  
 24 Q. Working backwards from that, did you  
 25 attend college? 10:21AM

1 Q. Did you review your policy?  
 2 A. No.  
 3 Q. Did you review any correspondence from  
 4 Conseco?  
 5 A. Yes. 10:18AM  
 6 Q. Which correspondence?  
 7 A. Oh, my. Numerous letters that they had  
 8 sent to me and mainly reports.  
 9 Q. Did you review any documents to prepare  
 10 for this deposition other than the ones that you 10:18AM  
 11 reviewed at your meeting with Mr. Millstein?  
 12 A. No.  
 13 Q. Did you do any independent preparation for  
 14 your deposition?  
 15 A. No. 10:19AM  
 16 Q. Other than your attorneys and your wife,  
 17 did you talk to anyone else about your deposition?  
 18 A. No. Other than to inform people that I  
 19 wouldn't be in certain places because I was giving  
 20 a deposition. 10:19AM  
 21 Q. Did you talk with anybody about the  
 22 substance of the testimony you expected to give?  
 23 A. No. Pardon me.  
 24 Q. To the best of your knowledge, who else  
 25 knows that you are giving a deposition today? 10:19AM

1 A. Yes.  
 2 Q. Which college?  
 3 A. Augustana College.  
 4 Q. That's also in Illinois?  
 5 A. Yes. 10:21AM  
 6 Q. What year did you graduate from Augustana  
 7 College?  
 8 A. '53. 1953, that is. Not 1853.  
 9 Q. Did you go right to the University of  
 10 Illinois from medical school upon graduating? 10:21AM  
 11 A. Yes.  
 12 Q. Did you ever attend any other  
 13 undergraduate institutions besides Augustana?  
 14 A. No.  
 15 Q. Other than the MD that you received from 10:22AM  
 16 the University of Illinois, do you have any other  
 17 advanced degrees?  
 18 A. I think halfway through the medical  
 19 school they gave us a degree of Master of Science or  
 20 something. I don't really remember because it was 10:22AM  
 21 pretty much irrelevant.  
 22 Q. Do you recall what discipline the master's  
 23 of science was in?  
 24 A. No, I don't. I think it was Master's  
 25 of Science. I mean, it was sort of vague. 10:22AM

1 Q. What was your major at Augustana College?  
 2 A. Premed.  
 3 Q. Did you have a minor?  
 4 A. No.  
 5 Q. And working backwards from Augustana 10:22AM  
 6 College, what year did you graduate high school?  
 7 A. 1949.  
 8 Q. Just so I understand the chronology.  
 9 You graduated high school in 1949, you went to  
 10 Augustana and graduated four years later -- 10:23AM  
 11 A. Correct.  
 12 Q. -- and then you went to University of  
 13 Illinois for medical school and graduated four years  
 14 later --  
 15 A. Correct. 10:23AM  
 16 Q. -- in 1957?  
 17 Upon graduating from the University of  
 18 Illinois, what did you do?  
 19 A. I moved to San Francisco and took an  
 20 internship for one year and then a residency in 10:23AM  
 21 general surgery for one year.  
 22 Q. So that brings us to about 1959?  
 23 A. Somewhere in there, yeah.  
 24 Q. What did you do next?  
 25 A. Then I moved to Indianapolis, Indiana, and 10:23AM

1 (Record read as follows:  
 2 "Q. And how about from 1959 to  
 3 1993, other than your practice in  
 4 neurosurgery, did you hold any  
 5 other employment or work in any  
 6 other occupations?")  
 7 THE WITNESS: Well, I guess you would  
 8 consider that in a residency you are employed, if  
 9 that's what you're asking.  
 10 BY MR. LISY: 10:25AM  
 11 Q. Well, what I'm asking is: Other than  
 12 the practice of medicine, in neurosurgery in  
 13 particular, from the years 1959 to 1993, did you --  
 14 A. No.  
 15 Q. -- have any other -- 10:25AM  
 16 A. No, I was not involved in any other  
 17 occupation.  
 18 Q. Okay. So I think I know the answer to  
 19 this next question but I'll ask it anyway: You've  
 20 never been an insurance agent of any kind? 10:26AM  
 21 A. No.  
 22 Q. You've never been an insurance broker --  
 23 A. No.  
 24 Q. -- of any kind?  
 25 Have you ever sold an insurance policy? 10:26AM

1 took a residency in neurological surgery.  
 2 Q. Has your practice been focused in  
 3 neurosurgery since that time?  
 4 A. Yes.  
 5 Q. Have you ever done any other kind of 10:24AM  
 6 medical practice?  
 7 A. No.  
 8 Q. Are you still practicing today?  
 9 A. No.  
 10 Q. When did you retire? 10:24AM  
 11 A. In 1993.  
 12 Q. Have you held any other occupations since  
 13 retiring in 1993?  
 14 A. Do you mean have I been employed?  
 15 Q. Yes. 10:24AM  
 16 A. No.  
 17 Q. And how about from 1959 to 1993, other  
 18 than your practice in neurosurgery, did you hold  
 19 any other employment or work in any other --  
 20 A. No. 10:25AM  
 21 Q. -- occupations?  
 22 A. I'm sorry. Would you repeat that  
 23 question? I'm not sure I followed your dates.  
 24 MR. LISY: Sure.  
 25 Will you repeat it, please. 10:25AM

1 A. No.  
 2 Q. Have you ever held yourself out as a  
 3 financial advisor?  
 4 A. No.  
 5 Q. Or a financial consultant? 10:26AM  
 6 A. No.  
 7 Q. When you were in school in Augustana  
 8 College from 1953 to 19-- excuse me -- from  
 9 1949 to 1953, did you take any classes relating  
 10 to finance? 10:26AM  
 11 A. No.  
 12 Q. How about relating to business?  
 13 A. No.  
 14 Q. Economics?  
 15 A. I may have taken Economics 101, but I 10:26AM  
 16 don't -- I can't be certain of that.  
 17 Q. Did you ever attend any other educational  
 18 institutions, universities, to take additional  
 19 classes, whether or not you received a degree, other  
 20 than the institutions we've already talked about? 10:27AM  
 21 A. Well, during the course of my practice I  
 22 would go to various universities for conferences,  
 23 educational conferences, relative to the practice  
 24 of neurosurgery.  
 25 Q. That would be in a continuing education -- 10:27AM

5 (Pages 14 to 17)

1 A. Yes.  
 2 Q. -- sense?  
 3 A. Yes.  
 4 Q. Did you ever attend over the course  
 5 of your life any financial seminars relating to 10:27AM  
 6 insurance?  
 7 A. No, not specifically to insurance.  
 8 Q. How about generally?  
 9 A. General, yes.  
 10 Q. When was that? 10:27AM  
 11 A. Like how to keep yourself in order. Oh, I  
 12 don't know, maybe half a dozen over a period of the  
 13 time I was in practice. You know, they're always  
 14 suckering doctors into these kind of conferences.  
 15 Q. Do you recall who hosted the conferences? 10:28AM  
 16 A. Do I recall who hosted? No, I have no  
 17 idea.  
 18 Q. Were they one-day conferences?  
 19 A. Yes. Usually for maybe three or four  
 20 hours or less. 10:28AM  
 21 Q. What kinds of topics were discussed at  
 22 these conferences?  
 23 A. Mainly investments and how wonderful they  
 24 would be.  
 25 Q. What kind of investments? 10:28AM

1 A. That also, yes. I mean visually see.  
 2 Q. If it's a physical asset, you want to see  
 3 it?  
 4 A. That's right.  
 5 Q. Got it. 10:30AM  
 6 My next few questions will focus on the  
 7 time from 1959 to 1993 when you were in practice for  
 8 neurosurgery. Were you ever in a private practice?  
 9 A. Yes.  
 10 Q. When was that? 10:30AM  
 11 A. From 1963 to 1993.  
 12 Q. Was that one private practice or --  
 13 A. Yeah.  
 14 Q. -- multiple ones?  
 15 A. One. 10:31AM  
 16 Q. What was the name of it?  
 17 A. It was my name.  
 18 Q. Dr. Eugene Kreps?  
 19 A. Yes.  
 20 Q. Were you affiliated with any other 10:31AM  
 21 physicians?  
 22 A. Yes.  
 23 Q. How many?  
 24 A. Let me see. Over a period of time maybe  
 25 1, 2, 3, 4 -- it was mainly in the realm of office 10:31AM

1 A. Oh, anywhere from real estate to  
 2 partnerships to -- those are the main ones.  
 3 Q. Was insurance ever discussed at these  
 4 conferences?  
 5 A. Not really. I don't ever recall any 10:28AM  
 6 relative to insurance. There were enough insurance  
 7 people around you didn't have to go.  
 8 Q. Did you ever participate in any  
 9 investments as a result of attending these  
 10 conferences? 10:29AM  
 11 A. Probably.  
 12 Q. Do you recall what kind of investments?  
 13 A. Some real estate, but they weren't  
 14 directly related to the conference.  
 15 Q. And how did those investments come to 10:29AM  
 16 be? In other words, did you talk to someone who  
 17 presented at the conference or did you do your own  
 18 research?  
 19 A. No. It was my own research.  
 20 Q. You heard about the idea at the conference 10:30AM  
 21 and then --  
 22 A. Right. Like don't buy anything you can't  
 23 see.  
 24 Q. By that you mean don't buy anything you  
 25 don't understand? 10:30AM

1 sharing.  
 2 Q. That would be about four over those  
 3 30 years?  
 4 A. Yeah.  
 5 Q. Not all at the same time? 10:31AM  
 6 A. No.  
 7 Q. Did you have any other -- withdraw.  
 8 Did you have any employees from 1963  
 9 to 1993?  
 10 A. Yes. 10:32AM  
 11 Q. And who were they?  
 12 A. Oh, I'm sorry. I don't remember their  
 13 names.  
 14 Q. I don't need their names. I'm interested  
 15 in whether they were, for example, administrators. 10:32AM  
 16 secretaries, receptionists, those kinds of things.  
 17 A. Yeah. Well, bookkeepers and  
 18 receptionists.  
 19 Q. At any given point from '63 to '93, about  
 20 how many employees would you have had working for 10:32AM  
 21 you?  
 22 A. From '63 to '93?  
 23 Q. Uh-huh.  
 24 A. You mean at one time or over that whole  
 25 period of time? 10:32AM

1 Q. At one time.  
 2 A. Probably two or three.  
 3 Q. Were you personally involved in any of the  
 4 billing for your practice during that time?  
 5 A. No. 10:33AM  
 6 Q. And by "billing" I mean accounts payable,  
 7 accounts receivable --  
 8 A. No.  
 9 Q. -- things like that.  
 10 Were you personally involved in any of the 10:33AM  
 11 budgeting for your practice during that time?  
 12 A. No. I don't recall any budgets.  
 13 Q. Did you have any financial statements;  
 14 for example, balance sheets or income statements  
 15 for your practice during that time? 10:33AM  
 16 A. Oh, I'm sure I did.  
 17 Q. Were you involved personally with that  
 18 at all?  
 19 A. You mean relative to the practice?  
 20 Q. Yes. 10:33AM  
 21 MR. MILLSTEIN: Objection. Vague.  
 22 You can answer it.  
 23 THE WITNESS: I don't recall any.  
 24 BY MR. LISY:  
 25 Q. Did you have malpractice insurance during 10:34AM

1 life insurance products for your practice.  
 2 A. For my practice?  
 3 Q. Yes.  
 4 A. Life insurance for my -- I didn't buy any  
 5 life insurance for my practice. 10:35AM  
 6 Q. Okay. Let me take a step back. I may be  
 7 confused.  
 8 The question I had for you a few questions  
 9 ago was whether during the time that you were in  
 10 private practice you were involved in the purchase 10:35AM  
 11 of any insurance products. Mr. Millstein objected  
 12 and instructed you not to answer except as to life  
 13 insurance products. So respecting Mr. Millstein's  
 14 instruction, which I don't agree with, but my  
 15 question now is: With respect to life insurance 10:36AM  
 16 products during the time that you were in private  
 17 practice, how were you involved in the purchase of  
 18 those?  
 19 A. Writing a check.  
 20 Q. Who was the life insurance purchased for? 10:36AM  
 21 A. Me.  
 22 Q. Anyone else?  
 23 A. No. Sorry.  
 24 Q. At any point from 1963 to 1993, did you  
 25 have a group life insurance plan for any of the 10:36AM

1 this time?  
 2 MR. MILLSTEIN: Objection. I'm going to  
 3 instruct not to answer financial privacy. I think  
 4 that's covered by the recent court order.  
 5 BY MR. LISY: 10:34AM  
 6 Q. During this period of time, 1963 to  
 7 1993, were you ever involved in the purchase of  
 8 any insurance products for your practice?  
 9 MR. MILLSTEIN: Same objection with the  
 10 exception of life insurance. 10:34AM  
 11 So don't answer that except for life  
 12 insurance products.  
 13 BY MR. LISY:  
 14 Q. You can answer.  
 15 A. I'm a little confused at the moment. 10:35AM  
 16 MR. MILLSTEIN: You can answer as to the  
 17 question but only as it relates to life insurance  
 18 products. Were you involved in the purchase or  
 19 review of life insurance products?  
 20 THE WITNESS: Yes, I was involved in 10:35AM  
 21 purchasing life insurance.  
 22 BY MR. LISY:  
 23 Q. Tell me about that, please.  
 24 A. About?  
 25 Q. About your involvement in the purchase of 10:35AM

1 employees in your practice?  
 2 A. No.  
 3 Q. So let's talk about that life insurance  
 4 for the next few questions. How many life insurance  
 5 policies have you purchased in your lifetime? 10:37AM  
 6 A. In my lifetime?  
 7 Q. Yes.  
 8 A. I think five.  
 9 Q. So I'll ask you some questions about each  
 10 of those. I'd like to start with the first one that 10:37AM  
 11 you purchased. When was that?  
 12 A. I think it was when I was in college.  
 13 Q. Which would have been approximately the  
 14 late 1940s, early 1950s?  
 15 A. Probably. 10:38AM  
 16 Q. Which company?  
 17 A. Paul Revere Life Insurance.  
 18 Q. What kind of a life insurance product was  
 19 it?  
 20 A. Life insurance. That's all I know. 10:38AM  
 21 Q. Do you know if it was a term product?  
 22 A. I have no idea.  
 23 Q. Do you know the face value of the policy?  
 24 A. It was very small. I think it was enough  
 25 that if I die, I could get buried. 10:38AM

1 Q. Is that policy still in force today?  
 2 A. No.  
 3 Q. Do you know when it ceased being in force?  
 4 A. I think when I was -- either when I was in  
 5 medical school or immediately afterwards. 10:38AM  
 6 Q. That was a short-term policy?  
 7 A. Yeah.  
 8 Q. Why did you purchase that policy?  
 9 A. My father thought I should have it. I  
 10 guess he didn't want to bury me. 10:39AM  
 11 Q. What was the next life insurance policy  
 12 that you purchased?  
 13 A. I'm not certain. It may have been  
 14 New York Life.  
 15 Q. When was that? 10:39AM  
 16 A. I can't be certain about that either.  
 17 Either when I was in training or shortly afterwards.  
 18 Q. When you were in training for what?  
 19 A. Like in my internship or surgical  
 20 residencies. 10:40AM  
 21 Q. Sometime in the 1950s, approximately?  
 22 A. I couldn't be certain.  
 23 Q. Okay. What kind of a life insurance  
 24 policy was it?  
 25 A. A life insurance policy. That's all I 10:40AM

1 the life insurance policy? Did you ever purchase  
 2 another product from this friend?  
 3 A. No.  
 4 Q. And --  
 5 A. I wouldn't call him a friend at that 10:41AM  
 6 point.  
 7 Q. I may have skipped over a point. Did you  
 8 purchase the life insurance from the acquaintance or  
 9 did he refer you --  
 10 A. From the acquaintance. 10:42AM  
 11 Q. I see.  
 12 How about the next insurance policy that  
 13 you purchased, life insurance?  
 14 A. That was from Massachusetts General, I  
 15 believe was the name of the company. 10:42AM  
 16 Q. When was that?  
 17 A. When I was 55 years old.  
 18 Q. What year were you born?  
 19 A. 1931.  
 20 Q. That would have been in 1988. 10:43AM  
 21 A. Okay.  
 22 Q. I'm sorry. 1986.  
 23 What kind of policy was that?  
 24 A. A life insurance policy. I'm sorry,  
 25 I don't know the definitions of these various 10:43AM

1 know.  
 2 Q. Do you know if it was a term policy or a  
 3 whole life policy or some other kind of policy?  
 4 A. No, I don't know for certain.  
 5 Q. How did it come to be that you purchased 10:40AM  
 6 that life insurance policy?  
 7 A. I had an acquaintance that I had known for  
 8 a long time who was in the insurance business who  
 9 suggested that I should have some life insurance.  
 10 Q. As a result of that you purchased the 10:41AM  
 11 policy?  
 12 A. Yes.  
 13 Q. Do you recall the face amount of the  
 14 policy?  
 15 A. I do not. 10:41AM  
 16 Q. Is it still in force today?  
 17 A. It is not.  
 18 Q. When did it cease being in force?  
 19 A. Probably sometime in the '60s.  
 20 Q. Do you know why it ceased to be in force? 10:41AM  
 21 A. I don't recall the circumstances.  
 22 Q. The acquaintance that you mentioned, had  
 23 you purchased other investment products from him?  
 24 A. No.  
 25 Q. How about after the time you purchased 10:41AM

1 policies. I know what a term policy is, but  
 2 I don't know beyond that.  
 3 Q. Was this Massachusetts General policy a  
 4 term policy?  
 5 A. No. 10:43AM  
 6 Q. Is this the policy that's the subject of  
 7 this lawsuit?  
 8 A. Correct.  
 9 Q. Okay. We'll come back to this one.  
 10 A. All right. 10:43AM  
 11 Q. What's the next policy?  
 12 A. Indianapolis Life.  
 13 Q. When was that?  
 14 A. You have it.  
 15 Q. That's the document that you gave to us -- 10:44AM  
 16 A. Yes.  
 17 Q. -- at the start of the deposition?  
 18 A. That was in 2002, I recall. You have it.  
 19 Q. Yes, Mr. Millstein gave it to us this  
 20 morning. We're having it copied now. 10:44AM  
 21 A. Yeah.  
 22 Q. What kind of policy was that?  
 23 A. I guess it's a life policy.  
 24 Q. Is it a term policy?  
 25 A. No, no. 10:44AM



1 Q. Is that policy currently in force?  
 2 A. Yes.  
 3 Q. Why did you purchase that life insurance  
 4 policy?  
 5 A. Because it was felt that I should probably 10:44AM  
 6 have some more life insurance.  
 7 Q. Who was it felt by?  
 8 A. My wife. You know, widows like life  
 9 insurance.  
 10 Q. Were there any other reasons for 10:45AM  
 11 purchasing the Indianapolis Life Insurance policy?  
 12 A. No.  
 13 Q. Who assisted in the purchase of the  
 14 policy?  
 15 A. Assisted? 10:45AM  
 16 Q. Did you use an insurance agent?  
 17 A. Oh, yes.  
 18 Q. Who was that?  
 19 A. Mr. Killeen.  
 20 Q. Do you recall his first name? 10:45AM  
 21 A. Michael.  
 22 Q. How do you know Mr. Killeen?  
 23 A. He was a financial advisor.  
 24 Q. Of yours?  
 25 A. Yes. 10:46AM

1 Q. Would it have been more than one?  
 2 A. More than likely.  
 3 Q. Did you undergo a physical examination in  
 4 connection with the purchase of that policy?  
 5 A. Oh, I'm sure I did. 10:47AM  
 6 Q. And I don't have the document in front of  
 7 me. I believe that the face value was \$600,000?  
 8 A. Yes.  
 9 Q. What's the annual premium on that policy?  
 10 A. I have no idea. 10:48AM  
 11 Q. Do you make the payments on it?  
 12 A. No.  
 13 Q. Who does?  
 14 A. It was a paid-up thing.  
 15 Q. What do you mean by "paid-up"? 10:48AM  
 16 A. Well, I paid a large amount of money for a  
 17 paid-up policy at one time at the start. I guess  
 18 that's the definition.  
 19 Q. A single payment?  
 20 A. Yeah. 10:48AM  
 21 Q. Do you recall the amount?  
 22 A. \$130,000, as I recall.  
 23 Q. And your understanding is that you won't  
 24 have to make further annual premium payments?  
 25 A. Correct. 10:48AM

1 Q. When did you first start working with  
 2 Mr. Killeen?  
 3 A. Probably a couple years before that.  
 4 Q. Had he helped you with other aspects of  
 5 your financial situation? 10:46AM  
 6 A. Yes.  
 7 Q. Did you approach Mr. Killeen about  
 8 purchasing another insurance policy?  
 9 A. No.  
 10 Q. Did he approach you? 10:46AM  
 11 A. Yes.  
 12 Q. Tell me about that.  
 13 A. He just felt that I needed more insurance  
 14 than what I had and he was concerned about the  
 15 stability of Consec Life Insurance Company, who 10:46AM  
 16 at the time had taken over the policy that I had.  
 17 Q. Did Mr. Killeen make recommendations about  
 18 other life insurance policies for you to consider?  
 19 A. Other than that one?  
 20 Q. Yes. 10:47AM  
 21 A. Not at that time, no.  
 22 Q. How many conversations did you have with  
 23 Mr. Killeen about purchasing the Indy Life Insurance  
 24 policy?  
 25 A. I don't recall. 10:47AM

1 Q. What's the basis of that understanding?  
 2 A. The basis of the understanding is that's  
 3 how it was presented to me.  
 4 Q. By Mr. Killeen?  
 5 A. Yes. 10:49AM  
 6 Q. And when we get the document back from  
 7 being copied, I may have a few more questions about  
 8 this so we may come back.  
 9 I have four insurance policies and earlier  
 10 you had mentioned five. Is there another one? 10:49AM  
 11 A. Yes.  
 12 Q. Which insurance company?  
 13 A. Aviva.  
 14 Q. When did you make that purchase?  
 15 A. A few months ago. 10:49AM  
 16 Q. In 2009?  
 17 A. Yes.  
 18 Q. What kind of a policy is that?  
 19 A. Insurance. It's not a term.  
 20 Q. Not a term policy? 10:50AM  
 21 A. Okay. A good one, I hope.  
 22 Q. What's the face amount on that policy?  
 23 A. I think it's \$600,000 also.  
 24 Q. Is there an annual premium?  
 25 A. No. It's a paid-up policy. 10:50AM

1 Q. What was the amount that was paid up?  
 2 A. Probably around \$129,000.  
 3 Q. In a single payment?  
 4 A. Yes. It might have been -- yeah, I think  
 5 it was around that. It was within 5,000 anyway. 10:51AM  
 6 Q. Who assisted with the purchase of that  
 7 policy?  
 8 A. I purchased that policy through  
 9 Mr. Killeen.  
 10 Q. And how did it come to be that you 10:51AM  
 11 purchased that policy?  
 12 A. Because of the letters that I had received  
 13 from Conseco.  
 14 Q. Which letters are you referring to?  
 15 A. A series of communications, written 10:51AM  
 16 communications, beginning in late October of 2008.  
 17 Q. We'll talk more about this later. But you  
 18 surrendered your Conseco policy?  
 19 A. That's correct.  
 20 Q. Did you make the purchase of the Aviva 10:52AM  
 21 policy after the surrender of the Conseco policy?  
 22 A. Right about that time. I don't remember  
 23 whether it was immediately before or immediately  
 24 afterwards.  
 25 Q. Is the Aviva policy a replacement for the 10:52AM

1 MR. LISY: Thank you.  
 2 BY MR. LISY:  
 3 Q. You mentioned that Mr. Killeen assisted in  
 4 the purchase of the Aviva policy and the Indy Life  
 5 policy. 10:54AM  
 6 A. Right.  
 7 Q. Other than Mr. Killeen, was anyone else  
 8 involved in terms of insurance agents or brokers?  
 9 A. No.  
 10 Q. And other than those two insurance 10:54AM  
 11 policies, have you ever purchased another insurance  
 12 policy through Mr. Killeen?  
 13 A. No.  
 14 Q. So we've talked about five life insurance  
 15 policies that you've purchased. Have there been 10:54AM  
 16 other life insurance policies that you've considered  
 17 purchasing but hadn't?  
 18 A. No.  
 19 Q. Have you ever been denied the opportunity  
 20 to purchase a life insurance policy? 10:55AM  
 21 A. No.  
 22 Q. Of these five life insurance policies;  
 23 the Indy Life policy, which you purchased in  
 24 approximately 2002, and the Aviva Life Insurance  
 25 policy that you purchased in approximately 2009, 10:56AM

1 Conseco policy?  
 2 A. Correct.  
 3 Q. Did you have to undergo a physical  
 4 examination in connection with the Aviva policy?  
 5 A. Yes. 10:53AM  
 6 Q. Do you maintain correspondence and  
 7 documentation for that policy?  
 8 A. I don't know what you mean.  
 9 Q. Do you have a copy of the Aviva Insurance  
 10 policy? 10:53AM  
 11 A. No. I don't have that at the present  
 12 time. It was delivered to me, but there was some  
 13 spelling mistakes in my name and so it was --  
 14 they're in the process of sending me another one.  
 15 if they ever get their offices open. I understand 10:53AM  
 16 they're closed because of inclement weather.  
 17 Q. You don't have a copy of the policy now --  
 18 A. I don't have a copy of it now.  
 19 Q. -- but you expect to receive one?  
 20 A. Yes. Yeah. We tried to get one but 10:53AM  
 21 apparently Indianapolis is shut down.  
 22 MR. LISY: Mr. Millstein, if it happens  
 23 that Dr. Kreps gets a copy of that policy, would you  
 24 produce it to us, please?  
 25 MR. MILLSTEIN: Yes. 10:54AM

1 those are the only two policies that are still in  
 2 force?  
 3 A. Correct.  
 4 Q. Were any of these policies affiliated with  
 5 an employer group? 10:56AM  
 6 A. No.  
 7 Q. Okay. I'd like to talk now about the  
 8 Massachusetts General Life Insurance policy that you  
 9 purchased in about 1986. Why did you purchase that  
 10 life insurance policy? 10:56AM  
 11 A. I had a -- I felt I had a need for  
 12 insurance. My wife thought I had a need for  
 13 insurance and that was the reason.  
 14 Q. Other than your wife, who did you discuss  
 15 the purchase of the insurance policy with? 10:57AM  
 16 A. The insurance salesperson.  
 17 Q. Who was that?  
 18 A. That was Larry Winston.  
 19 Q. Did you discuss the purchase of that  
 20 policy with anyone other than Larry Winston and 10:57AM  
 21 your wife?  
 22 A. No.  
 23 Q. Did Mr. Winston work for an insurance  
 24 agency?  
 25 A. I think he owns the insurance agency. 10:57AM

1 I'm not sure.  
 2 Q. What's the name of it?  
 3 A. I have no idea.  
 4 Q. How did you know Mr. Winston?  
 5 A. He had -- how did we know him? I guess he 10:57AM  
 6 contacted me as a result of one of these conferences  
 7 that I went to.  
 8 Q. Did you have a pre-existing relationship  
 9 with Mr. Winston?  
 10 A. No. 10:58AM  
 11 Q. Do you recall when you met him?  
 12 A. Probably about the time that I purchased  
 13 the policy.  
 14 Q. A few moments ago you mentioned that  
 15 you and your wife thought that you had a need for 10:58AM  
 16 an insurance policy. Did you have that thought  
 17 prior to the time you spoke with Mr. Winston?  
 18 A. We had discussed it. I don't recall when;  
 19 but, I mean, around that time.  
 20 Q. When Mr. Winston contacted you, did he do 10:59AM  
 21 that by telephone?  
 22 A. I have no idea. I would assume.  
 23 MR. MILLSTEIN: Don't speculate.  
 24 BY MR. LISY:  
 25 Q. I want you to tell me everything that you 10:59AM

1 MR. MILLSTEIN: Objection. Vague.  
 2 BY MR. LISY:  
 3 Q. Do you understand the question?  
 4 A. Yeah. I'm sure that he -- I'm sure that  
 5 he did because of the way in which I purchased it. 11:01AM  
 6 Q. And what do you mean by the way in which  
 7 you purchased it?  
 8 MR. MILLSTEIN: Doctor --  
 9 I wanted to admonish him prior to your  
 10 question. 11:01AM  
 11 I want to admonish you to not speculate  
 12 as to your answer, such as "it must have been."  
 13 If have you a reasonable basis for believing it's  
 14 something or a reasonable estimation, you should  
 15 make it, but you shouldn't guess or speculate for 11:01AM  
 16 the sake of being able to answer a question. Okay?  
 17 THE WITNESS: All right. Fine.  
 18 BY MR. LISY:  
 19 Q. My question was: You said he must have  
 20 explained it to me "because of the way in which I 11:01AM  
 21 purchased it." What do you mean by the way in which  
 22 you purchased it?  
 23 A. Well, the -- I purchased it by making five  
 24 payments, premium payments, once a year for five  
 25 years, at which point I wasn't supposed to have to 11:02AM

1 can remember about the first time that you spoke  
 2 with Mr. Winston about this insurance policy.  
 3 A. I don't remember where or when or what.  
 4 Q. Do you remember what you said to him?  
 5 A. No. 10:59AM  
 6 Q. Do you remember what he said to you?  
 7 A. No.  
 8 Q. And I don't necessarily mean precise  
 9 words; I mean more generally if you can't remember  
 10 precise words. 11:00AM  
 11 A. Other than he thought that this was a good  
 12 insurance policy.  
 13 Q. What did he have to say about that?  
 14 A. I don't recall the conversation.  
 15 Q. Did he suggest other insurance policies 11:00AM  
 16 besides the Massachusetts General Insurance policy?  
 17 A. No.  
 18 Q. Approximately how many conversations  
 19 did you have with Mr. Winston about purchasing  
 20 the Massachusetts General Insurance policy? 11:00AM  
 21 A. I would have no idea.  
 22 Q. Do you think it was more than one?  
 23 A. I'm sure it probably was, yes.  
 24 Q. Did Mr. Winston explain to you how the  
 25 policy worked? 11:01AM

1 make any more payments.  
 2 Q. Is that the way that Mr. Winston explained  
 3 it to you?  
 4 A. As I recall.  
 5 Q. Prior to these conversations or 11:02AM  
 6 conversation with Mr. Winston, did you have any  
 7 understanding about how a life insurance policy  
 8 could be purchased in this manner?  
 9 A. No.  
 10 Q. Did Mr. Winston give you any documentation 11:03AM  
 11 or sales material about the Massachusetts General  
 12 Insurance policy?  
 13 A. I don't recall.  
 14 Q. When was the last time that you spoke with  
 15 Mr. Winston? 11:03AM  
 16 A. I'm not certain. Sometime last year  
 17 probably.  
 18 Q. What was the context of that conversation?  
 19 A. I don't recall. He was on his -- he was  
 20 boarding an airplane so the conversation got cut 11:04AM  
 21 short.  
 22 Q. Did you speak with Mr. Winston more than  
 23 once last year?  
 24 A. I'm not certain. Probably I may have  
 25 talked to him on one other time, but I don't 11:04AM

1 remember whether that was in 2009 or 2008.  
 2 Q. What was that conversation about?  
 3 A. It was about the communication that was  
 4 sent to me by Conseco saying that my policy would  
 5 lapse early. 11:05AM  
 6 Q. Who called who in that conversation?  
 7 A. I called Mr. Winston.  
 8 Q. Why did you do that?  
 9 A. Well, he had sold me the policy and it was  
 10 my understanding that that wouldn't happen. I had 11:05AM  
 11 just received a statement saying that everything was  
 12 according to schedule and then all of a sudden I  
 13 received another letter saying that they -- to keep  
 14 the policy in force I would have to probably send  
 15 them a check over a period of time totaling up to 11:06AM  
 16 about \$500,000 or more.  
 17 Q. In your answer you mentioned a statement  
 18 that said "everything was according to schedule."  
 19 What statement are you referring to?  
 20 A. The yearly statement that they would send 11:06AM  
 21 out that I had received in October of 2008.  
 22 Q. At the time that you received the  
 23 correspondence from Conseco in 2008, which you  
 24 understood them to be asking you to pay \$500,000 or  
 25 more, that was a different understanding than you 11:06AM

1 Q. And that was different than what you had  
 2 understood to be the case when you purchased the  
 3 policy?  
 4 A. Correct.  
 5 Q. Okay. What did Mr. Winston say in 11:07AM  
 6 the conversation when you called him about this  
 7 correspondence?  
 8 A. I don't remember the exact conversation.  
 9 Q. Do you remember it generally?  
 10 A. Not really. 11:08AM  
 11 Q. The conversation that you had with  
 12 Mr. Winston when he was boarding an airplane,  
 13 was that a follow-up to this first conversation?  
 14 A. I think I was just asking him what --  
 15 how things were proceeding, to get clarification. 11:08AM  
 16 Q. What kind of things?  
 17 A. I don't remember what it was that I --  
 18 I don't remember specifically what I had asked him  
 19 about.  
 20 Q. Do you remember generally? 11:08AM  
 21 A. No.  
 22 Q. What did Mr. Winston say to you?  
 23 A. Not very much because he was getting on  
 24 an airplane.  
 25 Q. Did he give you any kind of an indication 11:09AM

1 had from Mr. Winston when you purchased the policy  
 2 from him?  
 3 MR. MILLSTEIN: Objection. Vague.  
 4 Compound.  
 5 You can answer it. 11:07AM  
 6 MR. LISY: Let me withdraw it and try to  
 7 ask it a better way.  
 8 THE WITNESS: Okay.  
 9 BY MR. LISY:  
 10 Q. When you purchased the policy from 11:07AM  
 11 Mr. Winston in approximately 1986, he explained to  
 12 you the five premium payments that would need to be  
 13 made.  
 14 A. Correct.  
 15 Q. And at that time was it your understanding 11:07AM  
 16 that you would not have to make an additional  
 17 premium payment?  
 18 A. Correct.  
 19 Q. That's what Mr. Winston had told you?  
 20 A. That's my understanding. 11:07AM  
 21 Q. And if we fast forward to 2008 when you  
 22 received a letter from Conseco, your understanding  
 23 at that time was that you would have to make  
 24 additional premium payments?  
 25 A. Correct. 11:07AM

1 about how things were proceeding?  
 2 A. No.  
 3 Q. Was that the last time you had spoken with  
 4 him?  
 5 A. Yes. 11:09AM  
 6 Q. About how many times would you say  
 7 you've spoken to Mr. Winston since he sold you  
 8 the insurance policy in 1986?  
 9 A. Oh, since he sold me the policy? Oh,  
 10 goodness. A number of times. A number of times. 11:09AM  
 11 Q. Do you speak with -- withdraw.  
 12 Did you speak with Mr. Winston on a  
 13 regular basis from 1986 until the present time?  
 14 A. No.  
 15 Q. What occasions would you speak to him on? 11:09AM  
 16 A. I don't remember for certain, but I know  
 17 we've had some conversations.  
 18 Q. Do you consider Mr. Winston a friend?  
 19 A. A friend? I consider him friendly, but  
 20 I don't know that I would consider him an intimate 11:10AM  
 21 friend.  
 22 Q. How about a professional acquaintance?  
 23 A. Yes.  
 24 Q. Okay. Other than the Massachusetts  
 25 General Life Insurance policy that you purchased 11:10AM

1 from Mr. Winston, have you purchased other insurance  
 2 policies or investment products from him?  
 3 A. No.  
 4 Q. The conversations that you've had with  
 5 him over the years, did those relate to your life 11:10AM  
 6 insurance policy?  
 7 A. Yes.  
 8 Q. Who initiated those conversations?  
 9 A. Probably me.  
 10 Q. For what reason? 11:11AM  
 11 A. Relative to a possibility of making loans  
 12 on my insurance policy.  
 13 Q. Why would you call Mr. Winston about  
 14 making a loan on your insurance policy?  
 15 A. I didn't know who else to call. 11:11AM  
 16 Q. Did he assist you with that?  
 17 A. Yes.  
 18 Q. Back in 1986 when you purchased the  
 19 Massachusetts General policy from Mr. Winston,  
 20 what was it that you thought you were buying? 11:12AM  
 21 A. A life insurance policy that would  
 22 insure me until age 95.  
 23 Q. Do you think you received that?  
 24 MR. MILLSTEIN: Objection. Vague.  
 25 THE WITNESS: Did I receive it? 11:12AM

1 wife is 15 years younger than I am.  
 2 Q. Anything else that was important to you at  
 3 the time?  
 4 A. Not that I recall.  
 5 Q. And over the duration of the policy did 11:14AM  
 6 other aspects of it become more important to you or  
 7 less important to you?  
 8 A. No.  
 9 Q. It remained the case that the amount  
 10 of the death benefit and the length of time were 11:14AM  
 11 important to you?  
 12 A. Yes.  
 13 Q. Those were the most important things?  
 14 A. Yes.  
 15 Q. When you purchased the policy in 1986, did 11:14AM  
 16 you receive a hard copy document of --  
 17 A. Yes.  
 18 Q. Who did you receive that from?  
 19 A. Mr. Winston, as I recall.  
 20 Q. Did he give it to you personally or mail 11:14AM  
 21 it to you or some other way?  
 22 A. I don't recall for certain.  
 23 Q. Did he review the policy at all?  
 24 A. I don't recall.  
 25 Q. At the time you received it from him, did 11:15AM

1 BY MR. LISY:  
 2 Q. Yes.  
 3 A. Well, that's what I thought I received.  
 4 Q. Sitting here today, is that what you --  
 5 strike that.  
 6 Sitting here today, did you receive a life  
 7 insurance policy that would insure you until age 95?  
 8 MR. MILLSTEIN: Objection. Vague. Calls  
 9 for a legal conclusion.  
 10 You can answer. 11:13AM  
 11 THE WITNESS: Well, that's what the policy  
 12 said.  
 13 BY MR. LISY:  
 14 Q. When you purchased the policy, what about  
 15 the policy was important to you? 11:13AM  
 16 A. The amount and the length of time that it  
 17 would be in force.  
 18 Q. What do you mean by "amount"?  
 19 A. Well, it was for a million dollars.  
 20 Q. The death benefit? 11:13AM  
 21 A. Yeah, the death benefit was a million  
 22 dollars.  
 23 Q. And what do you mean by "the length of  
 24 time"?  
 25 A. Well, that it went to age 95 because my 11:13AM

1 you read it?  
 2 A. I don't recall.  
 3 Q. Did you have any questions about the  
 4 policy?  
 5 A. Oh, most -- 11:15AM  
 6 MR. MILLSTEIN: Objection. Vague.  
 7 THE WITNESS: Most of it I didn't  
 8 understand. It was written in life insurance  
 9 language.  
 10 BY MR. LISY: 11:15AM  
 11 Q. Did you ask Mr. Winston or anyone else for  
 12 clarification?  
 13 A. I thought I understood the policy as  
 14 presented.  
 15 Q. A minute ago you said most of the policy 11:15AM  
 16 you didn't understand --  
 17 MR. MILLSTEIN: Object.  
 18 MR. LISY: Let me ask my question, please.  
 19 MR. MILLSTEIN: Okay.  
 20 BY MR. LISY: 11:16AM  
 21 Q. A minute ago you said most of the policy  
 22 you didn't understand, but just now you said you  
 23 thought you understood what the policy presented.  
 24 What I'm trying to understand is at the time you  
 25 received the policy did you have any questions about 11:16AM

1 it that you asked of Mr. Winston or anyone else?  
 2 MR. MILLSTEIN: Okay. Objection. It's  
 3 argumentative. I ask you to state a standalone  
 4 question without the preface of your understanding  
 5 of his prior answers which renders the question 11:16AM  
 6 argumentative and compound.  
 7 BY MR. LISY:  
 8 Q. At the time you purchased the policy and  
 9 you received the policy, did you have any questions  
 10 about it that you asked of Mr. Winston or anyone 11:16AM  
 11 else?  
 12 A. At the time I received it, no.  
 13 Q. At the time you received it, do you  
 14 believe you understood what the policy was?  
 15 A. Yes. 11:17AM  
 16 Q. And that understanding was from  
 17 Mr. Winston?  
 18 A. Correct.  
 19 Q. If you had had questions at the time,  
 20 could you have asked Mr. Winston about them? 11:17AM  
 21 MR. MILLSTEIN: Objection. Calls for  
 22 speculation.  
 23 You can answer.  
 24 THE WITNESS: I'm sure he would have  
 25 talked to me about it and answered any questions. 11:17AM

1 A. A reason? Because he thought that I  
 2 should have legal counsel.  
 3 Q. When did Mr. Winston refer you to  
 4 Mr. Millstein?  
 5 A. It would have either been in late 2008 11:19AM  
 6 or early 2009.  
 7 Q. In one of the conversations we talked  
 8 about earlier?  
 9 A. Yes. And also in a letter that he sent to  
 10 me giving me Mr. Millstein's address and so forth. 11:19AM  
 11 Q. Do you recall what else he said in that  
 12 letter?  
 13 A. No, I don't recall.  
 14 THE WITNESS: Am I causing you trouble  
 15 over there? 11:20AM  
 16 BY MR. LISY:  
 17 Q. Do you still have a copy of that letter?  
 18 A. I'm sure I do.  
 19 MR. LISY: David, I don't think we've seen  
 20 a copy of that. 11:20AM  
 21 MR. MILLSTEIN: I don't think I have.  
 22 MR. LISY: If you might inquire.  
 23 MR. MILLSTEIN: I will inquire and get  
 24 back to you on it.  
 25 MR. LISY: Thank you. 11:20AM

1 BY MR. LISY:  
 2 Q. Have you spoken with Mr. Winston about  
 3 your insurance policy since this lawsuit has been  
 4 filed?  
 5 A. Have I talked to him about what? 11:17AM  
 6 Q. Have you spoken with Mr. Winston about  
 7 your insurance policy since the lawsuit has been  
 8 filed?  
 9 A. Well, I talked to him. I guess you could  
 10 say it was about the insurance policy. 11:18AM  
 11 Q. When was that?  
 12 A. That would have either been in late 2008  
 13 or early 2009.  
 14 Q. Are those the conversations that we talked  
 15 about -- 11:18AM  
 16 A. Yes.  
 17 Q. -- a few moments ago?  
 18 A. Yes.  
 19 Q. Did Mr. Winston ever recommend that you  
 20 seek legal counsel? 11:18AM  
 21 A. Yes.  
 22 Q. Did he refer you to a particular attorney?  
 23 A. To Mr. Millstein.  
 24 Q. Did he give you a reason why he referred  
 25 you to Mr. Millstein? 11:18AM

1 BY MR. LISY:  
 2 Q. Did Mr. Winston ever recommend that you  
 3 sue Conesco Life?  
 4 MR. MILLSTEIN: Objection. Vague.  
 5 THE WITNESS: I don't recall that specific 11:21AM  
 6 recommendation.  
 7 BY MR. LISY:  
 8 Q. Do you know where Mr. Winston is working  
 9 today, if anywhere?  
 10 A. He has an office in Dublin and he has an 11:21AM  
 11 office somewhere in Southern California, but I don't  
 12 know where that is.  
 13 Q. Is Dublin a local --  
 14 A. Dublin, California. Yes, it's over the  
 15 hill. 11:21AM  
 16 Q. Do you know if Mr. Winston is still  
 17 selling insurance today?  
 18 A. Do I know? No, I don't know.  
 19 MR. LISY: We've been going a little bit  
 20 more than an hour. Now is a good time for a break. 11:22AM  
 21 THE VIDEOGRAPHER: The time is 11:22 a.m.  
 22 and we are off the record.  
 23 (Off the record.)  
 24 THE VIDEOGRAPHER: The time is 11:41 a.m.  
 25 and we are back on the record. 11:41AM

1 BY MR. LISY:  
 2 Q. Welcome back from the break, Dr. Kreps.  
 3 Do you understand that you're still under oath?  
 4 A. Yes.  
 5 Q. Okay. You're a plaintiff in this matter; 11:41AM  
 6 correct?  
 7 A. Yes.  
 8 Q. Are you asserting in this matter that  
 9 Conseco has in some way harmed you?  
 10 A. Yes. 11:42AM  
 11 Q. In what way?  
 12 A. By decreasing the term of the insurance.  
 13 Q. Any other ways?  
 14 A. That's the main way.  
 15 Q. Are there other ways that may not be the 11:42AM  
 16 main ways but that you still feel you've been harmed  
 17 by Conseco?  
 18 MR. MILLSTEIN: Objection. Calls for a  
 19 legal conclusion. Vague and ambiguous.  
 20 BY MR. LISY: 11:42AM  
 21 Q. You can answer.  
 22 A. Well, that's the main thing is that it  
 23 decreased from age 95 to age 80.  
 24 Q. What's your understanding of how Conseco  
 25 Life decreased the term of the insurance? 11:43AM

1 legal conclusion. Vague and ambiguous as well.  
 2 MR. LISY: Well, let me withdraw it.  
 3 BY MR. LISY:  
 4 Q. You're a plaintiff?  
 5 A. Yes. 11:45AM  
 6 Q. And you filed a lawsuit against Conseco  
 7 Life?  
 8 A. Yes.  
 9 Q. What do you want from that lawsuit?  
 10 MR. MILLSTEIN: Same objection. 11:45AM  
 11 THE WITNESS: Some type of compensation.  
 12 BY MR. LISY:  
 13 Q. Compensation for what?  
 14 A. Well, either to extend the policy to  
 15 age 95 or sufficient moneys to allow me to create 11:45AM  
 16 another policy that would take care of that  
 17 situation.  
 18 Q. Why do you believe you're entitled to that  
 19 compensation?  
 20 MR. MILLSTEIN: Same objection. Vague and 11:46AM  
 21 calls for a legal conclusion.  
 22 THE WITNESS: Because that was my  
 23 understanding of what the policy was supposed  
 24 to provide me.  
 25 BY MR. LISY: 11:46AM

1 A. How they did it or -- well, I received  
 2 information from them saying that that's -- that it  
 3 would be decreased unless I paid this exorbitant  
 4 amount.  
 5 Q. What information was that? 11:43AM  
 6 A. A letter that they sent me that showed  
 7 that based upon what -- at that time what the cash  
 8 value was, that that would only last and pay the  
 9 cost of insurance and the premiums through age 80.  
 10 Q. So in your circumstance the correspondence 11:43AM  
 11 you received from Conseco indicated that your policy  
 12 would last only through age 80?  
 13 A. Correct.  
 14 Q. When did you receive that?  
 15 A. Probably late 2008. I don't know whether 11:43AM  
 16 it was November or December.  
 17 Q. How old were you in 2008?  
 18 A. In 2008 I was a year younger than I am  
 19 now, 77.  
 20 Q. So in 2008 you understood that your policy 11:44AM  
 21 from Conseco would lapse in approximately three  
 22 years?  
 23 A. Yeah.  
 24 Q. What are you seeking in this lawsuit?  
 25 MR. MILLSTEIN: Objection. Calls for a 11:45AM

1 Q. And you feel as though the policy did not  
 2 provide that to you?  
 3 MR. MILLSTEIN: Objection. Calls for a  
 4 legal conclusion.  
 5 THE WITNESS: Yeah, that's my feeling 11:46AM  
 6 based upon the correspondence that they've sent me.  
 7 BY MR. LISY:  
 8 Q. You surrendered your policy from Conseco  
 9 Life; correct?  
 10 A. Yes. 11:47AM  
 11 Q. How do you feel that Conseco Life  
 12 could extend your policy to age 95 since you've  
 13 surrendered it?  
 14 A. Well, I assume that what they would have  
 15 to do would be to issue a new policy, a new paid-up 11:47AM  
 16 policy, to take through age 95.  
 17 Q. In connection with surrendering your  
 18 policy you received a cash payment from Conseco  
 19 Life; correct?  
 20 A. Correct. 11:47AM  
 21 Q. If Conseco Life were to issue you a new  
 22 paid-up policy, would you return that money to  
 23 Conseco Life?  
 24 MR. MILLSTEIN: Objection. Calls for a  
 25 legal conclusion. 11:47AM

1 THE WITNESS: That would depend upon the  
 2 circumstances of the policy that they would issue.  
 3 BY MR. LISY:  
 4 Q. If you didn't return the money that you  
 5 received, you would essentially be getting a free 11:48AM  
 6 life insurance policy from Conseco; correct?  
 7 MR. MILLSTEIN: Objection. Argumentative.  
 8 Calls for a legal conclusion. Not reasonably likely  
 9 to lead to discoverable evidence.  
 10 You can answer. 11:48AM  
 11 THE WITNESS: Yeah, for whatever the face  
 12 value would be of that policy.  
 13 BY MR. LISY:  
 14 Q. You believe that you're entitled to that?  
 15 MR. MILLSTEIN: Same objections and vague. 11:48AM  
 16 THE WITNESS: Yes.  
 17 BY MR. LISY:  
 18 Q. Why is that?  
 19 A. Why is what?  
 20 Q. Why do you feel as though you would be 11:48AM  
 21 entitled to a free insurance policy from Conseco?  
 22 MR. MILLSTEIN: Same objections. I think  
 23 the question is vague as well. I don't think the  
 24 deponent understands the hypothetical.  
 25 MR. LISY: I don't need a speaking 11:49AM

1 class representative?  
 2 A. To make myself available such as for  
 3 deposition or trial or whatever.  
 4 Q. The class that you're seeking to  
 5 represent, will it be contending that Conseco 11:50AM  
 6 did something wrong?  
 7 A. Yes.  
 8 Q. What?  
 9 MR. MILLSTEIN: Objection. Calls for a  
 10 legal conclusion. 11:50AM  
 11 THE WITNESS: That they have withdrawn  
 12 my -- shortened the term of my coverage.  
 13 BY MR. LISY:  
 14 Q. And my question is a little bit different.  
 15 It's directed to not your personal -- it's directed 11:51AM  
 16 not to your personal situation but to the class  
 17 situation. My question is: What will the class be  
 18 contending that Conseco did wrong?  
 19 MR. MILLSTEIN: Same objection.  
 20 THE WITNESS: I don't think -- 11:51AM  
 21 MR. MILLSTEIN: Hold on. When I talk, you  
 22 have to kind of --  
 23 THE WITNESS: Okay.  
 24 MR. MILLSTEIN: It means I'm going to make  
 25 an objection so... 11:51AM

1 objection. Stating the basis is fine.  
 2 BY MR. LISY:  
 3 Q. Do you understand the question?  
 4 A. Well, maybe. I don't know. I'm just  
 5 trying to -- what I want to accomplish is to have 11:49AM  
 6 the amount of insurance for the term that I had --  
 7 yeah, for the term that I had. In other words,  
 8 insurance up to age 95.  
 9 Q. You seek to represent a class in this  
 10 matter? 11:49AM  
 11 A. Yes.  
 12 Q. What's your understanding of that class?  
 13 A. Oh, I don't have a good understanding  
 14 of that. I'm not that familiar with class action  
 15 suits. 11:50AM  
 16 Q. You're seeking -- pardon me -- you're  
 17 seeking to be a class representative?  
 18 A. I was asked to do that, yes.  
 19 Q. Okay. Who asked you to do that?  
 20 MR. MILLSTEIN: Objection. 11:50AM  
 21 Attorney-client privilege.  
 22 Don't answer the question.  
 23 BY LISY:  
 24 Q. What's your understanding of the  
 25 duties and responsibilities, if any, of a 11:50AM

1 THE WITNESS: Okay.  
 2 MR. MILLSTEIN: Could you repeat the  
 3 question, please.  
 4 (Record read as follows:  
 5 "Q. And my question is a little  
 6 bit different. It's directed to not  
 7 your personal -- it's directed to not  
 8 your personal situation but to the  
 9 class situation. My question is:  
 10 What will the class be contending  
 11 that Conseco did wrong?")  
 12 MR. MILLSTEIN: Okay. Objection. Calls  
 13 for attorney-client privilege.  
 14 Don't answer that question.  
 15 BY MR. LISY: 11:52AM  
 16 Q. The class is making certain contentions in  
 17 this lawsuit; is that correct?  
 18 MR. MILLSTEIN: Objection. Vague. Calls  
 19 for a legal conclusion.  
 20 You can answer. 11:52AM  
 21 THE WITNESS: I don't know.  
 22 BY MR. LISY:  
 23 Q. Do you know what legal claims the class  
 24 will be pursuing against Conseco Life?  
 25 A. No. 11:52AM



1 MR. MILLSTEIN: Same objection.  
 2 BY MR. LISY:  
 3 Q. I'm sorry. No?  
 4 A. No.  
 5 Q. Have you read the complaint in this 11:52AM  
 6 matter?  
 7 A. I don't recall if I've read that or not.  
 8 Q. Have you read the amended complaint?  
 9 A. I don't -- I don't know if I have or not.  
 10 I don't recall. 11:53AM  
 11 Q. Have you read the proposed definition of  
 12 the class to be certified?  
 13 A. Not that I recall.  
 14 Q. Have you read plaintiff's motion for class  
 15 certification? 11:53AM  
 16 A. I don't know.  
 17 Q. Have you read any of the depositions of  
 18 any of the other plaintiffs that have been taken?  
 19 A. No.  
 20 Q. What work have you done in connection with 11:53AM  
 21 prosecuting this lawsuit?  
 22 MR. MILLSTEIN: Objection. Lacks  
 23 foundation.  
 24 MR. LISY: I'll withdraw it.  
 25 MR. MILLSTEIN: Okay. He withdrew the 11:53AM

1 Q. When was that?  
 2 A. Friday.  
 3 Q. Was that the first time you had met  
 4 Mr. Millstein?  
 5 A. That's correct. 11:55AM  
 6 Q. Have you met any of the other attorneys  
 7 in this lawsuit?  
 8 A. No.  
 9 Q. Have you ever discussed this lawsuit with  
 10 your attorneys over the telephone? 11:55AM  
 11 A. No. not that I recall.  
 12 MR. MILLSTEIN: I'll instruct you not  
 13 to -- well, you answered it. But I'll move to  
 14 strike that and instruct you not to answer because  
 15 you asked about the substance of a conversation with 11:55AM  
 16 his attorneys.  
 17 MR. LISY: No, I asked has he ever  
 18 discussed the lawsuit over the telephone.  
 19 MR. MILLSTEIN: Right. So that means  
 20 the discussion he had with me would have been about 11:55AM  
 21 the lawsuit as opposed to any other thing and that  
 22 would reveal -- tend to reveal the content of the  
 23 communication which you're not allowed to inquire  
 24 as to.  
 25 MR. LISY: Well. I'm not seeking the 11:55AM

1 question.  
 2 BY MR. LISY:  
 3 Q. Have you done any work in prosecuting or  
 4 moving this lawsuit along?  
 5 MR. MILLSTEIN: Objection. Vague. Calls 11:54AM  
 6 for a legal conclusion.  
 7 THE WITNESS: Well, I don't know what  
 8 you mean by "work." I have faxed some materials  
 9 to Mr. Millstein, some documents.  
 10 BY MR. LISY: 11:54AM  
 11 Q. So what I want to understand is everything  
 12 that you've done in connection with this lawsuit.  
 13 MR. MILLSTEIN: Objection --  
 14 BY MR. LISY:  
 15 Q. Can you tell me about that, please. 11:54AM  
 16 MR. MILLSTEIN: Objection. Vague.  
 17 THE WITNESS: Well, other than faxing  
 18 documents to Mr. Millstein's office and meeting  
 19 with Mr. Millstein on Friday and appearing here,  
 20 that's about it. 11:54AM  
 21 BY MR. LISY:  
 22 Q. About how many times would you say you've  
 23 met with your attorneys in connection with this  
 24 lawsuit?  
 25 A. Once. 11:55AM

1 content. I have no interest in understanding the  
 2 substance of the communication other than to know  
 3 that one occurred.  
 4 MR. MILLSTEIN: Well, then, it shouldn't  
 5 be referenced. If the content is not the subject of 11:56AM  
 6 your question, the question should not reference its  
 7 substance.  
 8 BY MR. LISY:  
 9 Q. How many times have you spoken with  
 10 Mr. Millstein on the telephone? 11:56AM  
 11 A. Maybe twice.  
 12 Q. Prior to last week, how many times had you  
 13 spoken to Mr. Millstein on the telephone?  
 14 A. Maybe twice.  
 15 Q. How many times have you spoken to any of 11:56AM  
 16 the other attorneys?  
 17 A. I have never spoken to any other  
 18 attorneys.  
 19 Q. You've never spoken to any of the other  
 20 attorneys representing you in this lawsuit? 11:56AM  
 21 A. No.  
 22 Q. Have you ever heard of the law firm  
 23 Gilbert LLP?  
 24 A. Not that I recall.  
 25 Q. Do you have a written fee agreement with 11:57AM

1 your attorneys in this matter?  
 2 A. Not that I know of.  
 3 Q. Are you responsible for paying any legal  
 4 fees in this matter?  
 5 A. Not that I know of. 11:57AM  
 6 Q. Do you have any understanding of any  
 7 situation where you may be required to pay legal  
 8 fees in this matter?  
 9 A. Do I have an understanding or do I make  
 10 an assumption? 11:57AM  
 11 Q. What's your understanding?  
 12 A. I don't have an understanding.  
 13 Q. And what's your assumption?  
 14 A. My assumption is that, yes, probably.  
 15 Q. All right. Why do you say that? 11:57AM  
 16 A. Well, I assume that's how the system  
 17 works.  
 18 Q. When did you first consider filing a  
 19 lawsuit against Conseco Life?  
 20 A. I guess when I was advised by -- when 11:58AM  
 21 I was given Mr. Millstein's name.  
 22 Q. That was by Mr. Winston?  
 23 A. Yes.  
 24 Q. Prior to that, had you ever considered  
 25 suing Conseco Life? 11:58AM

1 These are really veiled threats. You  
 2 haven't offered any conceivable relevance. It has  
 3 nothing to do with this case and it's intrusive,  
 4 it's harassing, it's time consuming and it's  
 5 likely to -- it's an indirect attempt to get at 11:59AM  
 6 attorney-client privileged information, which is  
 7 clearly -- and it is clearly attorney-client  
 8 communication how an individual comes to the point  
 9 of making a decision to become a plaintiff in this  
 10 case. 12:00PM  
 11 So don't answer that question.  
 12 BY MR. LISY:  
 13 Q. And I want to make very clear for  
 14 the record that I'm in no way seeking any  
 15 communications, the substance of any communications 12:00PM  
 16 you've had with your attorneys. My questions are  
 17 directed at your independent evaluation of when you  
 18 decided to sue Conseco Life prior to -- I think I've  
 19 tried to be clear -- prior to any communication with  
 20 Mr. Millstein. 12:00PM  
 21 MR. MILLSTEIN: Don't answer the question.  
 22 It's just a veiled way of getting at the same  
 23 information and it's not likely to lead to any  
 24 discoverable information.  
 25 MR. LISY: Okay. Could you state your 12:00PM

1 A. Yes.  
 2 Q. When?  
 3 A. About that time.  
 4 Q. That was your own independent idea?  
 5 MR. MILLSTEIN: Objection. 11:58AM  
 6 Don't answer whose idea it is to sue.  
 7 It's attorney-client privilege.  
 8 Counsel, I don't see any conceivable  
 9 relevance to this entire intrusive line of  
 10 questioning and I'm going to terminate it fairly 11:58AM  
 11 soon unless you can proffer to me some ostensible  
 12 relevance. There's nothing material about this.  
 13 BY MR. LISY:  
 14 Q. You mentioned that Mr. Winston referred  
 15 you to Mr. Millstein. Do I have that right? 11:59AM  
 16 A. Well, I wouldn't call it an actual  
 17 reference. He simply indicated that Mr. Millstein  
 18 was looking into the case and that if I was  
 19 interested, I should get in touch with him. Now,  
 20 I don't know if you call that a referral or not. 11:59AM  
 21 Q. Prior to speaking with Mr. Winston, did  
 22 you yourself entertain the idea of suing Conseco  
 23 Life?  
 24 MR. MILLSTEIN: I'm going to instruct you  
 25 not to answer. 11:59AM

1 basis for your instruction not to answer?  
 2 MR. MILLSTEIN: I think I stated a number  
 3 of bases for it. It's attorney-client privilege,  
 4 it's an indirect attempt to learn the substance of  
 5 the conversations between me and my client by asking 12:00PM  
 6 about his pre-lawsuit "state of mind," and there's  
 7 no other reasonable basis for these -- for this  
 8 information.  
 9 So it's attorney-client privileged and  
 10 he's not going to answer it, and it's also not 12:01PM  
 11 reasonably likely to lead to the discovery of  
 12 any admissible evidence in this matter.  
 13 MR. LISY: Anything else?  
 14 MR. MILLSTEIN: No. And work product too.  
 15 MR. LISY: Will you mark this, please 12:01PM  
 16 (indicating).  
 17 (Whereupon, Defendant's Exhibit 61 was  
 18 marked for identification.)  
 19 BY MR. LISY:  
 20 Q. Dr. Kreps, the court reporter has placed 12:01PM  
 21 in front of you an exhibit that has been marked as  
 22 Defendant's Exhibit No. 61. Would you please take a  
 23 look at that exhibit and let me know when you've had  
 24 a chance to do so.  
 25 A. All right. 12:03PM

1 Q. Do you recognize this document, sir?  
 2 A. Well, at least part of it appears to be  
 3 the -- a copy of the insurance policy with my name  
 4 on it from Massachusetts General Life Insurance  
 5 Company. 12:04PM  
 6 Q. Is there another part to it?  
 7 A. Well, some of it's not readable beyond  
 8 page 14. Some of it looks like my application,  
 9 but I can't be absolutely certain. I'm sorry.  
 10 I'm having trouble reading this. 12:05PM  
 11 Q. Well, let's focus on the first 14 pages  
 12 of the document excluding your application that's  
 13 appended to the back. Do you recognize the first  
 14 14 pages to be a copy of your Massachusetts General  
 15 Life Insurance policy? 12:05PM  
 16 A. Well, I don't know about page 3 and 4 and  
 17 5. Are these copies of copies?  
 18 Q. Why do you say that you're not sure about  
 19 pages 3, 4 and 5?  
 20 A. Well, they look funny and I can't really 12:06PM  
 21 read them. Are those just the -- I don't know what  
 22 those are.  
 23 Q. Do you -- have you ever seen those pages  
 24 before?  
 25 A. I don't know if I have or not. 12:06PM

1 and see if you could locate that file.  
 2 A. All right.  
 3 Q. When you received the Massachusetts  
 4 General Life Insurance policy at the time you  
 5 purchased it, did you read it? 12:08PM  
 6 A. I don't recall.  
 7 Q. Was there any reason that you couldn't  
 8 have read it?  
 9 A. I --  
 10 MR. MILLSTEIN: Objection. Argumentative. 12:08PM  
 11 You can answer.  
 12 THE WITNESS. It might have been time.  
 13 BY MR. LISY:  
 14 Q. Why would time have prevented you from  
 15 reading it? 12:08PM  
 16 MR. MILLSTEIN: Objection. Calls for  
 17 speculation. Lack of foundation.  
 18 THE WITNESS: I was very, very busy. The  
 19 only reading I had a chance to do was technical.  
 20 BY MR. LISY: 12:08PM  
 21 Q. Related to your medical practice?  
 22 A. Correct.  
 23 Q. Earlier today we talked about statements  
 24 that you would receive from the insurance company  
 25 about your policy. 12:09PM

1 Q. Do you maintain a copy of your  
 2 Massachusetts General Life Insurance policy?  
 3 A. I'm sorry?  
 4 Q. Do you maintain a copy of your  
 5 Massachusetts General Life Insurance policy? 12:06PM  
 6 A. Well, I was asked to send in my policy  
 7 when I withdrew the money, okay, and I could not  
 8 find the original copy. I had had a copy that I had  
 9 made; I could find that, so I made a copy and sent  
 10 that to them. But the original one -- I just moved 12:06PM  
 11 is the problem and I've got boxes of records stacked  
 12 up that I can't get to in my garage right at the  
 13 moment. And so I don't know. I assume that the  
 14 policy is in there someplace.  
 15 Q. Do you maintain a file that contains 12:07PM  
 16 information about that insurance policy?  
 17 A. Yes. Yes. Later, yes.  
 18 Q. What do you mean by "Later"?  
 19 A. Well, I have a file beyond a certain date.  
 20 Okay. The other file I haven't found yet. 12:07PM  
 21 Q. I see. Is it possible that it's in one of  
 22 those boxes in the garage?  
 23 A. Yes, I'm sure it is. I'm pretty certain  
 24 it is.  
 25 Q. I'd ask you, if you could, to take a look 12:07PM

1 Do you recall that?  
 2 A. Yes.  
 3 Q. What did those statements contain?  
 4 A. The --  
 5 MR. MILLSTEIN: Objection. Vague. It's 12:09PM  
 6 compound.  
 7 You want to know -- you want him to  
 8 describe what every statement contained or are you  
 9 asking him generally what the statements contained?  
 10 Which statements contained what? It's impermissibly 12:09PM  
 11 broad, vague and ambiguous.  
 12 BY MR. LISY:  
 13 Q. Do you understand the question, sir?  
 14 A. Well, you want to know all of the things  
 15 that I received from Conesco? Is that what you're 12:09PM  
 16 asking?  
 17 Q. Over time you received statements from  
 18 Conesco?  
 19 A. Yeah. Yeah.  
 20 Q. What was your recollection and 12:09PM  
 21 understanding of what was contained in those  
 22 statements?  
 23 MR. MILLSTEIN: Same objection.  
 24 Counsel, that's an improper question.  
 25 Over the course of years you want him to 12:09PM

1 characterize a bunch of documents.  
 2 MR. LISY: I don't need a speaking  
 3 objection.  
 4 MR. MILLSTEIN: No. I think it's improper  
 5 and I think you should withdraw the question and ask 12:09PM  
 6 another question.  
 7 MR. LISY: You made your objection. I  
 8 would like him to answer it, if he can.  
 9 THE WITNESS: Well, I received yearly  
 10 statements showing the policy in force and so forth, 12:10PM  
 11 the increasing amount of accumulation value that  
 12 would cover all the premiums, statements that  
 13 said that there would be no increase in cost of  
 14 insurance, then letters that they sent regarding  
 15 this change and so forth. 12:10PM  
 16 BY MR. LISY:  
 17 Q. In your answer you mentioned "yearly  
 18 statements."  
 19 A. Yeah.  
 20 Q. You received statements on a yearly basis? 12:10PM  
 21 A. Oh, yes.  
 22 Q. Would those first have been from  
 23 Massachusetts General?  
 24 MR. MILLSTEIN: Objection. Calls for  
 25 speculation. 12:11PM

1 A. Yes.  
 2 Q. And the insured is "Kreps, R. Eugene," and  
 3 that's you?  
 4 A. Right.  
 5 Q. Underneath -- I'm sorry. Did I interrupt 12:14PM  
 6 you?  
 7 A. No.  
 8 Q. Underneath that there's information for  
 9 "Owner," and the owner is listed as "Trustee of  
 10 Eugene Kreps Pension Plan Trust." 12:14PM  
 11 A. Correct.  
 12 Q. Who was the owner at the time in 1990  
 13 that's the owner of this insurance policy?  
 14 A. It would have been me as the trustee of my  
 15 corporate pension plan. 12:14PM  
 16 Q. Was that the case also in 1986 when the  
 17 policy was purchased?  
 18 A. I couldn't tell you.  
 19 Q. Why was the Eugene Kreps Pension Plan with  
 20 you as the trustee the owner of this life insurance 12:15PM  
 21 policy?  
 22 A. I don't know. I guess I was advised --  
 23 MR. MILLSTEIN: Don't speculate.  
 24 THE WITNESS: I don't know.  
 25 BY MR. LISY: 12:15PM

1 THE WITNESS: I don't recall.  
 2 MR. LISY: Mark that, please (indicating).  
 3 (Whereupon, Defendant's Exhibit 62 was  
 4 marked for identification.)  
 5 BY MR. LISY: 12:11PM  
 6 Q. Dr. Kreps, the reporter has handed you  
 7 what has been marked as Defendant's Exhibit 62. And  
 8 for this and for other documents that you're handed  
 9 over the course of the day I'd just ask for you to  
 10 review them, and when you've done so, let me know. 12:11PM  
 11 That way I don't have to repeat myself with this  
 12 little preamble every time we give you an exhibit.  
 13 A. All right.  
 14 Q. Do you recognize this document as  
 15 an annual statement that you received from 12:13PM  
 16 Massachusetts General in or around October of 1990?  
 17 MR. MILLSTEIN: Objection. Compound.  
 18 THE WITNESS: It sort of looks like it.  
 19 That --  
 20 BY MR. LISY: 12:13PM  
 21 Q. You'll see -- I'm sorry.  
 22 A. That's what it says.  
 23 Q. If you look at the top of the first page  
 24 on the left-hand side, you'll see that there's some  
 25 information there titled "Insured"? 12:13PM

1 Q. Did you ever have a conversation with  
 2 Mr. Winston about structuring the plan in this way?  
 3 A. I don't recall.  
 4 Q. Did you have conversations with anyone  
 5 else about this subject? 12:15PM  
 6 A. No.  
 7 Q. Did there come a point in time where the  
 8 pension plan, the Eugene Kreps Pension Plan -- I'll  
 9 just refer to it as "the plan," if that's okay with  
 10 you. 12:15PM  
 11 A. (Witness nods.)  
 12 Q. Did there come a point in time where the  
 13 plan was not the owner of this insurance policy?  
 14 A. Yes.  
 15 Q. When was that? 12:15PM  
 16 A. Oh, probably at the time that my  
 17 corporation was dissolved.  
 18 Q. What year was that?  
 19 A. Oh, I'm not sure. Sometime after '93,  
 20 which is when I terminated my practice. 12:16PM  
 21 Q. What was the reason for the dissolution  
 22 of your corporation?  
 23 A. I quit the practice. I retired.  
 24 Q. And at that time who became the owner of  
 25 the insurance policy? 12:16PM

1 A. I did.  
 2 Q. Did you have any tax purposes in  
 3 structuring the policy so that the owner was  
 4 the plan?  
 5 MR. MILLSTEIN: Objection. 12:16PM  
 6 Don't answer it. It calls for personal  
 7 financial information.  
 8 BY MR. LISY:  
 9 Q. If you look on the first page of this  
 10 document, in the lower right-hand corner there's a 12:17PM  
 11 section that begins with the sentence, "The current  
 12 interest rate is 8.25 percent per annum."  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. What was your understanding at the time 12:17PM  
 16 you purchased the policy of what the interest rate  
 17 on the policy would be?  
 18 MR. MILLSTEIN: Objection. Vague.  
 19 You can answer.  
 20 THE WITNESS: It could vary and I don't 12:17PM  
 21 remember what it was related to.  
 22 BY MR. LISY:  
 23 Q. Did you have an understanding at the time  
 24 of whether the interest rate was related at all to  
 25 the policy? 12:17PM

1 a few moments ago "The current interest rate is  
 2 8.25 percent per annum," what did you understand  
 3 that to mean?  
 4 A. I don't recall what I understood at that  
 5 time relative to any details. 12:19PM  
 6 Q. If you turn to the second page of this  
 7 document, you'll see that there are some numbers  
 8 there reflecting a death benefit as well as a  
 9 surrender charge, policy loan and cash surrender  
 10 value. 12:20PM  
 11 Do you see where I'm referring you to on  
 12 the second page?  
 13 A. Policy loan and -- yes, okay. I see where  
 14 it says that.  
 15 Q. Did you read those numbers when you 12:20PM  
 16 received the annual statement?  
 17 A. I have no idea.  
 18 Q. Did you ever do any kind of comparison  
 19 between -- withdraw that.  
 20 With respect to this annual statement, 12:20PM  
 21 did you do a comparison between those numbers and  
 22 any numbers in your life insurance policy?  
 23 MR. MILLSTEIN: Objection. Vague.  
 24 THE WITNESS: I don't recall.  
 25 BY MR. LISY: 12:21PM

1 MR. MILLSTEIN: Objection. Vague.  
 2 THE WITNESS: I'm not sure I understand  
 3 what you're saying.  
 4 BY MR. LISY:  
 5 Q. So my focus is -- my question is focused 12:18PM  
 6 on the time you purchased the policy in or around  
 7 1986. Did you understand at the time that there  
 8 would be an interest rate that could affect the  
 9 policy in some way?  
 10 MR. MILLSTEIN: Same objection. Vague. 12:18PM  
 11 THE WITNESS: I don't recall.  
 12 BY MR. LISY:  
 13 Q. Did you have any discussion with  
 14 Mr. Winston about the interest rate on the policy?  
 15 A. I don't recall. 12:18PM  
 16 Q. At the time you purchased the policy in  
 17 1986, did you have an understanding generally that  
 18 interest rates could vary?  
 19 MR. MILLSTEIN: Objection. Vague.  
 20 THE WITNESS: Do you mean interest rates 12:19PM  
 21 in general could vary?  
 22 Oh, sure. There were a lot of interest  
 23 rate changes going on at that time.  
 24 BY MR. LISY:  
 25 Q. And the sentence that I read to you 12:19PM

1 Q. Did you keep any kind of separate  
 2 bookkeeping that tracked the various charges  
 3 and values of your insurance policy?  
 4 A. No.  
 5 Q. If you turn back to the first page. 12:21PM  
 6 The right-hand column that's titled "Accumulation  
 7 Account."  
 8 A. Yes.  
 9 Q. You'll see a range of numbers from  
 10 approximately \$29,940 up to \$67,277 at the end of 12:21 PM  
 11 the table. Did you ever review those numbers when  
 12 you received this statement?  
 13 A. I don't recall.  
 14 Q. Did you do a comparison between those  
 15 numbers and the guaranteed cash value table in your 12:21PM  
 16 insurance policy?  
 17 A. Not that I recall.  
 18 MR. LISY: Will you mark that, please  
 19 (indicating).  
 20 (Whereupon, Defendant's Exhibit 63 was 12:22PM  
 21 marked for identification.)  
 22 THE WITNESS: Okay.  
 23 BY MR. LISY:  
 24 Q. Do you recognize this document, sir?  
 25 A. No, not really. 12:23PM

21 (Pages 78 to 81)

1 Q. Do you recall ever having seen a copy of  
2 it before?  
3 A. I don't recall.  
4 Q. In or around 1992, did you have any  
5 communications with Mr. Winston about placing your 12:24PM  
6 policy, your Massachusetts General policy, on the  
7 so-called vanishing premium option?  
8 A. I don't recall.  
9 Q. Did you have any conversations with  
10 Mr. Winston at any time about placing your 12:24PM  
11 Massachusetts General policy on the so-called  
12 vanishing premium option?  
13 A. I don't remember any.  
14 Q. When I use the phrase "the so-called  
15 vanishing premium option," do you have an 12:24PM  
16 understanding of what I mean by that?  
17 A. No.  
18 Q. Earlier in your testimony you mentioned a  
19 conversation or conversations with Mr. Winston about  
20 paying a certain number of premiums on the policy 12:25PM  
21 and then not paying after that.  
22 Do you recall that?  
23 A. Correct.  
24 Q. Did Mr. Winston characterize that process  
25 as -- with any kind of a name? 12:25PM

1 payments on your Massachusetts General Life  
2 Insurance policy?  
3 A. I don't recall.  
4 Q. In or around 1992, did you have an  
5 intention to not pay further premium payments on 12:26PM  
6 your Massachusetts General Life Insurance policy?  
7 A. I was not aware. I thought that was --  
8 from the beginning after the five years that would  
9 be the situation.  
10 Q. Okay. What's the basis for that 12:27PM  
11 understanding?  
12 A. When the -- that was my understanding when  
13 I purchased the policy.  
14 Q. So your understanding at the time you  
15 purchased it was after five years you wouldn't be 12:27PM  
16 making further premium payments?  
17 A. Correct.  
18 MR. LISY: Okay. The videographer has  
19 indicated we need to change the tape. Let's go  
20 off the record. 12:27PM  
21 THE VIDEOGRAPHER: This marks the end of  
22 disk No. 1 in the deposition of Eugene Kreps, M.D.  
23 The time is 12:27 p.m. and we are off the  
24 record.  
25 (Whereupon, lunch was taken from 12:27PM

1 A. Not that I recall.  
2 Q. Okay. Did Mr. Winston ever call that the  
3 "optional premium payment provision" of your policy?  
4 A. I would have no idea.  
5 Q. Okay. I'd like to come up with a name 12:25PM  
6 that we can assign that concept of just paying, in  
7 your case, five premium payments and then not paying  
8 more over time.  
9 MR. MILLSTEIN: That's not a question.  
10 There's no question pending. 12:26PM  
11 BY MR. LISY:  
12 Q. Would you agree that for purposes of this  
13 deposition just for simplicity we can call that the  
14 "optional premium payment" or "OPP provision"?  
15 MR. MILLSTEIN: I'll object. I don't 12:26PM  
16 think that's a proper designation, and I think  
17 it's -- I don't think it's a proper question  
18 to reference some testimony to a clause in the  
19 agreement and ask a witness to please call the  
20 concept a clause. That's not -- 12:26PM  
21 MR. LISY: Fine. I'll withdraw it.  
22 MR. MILLSTEIN: Okay.  
23 BY MR. LISY:  
24 Q. In or around 1992, did you ever speak  
25 with Mr. Winston about not making further premium 12:26PM

1 12:27 p.m. until 1:39 p.m.)  
2 THE VIDEOGRAPHER: This marks the  
3 beginning of disk No. 2 in the deposition of  
4 Eugene Kreps, M.D.  
5 The time is 1:39 p.m. and we are back the 01:39PM  
6 on the record.  
7 BY MR. LISY:  
8 Q. Welcome back, Dr. Kreps.  
9 A. Thank you.  
10 (Whereupon, Defendant's Exhibit 64 was  
11 marked for identification.)  
12 BY MR. LISY:  
13 Q. I'm handing you what has been marked as  
14 Defendant's Exhibit No. 64.  
15 Have you had a chance to review the 01:40PM  
16 document?  
17 A. Yes.  
18 Q. Is that your signature?  
19 A. It is.  
20 Q. What is this document? 01:40PM  
21 A. It's a letter to Massachusetts General  
22 Life Insurance Company in Englewood, Colorado.  
23 I guess it's Colorado, yes.  
24 Q. It's a letter from you?  
25 A. Yes. 01:41PM

1 Q. To Massachusetts General?  
 2 A. Right.  
 3 Q. There's some handwriting right below the  
 4 signature. Is that your handwriting?  
 5 A. Well, I can't be sure. It sort of looks 01:41PM  
 6 like it.  
 7 Q. Can you make out what it says?  
 8 A. I can't. I can make out the word  
 9 "please."  
 10 Q. In the first sentence of the letter, "The 01:41PM  
 11 above policy has had the...five" -- let me start  
 12 over. "The above policy has had the planned five  
 13 payments made." What does that mean?  
 14 MR. MILLSTEIN: Objection. Calls for  
 15 speculation. 01:41PM  
 16 THE WITNESS: I don't know. I don't  
 17 remember this letter.  
 18 BY MR. LISY:  
 19 Q. Did you write this letter?  
 20 A. I must have. I signed it. 01:41PM  
 21 Q. The next sentence, which is a new  
 22 paragraph, states that "I request that this policy  
 23 be placed on the vanishing mode effective with the  
 24 premium due date above."  
 25 What do you mean when you write "the 01:42PM

1 A. No.  
 2 MR. MILLSTEIN: Objection. Compound.  
 3 THE WITNESS: Not that I know of.  
 4 (Whereupon, Defendant's Exhibit 65 was  
 5 marked for identification.) 01:45PM  
 6 THE WITNESS: All right.  
 7 BY MR. LISY:  
 8 Q. Do you recognize this document?  
 9 A. Do I recognize it? Do you mean do I  
 10 remember it? No. 01:45PM  
 11 Q. Have you ever seen it before?  
 12 A. I'm sure I have.  
 13 MR. MILLSTEIN: Don't speculate. He's  
 14 just asking if you've ever seen this before.  
 15 THE WITNESS: I don't recall. 01:45PM  
 16 BY MR. LISY:  
 17 Q. Do you see on the first page of the  
 18 document there's a column all the way to the  
 19 far right titled "Accumulated Value"?  
 20 A. Yes. 01:45PM  
 21 Q. It runs from a range of approximately  
 22 \$156,207 to \$156,778.  
 23 Do you recall referencing that column  
 24 of this document?  
 25 MR. MILLSTEIN: Objection. Asked and 01:46PM

1 vanishing mode"?  
 2 A. That was probably written at the advice of  
 3 Mr. Winston; otherwise, I would not have on my own  
 4 written this letter.  
 5 Q. What did you understand that to mean when 01:42PM  
 6 you wrote the letter?  
 7 MR. MILLSTEIN: Objection. Lacks  
 8 foundation.  
 9 You can answer it if you know what you  
 10 meant. 01:42PM  
 11 THE WITNESS: Okay. I don't know what my  
 12 thought was at the time, but I would suspect that  
 13 this was after the five -- the initial five payments  
 14 were made and then you had to request that it be  
 15 placed on vanishing so that you did not pay more 01:42PM  
 16 premiums.  
 17 BY MR. LISY:  
 18 Q. And that was your intention in writing  
 19 this letter?  
 20 A. I assume so. 01:42PM  
 21 Q. There's no date on the letter, although  
 22 there is a received date stamp of September 30th,  
 23 1992, towards the bottom.  
 24 Did you make any annual premium payments  
 25 on your Massachusetts General policy after 1992? 01:43PM

1 answered and vague.  
 2 BY MR. LISY:  
 3 Q. You can answer.  
 4 A. Oh, I don't recall.  
 5 Q. Was it generally your practice to 01:46PM  
 6 read annual statements that you received from  
 7 Mass General or Conseco Life?  
 8 A. Pretty much. I would look at certain  
 9 aspects maybe.  
 10 Q. Which aspects? 01:46PM  
 11 A. Usually the second -- what appears here  
 12 on the second page where it would say what the --  
 13 well, I guess the accumulation value would be on the  
 14 other page and then the fact that it would say what  
 15 the expense charges were and cost of insurance. 01:47PM  
 16 Q. Over time it was your practice to read  
 17 the accumulation value in the statements that you  
 18 received?  
 19 A. I -- generally I would do that.  
 20 Q. And the same for the expense and cost 01:47PM  
 21 of insurance charges?  
 22 A. Generally I would do that.  
 23 Q. Did you ever have any questions about  
 24 any of the values that you saw listed in the  
 25 accumulation value portion of the statement? 01:47PM

1 A. No. As long as the bottom line looked  
2 good.  
3 Q. Did that generally track with your  
4 expectations over time?  
5 A. I don't know that I had expectations. 01:48PM  
6 I don't know what you mean by "expectations." My  
7 expectation was that there was always a good amount  
8 there.  
9 Q. Did you ever look at a statement and think  
10 to yourself that number isn't what I expected or 01:48PM  
11 that number isn't a good number?  
12 A. I don't recall.  
13 Q. Okay. How about on the fees? With the  
14 expense or cost of insurance, did you ever see  
15 anything in that part of the statement that 01:48PM  
16 surprised you?  
17 A. Not really, that I can recall.  
18 Q. At the time you purchased the policy  
19 in 1986, what was your understanding about how  
20 the expense charge would be assessed? 01:48PM  
21 A. I don't know that I had any understanding.  
22 Q. Did Mr. Winston explain that to you?  
23 A. I wouldn't recall what he explained.  
24 Q. Do you recall whether you asked him any  
25 questions about it? 01:48PM

1 Q. Did you ever inquire of Conseco Life prior  
2 to October of 2008 about the cash value of your  
3 policy?  
4 A. Did I inquire about the cash value?  
5 Yeah, probably on a couple of times, but I don't 01:50PM  
6 recall exactly when or what I asked.  
7 Q. Do you recall why you did that?  
8 A. Well, I made a loan one time of \$100,000  
9 or so. I don't know why I did that but --  
10 MR. MILLSTEIN: He just asked did you 01:51PM  
11 ever.  
12 MR. LISY: Can you please not interrupt  
13 him.  
14 MR. MILLSTEIN: Well, I think I can if  
15 he's going way beyond the question. 01:51PM  
16 MR. LISY: No, I don't think you can and  
17 I'd like you to stop.  
18 MR. MILLSTEIN: I think I can. I think  
19 it's a waste of time and I think you're entitled to  
20 answers to your questions. And if a witness happens 01:51PM  
21 to start going on, it wastes time. You don't have a  
22 right to answers to things you didn't ask. So if  
23 he's inadvertently or improperly responding to your  
24 question, I don't think you can sort of gratuitously  
25 have an ability to take advantage of that and just 01:51PM

1 A. I don't recall.  
2 Q. At any time since you purchased the policy  
3 through, let's say, the day before that you received  
4 the letter from Conseco in October of 2008, did you  
5 gain any understanding about how the expense charge 01:49PM  
6 with respect to your policy operated?  
7 A. No.  
8 Q. How about the cost of insurance charge?  
9 Did you have an understanding as to how that would  
10 be assessed when you purchased the policy? 01:49PM  
11 A. No. And I'm not even sure how they  
12 determine that.  
13 Q. You weren't sure at the time?  
14 A. I still have no idea how they determine  
15 that. 01:49PM  
16 Q. Did you have any understanding as to  
17 whether those costs could vary over time?  
18 A. No, not really.  
19 Q. Did you ever inquire of Conseco Life about  
20 the expense or cost of insurance charges associated 01:50PM  
21 with your policy?  
22 MR. MILLSTEIN: Objection. Vague.  
23 BY MR. LISY:  
24 Q. Prior to October of 2008.  
25 A. I don't recall. 01:50PM

1 let him go on.  
2 MR. LISY: I'm entitled to ask the witness  
3 questions and the witness is entitled to give me  
4 answers. I'm entitled to the answers the witness  
5 gives to me. Whether you agree or disagree with 01:51PM  
6 them is not for --  
7 MR. MILLSTEIN: Well, I don't disagree  
8 with them. He's not responding to yes or no  
9 questions.  
10 MR. LISY: I don't appreciate your 01:51PM  
11 interrupting the witness.  
12 MR. MILLSTEIN: Well, you've made your  
13 record, Counsel, and I've made mine.  
14 BY MR. LISY:  
15 Q. And, Dr. Kreps, before Mr. Millstein 01:51PM  
16 interrupted you I had asked you why you inquired  
17 about the cash value. I'll ask that question again  
18 and could you please give me the answer: Why did  
19 you inquire of Conseco Life about the cash value of  
20 your policy? 01:52PM  
21 A. The -- at the time it was to find out what  
22 the cash value was and how much I could take out  
23 without it affecting the policy, the term of the  
24 policy.  
25 Q. This was at the time that you were 01:52PM



1 considering a loan on the policy?  
 2 A. Yes.  
 3 Q. Were there other times that you inquired  
 4 about the cash value of the policy?  
 5 A. No. Only the two times that I inquired 01:52PM  
 6 about a loan, and the last time I inquired about it  
 7 was when I was determining whether or not I should  
 8 cash out the policy.  
 9 Q. When you inquired about the cash value of  
 10 your policy from Conseco, did you receive a response 01:53PM  
 11 from the company?  
 12 A. I don't recall. I must have.  
 13 Q. The accumulated value portion of your  
 14 annual statement that you said you referenced from  
 15 time to time, did you ever do a comparison of that 01:53PM  
 16 to any value in your insurance policy? The hard  
 17 copy of the policy itself.  
 18 A. Oh, no.  
 19 (Whereupon, Defendant's Exhibit 66 was  
 20 marked for identification.) 01:54PM  
 21 BY MR. LISY:  
 22 Q. Have you seen this document before?  
 23 A. I don't recall.  
 24 Q. Let's turn to the second page. When you  
 25 called Conseco to inquire about the cash value of 01:55PM

1 Q. And in going through Mr. Winston's office,  
 2 what information were you seeking to obtain from the  
 3 company?  
 4 A. Probably --  
 5 MR. MILLSTEIN: Objection. Lacks 01:57PM  
 6 foundation. Calls for speculation.  
 7 BY MR. LISY:  
 8 Q. You can answer.  
 9 A. What was your question again? I got lost.  
 10 Q. That's fine. We were talking about 01:57PM  
 11 you were inquiring of the company about certain  
 12 information and you said that you probably went  
 13 through Mr. Winston's office. Do I have that right?  
 14 A. Yes.  
 15 Q. Okay. In going through Mr. Winston's 01:57PM  
 16 office, what information were you seeking to get?  
 17 MR. MILLSTEIN: Objection. Lacks  
 18 foundation. Calls for speculation.  
 19 THE WITNESS: What I could borrow from the  
 20 policy values, the cash value. 01:57PM  
 21 BY MR. LISY:  
 22 Q. Do you recall when you took a loan on the  
 23 policy?  
 24 A. Not really. I know one of them was  
 25 shortly before I bought the policy in 2002. 01:57PM

1 your policy, are any of the values on the second  
 2 page the number that you were calling to inquire  
 3 about?  
 4 A. Oh, I don't recall that.  
 5 Q. And by that I mean not the particular 01:56PM  
 6 number that's reflected on this statement, but, for  
 7 example, there's an entry for a death benefit of  
 8 \$1 million, and below that there's a value for the  
 9 accumulation account, and below that there's a value  
 10 for the cash surrender value. 01:56PM  
 11 When you called to inquire, were those --  
 12 were any of those numbers what you were calling to  
 13 inquire about?  
 14 MR. MILLSTEIN: Objection. Vague.  
 15 Are you referring to the numbers in the 01:56PM  
 16 document or categories or what? I believe it's  
 17 vague.  
 18 MR. LISY: Yes, categories.  
 19 BY MR. LISY:  
 20 Q. So not the particular numbers that are 01:56PM  
 21 listed here, but, for example, the cash surrender  
 22 value at whatever time that you called.  
 23 A. Okay. I probably did not call them  
 24 directly. I probably went through Mr. Winston's  
 25 office and they obtained information for me. 01:56PM

1 Q. The Indy Life policy?  
 2 A. Yeah.  
 3 Q. The document that has been marked as  
 4 Defendant's Exhibit 66, do you maintain a file at  
 5 your home of annual statements like this document? 01:58PM  
 6 A. Probably. I never throw anything away.  
 7 Q. Would those possibly be in the garage  
 8 file?  
 9 A. That's right.  
 10 (Whereupon, Defendant's Exhibit 67 was 01:59PM  
 11 marked for identification.)  
 12 THE WITNESS: Okay.  
 13 BY MR. LISY:  
 14 Q. Have you seen this document before?  
 15 A. I don't recall whether I have or not. 02:00PM  
 16 Q. Does it look like the kind of annual  
 17 statement that you would receive from the company?  
 18 A. Yes.  
 19 Q. If you turn to the second page of the  
 20 document, there's a reference to a surrender charge 02:00PM  
 21 of approximately \$34,000. It's about -- it's the  
 22 second line in from the top, the second sentence  
 23 in from the top.  
 24 A. Yes.  
 25 Q. When was the first time that you 02:01PM

25 (Pages 94 to 97)

1 considered surrendering your policy?  
 2 A. Maybe three months ago.  
 3 Q. It would have been late 2009?  
 4 A. Yeah.  
 5 Q. What was the reason for considering the 02:01PM  
 6 surrender at that time?  
 7 A. So that I could obtain the residual cash  
 8 value, as I had explored other options and it did  
 9 not appear reasonable to leave that money in there  
 10 if the policy was going to disappear in two years. 02:02PM  
 11 Q. You said "other options." What do you  
 12 mean by that?  
 13 A. Financial options. What I could do with  
 14 the money.  
 15 Q. I see. Was -- 02:02PM  
 16 A. With the cash. With the cash surrender  
 17 value.  
 18 Q. Was purchasing life insurance --  
 19 A. One of the options.  
 20 Q. Were there other options? 02:02PM  
 21 A. Well, you can always put money in a CD.  
 22 Q. At the time you were considering  
 23 surrendering the policy, did you feel that you  
 24 could get a better investment return by using  
 25 your money in some other kind of investment? 02:03PM

1 Q. Okay. And what was that understanding?  
 2 A. That it was -- that there would be  
 3 interest on that.  
 4 Q. What was your understanding as to what  
 5 that interest would be? 02:04PM  
 6 A. I wasn't certain. I couldn't tell you.  
 7 Q. Did you review any documents at the time  
 8 to try and determine what that interest rate would  
 9 be?  
 10 A. I don't recall what I reviewed at that 02:04PM  
 11 time.  
 12 Q. Did you speak with anyone other than your  
 13 attorneys about what that interest rate might be?  
 14 A. My financial advisor.  
 15 Q. Mr. Killian? 02:04PM  
 16 A. Yes.  
 17 Q. When did you speak with him?  
 18 A. Prior to that.  
 19 Q. One occasion?  
 20 A. No. A number of occasions, I'm sure. It 02:05PM  
 21 was very difficult to get any information from the  
 22 company at that time.  
 23 Q. Did you make attempts to get information  
 24 from the company?  
 25 A. My financial advisor apparently called 02:05PM

1 MR. MILLSTEIN: Objection. Lacks  
 2 foundation. Vague and ambiguous.  
 3 THE WITNESS: Probably.  
 4 BY MR. LISY:  
 5 Q. Did you understand at the time whether you 02:03PM  
 6 were getting any kind of return on your accumulation  
 7 account value?  
 8 MR. MILLSTEIN: Objection. Vague.  
 9 THE WITNESS: I'm sorry. Would you repeat  
 10 the question? I don't understand. If I could get 02:03PM  
 11 what?  
 12 BY MR. LISY:  
 13 Q. Let me take a step back. I'll withdraw it  
 14 and ask you another question.  
 15 At the time you were considering 02:03PM  
 16 surrendering your policy there was an accumulated  
 17 cash value.  
 18 A. Correct.  
 19 Q. And at the time you had an understanding  
 20 of what that cash value was. 02:03PM  
 21 A. Yes.  
 22 Q. Did you have an understanding as to  
 23 whether that cash value was earning interest or  
 24 otherwise growing in value?  
 25 A. Yes. 02:04PM

1 them almost daily.  
 2 Q. Do you know what kind of a response, if  
 3 any, he received?  
 4 A. They were told that the policy was  
 5 in review and that they couldn't give him any 02:05PM  
 6 information.  
 7 Q. Did you ultimately obtain any information  
 8 about your policy at that time?  
 9 MR. MILLSTEIN: Objection. Vague.  
 10 THE WITNESS: I don't remember really. 02:05PM  
 11 Oh, I did get a letter. I did get a letter.  
 12 BY MR. LISY:  
 13 Q. From the company?  
 14 A. Yes. I don't recall the date.  
 15 Q. Do you recall the content of the letter? 02:06PM  
 16 A. It showed the cash value and the amount of  
 17 premiums I had paid. I never received a statement  
 18 like -- I didn't receive a statement like this  
 19 (indicating).  
 20 MR. MILLSTEIN: The record will reflect 02:06PM  
 21 the witness is referring to Exhibit 67.  
 22 BY MR. LISY:  
 23 Q. Who made the decision to surrender your  
 24 policy?  
 25 A. I did. 02:06PM

1 Q. Did Mr. Killean advise you to do so?  
 2 A. Mr. Killean had helped me explore various  
 3 options and to determine what would be the best  
 4 option.  
 5 Q. And correct me if I've got this wrong. 02:07PM  
 6 I think earlier you said that you received some  
 7 correspondence from the company in late 2008 and  
 8 that's what got you thinking about surrendering  
 9 the policy. Do I have that right?  
 10 A. No. I did receive correspondence in late 02:07PM  
 11 2008, but that isn't when I started thinking about  
 12 surrendering it because I didn't know enough about  
 13 it at the time and I didn't consider the surrender  
 14 until I found out what my options would be in middle  
 15 and late 2009. We couldn't get any information from 02:07PM  
 16 the company during that period of time --  
 17 Q. I see.  
 18 A. -- of significance.  
 19 Q. And by finding out what your options would  
 20 be, you were working with Mr. Killean? 02:08PM  
 21 A. Yes.  
 22 Q. Anyone else?  
 23 A. No.  
 24 Q. At the time you surrendered your Conseco  
 25 Life policy, your Mass General policy, had you 02:08PM

1 Q. So at that time --  
 2 A. Which time?  
 3 Q. The time that you surrendered --  
 4 A. Okay.  
 5 Q. -- your policy, did you have any 02:10PM  
 6 understanding about whether that \$500,000 would  
 7 be required to be paid?  
 8 MR. MILLSTEIN: Objection. Vague. Calls  
 9 for a legal conclusion.  
 10 THE WITNESS: The money that they said 02:10PM  
 11 I would have to pay to keep my policy in force to  
 12 age 95 is the money that I was talking about. And  
 13 at that time, no, I would not be required to do  
 14 that. It was -- that was a payment of 340 some  
 15 thousand dollars plus monthly premiums beginning 02:11PM  
 16 at -- I forget exactly the date that that would  
 17 start, and that total amount up to age 95 would be  
 18 the additional 500 and some thousand dollars. But  
 19 it was only if I was paying premiums along and only  
 20 if I paid the shortfall. 02:11PM  
 21 BY MR. LISY:  
 22 Q. It was your understanding at the time  
 23 that if you wanted to keep your insurance policy,  
 24 you would have to pay those moneys?  
 25 A. Correct. 02:11PM

1 obtained additional life insurance from Aviva?  
 2 A. Yes, I was in the process.  
 3 Q. And had that Aviva policy issued at the  
 4 time you surrendered your Mass General/Conseco  
 5 policy? 02:09PM  
 6 A. I think the month before. Maybe a week,  
 7 two weeks, three weeks, I don't recall the exact  
 8 date.  
 9 Q. At the time that you decided to  
 10 surrender your insurance policy, did you have any 02:09PM  
 11 understanding about whether the amount of money that  
 12 the company had asked you to pay would be demanded?  
 13 MR. MILLSTEIN: Objection. Vague.  
 14 BY MR. LISY:  
 15 Q. I'll try it a different way with a little 02:09PM  
 16 bit of context.  
 17 Earlier we had talked about a letter that  
 18 you had gotten from the company asking you to pay  
 19 which you believed to be about \$500,000.  
 20 A. That would have been the total. 02:10PM  
 21 Q. Okay. It was after that that you made the  
 22 decision to surrender your policy?  
 23 A. (Witness nods.)  
 24 Q. Yes?  
 25 A. Yes. 02:10PM

1 MR. MILLSTEIN: Objection. Calls for a  
 2 legal conclusion.  
 3 BY MR. LISY:  
 4 Q. What was your understanding at the time  
 5 you surrendered your policy about what would happen 02:11PM  
 6 if you didn't pay those moneys?  
 7 MR. MILLSTEIN: Same objection.  
 8 THE WITNESS: According to the letter that  
 9 I received, the policy would lapse at age 80.  
 10 BY MR. LISY: 02:12PM  
 11 Q. Was that something that you discussed with  
 12 Mr. Killean?  
 13 A. Oh, yes.  
 14 (Whereupon, Defendant's Exhibit 68 was  
 15 marked for identification.) 02:14PM  
 16 THE WITNESS: Okay.  
 17 BY MR. LISY:  
 18 Q. Have you seen this document before?  
 19 A. Oh, yes.  
 20 Q. And what is it? 02:15PM  
 21 A. It's a letter from Conseco Life Insurance  
 22 Company.  
 23 Q. Did you receive this letter?  
 24 A. Yes.  
 25 Q. Did you read it when you received it? 02:15PM

1 A. I did.  
 2 Q. Did you discuss this letter with  
 3 Mr. Killian?  
 4 A. I did.  
 5 Q. Is this the letter from which you gained 02:15PM  
 6 your understanding that the policy would lapse by  
 7 age 80 if you didn't make certain payments?  
 8 A. Correct.  
 9 Q. Can you show me where that is in here?  
 10 A. Page -- oh, these aren't numbered. Yeah, 02:15PM  
 11 up at the top it says "Page 22" --  
 12 Q. I'm sorry to interrupt you. If you look  
 13 at the bottom right hand --  
 14 A. Okay.  
 15 Q. -- let's use those. 02:15PM  
 16 A. 132.  
 17 Q. Is there a specific entry on this page  
 18 that informed your understanding of what would  
 19 happen by your age 80?  
 20 A. Yes. 02:16PM  
 21 Q. Can you explain that to me, please.  
 22 A. Where it says that at age 80 that the  
 23 death benefit would be zero, over on the right.  
 24 Well, age 81.  
 25 Q. Have you ever heard this document referred 02:16PM

1 A. Yes.  
 2 Q. Did you discuss them with anyone else  
 3 other than your attorneys?  
 4 A. My wife.  
 5 Q. Anyone else? 02:18PM  
 6 A. Oh, she didn't count? No.  
 7 Q. Do you have any understanding of what  
 8 the phrase "continuation of insurance" means as it  
 9 relates to your policy?  
 10 A. Continuation of insurance? I'm not sure 02:18PM  
 11 I could define that accurately.  
 12 Q. Have you ever heard it used before?  
 13 A. Yeah.  
 14 Q. By who?  
 15 A. Well, I mean, I've read it someplace. 02:18PM  
 16 I don't know that I've ever heard anybody use the  
 17 phrase other than you.  
 18 Q. Did you talk about continuation of  
 19 insurance with Mr. Killian?  
 20 A. I don't recall specifically talking about 02:18PM  
 21 that particular phrase.  
 22 Q. I'd like to direct you to the third  
 23 page that has a number of "127" down in the bottom  
 24 right-hand corner.  
 25 A. 127. 02:19PM

1 to as an "illustration"?  
 2 A. I'm sorry?  
 3 Q. Have you ever heard this referred to as an  
 4 "illustration"?  
 5 A. I think it says that someplace. Yes, "an 02:16PM  
 6 in force life insurance illustration."  
 7 Q. And what is your understanding of what an  
 8 illustration is?  
 9 A. It's a projection based upon certain  
 10 variables. 02:17PM  
 11 Q. Okay. The illustration that you pointed  
 12 me to at No. 132 is one illustration. Do you see  
 13 that there are two other illustrations that are --  
 14 A. Oh, yes.  
 15 Q. -- attached to this letter? 02:17PM  
 16 A. Yes. I'm well aware of those.  
 17 Q. What's your understanding of those  
 18 illustrations?  
 19 A. That they required premium payments and  
 20 shortfall payments. 02:17PM  
 21 Q. That both of them required some sort of  
 22 payment by you?  
 23 A. Yes.  
 24 Q. Did you discuss all of these illustrations  
 25 with Mr. Killian? 02:18PM

1 Q. It's the last paragraph that starts, "We  
 2 have enclosed three projections of the expected  
 3 future performance."  
 4 A. Uh-huh.  
 5 Q. It refers to the projections as 02:19PM  
 6 illustrations.  
 7 Do you see the third sentence in that  
 8 paragraph states, "The second illustration assumes  
 9 that you do not pay the shortfall amount and assumes  
 10 no further premium payments under the continuation 02:19PM  
 11 of insurance provision."  
 12 A. Uh-huh.  
 13 Q. Did you review that illustration with  
 14 Mr. Killian?  
 15 A. Yes, I think so. I don't know if I 02:20PM  
 16 reviewed that specific thing with him. I don't  
 17 recall for certain.  
 18 Q. Did you have any discussion with  
 19 Mr. Killian about what would happen if you did not  
 20 make the shortfall amount payment and did not make 02:20PM  
 21 any further premium payments?  
 22 A. I don't recall our discussion.  
 23 Q. Your understanding at the time you  
 24 surrendered your policy was that if you never paid  
 25 another dime to Consec, the policy would lapse. 02:20PM

1 Do I have that right?  
 2 A. Correct.  
 3 Q. And it would lapse at age 80 or 81?  
 4 A. Yes.  
 5 (Whereupon, Defendant's Exhibit 69 was 02:22PM  
 6 marked for identification.)  
 7 BY MR. LISY:  
 8 Q. Have you had a chance to review this  
 9 document?  
 10 A. Yes. 02:23PM  
 11 Q. Is that your signature on --  
 12 A. Yes.  
 13 Q. What is this document?  
 14 A. It's a letter to Conseco Life Insurance  
 15 Company. 02:24PM  
 16 Q. And what are you asking Conseco to do?  
 17 A. Surrender the net cash value of the  
 18 policy.  
 19 Q. The second paragraph of the letter states  
 20 in part, "I was informed that the current net cash 02:24PM  
 21 value is \$130,029.10."  
 22 A. Correct.  
 23 Q. That was your understanding at the time of  
 24 the net cash value?  
 25 A. Yes. 02:24PM

1 (Whereupon, Defendant's Exhibit 71 was  
 2 marked for identification.)  
 3 THE WITNESS: Oh, we're moving on.  
 4 BY MR. LISY:  
 5 Q. Have you had a chance to review this 02:28PM  
 6 document?  
 7 A. Yes.  
 8 Q. Have you seen it before?  
 9 A. Yes, I'm sure I have.  
 10 Q. What is it? 02:28PM  
 11 A. It's a yearly statement.  
 12 Q. Turn to the second page of the document.  
 13 About halfway down the page right above the  
 14 header "Definitions" you'll see a statement that  
 15 says, "The surrender value of your policy on 02:29PM  
 16 October 1st, 2000 is the greater of the cash value  
 17 of \$170,408.24 or the guaranteed cash value of zero  
 18 dollars."  
 19 Do you see that statement?  
 20 A. Yes. 02:29PM  
 21 Q. Did you read that statement at the time  
 22 you reviewed it?  
 23 A. I've read that statement numerous times  
 24 and I cannot figure out what it says.  
 25 MR. MILLSTEIN: Okay. He didn't ask that. 02:29PM

1 Q. When you surrendered the policy, did you  
 2 receive that amount from Conseco?  
 3 A. I did.  
 4 (Whereupon, Defendant's Exhibit 70 was  
 5 marked for identification.) 02:26PM  
 6 BY MR. LISY:  
 7 Q. Have you had a chance to review this  
 8 document?  
 9 A. Somewhat, yes.  
 10 Q. Let me know when you're finished. 02:26PM  
 11 I'll will give you my question now so you  
 12 can have it in context. The question is going to  
 13 be: Is this a copy of the surrender packet that  
 14 you sent to Conseco to surrender your policy?  
 15 A. Yes. 02:26PM  
 16 Q. If you look at the fifth page of the  
 17 document that's numbered 6670 in the bottom  
 18 right-hand corner.  
 19 A. Yep.  
 20 Q. That's the same letter we just looked at? 02:27PM  
 21 A. Yes.  
 22 Q. And that's your signature on the letter?  
 23 A. Yes. I think that's the one we used.  
 24 Q. It should be.  
 25 A. Yeah. 02:27PM

1 THE WITNESS: Okay.  
 2 MR. MILLSTEIN: He just asked if you read  
 3 the statement.  
 4 THE WITNESS: Yes.  
 5 MR. LISY: And, again, I'd be grateful if 02:29PM  
 6 you didn't interrupt the witness.  
 7 MR. MILLSTEIN: He was finished with the  
 8 question. What do you mean interrupting him?  
 9 BY MR. LISY:  
 10 Q. When was the first time you read that 02:29PM  
 11 statement?  
 12 A. I don't recall that.  
 13 Q. Would it have been at the time that you  
 14 received this annual report?  
 15 MR. MILLSTEIN: Objection. Calls for 02:30PM  
 16 speculation. Lacks foundation.  
 17 THE WITNESS: I wouldn't know whether  
 18 this -- that statement or some other time.  
 19 BY MR. LISY:  
 20 Q. What's your understanding of what it 02:30PM  
 21 means?  
 22 MR. MILLSTEIN: Objection. Vague as to  
 23 time.  
 24 THE WITNESS: I'm not sure I understand  
 25 what it means. 02:30PM

1 BY MR. LISY:

2 Q. Have you ever understood what it meant?

3 A. Not really because I don't know -- to me  
4 it's a confusing statement. I know what cash value  
5 means. 02:30PM

6 Q. What does cash value mean?

7 A. That means the amount of money that is in  
8 cash that can be surrendered.

9 Q. From reading this statement, what's your  
10 understanding of the amount of money that's in cash 02:31PM  
11 that can be surrendered?

12 MR. MILLSTEIN: Objection. Vague.  
13 Argumentative as well.

14 BY MR. LISY:

15 Q. You can answer. 02:31PM

16 A. The 170,000.

17 Q. Did you ever ask anybody about the meaning  
18 of this statement?

19 A. Yes.

20 Q. Who? 02:31PM

21 MR. MILLSTEIN: Objection.  
22 Attorney-client privilege.

23 Don't answer to the extent anything  
24 you know about this reflects a conversation with  
25 counsel. 02:32PM

1 Q. That's an annual report for the period  
2 ending October 2nd, 2000.

3 Do you see that?

4 A. Yes.

5 Q. So that's the next year's annual report; 02:34PM  
6 correct?

7 A. Correct.

8 Q. If you turn to the second page there --

9 A. The next year? Oh, okay.

10 Q. From the previous exhibit. 02:34PM

11 A. All right.

12 Q. If you turn to the second page to the  
13 statement right above "Definitions," which is what  
14 we talked about a moment earlier, you see that there  
15 is now a reference to "guaranteed cash value"? 02:34PM

16 A. (Witness nods.)

17 Q. Do you agree with me that there was a  
18 change in the annual statement from 1999 to 2000?

19 MR. MILLSTEIN: Objection. Calls for  
20 a legal conclusion. The documents speak for 02:35PM  
21 themselves.

22 BY MR. LISY:

23 Q. You can answer.

24 A. It appears that way.

25 Q. In or around October of 2000 when you 02:35PM

1 MR. LISY: I'll try it another way.

2 BY MR. LISY:

3 Q. Other than your attorneys, did you ever  
4 ask anybody about the meaning of this statement?

5 A. I don't recall. 02:32PM

6 Q. If you turn back to what has been  
7 previously marked as Defendant's Exhibit 67.

8 MR. MILLSTEIN: Here's a copy  
9 (indicating). This is my copy. You can use that.

10 BY MR. LISY: 02:33PM

11 Q. Defendant's Exhibit 67 is an annual report  
12 for the period ending October 2nd, 1999.

13 Do you see that?

14 A. Yes.

15 Q. Now, if you can turn to the second page 02:33PM  
16 right above the "Definitions." About halfway down  
17 above the "Definitions" header you'll see a  
18 reference to "Cash surrender value."

19 Do you see that?

20 A. Yes. 02:33PM

21 Q. You'll see that there's no reference there  
22 to guaranteed cash value in that sentence.

23 A. Correct.

24 Q. And if you turn back to Defendant's 71.

25 A. Okay. 02:34PM

1 received Defendant's Exhibit No. 71, did you notice  
2 that change?

3 A. I don't recall if I noticed the change or  
4 not. I don't remember them from year to year.

5 Q. Do you recall having any reaction? 02:35PM

6 A. No.

7 Q. Are you familiar with the term  
8 "underfunded" as it applies to your Mass General  
9 or Conseco policy?

10 A. Well, in the statement they sent to me 02:36PM  
11 they said that the policy was underfunded.

12 Q. Do you have an understanding of what that  
13 means?

14 MR. MILLSTEIN: Objection. Calls for  
15 speculation. Calls for a legal conclusion and it's 02:36PM  
16 vague and ambiguous.

17 BY MR. LISY:

18 Q. You can answer.

19 A. My understanding was that they needed to  
20 have that money in order to continue the policy. 02:37PM

21 Q. Conseco needed to have that money?

22 A. Yeah. I needed to pay that in order to  
23 maintain the policy.

24 Q. Do you believe that you owed Conseco that  
25 money? 02:37PM

1 MR. MILLSTEIN: Objection. Calls for a  
2 legal conclusion.  
3 THE WITNESS: I didn't think I did.  
4 BY MR. LISY:  
5 Q. Why not? 02:37PM  
6 MR. MILLSTEIN: Same objection.  
7 THE WITNESS: Because that's not the way I  
8 understood the policy.  
9 MR. MILLSTEIN: Is this a good time to  
10 take a break now? 02:38PM  
11 MR. LISY: Sure.  
12 MR. MILLSTEIN: Okay.  
13 THE VIDEOGRAPHER: The time is 2:38 p.m.  
14 and we are off the record.  
15 (Off the record.) 02:50PM  
16 (Whereupon, Defendant's Exhibit 72 was  
17 marked for identification off the  
18 record.)  
19 THE VIDEOGRAPHER: The time is 2:53 p.m.  
20 and we are back on the record. 02:53PM  
21 BY MR. LISY:  
22 Q. Welcome back, Dr. Kreps.  
23 The court reporter has handed you what has  
24 been marked as Defendant's Exhibit No. 72. Would  
25 you please take a look at that. My question is 02:53PM

1 Q. Any government agency?  
2 A. No.  
3 Q. And I'm asking that question in the  
4 broadest way possible, whether it's in California  
5 or any other -- excuse me -- jurisdiction. 03:05PM  
6 A. No.  
7 (Whereupon, Defendant's Exhibit 73 was  
8 marked for identification.)  
9 BY MR. LISY:  
10 Q. I know this document is a little difficult 03:06PM  
11 to read. My question is going to be have you seen  
12 it before?  
13 A. I don't recall.  
14 Q. If you look at the top right-hand corner  
15 of the document, there's a date of October 1st, 03:06PM  
16 1987, which is around the time that --  
17 A. Yes.  
18 Q. -- you purchased your policy; correct?  
19 A. Yes.  
20 Q. Okay. At the time you purchased your 03:07PM  
21 policy, did you receive any illustrations showing  
22 what might happen over time?  
23 A. Yes.  
24 Q. Is this one of those illustrations?  
25 A. I don't know. 03:07PM

1 going to be have you ever seen this document before?  
2 A. I'm not sure. I don't know.  
3 MR. MILLSTEIN: Why don't you review it.  
4 THE WITNESS: Read what?  
5 MR. MILLSTEIN: Review the document before 02:54PM  
6 you answer the question.  
7 Do you want to repeat the question?  
8 MR. LISY: Sure.  
9 BY MR. LISY:  
10 Q. Have you seen this document before? 03:04PM  
11 A. I don't recall.  
12 MR. LISY: We have not received a  
13 verification page from Dr. Kreps. If you can  
14 provide us with one, please.  
15 MR. MILLSTEIN: Okay. Sure. 03:05PM  
16 MR. LISY: Thanks.  
17 BY MR. LISY:  
18 Q. Dr. Kreps, have you ever had any  
19 communications with any regulatory body about  
20 your Conseco insurance policy? 03:05PM  
21 A. Regulatory body? What's a regulatory  
22 body?  
23 Q. For example, the California Department of  
24 Insurance.  
25 A. No. 03:05PM

1 Q. Over the course of your contract --  
2 withdraw that.  
3 Over the course of your policy's life did  
4 you receive illustrations showing what might happen  
5 over time? 03:07PM  
6 A. Yes.  
7 Q. Did you request those illustrations?  
8 A. Are you considering the yearly statement  
9 an illustration?  
10 Q. I'll try it like this: Aside from the 03:07PM  
11 yearly statement, did you request over the course of  
12 your life insurance policy any illustrations showing  
13 what might happen over time?  
14 A. Not that I recall.  
15 Q. Do you recall reviewing any illustrations? 03:08PM  
16 A. Only the ones that I received in, whatever  
17 it was, October or November of 2008.  
18 Q. If you look on this document at the first  
19 page, about a third of the way down the page there's  
20 a heading titled "Important Notice" on the left-hand 03:08PM  
21 side.  
22 A. Okay.  
23 Q. I'll read it to you. It states, in part,  
24 "The projected results of your insurance program  
25 may change drastically with variations in the 03:08PM

1 interest rates, mortality rates, risk charges.  
2 expense factors and frequency, timing and amount  
3 of your premium payments."

4 Do you see that?

5 A. Yeah, I see where it is, yeah. 03:09PM

6 Q. In October of 2000 -- withdraw that.

7 In October of 1987 or thereabouts, did you  
8 have any understanding about whether your insurance  
9 policy could change drastically due to those kinds  
10 of variations? 03:09PM

11 A. No.

12 Q. Did Mr. Winston ever explain to you that  
13 your insurance policy could change with variations  
14 due to those kinds of factors?

15 A. Not that I recall. 03:09PM

16 Q. You said earlier that your understanding  
17 that you wouldn't have to pay annual premiums past  
18 the fifth year came from Mr. Winston; is that right?

19 A. Correct.

20 Q. Did you have any other basis for that 03:10PM  
21 understanding?

22 A. Not really, that I recall.

23 Q. Did you ever see that concept laid out  
24 in your insurance policy at any time?

25 A. Not that I recall. 03:10PM

1 A. I mean, it says here that the cash  
2 value -- the surrender value is the greater cash  
3 value of \$170,000. So I guess that would be higher  
4 than zero, wouldn't it?

5 Q. And with respect to the portion of that 03:12PM  
6 phrase that says, "the guaranteed cash value of zero  
7 dollars," did you ever expect that the guaranteed  
8 cash value for your life insurance policy should be  
9 more than zero dollars?

10 A. I'm sorry. Did I ever expect it would be? 03:12PM

11 Q. Did you ever expect that the guaranteed  
12 cash value of your life insurance policy would be  
13 more than zero dollars?

14 MR. MILLSTEIN: Objection. Vague. Calls  
15 for a legal conclusion. 03:12PM

16 THE WITNESS: Yes. Because of statements  
17 that I read said there was cash value.

18 BY MR. LISY:

19 Q. Are you referring to the accumulation  
20 account value? 03:12PM

21 A. No. I'm referring to statements sent to  
22 me by Conseco.

23 Q. And you feel that those statements  
24 reflected that the guaranteed cash value should  
25 be more than zero dollars? 03:13PM

1 Q. Do you know whether your insurance policy  
2 provides for that kind of an arrangement?

3 A. No. I haven't reviewed it.

4 Q. You never looked for it?

5 A. I haven't reviewed it during the period of 03:10PM  
6 my memory.

7 Q. Do you have any recollection of reviewing  
8 it for that kind of information?

9 A. No.

10 Q. If you turn back to what has been 03:10PM  
11 previously marked as Defendant's Exhibit No. 71.  
12 It's the October 2001 annual statement.

13 A. Yes.

14 Q. If you turn to the second page of that,  
15 again, to that same sentence that we talked about 03:11PM  
16 before, about the guaranteed cash value of zero  
17 dollars and zero cents.

18 Do you see that?

19 A. Yes.

20 Q. Did you ever expect that that guaranteed 03:11PM  
21 cash value would be higher than zero dollars?

22 A. Did I ever expect it would be higher? I  
23 don't know that I had an expectation. I'm not sure  
24 what you're asking really.

25 Q. Okay. 03:11PM

1 MR. MILLSTEIN: Objection. Vague.

2 THE WITNESS: Well, it was the cash  
3 value. I don't know that they applied the term  
4 "guaranteed." They just said the cash value is  
5 such and such. 03:13PM

6 BY MR. LISY:

7 Q. Did you ever review your Massachusetts  
8 General/Conseco Life Insurance policy for any  
9 guaranteed cash values?

10 A. No. 03:13PM

11 Q. Getting back to something we talked about  
12 a minute ago, your understanding that you wouldn't  
13 have to pay annual premiums past the fifth year.

14 A. Correct.

15 Q. Did you ever have any understanding 03:14PM  
16 that -- withdraw that.

17 Did you ever have any understanding about  
18 whether you would ever have to pay any additional  
19 premium in any circumstance?

20 A. I never had any understanding, no. 03:14PM

21 Q. As far as you were concerned, once you  
22 paid the five annual premiums, that was all the  
23 money that you would ever have to pay on this  
24 insurance policy?

25 A. Yes. 03:14PM



1 Q. Okay. When did you first find out that  
 2 Conseco Life was asking you to pay more money into  
 3 the insurance policy beyond those five premium  
 4 payments?  
 5 A. On October, I think, 31st of 2008, I 03:15PM  
 6 think. I'd have to check that.  
 7 Q. When you received the correspondence --  
 8 A. Yes.  
 9 Q. -- with the illustrations?  
 10 A. Yes. Wasn't that on the 31st of October 03:15PM  
 11 of 2008?  
 12 Q. Let's say October 2008.  
 13 Do you believe that at any time prior to  
 14 that Conseco Life should have told you that more  
 15 money was required? 03:15PM  
 16 MR. MILLSTEIN: Objection. Calls for a  
 17 legal conclusion. Assumes facts not in evidence.  
 18 Lacks foundation.  
 19 THE WITNESS: Well, if there was a  
 20 determination earlier, yes, I would assume they 03:16PM  
 21 would tell me.  
 22 BY MR. LISY:  
 23 Q. What do you mean by "if there was a  
 24 determination earlier"?  
 25 A. Well, if they -- if Conseco had determined 03:16PM

1 you what has been marked as Defendant's Exhibit 74.  
 2 Could you take a minute to review it and let me know  
 3 if you've seen this document before.  
 4 MR. MILLSTEIN: Did you give me a copy?  
 5 THE WITNESS: Okay. 03:26PM  
 6 BY MR. LISY:  
 7 Q. Have you seen this document before?  
 8 A. I don't recall.  
 9 Q. Do you recall asking Mr. Killean --  
 10 withdraw that. 03:26PM  
 11 Do you recall asking Mr. Winston for an  
 12 illustration about your life insurance policy in or  
 13 around January of 2002?  
 14 A. No, I don't recall.  
 15 Q. Did you ask Conseco Life for an 03:27PM  
 16 illustration about your policy in or around  
 17 January of 2002?  
 18 A. I don't recall whether I personally did or  
 19 not.  
 20 Q. When you say whether you personally did 03:27PM  
 21 or not, is it possible that someone did so on your  
 22 behalf?  
 23 A. Yes.  
 24 Q. Who would that have been?  
 25 A. Probably Mr. Killean, in looking at the 03:27PM

1 that I would need to pay more at an earlier date, I  
 2 would assume that would have been made known to me  
 3 because in all my statements there was nothing that  
 4 I could see that indicated that there was any kind  
 5 of a problem. 03:17PM  
 6 Q. Is there -- what's -- withdraw that.  
 7 What's the basis for your understanding  
 8 that they would have had to have told you when a  
 9 determination was made?  
 10 A. That they would have to tell me? 03:17PM  
 11 MR. MILLSTEIN: Objection. Calls for a  
 12 legal conclusion.  
 13 MR. LISY: Did I get that wrong?  
 14 Let me try it again. I'll withdraw it.  
 15 Let's go off the record. 03:17PM  
 16 THE VIDEOGRAPHER: The time is 3:18 p.m.  
 17 and we are off the record.  
 18 (Off the record.)  
 19 (Whereupon, Defendant's Exhibit 74 was  
 20 marked for identification off the  
 21 record.)  
 22 THE VIDEOGRAPHER: The time is 3:24 p.m.  
 23 and we are back on the record.  
 24 BY MR. LISY:  
 25 Q. Dr. Kreps, the court reporter has handed 03:24PM

1 date.  
 2 Q. That would have been Mr. Killean or  
 3 Mr. Winston?  
 4 A. Yeah.  
 5 Q. Mr. Killean? 03:27PM  
 6 A. Mr. Killean probably.  
 7 Q. I see.  
 8 Did you request that Mr. Killean obtain an  
 9 illustration for you on your life insurance policy  
 10 in or around January of 2002? 03:27PM  
 11 A. I don't recall if I asked him to obtain an  
 12 illustration, no.  
 13 Q. Had he ever shared illustrations that he  
 14 had received with you at any point in time?  
 15 A. Not that I recall. 03:28PM  
 16 (Whereupon, Defendant's Exhibit 75 was  
 17 marked for identification.)  
 18 BY MR. LISY:  
 19 Q. And I'd also like to show you what has  
 20 been previously marked -- well, excuse me, marked 03:28PM  
 21 by the court reporter as Defendant's Exhibit 75.  
 22 Is that a copy of the Indianapolis Life  
 23 Insurance policy that you brought to the deposition  
 24 today?  
 25 A. It appears to be. 03:28PM

1 Q. This policy is currently in force?  
 2 A. That's my understanding, yes.  
 3 Q. And the face value is \$600,000?  
 4 A. That's my understanding, yes.  
 5 Q. When did that policy go into effect? 03:28PM  
 6 A. April 13th, 2002.  
 7 Q. In connection with obtaining that life  
 8 insurance policy, did you undertake a review of  
 9 your existing life insurance policy at the time?  
 10 MR. MILLSTEIN: Objection. Vague. 03:29PM  
 11 THE WITNESS: It depends upon what you  
 12 mean by "review." I discussed it with Mr. Killean  
 13 probably.  
 14 BY MR. LISY:  
 15 Q. You discussed your Mass General policy 03:29PM  
 16 with Mr. Killean --  
 17 MR. MILLSTEIN: Objection. Vague.  
 18 BY MR. LISY:  
 19 Q. -- in or around --  
 20 A. I don't recall exactly what we discussed. 03:29PM  
 21 Q. What was the purpose for taking out the  
 22 life insurance policy from Indy Life?  
 23 A. To increase my amount of coverage.  
 24 Q. And by "coverage" do you mean death  
 25 benefit? 03:30PM

1 MR. LISY: Those are all the questions  
 2 that I have for now subject to any that David has.  
 3 And, again, Dr. Kreps, thank you very much  
 4 for your time today. I'd be grateful if you could  
 5 take a look for those documents that you mentioned 03:32PM  
 6 in your garage.  
 7 THE WITNESS: That letter, yeah.  
 8 MR. LISY: And if you find any, if you  
 9 would send them to your attorneys, please.  
 10 THE WITNESS: Yeah. And if I get the 03:32PM  
 11 policy back that they're correcting.  
 12 MR. LISY: From Aviva?  
 13 THE WITNESS: Yes.  
 14 MR. MILLSTEIN: I'll get you a  
 15 verification. 03:32PM  
 16 MR. LISY: Thank you very much, sir.  
 17 THE VIDEOGRAPHER: This marks the end of  
 18 disk No. 2 of 2 and concludes today's deposition of  
 19 Eugene Kreps, M.D.  
 20 The time is 3:33 p.m. and we are off the 03:33PM  
 21 record.  
 22 DEPOSITION REPORTER: Do you want a copy  
 23 of the transcript?  
 24 MR. MILLSTEIN: Yes. I'm going to get a  
 25 copy and Gilbert LLC will also get a copy. Okay? 03:33PM

1 A. Death benefit, yeah.  
 2 Q. At the time that you took out the policy  
 3 from Indy Life, did you review your Mass General  
 4 Life Insurance policy with Mr. Killean?  
 5 A. Oh, we discussed it. I don't know if you 03:30PM  
 6 would consider it a review.  
 7 Q. What about the policy did you discuss?  
 8 A. The fact that it had sufficient cash  
 9 value, that it would be advantageous to borrow out  
 10 some of the cash value in order to take out another 03:30PM  
 11 policy that -- only to the extent that it would not  
 12 affect the term and the guarantees on the Conesco or  
 13 Mass General policy.  
 14 Q. Did you determine whether there was  
 15 sufficient cash value to follow those plans? 03:31PM  
 16 A. I did not personally. Mr. Killean had  
 17 discussions with the people at Conesco.  
 18 Q. Did Mr. Killean relate the context of  
 19 those discussions to you?  
 20 A. Yes. That's what determined the amount 03:31PM  
 21 that was borrowed.  
 22 Q. Did you review any documents in connection  
 23 with that analysis?  
 24 A. Not that I recall. I just don't recall if  
 25 I reviewed. 03:32PM

1 Send Gilbert their copy expedited. I  
 2 don't need my copy expedited.  
 3 (Whereupon, the deposition concluded.)  
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1 CERTIFICATE OF REPORTER

2  
3 I, JANIS L. JENNINGS, a Certified Shorthand  
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth; that  
7 any witnesses in the foregoing proceedings, prior to  
8 testifying, were placed under oath; that a verbatim  
9 record of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; further, that the foregoing is an accurate  
12 transcription thereof.

13 I further certify that I am neither  
14 financially interested in the action nor a relative or  
15 employee of any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date  
17 subscribed my name.

18  
19 Dated: January 18, 2009.

20  
21  
22  
23 \_\_\_\_\_  
24 JANIS JENNINGS, CSR NO. 3942, CLR, CRP  
25

1 EXHIBITS

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8	Exhibit 62 Massachusetts General Life Insurance	
9	Company Annual Report; CLIC 0001037 -	
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12	Exhibit 63 Letter dated 9/24/92 from Eugene Kreps	
13	to Massachusetts General Life Insurance	
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17	Massachusetts General Life Insurance	
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21	holder statement for July 01, 1994 to	
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6	statement of policy value - July 01,	
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10	Exhibit 67 Conseco Life policyholder statement for	
11	October 01, 1998 to October 02, 1999;	
12	CLIC 0006637 - 6638	97
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14	Exhibit 68 Letter dated 10/7/08 from Conseco Life	
15	Insurance Company to Eugene Kreps;	
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18	Exhibit 69 Letter dated 10/29/09 from R. Eugene	
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