

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

IRVING H. BLUMENTHAL, JR.,	*
INDIVIDUALLY AND ON BEHALF	*
OF ALL SIMILARLY SITUATED	*
INSUREDS OF NEW YORK LIFE	*
INSURANCE AND ANNUITY	*
CORPORATION	*
	*
VS.	*
	*
NEW YORK LIFE INSURANCE AND	*
ANNUITY CORPORATION	*

NO. 5:08-CV-00456-F

 ORAL AND VIDEOTAPED DEPOSITION OF
 DAVID SANDERFORD
 MARCH 4, 2010

ANSWERS AND DEPOSITION OF DAVID SANDERFORD, a witness produced at the instance of the Defendant, taken in the above styled and numbered cause, on the 4th day of March, 2010, from 9:09 a.m. to 3:20 p.m., before Gail McElduff Spurgeon, a Certified Court Reporter in and for the State of Texas, at the offices of Fulbright & Jaworski, 2200 Ross Avenue, Suite 2800, City of Dallas, County of Dallas, and State of Texas, pursuant to the Federal Rules of Civil Procedure.

DAVID SANDERFORD - March 04, 2010

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 MS. JENNIFER F. SHERRILL Federman & Sherwood 4 10205 N. Pennsylvania Oklahoma City, Oklahoma 73120 5 APPEARING FOR THE PLAINTIFF</p> <p>6</p> <p>7 MR. PHILLIP E. STANO Sutherland Asbill & Brennan 1275 Pennsylvania Avenue, NW 8 Washington, DC 20004-2415 APPEARING FOR THE DEFENDANT</p> <p>9</p> <p>10 MS. KAREN J. LAMP New York Life Insurance Company 11 51 Madison Avenue New York, NY 10010 12 APPEARING FOR THE DEFENDANT</p> <p>13</p> <p>14 ALSO PRESENT: Anthony Marlar, Videographer</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We're now on the 3 record for the videotaped deposition of David M. 4 Sanderford. Today is March 4th, 2010. The time is 5 9:09 a.m. The case is entitled Irving Blumenthal, Jr., 6 versus New York Life Insurance, Case No. 7 5:08-CV-00456-F.</p> <p>8 Would counsel all present please identify 9 yourselves for the record?</p> <p>10 MS. SHERRILL: Jennifer Sherrill of 11 Federman & Sherwood for the Plaintiff.</p> <p>12 MR. STANO: Phillip Stano for the 13 defendant -- and, Anthony, the company's name is 14 New York Life Insurance & Annuity Corporation.</p> <p>15 THE VIDEOGRAPHER: Okay.</p> <p>16 MS. LAMP: Karen Lamp for New York Life.</p> <p>17 THE VIDEOGRAPHER: The court reporter 18 will now swear in the witness.</p> <p>19 DAVID SANDERFORD, 20 having been first duly sworn, testified as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. STANO:</p> <p>23 Q. Would you state your name for the record, 24 please?</p> <p>25 A. David Max Sanderford.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 Changes and Signature..... 259</p> <p>5 Reporter's Certificate..... 261</p> <p>6 DAVID SANDERFORD</p> <p>7 EXAMINATION BY MR. STANO..... 4</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NO. DESCRIPTION PAGE</p> <p>11 1 Resume of David Sanderford..... 10</p> <p>12 2 Notice to Take Deposition..... 55</p> <p>13 3 David Sanderford's File..... 55</p> <p>14 4 NYLIAC Protector Universal Life Insurance In .. 88 Force Illustration</p> <p>15 5 NYLIAC Protector Life Insurance Illustration...117</p> <p>16 6 Report and Analysis of David Sanderford.....147</p> <p>17 7 Policy Delivery Receipt.....169</p> <p>18 8 Interest Rate - Historical Analysis.....181</p> <p>19 9 Damage Analysis.....254</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 Q. And where do you reside, Mr. Sanderford?</p> <p>2 A. 5502 Flag Stick Drive, Granbury, Texas.</p> <p>3 Q. And do you -- that's your home address?</p> <p>4 A. That is.</p> <p>5 Q. And do you have a business address?</p> <p>6 A. That is also my business address.</p> <p>7 Q. Okay. And how long have you resided at that 8 address?</p> <p>9 A. I believe it will be 11 years within a month 10 or so.</p> <p>11 Q. Is that your business address for the past 12 11 years as well?</p> <p>13 A. It is.</p> <p>14 Q. And what is your business currently?</p> <p>15 A. My business is to provide consulting services 16 to attorneys who represent mostly claimants, but 17 sometimes defendants in securities litigation.</p> <p>18 Q. Okay. And how long have you been in this 19 business?</p> <p>20 A. Approximately 12 years.</p> <p>21 Q. Okay. Basically, you're an expert witness?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. Did you get the notice to take your 24 deposition in this case?</p> <p>25 A. I did.</p>

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<p style="text-align: right;">6</p> <p>1 Q. And did you bring the materials with you that 2 were requested in the notice? 3 A. I have. 4 Q. Okay. Great. Do you have them here? 5 A. I have a file folder full of material that 6 you're welcome to access as you please. 7 Q. Okay. Yeah. At some point I would like you 8 to get that out. 9 A. Sure. 10 Q. We can -- we'll get to that during the 11 deposition. 12 What life -- well, strike that. 13 What is your educational background? 14 A. I have a business degree from Louisiana 15 Tech -- that's Ruston, Louisiana -- graduating in 1965. 16 I have a JD degree from Saint Mary's Law School in 17 San Antonio, Texas in 1969. 18 Q. Okay. Are you a member of any state bars? 19 A. I am a member of the Texas State Bar and have 20 been continuously since my graduation and passing the 21 bar in 1970, although I have never been in the active 22 private practice of law. 23 Q. Okay. Is your bar membership active? 24 A. It is in a classification that's referred to 25 as current but not active. It's for academics,</p>	<p style="text-align: right;">8</p> <p>1 Q. I see. And how long have you been in that 2 category? 3 A. Always. 4 Q. Okay. So you -- since you've been a member of 5 the Texas Bar from 1970 -- is that correct? 6 A. That's correct. 7 Q. -- you've not been required to take CLE 8 courses? 9 A. That's correct. 10 Q. Okay. So you've not practiced as a lawyer 11 even -- 12 A. That is correct. 13 Q. -- even though you have the designation. 14 A. I was general counsel for a series of 15 financial companies. 16 Q. Uh-huh. 17 A. That does not require me to fall under the 18 classification of the active practice of law. 19 Q. You've never held -- 20 A. I was in-house counsel. 21 Q. I see. You've never held yourself out as an 22 active practitioner, have you? 23 A. No. 24 Q. Okay. Thank you. Are you an actuary? 25 A. I am not.</p>
<p style="text-align: right;">7</p> <p>1 corporate attorneys, and people that are retired who 2 want to retain their bar membership. 3 Q. Okay. Are you practicing law now? 4 A. I do not. 5 Q. How long have you been in the inactive state? 6 A. My bar association classification, I believe, 7 has been the same throughout my entire career. 8 Q. Okay. How long have you been inactive, as an 9 inactive member of the bar? 10 A. I passed the bar exam in 1970 -- 11 Q. Okay. 12 A. -- and continuously since that time. 13 Q. Okay. But I understood you to say that you 14 now have a different or a special type of bar 15 classification that indicates you're not practicing 16 actively. And correct me if I'm wrong. I'm not trying 17 to put words in your -- 18 A. Perhaps I wasn't as clear as I should have 19 been. The Texas Bar has a classification for people who 20 do not actively engage in the private practice of law. 21 Q. Okay. 22 A. It enables you to maintain your bar 23 affiliation at a lower dues rate, and to not necessarily 24 have continuing legal education requirements placed on 25 you.</p>	<p style="text-align: right;">9</p> <p>1 Q. You don't belong to the American Academy of 2 Actuaries? 3 A. No, I do not. 4 Q. Or the Society of Actuaries? 5 A. No, sir. 6 Q. Or any other actuarial association? 7 A. No, but some of my best friends are actuaries. 8 Q. Okay. Well, we won't hold that against you. 9 Just kidding, of course. 10 Have you ever attended the actuarial 11 meetings of the Society of Actuaries? 12 A. No. 13 Q. Or what about the American Academy of 14 Actuaries, ever -- 15 A. No. 16 Q. -- attended their meetings? 17 Have you ever spoken on any of their 18 panels? 19 A. No. 20 Q. Have you ever published any articles that 21 required or that contained an actuarial expertise or 22 discussion? 23 A. No. 24 Q. Have you ever published any articles on 25 universal life insurance?</p>

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10	<p>1 A. I don't believe so. 2 (Exhibit No. 1 marked.) 3 Q. (BY MR. STANO) Mr. Sanderford, let me show 4 you what's marked as -- 5 A. Sure. 6 Q. -- Defendant's Exhibit No. 1. And you've seen 7 that before, haven't you? 8 A. I have. 9 Q. Okay. And what is that? 10 A. This is a biographical and -- resume, a 11 description of my past education and work experience. 12 Q. Does it mention universal life at all, 13 universal life insurance? 14 A. I would have to read it over, but since you 15 asked the question, I assume it does not. 16 Q. Well, I could not find it, but if it's there 17 and I missed it, please point it out to me. 18 A. It does not, but it refers specifically to 19 companies in which I have direct universal life 20 experience. 21 Q. Let's go through your bio. That's what you 22 call this? 23 A. Yes. 24 Q. Okay. Let's start from the earliest and then 25 work up to the current. You mentioned that prior to</p>	12	<p>1 Life Insurance Company, or VALIC, from '70 to '73? 2 A. That's correct, sir. 3 Q. In what capacity? 4 A. At the beginning, associate general counsel; 5 at the -- 6 Q. Okay. 7 A. -- end, general counsel. 8 Q. Okay. Did you know a Bill Wilson? 9 A. Bill Wilson. The name sounds familiar, but I 10 don't -- 11 Q. Okay. What were your duties and 12 responsibilities at VALIC or -- which I mean to be 13 Variable Annuity Life Insurance Company? 14 A. Dealing with tax related issues, dealing with 15 securities related issues, and dealing with state 16 insurance department related issues to the products that 17 we distributed. 18 Q. Compliances? 19 A. Yes. 20 Q. Mostly? 21 A. No. It was a variety of legal issues. Tax 22 related issues -- 23 Q. Okay. 24 A. -- securities related issues. Our products 25 were largely registered securities --</p>
11	<p>1 1983 you worked for Security First Group -- 2 A. That's correct. 3 Q. -- as general counsel. Did that company, at 4 the time you worked for -- well, what were the years 5 that you worked for Security First Group? 6 A. 1973 to 1983. 7 Q. Okay. Did Security First sell universal life 8 insurance? 9 A. No. 10 Q. Okay. 11 A. But the company I worked with prior to that 12 did. 13 Q. Would that be Variable Annuity Life Insurance 14 Company? 15 A. It would be that and its parent company, 16 American General Life Insurance Company, based in 17 Houston. 18 Q. And you worked for that company from what 19 years? 20 A. From 1970 to 1973. 21 Q. And what was your position -- well, let me 22 make sure I got the company correct. Is it VALIC? 23 A. VALIC. The full name of the company was the 24 Variable Annuity Life Insurance Company. 25 Q. Okay. And you worked for Variable Annuity</p>	13	<p>1 Q. Uh-huh. 2 A. -- and were distributed through registered 3 broker-dealers. So there is a number of functions 4 necessary to meet the regulatory requirements of that -- 5 of that system. 6 Q. Okay. 7 A. In addition, I was responsible for dealing 8 with state insurance departments in product approval, 9 dealing with complaint issues, dealing with our 10 representation by outside counsel. I would supervise 11 outside counsel with respect to litigation and with 12 respect to their dealing with our regulators. 13 Q. This was your first job out of law school? 14 A. Actually, the second job. The first job -- I 15 worked part-time for United Services Automobile 16 Association -- 17 Q. Okay. 18 A. -- in San Antonio. 19 Q. Prior to 1970? 20 A. Well, I worked part-time before I graduated 21 from law school. They offered me a job in their law 22 department upon passing the bar -- 23 Q. Uh-huh. 24 A. -- and I worked there approximately six to 25 eight months before I was recruited to American General</p>

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<p style="text-align: right;">14</p> <p>1 and VALIC of Houston.</p> <p>2 Q. Okay. I assume VALIC's chief product were --</p> <p>3 was annuities.</p> <p>4 A. Yes. Interesting sidelight is I actually</p> <p>5 filed the first registration statement for a variable</p> <p>6 universal life policy --</p> <p>7 Q. Uh-huh.</p> <p>8 A. -- in the United States in 1973, on behalf of</p> <p>9 American General and VALIC.</p> <p>10 Q. Okay. Would -- and that registration</p> <p>11 statement contained a universal life policy?</p> <p>12 A. That's correct.</p> <p>13 Q. Who prepared that policy? Who designed it?</p> <p>14 A. Who designed it?</p> <p>15 Q. Your actuaries?</p> <p>16 A. Lawyers and actuaries.</p> <p>17 Q. Now, do you claim to be or to have experience</p> <p>18 in the design of universal life policies?</p> <p>19 A. On several occasions I have. I have been a</p> <p>20 member of a product development committee at --</p> <p>21 Q. Okay.</p> <p>22 A. -- two of the companies that I worked for.</p> <p>23 Such committees, as typical in the industry, have</p> <p>24 representation of in-house legal advice --</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">16</p> <p>1 to file with the Securities & Exchange Commission.</p> <p>2 Q. Okay.</p> <p>3 A. And that the product ultimately was one that</p> <p>4 would gain approval at state insurance departments.</p> <p>5 Q. Okay. Were you involved in the actuarial</p> <p>6 design of the policy?</p> <p>7 A. Oh, no.</p> <p>8 Q. Okay. You're not competent to do that, are</p> <p>9 you? And I don't mean to imply that you're incompetent.</p> <p>10 I just saying that's just not your area.</p> <p>11 A. I am not an actuary.</p> <p>12 Q. And therefore, you would not be involved in</p> <p>13 the actuarial components of the design of the policy,</p> <p>14 correct?</p> <p>15 A. Well, you used the word "involved." Actuaries</p> <p>16 would present their research, their evaluations --</p> <p>17 Q. Uh-huh.</p> <p>18 A. -- and their recommendations into the</p> <p>19 committee. The committee would be very involved in the</p> <p>20 discussed debate and testing of those conclusions.</p> <p>21 Q. Right.</p> <p>22 A. The actuaries would be forced to prove, in</p> <p>23 effect, what they calculated was both relevant and</p> <p>24 accurate to the product that was being developed.</p> <p>25 Q. Okay. But you did none of those actuarial</p>
<p style="text-align: right;">15</p> <p>1 A. -- in-house actuarial advice, in-house</p> <p>2 information systems, and administration.</p> <p>3 Q. Okay. Let's go through this list. You have</p> <p>4 several companies here, and just to save some time, I</p> <p>5 want to focus on the companies where you had actual</p> <p>6 experience with universal life policies and the design</p> <p>7 of a policy. Obviously, you didn't have any of that</p> <p>8 with USAA, did you?</p> <p>9 A. No.</p> <p>10 Q. Okay. Now, with VALIC or Variable Annuity</p> <p>11 Life Insurance Company, did you actually design or</p> <p>12 assist in the design of universal life policies?</p> <p>13 A. No one person had design responsibility for</p> <p>14 the policy. It was a committee effort.</p> <p>15 Q. And did you --</p> <p>16 A. And I was prominent on the committee.</p> <p>17 Q. Okay. And what contribution did you make to</p> <p>18 the design of the universal life policies?</p> <p>19 A. That it met the legal requirements for a life</p> <p>20 insurance company domiciled in the state of Texas --</p> <p>21 Q. Okay.</p> <p>22 A. -- that it described a policy that was</p> <p>23 consistent with the market research data that we had</p> <p>24 requested and obtained, and that it was properly</p> <p>25 described in a registration statement that I was going</p>	<p style="text-align: right;">17</p> <p>1 computations, did you? That would --</p> <p>2 A. I did not.</p> <p>3 Q. Okay. Why did you leave VALIC? You were</p> <p>4 there for three years. You became general counsel in</p> <p>5 three years.</p> <p>6 A. The president left to form a new company and</p> <p>7 invited me to go with him --</p> <p>8 Q. Okay.</p> <p>9 A. -- to be legal counsel in the new company.</p> <p>10 Q. That would be Security First Group?</p> <p>11 A. That is correct.</p> <p>12 Q. You say it's now MetLife?</p> <p>13 A. It was ultimately acquired by MetLife.</p> <p>14 Q. But when you say "now MetLife," it's not the</p> <p>15 MetLife company; it was --</p> <p>16 A. No. It was acquired by MetLife --</p> <p>17 Q. Okay.</p> <p>18 A. -- and is a MetLife subsidiary today.</p> <p>19 Q. Okay. And you were at Security First from</p> <p>20 when to when?</p> <p>21 A. Approximately 10 years, '73 to '83.</p> <p>22 Q. Okay. And you were the GC at Security First;</p> <p>23 is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And what were your duties and</p>

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18	<p>1 responsibilities with regard to universal life 2 insurance, if any? 3 A. At Security First Group, we had very little to 4 do with universal life insurance. 5 Q. Okay. 6 A. We sold universal life insurance products of 7 other companies -- 8 Q. Uh-huh. 9 A. -- and I was involved in the due diligence 10 process in evaluating those products and determining 11 whether or not the issuers met our financial standards, 12 whether the products met our marketing standards, and 13 whether the administrative relationships would be 14 compatible, and whether the products were legally 15 offered for sale, and whether our sales literature was 16 appropriate and fully representation of the products. 17 Q. Okay. Did you do any look back at the product 18 to determine if it had -- if its design was appropriate 19 and proper from an actuarial point of view? 20 A. From an actuarial point of view? 21 Q. Yes. 22 A. No, sir. 23 Q. Okay. You mainly looked at the products -- 24 the universal life products that we're talking about, to 25 make sure they were in compliance with the various</p>	20	<p>1 After getting those statistics, we put out a request for 2 proposal to many insurance companies and received, 3 typically, dozens of responses. 4 Q. Uh-huh. 5 A. So a due diligence process, where we may have 6 had the goal of only approving one or two products for 7 distribution by us, we probably reviewed many. 8 Q. Okay. Why didn't you sell -- why didn't you 9 develop your own universal life product and sell it 10 yourself? 11 A. We felt it was more efficient to do 12 otherwise -- 13 Q. Did you -- 14 A. -- just like companies outsource certain 15 responsibilities and functions today. 16 Q. Sure. Did you not have the expertise in-house 17 to sell -- to develop your own universal life product 18 and sell it? 19 A. I don't know that that would be an accurate 20 statement, that we didn't have the expertise. We had 21 actuaries, we had attorneys, we had all the people who 22 could have contributed to issuing our own policy. But 23 we decided we could get to the market faster, better, 24 and with products that had a track record -- 25 Q. Uh-huh.</p>
19	<p>1 insurance department codes and regulations and laws? 2 A. At Security First Group none of the universal 3 life policies that we sold were issued by our own 4 company. 5 Q. Okay. 6 A. We used third-party products. 7 Q. Okay. 8 A. And so my role was to establish and conduct a 9 due diligence process -- 10 Q. Okay. 11 A. -- to evaluate both the issuers and the 12 products as to whether or not they could be sold, should 13 be sold by our organization. 14 Q. Approximately how many different policy forms 15 did you do over the years, if you have any estimate? 16 A. That's a difficult question to answer as you 17 put it. May I explain? 18 Q. Sure. Please. 19 A. Okay. When we determined that variable 20 universal life and nonvariable universal life products 21 were going to be sold by us, we surveyed our 22 distribution office to determine what products they felt 23 they could best sell -- 24 Q. Uh-huh. 25 A. -- and what their customer requirements were.</p>	21	<p>1 A. -- and that that would be better for us in the 2 long run. 3 Q. Was Security First Group a new company? 4 A. Yes. It was a start-up company in 1973. 5 Q. Okay. Are you saying that your actuaries at 6 Security First Group between '73 and '83, at the time 7 you were there, had universal life experience? 8 A. Oh, yes. 9 Q. Okay. 10 A. One of them, even with New York Life. 11 Q. Okay. Did you ever -- you said you did -- 12 A. If memory serves correctly, and I think it 13 does. 14 Q. Sure. You said you did due diligence on the 15 various bidders, for lack of a better expression, of 16 other companies that wanted to be the policy that you 17 sold. 18 A. That's correct. 19 Q. Did you ever -- with regard to the policy or 20 policies that Security First Group eventually selected 21 to sell, did you or anyone at Security First Group ever 22 make any changes to the policies that you eventually 23 sold, or did you take them as was -- as developed by the 24 companies that developed them? 25 A. Well, the idea in getting quickly to the</p>

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<p style="text-align: right;">22</p> <p>1 market with a product that had some history to it, would 2 indicate that we would take a product that was being 3 actively sold -- 4 Q. Okay. 5 A. -- successfully, and to distribute that 6 product. 7 Q. So is it fair to say that no changes were made 8 to the policies -- 9 A. No. I don't recall whether we actively made 10 changes to the policy. I think it's highly likely we 11 did. I know that there were several occasions to where 12 we were confronted with market opportunities that we -- 13 Q. Uh-huh. 14 A. -- may have felt weren't being addressed by 15 the products that we had. But I don't recall today 16 whether we met those opportunities by going and finding 17 other products that had -- 18 Q. Uh-huh. 19 A. -- potential features and benefits that we 20 required, or whether we requested the companies issuing 21 the products we had, to either change those products or 22 develop a new product. 23 Q. So as you sit here today, you can't think of 24 any changes that were made to the products -- by 25 products I mean the policies -- that were eventually</p>	<p style="text-align: right;">24</p> <p>1 Q. So GNA sold annuities, and they sold universal 2 life? 3 A. They sold both, predominantly annuities, 4 mutual funds, and life insurance in that order, ranked 5 one, two, three. 6 Q. Okay. What part of their portfolio is 7 universal life, if you have any way to -- 8 A. I don't understand that question. 9 Q. What percentage of their business -- 10 A. Oh, what percentage. 11 Q. Yeah. Excuse me, I wasn't clear. What 12 percentage of their business was universal life versus 13 annuities and -- and the other products you mentioned, 14 mutual funds and so forth? 15 A. I would say probably not more than 5 to 16 10 percent. 17 Q. Okay. 18 A. And it depends on how you measure. 19 Q. True. By face amount or premium volume, 20 whatever? 21 A. Exactly. 22 Q. It certainly is a small part of their 23 business, correct? 24 A. It was a later part, but growing. 25 Q. Okay.</p>
<p style="text-align: right;">23</p> <p>1 sold by Security First? 2 A. I cannot specifically recall 25 to 30 years 3 ago the solutions to that question you ask. 4 Q. Okay. And you stayed at Security First for 5 approximately 10 years, and then you went, according to 6 your resume, to GNA? 7 A. Yes, sir, Great Northern Annuity. 8 Q. Okay. And again, another annuity company, 9 correct? 10 A. That's correct. 11 Q. Would you say your expertise is mainly with -- 12 or your experience has mainly been with annuities? 13 A. I would say more with annuities than any other 14 form of product. 15 Q. Okay. 16 A. But -- but within the context of products -- 17 Q. Uh-huh. 18 A. -- it includes many forms of packaged product, 19 mutual funds. We had nationwide distribution systems, 20 both within brokerage firms and within banks, and we 21 supplied products -- some of our own issue, some 22 third-party issue -- to both. And we sold billions of 23 products -- dollars of products a year. 24 Q. Okay. So -- 25 A. Including universal life.</p>	<p style="text-align: right;">25</p> <p>1 A. Most of the distribution clients for GNA were 2 financial institutions like banks, savings and loans. 3 And we would develop investment programs that met their 4 requirements. For a bank that did not want any 5 universal life products, the investment representatives 6 wouldn't sell any. For a bank that wanted to be more 7 life insurance oriented than investment oriented, they 8 would sell more. 9 Q. Okay. You say it was a later product, if I 10 understood -- 11 A. Yes. It was introduced later. GNA was also a 12 start-up company. 13 Q. Okay. Was it the same CEO who started 14 Security First? 15 A. No. It was a gentleman that I worked with at 16 Security First Group. 17 Q. Uh-huh. Okay. And when you say it was a 18 later -- when you said universal life was a later 19 product at GNA, I assume you meant that it was -- it was 20 sold at a later time than from the time the company 21 first started. 22 A. That's correct. 23 Q. Approximately what time did it start? 24 A. I began working with GNA in 1983. I would say 25 GNA probably did not sell any universal life product</p>

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26	<p>1 until maybe '88 --</p> <p>2 Q. Okay.</p> <p>3 A. -- '89, and that would be an estimate.</p> <p>4 Q. Understood. You left in '94 for what reason?</p> <p>5 And don't tell me Aetna was a start-up company.</p> <p>6 A. Well, I don't look my age, I guess, to be</p> <p>7 200 years old. Aetna is an old line company. No.</p> <p>8 Aetna was just getting into the business of distributing</p> <p>9 products outside of traditional distribution channels.</p> <p>10 Q. Uh-huh.</p> <p>11 A. And my experience in -- with banks and</p> <p>12 financial institutions was of interest to them. And</p> <p>13 this came at a good time. GE Capital had just bought</p> <p>14 GNA about one year prior to my leaving. The honeymoon</p> <p>15 was over, and they were telling us that --</p> <p>16 Q. It was time to move on?</p> <p>17 A. Well, not necessarily time to move on, but</p> <p>18 business was going to be conducted the GE Capital way.</p> <p>19 And so a very nice company, that became attractive</p> <p>20 enough for GE Capital to buy, was going to be changed</p> <p>21 considerably. So it became an idea of mine that I would</p> <p>22 like to go to another opportunity.</p> <p>23 Q. So maybe a change of cultures or a clash of</p> <p>24 cultures? And I don't mean that in a negative way.</p> <p>25 A. No, that's okay. Anybody that's worked with</p>	28	<p>1 of investment programs that met the requirements of</p> <p>2 those distributors at banks and financial institutions.</p> <p>3 And I was also responsible, as an OSJ principal, for the</p> <p>4 implementation of our compliance program, and to see</p> <p>5 that it was improved and executed among our</p> <p>6 organizations.</p> <p>7 Q. Are we talking GNA now?</p> <p>8 A. At GNA.</p> <p>9 Q. Okay. When --</p> <p>10 A. And we developed two types of sales forces:</p> <p>11 ones that were employ -- common law employees of the</p> <p>12 bank, where we, in effect, would be referred to as a</p> <p>13 third-party marketing company; and those where we</p> <p>14 directly employed the account executives, and they were</p> <p>15 our common law employees, and they occupied space at</p> <p>16 banks or financial institutions, and we compensated them</p> <p>17 as state law might permit, usually space lease</p> <p>18 agreements. And at our high watermark there, all of</p> <p>19 these people reported to me. And I was responsible for</p> <p>20 the sales activities and compliance, and for between 500</p> <p>21 and 600 full-time Series 7 and Series 6 account</p> <p>22 executives.</p> <p>23 Q. Did you run into universal life products at</p> <p>24 that time, or were you involved with them?</p> <p>25 A. Oh, yes.</p>
27	<p>1 GE Capital can hardly avoid clashing with them.</p> <p>2 Q. Okay.</p> <p>3 A. That's my experience.</p> <p>4 Q. Sure. Aetna, what was your duties and</p> <p>5 responsibilities at Aetna?</p> <p>6 A. I was vice president of financial</p> <p>7 institution --</p> <p>8 Q. What does that mean?</p> <p>9 A. -- distribution.</p> <p>10 What does that mean?</p> <p>11 Q. In terms of your duties and responsibilities.</p> <p>12 A. Okay. They had -- I was no longer working as</p> <p>13 an attorney. At GNA, prior to coming to Aetna, my</p> <p>14 responsibilities changed considerably. I became</p> <p>15 responsible for business development and compliance.</p> <p>16 Q. At Aetna?</p> <p>17 A. At GNA first.</p> <p>18 Q. At GNA first. Okay.</p> <p>19 A. Excuse me for digressing, but --</p> <p>20 Q. No, that's fine?</p> <p>21 A. Is that okay?</p> <p>22 Q. Yeah. Sure. Absolutely.</p> <p>23 A. At GNA I was responsible for developing</p> <p>24 relationships with distributors and banks. I was</p> <p>25 responsible for the hiring, training, and implementation</p>	29	<p>1 Q. Were you involved --</p> <p>2 A. As I mentioned, we -- banks began requesting</p> <p>3 more and more universal life products.</p> <p>4 Q. But you were involved in the sales side,</p> <p>5 correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. You weren't involved in the policy</p> <p>8 design, the policy drafting, the policy creation side,</p> <p>9 correct?</p> <p>10 A. At GNA I was a -- I guess the proper</p> <p>11 classification would be senior executive.</p> <p>12 Q. Okay. But my question is --</p> <p>13 A. And --</p> <p>14 Q. -- were you involved in the --</p> <p>15 A. And I actually --</p> <p>16 Q. -- design of policies.</p> <p>17 A. -- chaired our product development committee.</p> <p>18 Q. Okay.</p> <p>19 A. And this meant that the actuaries and</p> <p>20 attorneys and the other members of the committee that</p> <p>21 played a role in the development of both annuity and</p> <p>22 universal life products --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- were my responsibility. And I managed that</p> <p>25 process for several years. I was also on the investment</p>

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<p style="text-align: right;">30</p> <p>1 committee, I was also on our compliance -- senior 2 compliance committee as well. 3 Q. So the actuaries who designed the universal 4 life policies reported to you as part of -- 5 A. Not direct line -- 6 Q. -- the product development? 7 A. -- but dotted line, to the extent that they 8 were involved in product development. 9 Q. Okay. 10 A. Or product evaluation. 11 Q. Were you directly involved in product 12 development? I'm not talking about who reported to you. 13 I'm talking about did you ever roll up your sleeves, sit 14 down, and help draft a policy -- universal life policy? 15 A. Yeah. I don't have a photograph of me with 16 sleeves rolled up, but the answer to your question is 17 yes. 18 Q. And what part of the policy did you draft? 19 Did you rewrite the wording, or what -- tell me about 20 that, that process. 21 A. Well, I have done that. I usually try to find 22 other people who work for me to do it -- 23 Q. Uh-huh. 24 A. -- but I have done that. 25 Q. Okay. Did -- were you involved in the pricing</p>	<p style="text-align: right;">32</p> <p>1 Q. Is made by who? 2 A. Pardon? 3 Q. You said the final call -- 4 A. Oh. By the senior management of the insurance 5 company. 6 Q. Now, is that true -- that's -- was that true 7 for GNA? 8 A. Of course. 9 Q. And do you know if it's true for other 10 companies? If you know. Do you actually know? 11 A. Your answer -- your question is so broad, it 12 is difficult for me to say. 13 Q. Well, let's -- 14 A. I have had a 35-year -- 15 Q. Okay. 16 A. -- 30-year-plus career in financial services, 17 where I've worked with people who are alumni from many 18 insurance companies. 19 Q. Okay. 20 A. And I felt, in the course of my interaction 21 with them in the development of our work for our 22 companies, that we adhered to the best practices of the 23 insurance industry. 24 Q. Do you know how it's done at New York Life 25 Insurance & Annuity Corporation specifically?</p>
<p style="text-align: right;">31</p> <p>1 of the policy? And when I say policy, I'm talking about 2 universal life policies. 3 A. Yes, but not an actuarial standpoint. 4 Q. From what standpoint? 5 A. From a business management standpoint. 6 Q. In terms of making sure the price was 7 competitive? 8 A. Insurance companies do not issue what 9 actuaries dream up and bring to them as a product. 10 Q. Uh-huh. 11 A. Product development is a comprehensive process 12 that involves several skills -- 13 Q. Right. 14 A. -- in addition to actuarial science -- 15 Q. Uh-huh. 16 A. -- skills. Any insurance company will be 17 heavily influenced by competent actuarial input into the 18 development of pricing factors to consider. 19 Q. Uh-huh. 20 A. But the final call as to many pricing factors, 21 what market -- or it's going to be determined by what 22 markets are going to be addressed, by the public 23 perception that you want your company to have in the 24 marketplace, and by your confidence that you can 25 administer what the actuaries have suggested.</p>	<p style="text-align: right;">33</p> <p>1 A. Only to the extent that I've had documents 2 exposed to me, through this case or any other that I may 3 have been involved in, that has some insight as to 4 New York Life processes. 5 Q. Well -- 6 A. I've never been in New York Life's corporate 7 offices. I have never been involved in their meetings, 8 where they would develop any product. 9 Q. Uh-huh. For the record, let's say, when we 10 refer to -- refer to New York Life, we're talking about 11 New York Life Insurance & Annuity Corporation -- 12 A. Okay. 13 Q. -- the defendant in this case -- 14 A. Okay. 15 Q. -- unless one of us specifically says 16 otherwise. 17 A. Okay. 18 Q. That will just keep the record clean, and that 19 way we can call it New York Life if we want to. Do you 20 have any actuarial science expertise? 21 A. None except through my exposure to actuaries 22 in my career. 23 Q. No formal training whatsoever, correct? 24 A. No formal training. 25 Q. Did you ever take any actuarial courses?</p>

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34	<p>1 A. I've taken statistical courses in 2 undergraduate school.</p> <p>3 Q. Okay. Did you --</p> <p>4 A. Linear program --</p> <p>5 Q. -- pass them?</p> <p>6 A. Up to the point of linear programming.</p> <p>7 Q. Okay. Did you pass them?</p> <p>8 A. Yeah. I managed to squeak through.</p> <p>9 Q. Yeah. Did you ever -- and I don't mean that 10 as a criticism.</p> <p>11 A. No, that's okay.</p> <p>12 Q. I know it's difficult to pass actuarial 13 courses to get actuarial certification. Many actuaries 14 take them multiple times --</p> <p>15 A. Oh, I --</p> <p>16 Q. -- so I do not mean that as a criticism.</p> <p>17 A. No, I understand.</p> <p>18 Q. Have you ever taken any actuarial courses 19 pertaining to getting an actuarial designation?</p> <p>20 A. No.</p> <p>21 Q. Okay. So if I understood your testimony 22 correctly with regard to New York Life Insurance & 23 Annuity Corporation, you don't know how the senior 24 management interacts with the actuaries who design their 25 policies, correct?</p>	36	<p>1 distribution systems -- setting up new distribution 2 systems --</p> <p>3 A. That's correct.</p> <p>4 Q. -- marketing compliance, that type thing, 5 correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay.</p> <p>8 A. Predominantly.</p> <p>9 Q. Predominantly. You took a finished universal 10 life product -- by finished I mean one that had been 11 completed, formed, filed, approved -- and you helped 12 sell it to market it -- and you helped to market it, 13 correct?</p> <p>14 A. I did that and other things.</p> <p>15 Q. Such as?</p> <p>16 A. Such as making an evaluation of how that 17 product might be refined or changed or amended to be 18 more successful in the bank channel of distribution.</p> <p>19 Q. Okay.</p> <p>20 A. And those recommendations were evaluated, and 21 some of them selected and acted on, and some were not.</p> <p>22 Q. Okay. You left Aetna in '90 -- you were there 23 for two years, correct?</p> <p>24 A. No, three years.</p> <p>25 Q. Okay. I'm sorry. And you left Aetna in '96</p>
35	<p>1 A. I cannot give any direct testimony on that --</p> <p>2 Q. Okay.</p> <p>3 A. -- issue.</p> <p>4 Q. And your only exposure to New York Life 5 Insurance & Annuity Corporation is through this case, 6 correct, in terms of the actuarial issues that are 7 involved in this case?</p> <p>8 A. That's correct, although I --</p> <p>9 Q. Okay.</p> <p>10 A. Yes.</p> <p>11 Q. I do not mean to cut you off.</p> <p>12 A. No, that's okay.</p> <p>13 Q. The answer was yes?</p> <p>14 A. That's correct.</p> <p>15 Q. Thank you. Aetna, the universal life, you 16 were involved in sales and you had left the legal field 17 sometime ago, correct?</p> <p>18 A. The idea around my hire at Aetna was to 19 develop a new channel of distribution relative to having 20 their products --</p> <p>21 Q. Okay.</p> <p>22 A. -- annuities and universal life insurance, 23 sold through financial institutions.</p> <p>24 Q. So you were on the sales side of universal 25 life products, correct? You dealt -- you dealt with</p>	37	<p>1 for what reason?</p> <p>2 A. They wanted to get into the health insurance 3 business. They established their priorities, and the 4 handwriting was on the wall.</p> <p>5 Q. Okay.</p> <p>6 A. So I cast around for another opportunity, and 7 the best opportunity was to come back home to Texas.</p> <p>8 Q. Okay. And you went with, according to your 9 resume, LSW?</p> <p>10 A. Life Insurance Company of the Southwest, a 11 subsidiary of National Life of Vermont.</p> <p>12 Q. Uh-huh. And its product lines?</p> <p>13 A. Annuities of all sorts, and life insurance of 14 all sorts, including universal life.</p> <p>15 Q. Okay. And you were there for two years?</p> <p>16 A. That's correct. I took a two-year contract.</p> <p>17 Q. Three years. Okay?</p> <p>18 A. No. Actually, I was there exactly two 19 years --</p> <p>20 Q. Okay.</p> <p>21 A. -- because I had a two-year contract to do 22 some business development work for them.</p> <p>23 Q. And again, is it establishing or enhancing 24 distribution channels --</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">38</p> <p>1 Q. -- for the products? 2 Okay. And you left after your two-year 3 contract was up? 4 A. That's correct. 5 Q. Was it not renewed? 6 A. No. I had no interest in continuing. 7 Q. Why is that? 8 A. Because I had an idea about a business I 9 wanted to get into. 10 Q. That was the Maxford Company? 11 A. The Maxford Company, yes. 12 Q. Is it a combination of names, Maxford? 13 A. It is. 14 Q. What is it? What are -- 15 A. My middle name is Max. 16 Q. You mentioned that. 17 A. The last syllable of my last name is Ford. 18 Q. Okay. And you started that company in '98? 19 A. At the end of that year. I think my contract 20 was up perhaps December -- 21 Q. Uh-huh. 22 A. -- of that year, and I formed that company at 23 exactly the same time as I left. 24 Q. And what was your idea? You said you had an 25 idea to form a company.</p>	<p style="text-align: right;">40</p> <p>1 A. Okay. While I was doing that, I was 2 approached by an attorney to provide some expert witness 3 consulting, which I had not anticipated -- 4 Q. Uh-huh. 5 A. -- doing previous to that time. 6 Q. Okay. 7 A. I did that. I tended to like it. Attorneys 8 have called me back to do more. And it became the 9 business that I would rather do than the compliance 10 services. Now, all of my expert witness work has been 11 around the context of insurance and securities 12 litigation. 13 Q. And not universal life insurance? 14 A. Annuities, securities of all types, and 15 universal life insurance. I would say the product in 16 the last two to three years -- 17 Q. Uh-huh. 18 A. -- that predominates in the cases that I've 19 worked in, is universal life. 20 Q. Have you test -- so you've testified as an 21 expert witness on universal life insurance issues? 22 A. I have. 23 Q. And you've provided written reports on 24 universal life insurance? 25 A. I have.</p>
<p style="text-align: right;">39</p> <p>1 A. Well, I felt I could provide some compliance 2 services that financial service organizations might like 3 to access. I would be happy to tell you about it. 4 Q. Yeah. Would you, please? 5 A. The first was a service that I felt financial 6 institutions might find attractive, to become aware of 7 instances of selling away. 8 Q. Uh-huh. 9 A. There are some loopholes in the law where 10 nonregistered products are sold by people who are 11 provided full-time employee benefits, but they meet with 12 customers and sell them products that have not been 13 approved by their organization. 14 Q. Uh-huh. 15 A. So as -- as a representative, they can get 16 100 percent of a commission, as opposed to a small 17 percentage of a commission that goes directly to the 18 institution. 19 Q. Okay. What services does the Maxford Company 20 provide, or advice, with regard to universal life 21 insurance? 22 A. Well, any answer would be incomplete if I 23 didn't say one or two more sentences about these 24 compliance services. 25 Q. Sure. I don't mean to cut you off.</p>	<p style="text-align: right;">41</p> <p>1 Q. Okay. And you brought those with you today? 2 A. No. 3 Q. Why not? 4 A. I hadn't anticipated that those specific 5 reports would be required under the order. But I would 6 be happy to provide them, if they are. 7 Q. I thought -- I thought you said you had 8 received the notice to take your deposition. 9 A. I have. 10 Q. That notice requested you to bring any reports 11 you had written on universal life. 12 A. I thought it applied to this case. 13 Q. We're going to need those reports. Sir, the 14 report -- or the notice reads, in part -- it basically 15 asks for two categories of documents: all documents you 16 relied on in giving your report in this case -- did you 17 bring those? 18 A. Yes. 19 Q. And the second category of documents, copies 20 of all -- "copies of all other reports or analyses of 21 which" -- "of whole or universal life policies prepared 22 in an expert consulting or expert witness capacity in 23 any other judicial, administrative, or arbitral 24 proceeding," period. 25 A. Well then, I missed that, and I apologize for</p>

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42	<p>1 the oversight.</p> <p>2 Q. Okay. You say you've given testimony on</p> <p>3 insurance case -- on insurance products that are</p> <p>4 securities?</p> <p>5 A. Yes, of course, variable annuities, variable</p> <p>6 universal life.</p> <p>7 Q. Is universal life a security?</p> <p>8 A. Not unless it's a variable universal life.</p> <p>9 Q. Is this a variable universal life product at</p> <p>10 issue in this case?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. But recall this. Many aspects of securities</p> <p>14 litigation are conducted around products that aren't</p> <p>15 necessarily registered securities. So in many respects</p> <p>16 I've given both testimony and made reports --</p> <p>17 Q. Uh-huh.</p> <p>18 A. -- on nonvariable universal life products in</p> <p>19 securities litigation involving registered</p> <p>20 representatives.</p> <p>21 Q. Okay. How many times have you testified as an</p> <p>22 expert on universal life in cases where the universal --</p> <p>23 where the policy at issue was a universal life policy?</p> <p>24 A. None, outside of arbitration. The cases</p> <p>25 involving universal life that I've been involved in</p>	44	<p>1 MR. STANO: Okay. Well, we reserve the</p> <p>2 right to continue this deposition to review those</p> <p>3 documents that were requested and expected to be here.</p> <p>4 Q. (BY MR. STANO) Who gave you the notice of</p> <p>5 deposition? How did you receive it?</p> <p>6 A. I don't recall. It would have -- there was</p> <p>7 more than one law firm involved --</p> <p>8 Q. Okay.</p> <p>9 A. -- on this case.</p> <p>10 Q. Did it come from Plaintiff's counsel?</p> <p>11 A. It would have come from Plaintiff's counsel,</p> <p>12 yes.</p> <p>13 Q. Okay. Did you talk to anyone about it when</p> <p>14 you got it?</p> <p>15 A. No.</p> <p>16 Q. Okay. Have you ever talked to Plaintiff's</p> <p>17 counsel about this case?</p> <p>18 A. Yes, I have.</p> <p>19 Q. Okay. Who did you talk to?</p> <p>20 A. Two people: Jennifer Sherrill --</p> <p>21 Q. Okay.</p> <p>22 A. -- who is present here today, and Shannon</p> <p>23 Emmons.</p> <p>24 Q. Uh-huh. When was the last time you talked to</p> <p>25 either Ms. Sherrill or Ms. Emmons?</p>
43	<p>1 outside of arbitration have all been -- were all settled</p> <p>2 prior to trial.</p> <p>3 Q. But you testified in those cases?</p> <p>4 A. I have -- kind of hard to say.</p> <p>5 Q. What's hard to say about whether you testified</p> <p>6 or not? Did you give a deposition in those cases?</p> <p>7 A. I showed up for a deposition in a case that</p> <p>8 was settled in the middle of deposition.</p> <p>9 Q. Okay.</p> <p>10 A. That's what makes it hard to say.</p> <p>11 Q. Sure. Did you provide an expert report in</p> <p>12 that case?</p> <p>13 A. I'm not certain. I may have. Of course, it</p> <p>14 would be one of the reports that I would be happy to</p> <p>15 give you.</p> <p>16 Q. All right. Thank you. What about the cases</p> <p>17 where you showed up for deposition and it was actually</p> <p>18 conducted, were there any of those cases?</p> <p>19 A. There was at least one case, I believe, that</p> <p>20 involved a form of universal life insurance, where a</p> <p>21 deposition was actually taken. I would have to review</p> <p>22 my files.</p> <p>23 Q. Okay. Was it a variable universal life</p> <p>24 product or universal life?</p> <p>25 A. I can't say today.</p>	45	<p>1 A. Well, Ms. Sherrill has been up to the moment</p> <p>2 this deposition started, as we've been in each other's</p> <p>3 company for an hour and a half yesterday evening, and --</p> <p>4 Q. Okay.</p> <p>5 A. -- this morning when I picked her up and gave</p> <p>6 her a ride to the deposition.</p> <p>7 Q. Sure. So y'all talked -- I'm sorry, I didn't</p> <p>8 mean to interrupt. Go ahead.</p> <p>9 A. It mostly was about traffic and dodging cars,</p> <p>10 but --</p> <p>11 Q. Okay.</p> <p>12 A. I think I put a few years on her life.</p> <p>13 Q. Putting aside the -- those issues, did you</p> <p>14 talk about the substance of the case, the issues in the</p> <p>15 case?</p> <p>16 A. Yesterday when we met, we had a discussion,</p> <p>17 yes.</p> <p>18 Q. Okay. And what did you talk about?</p> <p>19 A. Issues that might come up in the deposition.</p> <p>20 Q. Such as what? I would like --</p> <p>21 A. Such as the issues listed --</p> <p>22 Q. Rather than drag it out, maybe if you could</p> <p>23 just tell me, so that I won't have to ask it.</p> <p>24 A. Okay. It's exactly the issues brought up by</p> <p>25 your expert in his report that were critical of mine.</p>

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<p style="text-align: right;">46</p> <p>1 Q. Uh-huh.</p> <p>2 A. Okay?</p> <p>3 Q. Okay. Anything else?</p> <p>4 A. No.</p> <p>5 Q. Okay. Did you discuss any deposition</p> <p>6 testimony that's been given to date?</p> <p>7 A. No.</p> <p>8 Q. Okay. Prior to talking to Ms. Sherrill</p> <p>9 yesterday, you said -- you said you had talked to either</p> <p>10 her or Ms. Emmons in the past. Who did you speak with,</p> <p>11 with Plaintiff's counsel, prior to meeting with</p> <p>12 Ms. Sherrill yesterday?</p> <p>13 A. I don't understand your question, actually.</p> <p>14 Q. I -- and I don't understand it either. After</p> <p>15 you -- prior to -- prior to talking to Ms. Sherrill</p> <p>16 yesterday, when was the earlier -- when was the next</p> <p>17 time that you had talked to counsel prior to -- to</p> <p>18 speaking --</p> <p>19 A. Prior to that?</p> <p>20 Q. Yes, prior to speaking to Ms. Sherrill.</p> <p>21 A. I exchanged a couple of e-mails with</p> <p>22 Ms. Sherrill about when, where, how, and --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- everything to get here and how to -- how to</p> <p>25 meet. Those e-mails didn't discuss anything of</p>	<p style="text-align: right;">48</p> <p>1 Plaintiff's counsel -- or strike that.</p> <p>2 How did -- how did you -- did you request</p> <p>3 documents from Plaintiff's counsel initially, or did</p> <p>4 they send you a batch of documents?</p> <p>5 A. They just sent me a batch of documents.</p> <p>6 Q. Okay. How did they retain you? How -- did</p> <p>7 you have a prior relationship with them?</p> <p>8 A. I had previously worked maybe two cases for a</p> <p>9 named partner in Ms. Sherrill's firm, Bill Federman.</p> <p>10 Q. Uh-huh.</p> <p>11 A. Also had worked a couple of cases with a</p> <p>12 couple of other Oklahoma City law firms.</p> <p>13 Q. Okay.</p> <p>14 A. So I'm assuming that it may have been Bill</p> <p>15 Federman that may have suggested to Shannon Emmons --</p> <p>16 Q. Uh-huh.</p> <p>17 A. -- to contact me. But that was the first</p> <p>18 person I spoke with.</p> <p>19 Q. With Shannon?</p> <p>20 A. Yes.</p> <p>21 Q. Ms. Emmons. And she made the initial contact?</p> <p>22 A. That's correct.</p> <p>23 Q. And what did she say when she contacted you?</p> <p>24 A. Well, we talked a little bit about what their</p> <p>25 needs for an expert witness might be --</p>
<p style="text-align: right;">47</p> <p>1 substance with respect to the case.</p> <p>2 Q. Okay.</p> <p>3 A. My last conversation with Ms. Emmons would</p> <p>4 have been probably a couple of days ago.</p> <p>5 Q. Okay. And what did you speak about?</p> <p>6 A. There were two documents, that I found that I</p> <p>7 had not been provided, that I wanted to see a copy of.</p> <p>8 Q. Uh-huh. What were they?</p> <p>9 A. Actually, three documents that would fall into</p> <p>10 two categories. The two 1999 sales illustrations and --</p> <p>11 Q. Do you remember the dates of those sales</p> <p>12 illustrations or the month?</p> <p>13 A. January and July.</p> <p>14 Q. Okay. How did you know they existed?</p> <p>15 A. I was reviewing the production of documents</p> <p>16 request, and they were identified by date.</p> <p>17 Q. Uh-huh. Okay.</p> <p>18 A. And I assumed at first that I had just missed</p> <p>19 it in the materials that had been provided to me by</p> <p>20 counsel. And I went back and looked, and I didn't --</p> <p>21 could not find them --</p> <p>22 Q. Okay.</p> <p>23 A. -- either. And the other was the last annual</p> <p>24 summary for the period ending June 2008.</p> <p>25 Q. Okay. When you requested documents from</p>	<p style="text-align: right;">49</p> <p>1 Q. Uh-huh.</p> <p>2 A. -- and what my background was. And eventually</p> <p>3 I sent her a copy of my standard retainer agreement.</p> <p>4 Q. Uh-huh. Do you have that here with you?</p> <p>5 A. I'm not certain. I'm not certain.</p> <p>6 Q. You've testified as an expert witness how many</p> <p>7 times?</p> <p>8 A. I have described the retainer agreement in my</p> <p>9 report.</p> <p>10 Q. Right. But you've testified as an expert</p> <p>11 witness how many times, dozens?</p> <p>12 A. I would say the number is between 35 and</p> <p>13 40 times.</p> <p>14 Q. Okay. And haven't you been asked to produce</p> <p>15 the file that you created in those cases?</p> <p>16 A. Almost never in any arbitration or</p> <p>17 mediation --</p> <p>18 Q. Okay.</p> <p>19 A. -- exercise.</p> <p>20 Q. Well, this -- this is a little different. I</p> <p>21 requested your entire file, everything. E-mails, notes,</p> <p>22 scraps of piece of paper. And much of what I've</p> <p>23 requested, you're telling me, is not here. That's</p> <p>24 frustrating.</p> <p>25 A. Well, I wouldn't want that.</p>

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<p style="text-align: right;">50</p> <p>1 Q. Thank you. And what was Ms. Emmons looking 2 for you when she initially contacted you? You said she 3 was looking -- she talked about her needs for an expert. 4 What need did she need to be filled? 5 A. Well, we talked about financial services 6 generally. We talked about life insurance. We 7 talked -- 8 Q. Uh-huh. 9 A. -- about universal life. We talked about 10 compliance. We talked about sales literature. We 11 talked about the insurance industry and what their sales 12 practices have been and are today. So it was a general, 13 broad-ranging conversation. 14 Q. Did you talk about New York Life Insurance & 15 Annuity Corporation specifically, with regard to its 16 sales practices? 17 A. She certainly made me aware they were a 18 defendant in the case. 19 Q. Okay. 20 A. I can't recall specifically whether she 21 mentioned any specific sales practices of New York Life. 22 Q. Okay. Are you offering opinions today on 23 New York Life Insurance & Annuity Corporation's sales 24 practices? 25 A. I am, with respect to the documents that I've</p>	<p style="text-align: right;">52</p> <p>1 Q. Meaning what? 2 A. Meaning I have no opinion about your question. 3 Q. Well, let's not get cute, sir. I mean, you 4 seem like a nice person, and I'm just trying to get a 5 deposition done, but I can't ask you questions about 6 documents you've looked at, and opinions you've formed 7 based on those documents, if I don't have the documents 8 here and I don't know what you've looked at. You 9 understand that, don't you? 10 A. I'm not going to argue with you. 11 Q. I'm not arguing with you. I'm not asking you 12 to argue. I'm saying, Do you understand my dilemma? 13 A. If you have a dilemma, that's a self-declared 14 dilemma, and if I have failed to meet -- 15 MR. STANO: Okay. Jackie -- 16 A. If I have failed to meet my responsibilities 17 under the notice, I'll be happy to remedy that. 18 MR. STANO: Jackie -- 19 MS. SHERRILL: I'm Jennifer. 20 MR. STANO: I'm sorry. 21 MS. SHERRILL: That's okay. 22 MR. STANO: Excuse me. I'm sorry, I 23 apologize. 24 Jennifer, I have asked -- we asked for the 25 documents on which he -- which he looked at.</p>
<p style="text-align: right;">51</p> <p>1 seen and my conversation with Mr. Blumenthal. 2 Q. Okay. Did you bring all the documents that 3 you've seen in this case? 4 A. I cannot promise you that all of the documents 5 sent to me by either Shannon Emmons or Jennifer Sherrill 6 are physically present today because a lot of them 7 are -- were duplicates and overlapped, and I made no 8 effort to go through and see whether or not -- to avoid 9 duplications or -- or to evaluate whether I had actually 10 looked at a document in coming to my opinions. But 11 there are a quite of number of documents that I haven't 12 reviewed at all perhaps. 13 Q. Okay. With regard to all the documents that 14 you reviewed, are they here today? 15 A. Without forwarding you the e-mails themselves, 16 which includes attachments of multiple documents, 17 multiple times, I cannot guarantee you that every 18 document that I've looked at is present here today. 19 Q. Mr. Sanderford, how am I supposed to ask you 20 questions about your opinions that were formed based, in 21 part, on review of documents, if you don't have those 22 documents here, and I don't know which documents you've 23 looked at? How am I supposed to do that? And I will -- 24 I will represent that I'm not a mind reader. 25 A. I have no opinion as to your question.</p>	<p style="text-align: right;">53</p> <p>1 MS. SHERRILL: I -- I -- well -- 2 MR. STANO: And they're not here, and I 3 can't ask him questions about documents that aren't 4 here. Okay? 5 MS. SHERRILL: But I think maybe there 6 might -- somebody correct me if I'm wrong. I think 7 you're asking him if he has brought every single 8 document that he's looked at, and I think he's telling 9 you that he might have scanned some documents, but not 10 used it, but that he has documents -- I mean, I might be 11 reading minds, or I might be misinterpreting what's 12 being said, but I believe Mr. Sanderford has brought 13 documents with him that he has relied upon in -- 14 MR. STANO: But he -- 15 MS. SHERRILL: -- forming his opinion. 16 MR. STANO: He has not said -- and 17 correct me if I'm wrong, Mr. Sanderford. He has not 18 said that he has brought at least one copy of every 19 document that he looked at, excluding duplicates, that 20 he -- and which he relied on in forming his opinion. 21 Q. (BY MR. STANO) Is that correct? 22 A. I'm not sure I would say it exactly that way. 23 Q. How would you say it? 24 A. I have provided copies and specific 25 descriptive references of outside sources of information</p>

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54	<p>1 that I have relied upon in giving my opinion. That was 2 an attachment and exhibit to my report. In addition to 3 that, I have stated that there are other reports, 4 involving universal life and other life insurance 5 products, that I may have authored in other cases, which 6 I have not brought to this deposition, which you have 7 informed me was my responsibility to do so. And I will 8 remedy that as quickly as I can.</p> <p>9 I believe you have also asked me, is there 10 any other document that I have -- may have received from 11 counsel that I have not brought here today, and I've 12 told you that I cannot guarantee that I have brought 13 every document that I've ever received from counsel. 14 That's my best recompilation of our discussion.</p> <p>15 MR. STANO: Okay. So he can't give us a 16 guarantee that he's brought every document that he ever 17 received from you, that he looked at, and which he 18 relied on in forming his opinion. So this puts me at 19 a -- at a big disadvantage.</p> <p>20 A. Well, I brought everything that I felt that 21 was necessary for me to form these opinions. Now, what 22 you're asking me is, is there any document that I've 23 read that has any implication at all in what I may know, 24 or what I may have thought, or what I may have given an 25 opinion on. And all I've said is that I can't guarantee</p>	56	<p>1 assorted copies that together constitute my file on this 2 case.</p> <p>3 Q. Does it contain -- or does it represent your 4 entire file on this case?</p> <p>5 A. It represents my entire file on this case, 6 with the exception of items that I will enumerate again 7 right now. It does not include requested opinions from 8 other cases. It does not include some copies of e-mails 9 that apparently may fall under the description of the 10 notice. And it may not include some documents provided 11 by counsel as attachments, that I believe I have not 12 used in forming my opinions in this case.</p> <p>13 Q. Does Exhibit 3 include every document you've 14 relied on in forming an opinion in this case?</p> <p>15 A. To this point, yes.</p> <p>16 Q. Okay. Have you -- 17 (Discussion off the record.)</p> <p>18 Q. (BY MR. STANO) Have you destroyed any part of 19 your file in this case?</p> <p>20 A. No. No.</p> <p>21 Q. Did you make notes, handwritten or otherwise, 22 that you threw away or discarded?</p> <p>23 A. No.</p> <p>24 Q. So that the record is clear, there are no 25 other documents that you've relied upon in forming your</p>
55	<p>1 there is no such document, but I believe that I have 2 every document that would be necessary by a reasonable 3 person, even a reasonable attorney, to understand and to 4 ask me about my opinion.</p> <p>5 MR. STANO: Let's go off the record for a 6 moment.</p> <p>7 (Discussion off the record.) 8 (Recess 10:03 a.m. to 10:16 a.m.) 9 (Exhibit No. 2 and 3 marked.)</p> <p>10 Q. (BY MR. STANO) Mr. Sanderford, let me show 11 you what's marked as Defendant's Exhibit No. 2. Do you 12 recognize that document?</p> <p>13 A. I believe I do.</p> <p>14 Q. Now, it is -- what is it?</p> <p>15 A. It's subtitled Notice to Take Deposition.</p> <p>16 Q. And it, among other things, requests you to 17 bring your file that you have on this case?</p> <p>18 A. Yes. And I --</p> <p>19 Q. And did you?</p> <p>20 A. I did bring the file, what's marked --</p> <p>21 Q. Let me show you what's marked as Defendant's 22 Exhibit No. 3 -- excuse me, Deposition Exhibit No. 3. 23 What is Deposition Exhibit No. 3?</p> <p>24 A. It is an expanding file folder that contains 25 both manila folders, legal pads, note cards, and</p>	57	<p>1 opinion in this case, other than what's in Exhibit 3, 2 correct?</p> <p>3 A. That's correct at this point.</p> <p>4 Q. At this point, meaning what?</p> <p>5 A. Meaning I may -- as this case progresses, I 6 may access other reference and research information that 7 will affect my ultimate testimony.</p> <p>8 Q. Fair enough. Have you spoken with the 9 Plaintiff in this case, Irving Blumenthal?</p> <p>10 A. I have.</p> <p>11 Q. Did you interview him -- or, excuse me, did 12 you speak with him in person?</p> <p>13 A. On the phone.</p> <p>14 Q. How many times?</p> <p>15 A. Once.</p> <p>16 Q. When?</p> <p>17 A. I'm not sure, but a page in my legal pad 18 contains the notes of that telephone conversation and 19 probably the date.</p> <p>20 Q. Okay. Can you turn to that, please?</p> <p>21 A. If I may be given permission to rifle through 22 this.</p> <p>23 Q. Sure.</p> <p>24 A. Okay. It would have been this page right 25 here.</p>

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58	<p>1 Q. Would you do me the courtesy of just marking 2 it, so --</p> <p>3 A. You might want to use a different color. I've 4 been using blue on this. It might --</p> <p>5 Q. Well, if you want to mark it and write the 6 word "Blumenthal" or B --</p> <p>7 A. Okay. Sure.</p> <p>8 Q. -- in your handwriting, that would just help 9 me find it.</p> <p>10 A. Sure.</p> <p>11 Q. And I would appreciate it that.</p> <p>12 Thank you, sir.</p> <p>13 MR. STANO: Jennifer, do you need to see 14 that?</p> <p>15 MS. SHERRILL: Okay.</p> <p>16 Q. (BY MR. STANO) Whose idea was it to call 17 Mr. Blumenthal?</p> <p>18 A. Mine.</p> <p>19 Q. And why did you want to speak with him?</p> <p>20 A. I think that's a good idea, every time that 21 the subject may come up of whether a recommendation by a 22 financial -- for a financial service product might be 23 suitable to the circumstances of a client.</p> <p>24 Q. And when did you call him?</p> <p>25 A. The date is not on there. I would have to</p>	60	<p>1 A. I think she -- and this is my best memory. 2 The call may have been initiated by her office. Whether 3 she was on the call, I don't know, because she would 4 have been in Oklahoma City. I was --</p> <p>5 Q. Sure.</p> <p>6 A. I was at my home.</p> <p>7 Q. Okay. Was the call in 2010?</p> <p>8 A. I don't think so. I think it was before the 9 year end, but --</p> <p>10 Q. Do you recall the month of the call?</p> <p>11 Approximately. I'm not going to hold you to it.</p> <p>12 A. I'm going to guess it was December, but --</p> <p>13 Q. December of 2009? Approximately.</p> <p>14 A. Yes. And the reason I say that is because my 15 first conversation with Shannon, apparently, by a date 16 also in this legal pad, is October 28th --</p> <p>17 Q. Okay.</p> <p>18 A. -- when she acquired -- inquired about my 19 services and my availability. And it would have been 20 sometime following that. So it could have been anywhere 21 from the beginning of November through the early part of 22 December, I believe.</p> <p>23 Q. Okay.</p> <p>24 A. It would have predated my report.</p> <p>25 Q. When were you formally retained by Ms. Emmons</p>
59	<p>1 consult my telephone records.</p> <p>2 Q. Okay. You -- on these notes that you referred 3 to, you have "Canceled, 12-13-08." Was that -- was that 4 a phone conversation or an appointment you had set up 5 with him that someone canceled?</p> <p>6 A. No. I believe that's the date the policy 7 lapsed or was cashed out.</p> <p>8 Q. Okay.</p> <p>9 A. Or that's what I recall from it.</p> <p>10 Q. Okay. Was anyone else on the line when you 11 spoke with Mr. Blumenthal?</p> <p>12 A. I'm not certain, but I -- but the call was set 13 up by Shannon Emmons, and it's possible that she may 14 have been on the call, but I don't recall her 15 participating in the conversation.</p> <p>16 Q. Did you identify yourself to Mr. Blumenthal?</p> <p>17 A. Oh, yes.</p> <p>18 Q. Did -- you gave him your name?</p> <p>19 A. Yes. I said that I had been retained by his 20 counsel to do some work on his case, and would he spend 21 some time with me to discuss this, and he said yes.</p> <p>22 Q. Was Ms. Emmons on the call as sort of a 23 go-between or in --</p> <p>24 A. She either --</p> <p>25 Q. -- an introductory fashion?</p>	61	<p>1 to be an expert witness in this case?</p> <p>2 A. It would have been around the first week of 3 November, I think, but I do not have the retainer -- the 4 original or a copy of the original retainer agreement 5 with me today.</p> <p>6 Q. That's part of your file, isn't it, on this 7 case?</p> <p>8 A. It is not a part of my file on this case.</p> <p>9 Q. The retainer agreement on this case is not 10 part of a file on this case? What part of a file is it?</p> <p>11 What other file do you have --</p> <p>12 A. Well, you would have to perhaps -- the 13 machinations of a home office environment is not helpful 14 here, but when I get a retainer agreement, it simply 15 goes into a file with all other retainer agreements, and 16 my wife knows how to process any payment I receive.</p> <p>17 Q. Okay. Do you --</p> <p>18 A. And my wife acts as my administrative officer, 19 if you will.</p> <p>20 Q. Is the retainer agreement the only other 21 document pertaining to this case that's not in the file 22 marked Exhibit 3?</p> <p>23 A. Well, I would make a point that I didn't rely 24 on the retainer agreement to form and write my 25 opinion --</p>

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<p style="text-align: right;">62</p> <p>1 Q. Right.</p> <p>2 A. -- but I believe your statement is correct.</p> <p>3 Q. Okay. You were retained around --</p> <p>4 A. Shortly after that October 28th -- I think</p> <p>5 that's the date on --</p> <p>6 Q. Sure.</p> <p>7 A. May I look at --</p> <p>8 Q. Absolutely. And when I -- I'm just trying to</p> <p>9 get the best date possible. I understand you may be off</p> <p>10 by some time. I'm not worried about that. I'm just</p> <p>11 trying to get an approximation.</p> <p>12 A. It would have been between the 1st of November</p> <p>13 and December 2nd, the date of my report. So I would</p> <p>14 revise my answer previously. More likely, it was in the</p> <p>15 month of November, as opposed to the beginning of</p> <p>16 December.</p> <p>17 Q. That you spoke with --</p> <p>18 A. Mr. Blumenthal.</p> <p>19 Q. Okay.</p> <p>20 A. And the retainer agreement would have been</p> <p>21 executed -- I don't see the date on here. I thought --</p> <p>22 well, it isn't here.</p> <p>23 Q. That's okay.</p> <p>24 A. -- would have -- would have been approximately</p> <p>25 the first week of November.</p>	<p style="text-align: right;">64</p> <p>1 witness? At least you mentioned your role in the case.</p> <p>2 A. I did identify my role in the case. I'm not</p> <p>3 sure how much explanation I gave. I may have relied</p> <p>4 upon Shannon Emmons to have described that.</p> <p>5 Q. Okay. Did Shannon tell you, prior to your</p> <p>6 calling or during the time you were calling</p> <p>7 Mr. Blumenthal, that she had told Mr. Blumenthal that</p> <p>8 you had been retained as an expert witness?</p> <p>9 A. I didn't understand that question, sir.</p> <p>10 Q. Okay. Did Shannon tell you at any time that</p> <p>11 she had informed Mr. Blumenthal that you had been hired</p> <p>12 as an expert witness?</p> <p>13 A. I don't think she ever said that. I assume</p> <p>14 she wouldn't have initiated the call, had she not --</p> <p>15 Q. Okay.</p> <p>16 A. -- done that.</p> <p>17 Q. Okay. Fair enough. What did you talk about</p> <p>18 generally with Mr. Blumenthal?</p> <p>19 A. I asked for a little bit of background</p> <p>20 information.</p> <p>21 Q. Was this sort of like a question-and-answer</p> <p>22 format, where you were getting background information,</p> <p>23 trying to develop --</p> <p>24 A. Yeah. I asked him to tell me a little bit</p> <p>25 about his education.</p>
<p style="text-align: right;">63</p> <p>1 Q. So you spoke with Mr. Blumenthal sometime</p> <p>2 probably after the first week of November, after the</p> <p>3 retainer agreement was executed?</p> <p>4 A. That's correct.</p> <p>5 Q. But prior to December 2nd of 2009 because</p> <p>6 that's the date of your expert report?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. So we have a window of about 3 weeks --</p> <p>9 A. That's correct.</p> <p>10 Q. -- approximately.</p> <p>11 Okay. And you identified yourself as</p> <p>12 having been retained by Ms. Emmons in this case as an</p> <p>13 expert witness?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Did he understand what you were saying,</p> <p>16 as far --</p> <p>17 A. I may not have used --</p> <p>18 Q. -- as you could tell?</p> <p>19 A. -- the word "retained." I'm not sure that --</p> <p>20 you know, I tried to explain the concept. I may --</p> <p>21 Q. Sure.</p> <p>22 A. -- have used the word I've been "hired" --</p> <p>23 Q. Okay.</p> <p>24 A. -- to do work on the case.</p> <p>25 Q. Did you explain the concept of being an expert</p>	<p style="text-align: right;">65</p> <p>1 Q. Okay. And what did he say?</p> <p>2 A. He said he graduated from college. He said he</p> <p>3 started law school, but didn't complete law school.</p> <p>4 Q. Uh-huh. Did he say how far he'd gotten?</p> <p>5 A. I think he might have said one year or less --</p> <p>6 Q. Okay.</p> <p>7 A. -- but I don't know. I don't recall whether</p> <p>8 he said he was going full-time, part-time, or how many</p> <p>9 hours, or that type of thing.</p> <p>10 Q. So you talked about his educational</p> <p>11 background. You talked about where he worked?</p> <p>12 A. I did ask him a little bit about his business.</p> <p>13 Q. Okay.</p> <p>14 A. Yes.</p> <p>15 Q. And he said what?</p> <p>16 A. The important thing for me was that it was a</p> <p>17 relatively successful what you would call small</p> <p>18 business --</p> <p>19 Q. Uh-huh.</p> <p>20 A. -- having to do with mechanical applications</p> <p>21 to automobiles and other forms of transportation.</p> <p>22 Seemed a very interesting man.</p> <p>23 Q. How long did the call go, approximately?</p> <p>24 A. I would say 20, maybe 25 minutes.</p> <p>25 Q. Do you have your billing records here?</p>

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66	<p>1 A. No.</p> <p>2 Q. Where are they?</p> <p>3 A. They would be in my tax files, I assume.</p> <p>4 Q. I thought you said the only document</p> <p>5 pertaining to this case that's not in this file was the</p> <p>6 retainer agreement. Did you not say that just a few</p> <p>7 minutes ago?</p> <p>8 A. Yes, and I assumed, when I said that, that my</p> <p>9 handwritten notes about the telephone conversation would</p> <p>10 be sufficient.</p> <p>11 Q. Sir, I was asking about the completeness of</p> <p>12 the file. I wasn't talking about telephone notes. I</p> <p>13 was -- I was talking about making sure that the entire</p> <p>14 file that you have on this case was on this table today,</p> <p>15 and you said it was, other than the retainer agreement.</p> <p>16 Now you're telling me that documents pertaining to the</p> <p>17 file, more specifically your billing statements, are not</p> <p>18 in the file.</p> <p>19 A. My telephone billing statements?</p> <p>20 Q. Whatever billing statements you have.</p> <p>21 A. Or are you talking about my firm billing</p> <p>22 statements?</p> <p>23 Q. I'm talking about the billing statements</p> <p>24 pertaining to this file.</p> <p>25 A. Okay.</p>	68	<p>1 document, Mr. Blum -- Mr. Sanderford, excuse me, that</p> <p>2 you -- that pertains to this file that -- to this case,</p> <p>3 Blumenthal versus NYLIAC, that's not in Exhibit 3?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Thank you. How much was the initial billing</p> <p>6 statement for?</p> <p>7 A. It would have been either 2,000 or \$2,500.</p> <p>8 Those are the two typical retainer amounts that I</p> <p>9 request. I don't recall, as we sit here, which it was.</p> <p>10 Q. Okay.</p> <p>11 A. And I bill against that at the rate of \$200 an</p> <p>12 hour.</p> <p>13 Q. Okay. How many hours have you put on this</p> <p>14 case to date?</p> <p>15 A. I have made no attempt to accumulate hours</p> <p>16 spent on this case to date.</p> <p>17 Q. I don't understand your answer. You've made</p> <p>18 no attempt to accumulate hours? You made no attempt to</p> <p>19 bill hours or to --</p> <p>20 A. I have made --</p> <p>21 Q. -- to record the hours?</p> <p>22 A. -- no attempt to bill or record the hours to</p> <p>23 date.</p> <p>24 Q. Okay.</p> <p>25 A. Periodically, as is my practice -- I don't</p>
67	<p>1 Q. They're not in this -- they're not --</p> <p>2 A. I have -- I have made --</p> <p>3 Q. -- in Exhibit 3.</p> <p>4 A. -- no billing invoices describing times</p> <p>5 allocated to a telephone call to Mr. Blumenthal at any</p> <p>6 time, so --</p> <p>7 Q. But you have that recorded somewhere, don't</p> <p>8 you? Your time billed to this file, don't you?</p> <p>9 A. I would reconstruct those records at the time</p> <p>10 that I make supplemental billings to the firm.</p> <p>11 Q. Have you made any billings to the firm so far?</p> <p>12 A. Yes. I have made one billing to the firm for</p> <p>13 the initial engagement.</p> <p>14 Q. And is a copy of that bill in Exhibit 3?</p> <p>15 A. No, sir, it's not.</p> <p>16 Q. Where is it?</p> <p>17 A. It would be at my home office.</p> <p>18 Q. Okay. I will ask you one more time: Are</p> <p>19 there any documents pertaining to this file that are not</p> <p>20 in Exhibit 3? We've -- we've identified two documents</p> <p>21 so far. We've identified the retainer agreement, and we</p> <p>22 identified at least one billing statement. Is there any</p> <p>23 other document -- and leave it to me to decide whether I</p> <p>24 think I need to see it or not, or whether it's important</p> <p>25 or not. Don't screen anything. Is there any other</p>	69	<p>1 keep billing times as you might engage a law firm to do.</p> <p>2 But when I believe there is an appropriate passage of</p> <p>3 time and an appropriate amount of work engaged on a</p> <p>4 case --</p> <p>5 Q. Okay.</p> <p>6 A. -- I will sit down in my home office --</p> <p>7 Q. Uh-huh.</p> <p>8 A. -- and I will reflect on the calls that have</p> <p>9 been made, the conversations that have taken place, and</p> <p>10 any work that has transpired, and I will assign to it a</p> <p>11 number of hours that I will bill the law firm for and</p> <p>12 offer to discuss it with them, if -- if they need</p> <p>13 further information.</p> <p>14 Q. Do you do this on a regular basis, or just</p> <p>15 whenever you think it's appropriate?</p> <p>16 A. Whenever I think it's appropriate.</p> <p>17 Q. And the one bill that you've sent out to date</p> <p>18 was for approximately how much?</p> <p>19 A. I think it was \$2,500. I have identified that</p> <p>20 the amount may be different than that.</p> <p>21 Q. Sure. I understand.</p> <p>22 A. And if it's not \$2,500, I -- when I go look at</p> <p>23 that bill, I would be happy to inform you immediately.</p> <p>24 Q. I understand. But does it say, "For services</p> <p>25 rendered, \$2,500," or does it give a breakdown in time</p>

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70	<p>1 increments of any type, listing what that total amount 2 is for?</p> <p>3 A. I don't recall.</p> <p>4 Q. What's your normal practice to -- in terms of 5 billing? Do you bill -- do you --</p> <p>6 A. It might -- it might take any one of a number 7 or forms, depending upon how I've been engaged. Your 8 question assumes there is one prevailing billing and 9 invoicing practice.</p> <p>10 Q. Sir, my question doesn't assume anything. I'm 11 trying to figure out how you do your billing. Right or 12 wrong, up or down, it doesn't matter to me. I'm just 13 trying to figure out how you do it. Is it task-based 14 billing, where you list -- let me finish -- where you 15 list a certain amount of time for a certain task, or is 16 it some other type of billing? You just tell me.</p> <p>17 A. Some other type.</p> <p>18 Q. Okay. And how would you describe that?</p> <p>19 A. It can take a very -- a variety of forms.</p> <p>20 Q. Well, tell me how it happened in this case. I 21 don't care about your other cases. How did you bill in 22 this case?</p> <p>23 A. It could be one of two ways.</p> <p>24 Q. Okay.</p> <p>25 A. It could have been simply a request for</p>	72	<p>1 Q. Fair enough. I understand that. Did you 2 discuss any particular documents with him, that you can 3 recall?</p> <p>4 A. May I make reference to my notes?</p> <p>5 Q. Absolutely. This is not --</p> <p>6 A. Okay.</p> <p>7 Q. -- a memory test.</p> <p>8 A. I don't think that I requested any documents 9 from him. It looks like I had the finance -- the annual 10 summaries in front of me, when I was talking to him, and 11 it looks like that was sort of directing my 12 conversation.</p> <p>13 Q. Okay. The annual policy summaries?</p> <p>14 A. Yes.</p> <p>15 Q. I think I saw a few in there. And you talked 16 to him about the annual policy summaries, correct?</p> <p>17 A. Yes. And I -- yes.</p> <p>18 Q. Okay. Did he know what you were talking about 19 when you mentioned them?</p> <p>20 A. I don't recall whether he responded 21 immediately, or whether I had to explain, you know.</p> <p>22 Q. Okay. It's hard to talk about a document over 23 the phone when the other side doesn't have it. You 24 don't know if Mr. Blumenthal had an annual policy 25 summary in front of him while you were talking to him,</p>
71	<p>1 retainer amount --</p> <p>2 Q. Okay.</p> <p>3 A. -- where there's no identification of task or 4 any reference to time.</p> <p>5 Q. Okay.</p> <p>6 A. Or it could have been for an amount which 7 would include the retainer and additional amounts, where 8 it would have listed tasks in addition. And we'll see, 9 when I turn over the copy to you, which it is.</p> <p>10 Q. Well, let me ask you this. Do you have a fax 11 machine in your home?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Can you fax the bill and the retainer 14 agreement to this office during break?</p> <p>15 A. No.</p> <p>16 Q. Why?</p> <p>17 A. Because nobody is there.</p> <p>18 Q. Okay.</p> <p>19 A. Our dog Magnolia is a wonderfully smart dog, 20 but she's not competent to do that.</p> <p>21 Q. You say you talked to Mr. Blumenthal for 22 approximately 20 minutes? And I'm not going to hold you 23 to it, if you don't have the file.</p> <p>24 A. No. It could have been five minutes more or 25 five minutes less.</p>	73	<p>1 do you?</p> <p>2 A. I had the impression that he wasn't referring 3 to any specific documents --</p> <p>4 Q. Okay.</p> <p>5 A. -- on his side of the call.</p> <p>6 Q. Naturally --</p> <p>7 A. But -- but I wasn't there.</p> <p>8 Q. Sure. But naturally, you would have to 9 explain the document. Whether he had it or not, you 10 would have to tell him what you had? You had --</p> <p>11 A. Yes. I would have --</p> <p>12 Q. -- to at least --</p> <p>13 A. I would have tried to -- well --</p> <p>14 Q. -- identify it in some way.</p> <p>15 A. No. If I -- well, I can give you a definite 16 maybe on that.</p> <p>17 Q. Okay.</p> <p>18 A. If I wanted to ask a question about a point in 19 time, I could have asked a question by my referring to 20 the annual summary and asking about his recollection. I 21 could have said, Do you remember getting an annual 22 summary, and did it say thus and so?</p> <p>23 Q. Did you ask him that?</p> <p>24 A. I think what I'm telling you is I don't 25 recall --</p>

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74	<p>1 Q. Okay.</p> <p>2 A. -- exactly how -- how that question was</p> <p>3 formed.</p> <p>4 Q. Oh, sure. Well, you mentioned annual</p> <p>5 summaries in your report.</p> <p>6 A. I did. One document that I refer to</p> <p>7 specifically was the in force illustration dated</p> <p>8 November of 2006.</p> <p>9 Q. Was he familiar with that --</p> <p>10 A. Yes.</p> <p>11 Q. -- in force illustration? We'll get to that</p> <p>12 in just a moment.</p> <p>13 Did you ask Mr. Blumenthal what was his</p> <p>14 complaint against New York Life?</p> <p>15 A. I did.</p> <p>16 Q. Okay. And what did he say?</p> <p>17 A. I'll try to say it as best as I can recall,</p> <p>18 but don't take this for a quote --</p> <p>19 Q. Sure.</p> <p>20 A. -- but it's my understanding.</p> <p>21 Q. Of what he said?</p> <p>22 A. Of what he said.</p> <p>23 Q. Okay.</p> <p>24 A. He said he felt it was represented that this</p> <p>25 life insurance policy would have a death benefit of at</p>	76	<p>1 Q. Okay.</p> <p>2 A. Your expert's comments were that's a result,</p> <p>3 unfortunately, of some people just not understanding</p> <p>4 what they had been sold.</p> <p>5 Q. Right. And when I say "vanish," I'm putting</p> <p>6 vanishing in quotes.</p> <p>7 A. Okay.</p> <p>8 Q. But what -- I'm not asking about my expert.</p> <p>9 I'm asking about did Mr. -- what Mr. Blumenthal said, if</p> <p>10 anything --</p> <p>11 A. No. He didn't talk about vanishing premiums.</p> <p>12 He talked about being able to rely on the premiums that</p> <p>13 he was quoted as maintaining a death benefit of at least</p> <p>14 \$1 million for the remainder of his life.</p> <p>15 Q. Did he talk about paying premiums for a</p> <p>16 certain number of years, eight or nine years</p> <p>17 approximately, or for a fixed period of time, and then</p> <p>18 not having to pay any premiums beyond that?</p> <p>19 A. He may have thought that, but I don't think I</p> <p>20 discussed that with him.</p> <p>21 Q. Okay. Did you read the complaint before you</p> <p>22 called him?</p> <p>23 A. I would have imagined I had, but I can't,</p> <p>24 sitting here today, guarantee you that I had.</p> <p>25 Q. Okay. What else did you talk about? Are</p>
75	<p>1 least \$1 million --</p> <p>2 Q. Uh-huh.</p> <p>3 A. -- for which he would pay a premium of</p> <p>4 approximately \$53,000 a year, and that he expected and</p> <p>5 believed that it had been represented that that premium</p> <p>6 would be adequate for that policy to remain in force for</p> <p>7 the remainder of his life.</p> <p>8 Q. Okay. In other words, as long as he paid the</p> <p>9 premium, he would have the policy.</p> <p>10 A. Exactly.</p> <p>11 Q. Is that a fair summary?</p> <p>12 A. That was his position --</p> <p>13 Q. Okay.</p> <p>14 A. -- as I best recall it.</p> <p>15 Q. Okay. Did he talk about any representations</p> <p>16 of premium vanishing after a certain number of years?</p> <p>17 A. No.</p> <p>18 Q. Did you talk --</p> <p>19 A. I don't --</p> <p>20 Q. Did you talk about vanish? In your report you</p> <p>21 cite a lot of vanishing premium articles.</p> <p>22 A. Oh, well --</p> <p>23 Q. When I say "vanishing premium," you know what</p> <p>24 I'm talking about, don't you?</p> <p>25 A. I do.</p>	77	<p>1 there -- before we leave the subject of agent</p> <p>2 representations, is he saying Mr. Marlin, the insurance</p> <p>3 agent in this case, made that representation to him?</p> <p>4 A. I believe he did.</p> <p>5 Q. What else did he say Mr. Marlin said?</p> <p>6 A. With respect to Mr. Marlin, that is the only</p> <p>7 representation that I recall specifically him</p> <p>8 attributing to Mr. Marlin. I don't know whether he had</p> <p>9 other issues or statements to include that, but his</p> <p>10 primary point of conversation to me was that he felt he</p> <p>11 could rely on the quotations provided him from</p> <p>12 Mr. Marlin, and the verbal representations made by</p> <p>13 Mr. Marlin, that he could purchase from New York Life</p> <p>14 one -- at -- a universal life insurance policy with at</p> <p>15 least \$1 million of coverage, and by paying an annual</p> <p>16 premium of \$53,046 a year, that that policy would stay</p> <p>17 in force through the remainder of his life.</p> <p>18 Q. What quotations were provided -- strike that.</p> <p>19 Were written quotations provided to</p> <p>20 Mr. Blumenthal by Mr. Marlin?</p> <p>21 A. The documents that I understand --</p> <p>22 Q. And let me clarify my question. I don't mean</p> <p>23 to interrupt. During the sales process -- so that we</p> <p>24 can put some time frame on what my question pertains to.</p> <p>25 During the time -- during the time when the policy was</p>

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78	<p>1 sold by Mr. Marlin to Mr. Blumenthal, were written --</p> <p>2 A. So if I --</p> <p>3 Q. -- documents of any type provided to</p> <p>4 Mr. Blumenthal?</p> <p>5 A. May I ask a clarification?</p> <p>6 Q. Sure. Absolutely.</p> <p>7 A. Okay. Would you think of the July 19</p> <p>8 illustration as being a sales document, when it was</p> <p>9 delivered 38 days following the issue date of the</p> <p>10 policy?</p> <p>11 Q. Well, I'm not describe -- I'm not restricting</p> <p>12 it or defining it as the sales document or any type of</p> <p>13 document. I'm talking about anything in writing</p> <p>14 prevented -- provided to Mr. Blumenthal.</p> <p>15 A. Well, another document, an earlier</p> <p>16 illustration dated January 1999 --</p> <p>17 Q. Okay.</p> <p>18 A. -- is apparently an issue, and I cannot tell</p> <p>19 you for a fact of whether it was presented to</p> <p>20 Mr. Blumenthal because it was not signed --</p> <p>21 Q. Okay.</p> <p>22 A. -- and dated, and I understand although --</p> <p>23 from counsel that there may be conflicting testimony</p> <p>24 between Mr. Marlin and Mr. Blumenthal with respect to</p> <p>25 the issue of whether or not that illustration was</p>	80	<p>1 conversation -- we think it's in November -- that you</p> <p>2 had with Mr. Blumenthal, did he -- what documents did he</p> <p>3 mention that he had received from Mr. Marlin?</p> <p>4 A. The only document that I recall him</p> <p>5 specifically referencing --</p> <p>6 Q. Okay.</p> <p>7 A. -- in that one conversation that we had, was</p> <p>8 the November 28th, 2006, in force illustration provided</p> <p>9 by Mr. Marlin.</p> <p>10 Q. Now, who mentioned that? Did --</p> <p>11 A. He did.</p> <p>12 Q. Okay. He mentioned it by date?</p> <p>13 A. I don't know that he mentioned it by date. He</p> <p>14 talked about an in force illustration which I later came</p> <p>15 to understand is the only one that he requested and</p> <p>16 received.</p> <p>17 Q. How did you come to understand that, that the</p> <p>18 one illustration -- look, before we get to that, he</p> <p>19 mentioned he received an illustration from Mr. Marlin at</p> <p>20 some point, correct?</p> <p>21 A. At some point.</p> <p>22 Q. And that the policy was in effect at the time</p> <p>23 he received the illustration?</p> <p>24 A. That's correct.</p> <p>25 Q. So it was an in force illustration?</p>
79	<p>1 delivered, was discussed, and to the extent --</p> <p>2 Q. Okay.</p> <p>3 A. -- that it was discussed.</p> <p>4 Q. And we'll get --</p> <p>5 A. The only --</p> <p>6 Q. -- to that.</p> <p>7 A. -- other document that I can point to at this</p> <p>8 moment is one that was contained in here, which is a</p> <p>9 comparison of the New York Life policy versus a term</p> <p>10 life policy that Mr. Blumenthal owned at the -- during</p> <p>11 this same period. But I do not recall seeing a date on</p> <p>12 that comparison, so I cannot guarantee you that it was</p> <p>13 delivered and/or discussed before an application was</p> <p>14 taken for the New York Life policy.</p> <p>15 Q. All right. Fair enough. Let's focus on the</p> <p>16 conversation with Mr. Blumenthal and what documents he</p> <p>17 mentioned, if any, to you during -- you talked to</p> <p>18 Mr. Blumenthal once, correct?</p> <p>19 A. Once.</p> <p>20 Q. And you've never -- you've not spoken to</p> <p>21 him --</p> <p>22 A. I've never --</p> <p>23 Q. -- before or since?</p> <p>24 A. -- spoken to him before or since.</p> <p>25 Q. Okay. During the conversation, the one</p>	81	<p>1 A. Correct.</p> <p>2 Q. He did not mention a date with regard to the</p> <p>3 illustration, correct?</p> <p>4 A. I don't recall.</p> <p>5 Q. You have concluded it's the November 2006</p> <p>6 illustration; is --</p> <p>7 A. Yes.</p> <p>8 Q. -- that correct?</p> <p>9 On what basis do you think it was the</p> <p>10 November 6, 2000 (sic) illustration, as opposed to an</p> <p>11 illustration in force with some other date?</p> <p>12 A. Well, it's the only one that I've been</p> <p>13 provided copies of by counsel.</p> <p>14 Q. And on that basis --</p> <p>15 A. Yes.</p> <p>16 Q. -- alone you've concluded that it had to have</p> <p>17 been the November 2006 illustration?</p> <p>18 A. Of all the illustrations that I have received,</p> <p>19 which are three in total --</p> <p>20 Q. Okay.</p> <p>21 A. -- January 1999; July 19, 1999; and</p> <p>22 November 28, 2006 -- it's the only one that would have</p> <p>23 been feasible to have been received by him while his</p> <p>24 policy was in force and to have caused a concern as to</p> <p>25 the terms and ultimate viability of that policy.</p>

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82	<p>1 Q. What information was in the November 2006 2 illustration that would have caused these concerns about 3 the viability of his policy? 4 A. And -- 5 Q. No, go ahead. I'm listening to you. 6 A. What I would tell you is my best recollection 7 of that conversation, and that he described a period of 8 time, which I presume to be the years leading up to that 9 illustration, as having received annual summaries from 10 New York Life that provided him some information about 11 his policies. Regardless of what he called it, 12 regardless of how he defined it, that's what I 13 understood him to be referring to, that he received some 14 periodic distributions from New York Life -- 15 Q. Uh-huh. 16 A. -- that provided him some information about 17 his policy. 18 Q. Okay. Did he say if he got those on an annual 19 basis? 20 A. I -- 21 Q. He said he got them prior to November -- 22 A. Since I have -- 23 Q. -- of 2006. 24 A. By the time of this conversation, I, having 25 already received from legal counsel --</p>	84	<p>1 ultimately make a request for an in force 2 illustration -- 3 Q. Okay. 4 A. -- and -- which I assume is the 5 November 2006 -- 6 Q. Okay. 7 A. -- in force illustration. 8 Q. But he did say it was something he received 9 from -- from New York Life in 2006 that caused him to 10 ask for the illustration? 11 A. Correct. 12 Q. Okay. Did he -- did he say that whatever he 13 received from New York Life -- we think it's the annual 14 policy summary -- that it caused him concern? 15 A. Yes, he did. 16 Q. What was the concern that he had? 17 A. Here again, this is my best understanding. 18 Q. Sure. 19 A. My understanding is that he had observed, over 20 time, that information provided on these summaries -- 21 Q. Uh-huh. 22 A. -- would change the date in the footnotes in 23 the summaries about how long he might expect his policy 24 to remain in force, and that he noticed -- and here 25 again, this is what I gleaned from the conversation --</p>
83	<p>1 Q. Uh-huh. 2 A. -- copies of what I understood to be the 3 annual summaries or annual statements -- 4 Q. Right. 5 A. -- assumed that we were talking about the same 6 thing. 7 Q. Okay. But whatever he -- whatever they were, 8 he said prior to the November 2006 illustration -- 9 A. That he -- 10 Q. -- he had -- 11 A. -- had received. 12 Q. Some reports of some -- 13 A. Some -- 14 Q. -- type? 15 A. -- reports of some type, which I understood to 16 be the annual product summaries. 17 Q. Let's stick with that before we get to the 18 illustration -- 19 A. Sure. 20 Q. -- and we will. Did he say what type of 21 information was in those reports? 22 A. No, he didn't with any specificity, but he did 23 say that the report he received in 2006 -- 24 Q. Uh-huh. 25 A. -- did cause him to reflect on his policy and</p>	85	<p>1 he noticed that every year, as he continued to make his 2 payments, those dates might be pushed out further in the 3 future. And that's how he thought it probably worked, 4 you know. I didn't get any feeling that he had an 5 understanding mathematically of how rates of return were 6 credited, or what would cause the date to change 7 specifically, or whether or not there was any 8 conversation with Mr. Marlin about what to expect on 9 that date. 10 And the next impression I got was that the 11 summary that he received in 2006 -- and again, on my 12 recollection -- made that date move less than I think he 13 may have seen before, and that may have been -- or 14 that's what I undertook to be -- the triggering of his 15 concern which caused him to request an in force 16 illustration. And I believe he ultimately had that in 17 force illustration reviewed by some person that he had 18 access to, who may have been a subsequent financial 19 adviser. That's -- and I don't know who that person is 20 or -- 21 Q. Okay. 22 A. -- or what conversations that they may have 23 had, and that that produced his dissatisfaction. 24 Q. Okay. So it was your understanding that he 25 was receiving the annual reports from New York Life over</p>

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86	<p>1 a period of years. He was tracking the dates that the 2 policy would -- or the length of time the policy would 3 be in effect? 4 A. He exhibited some understanding -- 5 Q. Okay. 6 A. -- that the policy would be in effect for some 7 future period. 8 Q. And every time he got a -- 9 A. And the foot -- 10 Q. -- report, it would be pushed into the -- 11 A. And my under -- 12 Q. -- future: is that correct? 13 A. And here again, I may be giving him too much 14 understanding credit for this -- 15 Q. Right. 16 A. -- because I'm looking at the annual 17 summary -- 18 Q. Uh-huh. 19 A. -- and he tells me on the phone that he saw 20 dates, saw that as he made payments, it extended out in 21 the future. I turned over to the footnotes, and sure 22 enough, there are references -- 23 Q. Uh-huh. 24 A. -- that are quite similar to that. 25 Q. Did you discuss those footnotes with him?</p>	88	<p>1 A. That's my understanding. 2 Q. Okay. And he -- and he talked about the 3 policy -- the in force illustration dated November 4 of 2006? 5 A. There were apparently -- he indicated to me -- 6 Q. Uh-huh. 7 A. -- that the in force illustration caused him 8 great concern. 9 Q. Okay. 10 (Exhibit No. 4 marked.) 11 Q. (BY MR. STANO) Mr. Sanderford, let me show 12 you what's marked as Exhibit 4. It's Bates stamped in 13 the lower right-hand corner NYLIAC 62 through NYLIAC 67. 14 Is this the November 28th, 2006, in force illustration 15 that we've been talking about? 16 A. It appears to be. 17 Q. Okay. And I don't mean to rush you. Feel 18 free to -- 19 A. No. It -- it -- it -- 20 Q. -- take a look at it. I will represent to 21 you, sir, there's only one that I'm aware of. 22 A. It's a six-page illustration -- 23 Q. Okay. 24 A. -- that appears to be dated as you indicate. 25 Q. What figure or figures on this illustration</p>
87	<p>1 A. No. 2 Q. Okay. But you understood he was -- what he 3 was saying about looking at the annual summary and 4 tracking the footnotes and -- 5 A. I thought I understood -- 6 Q. Okay. 7 A. -- what he was making reference to. 8 Q. Okay. And he receives the 2006 annual summary 9 and the push-out date -- in other words, the date that 10 the force -- the policy would be in effect, was it 11 moving out -- 12 A. That -- 13 Q. -- forward enough -- 14 A. That's the -- 15 Q. -- faster? 16 A. -- only thing I recall having been mentioned 17 in that conversation that specifically relates to the -- 18 Q. Okay. 19 A. -- to what might have been the 2006 annual 20 summary. 21 Q. Do you have that in your file, the 2006 annual 22 summary? 23 A. It's in there, yes. 24 Q. Okay. And that caused him to ask for the 25 policy illustration -- the in force policy illustration?</p>	89	<p>1 was he particularly interested in, that was causing him 2 concern? Would it be the figure -- 3 A. He -- he -- 4 Q. -- that would show -- 5 A. He did not tell me, Look at Column 4 -- 6 Q. Sure. 7 A. -- and this number says this, I think it 8 should be that. 9 Q. Right. 10 A. That did not happen. 11 Q. Understood. 12 A. What he said was that his review of this, and 13 whatever advice he got from whoever he showed it to, 14 indicated that even if he continued making his premium 15 payments, that even on a nonguaranteed basis, current 16 charges -- 17 Q. Correct. 18 A. -- that his policy would lapse at Year 17. 19 Q. And he would be approximately 84 years of age? 20 A. Correct. 21 Q. And -- and -- 22 A. He also -- we also made an observation that on 23 a guaranteed basis that would be Year 13. 24 Q. Now, you're looking at NYLIAC 067 or Page 6 25 of 6 of -- of this exhibit?</p>

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90	<p>1 A. I am.</p> <p>2 Q. Okay. Just want to make sure.</p> <p>3 (Discussion off the record.)</p> <p>4 Q. (BY MR. STANO) Did he express surprise over</p> <p>5 this?</p> <p>6 A. He said he felt that was quite different than</p> <p>7 what he understood from Agent Marlin to expect.</p> <p>8 Q. Okay. Did he state that -- in effect, that</p> <p>9 this -- until he had seen Exhibit 4, the November 2006</p> <p>10 illustration, that he was not -- had never received</p> <p>11 information which would have revealed the expiration</p> <p>12 date of the policy in this fashion, or words to that</p> <p>13 effect?</p> <p>14 A. He said a number of things that were points</p> <p>15 that you expect to be made, and worded as you would</p> <p>16 expect to be made, by a layman.</p> <p>17 Q. Tell me exactly what word --</p> <p>18 A. Well, I can't tell you exactly, but I can --</p> <p>19 Q. Tell me what your --</p> <p>20 A. -- give you my impressions.</p> <p>21 Q. Okay. Impressions are fine. Tell me all</p> <p>22 the --</p> <p>23 A. Okay.</p> <p>24 Q. -- your impressions of everything he said.</p> <p>25 A. Okay. Would you be willing to have me also</p>	92	<p>1 would be \$6.6 million.</p> <p>2 Q. Okay.</p> <p>3 A. Now, you and I have probably observed things</p> <p>4 that people would call legal absurdities over time.</p> <p>5 This has to be an actuarial absurdity. There is no</p> <p>6 person nowhere, living, breathing, who would agree to</p> <p>7 the expectation of having to pay \$6.6 million for a life</p> <p>8 insurance policy with a death benefit of 1 million.</p> <p>9 Q. Well, putting --</p> <p>10 A. Now --</p> <p>11 Q. -- aside the --</p> <p>12 A. I'm just giving background for my impression.</p> <p>13 Q. Sure. Sure.</p> <p>14 A. My impression was that he had made</p> <p>15 observations in material from New York Life --</p> <p>16 Q. Right.</p> <p>17 A. -- that were so obviously out of whack that it</p> <p>18 wasn't until 2006 that he decided really to examine,</p> <p>19 because of the years not being pushed out, and taking</p> <p>20 another look.</p> <p>21 Now, today, I'm sitting here talking to</p> <p>22 you after having looked at the illustrations and having</p> <p>23 reviewed the annual summaries, and I picked up quite</p> <p>24 quickly on this \$200,000 annual premium thing. I would</p> <p>25 expect neither you nor a -- any representative from</p>
91	<p>1 look at the July 1999 illustration?</p> <p>2 Q. Did he mention that?</p> <p>3 A. I believe he did.</p> <p>4 Q. Why not? But tell me in what context that he</p> <p>5 mentioned the July 1999 illustration. Did he -- did</p> <p>6 he --</p> <p>7 A. There is a statement narrative in the</p> <p>8 January 19 -- July 1999 statement --</p> <p>9 Q. Okay.</p> <p>10 A. -- which I only came to appreciate sometime</p> <p>11 later. I didn't have that statement in my possession at</p> <p>12 that time.</p> <p>13 Q. Okay.</p> <p>14 A. That this narrative statement said that the</p> <p>15 annual premium required to guarantee that this policy</p> <p>16 would stay in force --</p> <p>17 Q. Uh-huh.</p> <p>18 A. -- through age 100 was \$200,000 and something</p> <p>19 more a year.</p> <p>20 Q. Did he tell you that?</p> <p>21 A. No. He made reference to an awfully large</p> <p>22 amount, and made reference to the fact that this</p> <p>23 obviously couldn't be correct. And so later, when I got</p> <p>24 the 1999 illustration, I did my own calculation.</p> <p>25 \$200,286.89 a year for 67 -- or, excuse me, for 33 years</p>	93	<p>1 New York Life could explain how there could be any</p> <p>2 expectation -- zero percent -- 0.1 percent expectation</p> <p>3 that anybody living would agree to buy a \$1 million</p> <p>4 death benefit policy, if there was any expectation that</p> <p>5 they would have to pay \$6.6 million to do so.</p> <p>6 Q. Are you offering opinions on rates for this</p> <p>7 policy, as to whether they're excessive or not? Have</p> <p>8 you been asked to do that? I didn't see in your report</p> <p>9 about excessive rates. Are you offering me an</p> <p>10 opinion -- are you amending your report as you -- during</p> <p>11 this deposition to offer me an opinion on -- on rates?</p> <p>12 A. I'll answer your question this way, which I</p> <p>13 think is the most direct and accurate answer I can give</p> <p>14 you. My report may very well be amended and --</p> <p>15 Q. Sir, I'm not asking whether it might be</p> <p>16 amended. I'm asking you, Are you offering an -- it's a</p> <p>17 yes-or-no answer. Are you --</p> <p>18 A. Am I offering an opinion today?</p> <p>19 Q. Yes.</p> <p>20 A. As to a conclusion about rates?</p> <p>21 Q. Have you been asked to offer an opinion on</p> <p>22 actuarial rates for the policy in question in this</p> <p>23 lawsuit? You either have been asked or you haven't. I</p> <p>24 just want to know if you have or not.</p> <p>25 A. And when you say "actuarial rates," that's</p>

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<p style="text-align: right;">94</p> <p>1 loading the question because some rates are business 2 related. as opposed to being actuarial related. 3 Q. Have you been asked to offer an opinion in 4 this case on the premium rate for the policy at issue? 5 A. I have never been asked to give an actuarial 6 opinion about this policy. I have had discussions about 7 an opinion that would address the predisposition of 8 New York Life to lower credited interest rates, that are 9 not responsive to market conditions, and to expand the 10 cost of insurance, not just by increasing age, as you 11 would expect, but as a percentage of the maximum amount 12 that they could charge in a policy. Both of those are 13 immensely potent financial levers that can profit the 14 issuing company at the expense of an individual 15 policyholder, and each of those would be issues common 16 with many policyholders, I expect, who buy the protector 17 policy under similar conditions. 18 MR. STANO: I'll move to strike as 19 nonresponsive. 20 Q. (BY MR. STANO) I asked you, sir: Were you 21 asked by Plaintiff's counsel to offer an opinion or 22 provide an opinion on the excessiveness of the premium 23 rate charged in this case? 24 A. Not as a function of the report that I have 25 published and issued.</p>	<p style="text-align: right;">96</p> <p>1 use that term inclusively, in my existing report. There 2 may be other issues with respect to patterns of rates 3 and the predisposition or predetermination by New York 4 Life as to how they will apply rates to a policy which 5 is still -- which I have not been asked to give an 6 opinion on at this time. 7 Q. In your conversation with Mr. Blumenthal, he 8 mentioned -- or he acknowledged the existence of the 9 July 1999 illustration; is that correct? He referenced 10 it in some fashion with regard to the -- 11 A. He referenced the prior illustration in some 12 fashion. 13 Q. Okay. 14 A. That one received about 38 days after the 15 policy issue date. 16 Q. He described it that way? 17 A. No. 18 Q. All right. 19 A. That's my under -- that's my knowledge. 20 Q. Okay. You -- it was your understanding there 21 were only three illustrations provided to Mr. Blumenthal 22 in this case? 23 A. That's all that I'm presently aware of. 24 Q. Did you ask counsel for Mr. Blumenthal to 25 provide you with all illustrations that had been</p>
<p style="text-align: right;">95</p> <p>1 Q. Thank you very much. So your report, as 2 presented in this case, does not offer or address the 3 excessiveness of the premium rate on the policy at 4 issue, correct? 5 A. It -- it addresses a number of issues that you 6 might call rates. It addresses whether or not New York 7 Life credited rates to the Blumenthal's policy that are 8 consistent with market and company financial conditions. 9 Q. Let me clarify my question. I'm talking about 10 the rate -- the premium rate or the premium amount 11 charged the policyholder. Does your report address 12 that? 13 A. It does. 14 Q. Where? What page? 15 A. It addresses the concept of a universal life 16 policy as being a low premium, high death benefit 17 design, or a high premium, high cash value design, which 18 your expert acknowledges the distinction between. And I 19 have made several observations in my existing report 20 about the proclivity of a low premium, high death 21 benefit design of producing lower cash surrender values, 22 which, in fact, produces a higher expectation of the 23 policy not having sufficient values to pay cost of 24 insurance and other fees in the future. 25 Now -- so I have addressed rates, as you</p>	<p style="text-align: right;">97</p> <p>1 provided in this case? 2 A. No. 3 Q. Did you -- did you rely on whatever they gave 4 you, without asking if this was everything with regard 5 to illustrations? 6 A. Well, what I specifically asked was -- I had 7 been provided the November 2006 illustration early on in 8 my engagement. Apparently, some time passed, where 9 counsel thought they had provided me the earlier 1999 10 illustrations. But when I saw them made reference to in 11 the production of documents pleading, I made a little 12 search of what they sent me, and I didn't -- 13 Q. Right. Right. 14 A. -- see it. I asked them to provide me copies, 15 and they did. 16 Q. Was this prior to your -- 17 A. Now, I didn't -- 18 Q. Was this -- 19 A. I didn't say in any other illustrations you -- 20 Q. Okay. 21 A. -- may have. Those were the only three that I 22 saw identified by date in the production of documents. 23 So I assumed that that was it. 24 Q. Was this prior to the time your report was -- 25 had been written, that you received the July 1999</p>

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<p style="text-align: right;">98</p> <p>1 illustration?</p> <p>2 A. I don't recall.</p> <p>3 Q. Is your -- is the July 1999 report --</p> <p>4 July 1999 illustration mentioned in your report, if you</p> <p>5 recall?</p> <p>6 A. I don't recall.</p> <p>7 Q. What other impressions did you get from</p> <p>8 Mr. Blumenthal, in speaking with him? What other points</p> <p>9 was he making with you?</p> <p>10 A. That's about it. It was, like I say, a</p> <p>11 relatively brief conversation lasting only about</p> <p>12 20 minutes --</p> <p>13 Q. Okay.</p> <p>14 A. -- and we've already spent 30 minutes</p> <p>15 discussing it.</p> <p>16 Q. It's good to be thorough. What questions did</p> <p>17 you ask of him that you haven't mentioned today?</p> <p>18 A. Let me -- oh. I think I asked him how long he</p> <p>19 held that policy, you know.</p> <p>20 Q. Okay.</p> <p>21 A. You know. And I think that's where the</p> <p>22 reference to the December 2008 date came about. I think</p> <p>23 I may have asked him as to whether or not he took a</p> <p>24 policy loan and, if so, did he recall when and where and</p> <p>25 how much.</p>	<p style="text-align: right;">100</p> <p>1 premiums. He felt it was July or August. I --</p> <p>2 Q. Of what year?</p> <p>3 A. 2008.</p> <p>4 Q. Okay.</p> <p>5 A. And I understand that that's correct, that the</p> <p>6 last payment may have been August.</p> <p>7 Q. Have you spoken with anyone else about this</p> <p>8 case, other than Mr. Blumenthal and his counsel?</p> <p>9 A. No.</p> <p>10 Q. Do you consider yourself an advocate in this</p> <p>11 case for Mr. Blumenthal?</p> <p>12 A. No.</p> <p>13 Q. What are the areas that you're offering</p> <p>14 opinions on in this case? What areas -- what opinions</p> <p>15 are -- just the areas of the opinions in your report.</p> <p>16 A. Okay. There are three basic areas, and of</p> <p>17 course, there are sort of subissues, and they're</p> <p>18 inclusive.</p> <p>19 Q. I understand that. I'm not trying to limit</p> <p>20 you. I'm just trying to get the broad areas.</p> <p>21 A. One is that the protector policy was designed</p> <p>22 negligently for the purpose it was being sold to</p> <p>23 Mr. Blumenthal.</p> <p>24 Q. Okay.</p> <p>25 A. Second was that there was a failure to</p>
<p style="text-align: right;">99</p> <p>1 Q. What did he say to that question?</p> <p>2 A. He said he had a policy loan. It was a</p> <p>3 significant one. He wanted to take money from the</p> <p>4 policy. He didn't -- I don't think he mentioned the</p> <p>5 amount or go further into it than that.</p> <p>6 Q. Did he say why he took out a policy loan?</p> <p>7 A. I'm not sure he did, but I'll tell you that</p> <p>8 the impression I got was that he felt it was the most</p> <p>9 efficient way to extract money from a product that he</p> <p>10 felt was going bad.</p> <p>11 Q. Did he say who or how he was able to take out</p> <p>12 the loan, who he contacted and --</p> <p>13 A. No.</p> <p>14 Q. And you relied on --</p> <p>15 A. He obviously would have had to make a formal</p> <p>16 request, probably on a document or by e-mail, as is now</p> <p>17 provided, to New York Life to engage it. I don't know</p> <p>18 whether he was acting on the advice of any specific</p> <p>19 person.</p> <p>20 Q. All right. Did he give you any details as to</p> <p>21 how he was able to take out the loan, the policy loan?</p> <p>22 A. I wrote the amount down for the loan, so he</p> <p>23 may have mentioned the exact amount.</p> <p>24 Q. Okay.</p> <p>25 A. Okay? I asked him when he stopped paying the</p>	<p style="text-align: right;">101</p> <p>1 disclose all relevant and material facts regarding this</p> <p>2 policy to Mr. Blumenthal, prior to the time it was</p> <p>3 purchased. And then I offered some estimations as to</p> <p>4 damage on a basis of rescission.</p> <p>5 Q. How did you determine that the disclosures</p> <p>6 were inadequate in the sale of this policy? I mean,</p> <p>7 you -- obviously, you weren't during -- there during the</p> <p>8 policy sale. Neither was I. How did you determine that</p> <p>9 there was inadequate disclosure?</p> <p>10 A. There are several ways, and I'll be happy to</p> <p>11 try to work my way through them.</p> <p>12 Q. Well, let's do it this way. Tell me the</p> <p>13 documents you looked at to determine there was</p> <p>14 inadequate disclosure. Let's just tick them off.</p> <p>15 A. Okay. The illustrations. Apparently,</p> <p>16 New York Life is a company that develops a -- it has a</p> <p>17 captive sales organization that is well trained, knows</p> <p>18 its products very well, and has access to a relatively</p> <p>19 sophisticated illustration system.</p> <p>20 Q. Let's take this in small bites. What</p> <p>21 documents, without -- we'll discuss them. I'm not</p> <p>22 trying to cut you off. I'm just trying to list the</p> <p>23 documents you -- that you looked at to determine that</p> <p>24 disclosures were not adequate. You said -- all that</p> <p>25 I've heard --</p>

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102	<p>1 A. Sure.</p> <p>2 Q. -- so far is illustrations.</p> <p>3 A. The illustrations, the summaries, the</p> <p>4 comparison to a term life product. I have -- the</p> <p>5 information that I've accessed through New York Life</p> <p>6 websites, with respect to their financial condition and</p> <p>7 financial results, and their own descriptions and</p> <p>8 characterizations of their accumulator and protector</p> <p>9 policies.</p> <p>10 Q. Tell me -- let's take them one at a -- was</p> <p>11 that everything?</p> <p>12 A. If I think of any more, I'll be -- certainly,</p> <p>13 as it comes to my mind, I'll --</p> <p>14 Q. Fair enough.</p> <p>15 A. -- try to identify it.</p> <p>16 Q. Fair enough. And I'm not trying to cut you</p> <p>17 off. What about the illustrations were inadequate, in</p> <p>18 terms of disclosure? Let's state it this way. What</p> <p>19 should the illustration have disclosed in order to have</p> <p>20 been adequate?</p> <p>21 A. You ask a good question, which unfortunately,</p> <p>22 I must give you a long answer.</p> <p>23 Q. Well, just tick off the points or the items.</p> <p>24 And we can -- and again, you can --</p> <p>25 A. Okay.</p>	104	<p>1 you do that for me, please? You're saying the</p> <p>2 illustration -- you said the illustrations, among other</p> <p>3 documents --</p> <p>4 A. Sure.</p> <p>5 Q. -- did not adequately disclose what should</p> <p>6 have been disclosed. I'm asking you just to tick off</p> <p>7 what should have been disclosed.</p> <p>8 A. Okay.</p> <p>9 Q. Can you do that?</p> <p>10 A. You bet.</p> <p>11 Q. Thank you.</p> <p>12 (Discussion off the record.)</p> <p>13 A. Okay. Well, let me give you a partial answer</p> <p>14 before we run out of tape.</p> <p>15 Q. (BY MR. STANO) Sure. And I'm not -- I'm not</p> <p>16 limiting you in any way. I just want to start out with</p> <p>17 a laundry list. Number one?</p> <p>18 A. There should be a reflection of values,</p> <p>19 guaranteed and nonguaranteed, identified with certain</p> <p>20 key benchmarks for this client, like life expectancy.</p> <p>21 Q. Uh-huh. What do you mean by that? Can you --</p> <p>22 A. Well, Mr. Blumenthal had a life expectancy of</p> <p>23 13.8 years at the time the policy was issued.</p> <p>24 Q. Okay.</p> <p>25 A. Ultimately, the documents he has access to,</p>
103	<p>1 Q. -- elaborate on them, but let me just -- I</p> <p>2 would --</p> <p>3 A. Okay.</p> <p>4 Q. -- like a laundry list as to what --</p> <p>5 A. All right.</p> <p>6 Q. -- the illustrations should have disclosed in</p> <p>7 order to have been adequate.</p> <p>8 A. Okay. In the first place, the requirements</p> <p>9 and standards set forth by the NAIC Model Illustration</p> <p>10 Act --</p> <p>11 Q. Uh-huh.</p> <p>12 A. -- are largely directed by the efforts of</p> <p>13 actuaries contributed by the insurance industry to the</p> <p>14 working committees that developed those model</p> <p>15 regulations. So the new illustrations are pretty much</p> <p>16 what insurance companies wish to say about themselves,</p> <p>17 as opposed to what regulators, on their own dime,</p> <p>18 developed for consumer protection. I -- so I would give</p> <p>19 less credit, I guess, to the standard being set high by</p> <p>20 the current model act on illustrations than what your</p> <p>21 expert might. Now --</p> <p>22 Q. Sir, let me interrupt you just for a moment.</p> <p>23 A. Okay.</p> <p>24 Q. I asked you to list the types of information</p> <p>25 that should have been disclosed that were not. Could</p>	105	<p>1 and his advisors have access to, identify the policy, if</p> <p>2 premiums are paid, would lapse somewhere between the</p> <p>3 13th and 17th year.</p> <p>4 Q. Oh, you said ultimately he received this</p> <p>5 information?</p> <p>6 A. Ultimately.</p> <p>7 Q. Okay.</p> <p>8 A. Okay? Now, I say that that's a point of</p> <p>9 information that should be specifically and clearly</p> <p>10 disclosed at the point of sale, and it was not. The</p> <p>11 January 1999 illustration is not operative for that</p> <p>12 purpose. It doesn't describe the premium paid or the</p> <p>13 exact policy that he ultimately purchased, not signed or</p> <p>14 any proof that there was any indication of discussion,</p> <p>15 delivery, or understanding of that.</p> <p>16 Q. Uh-huh.</p> <p>17 A. The July 19 illustration is -- absolutely</p> <p>18 fails to provide any presale information, as it was</p> <p>19 delivered 38 days following the policy issue date, when</p> <p>20 you were already subject to a 48,000-plus withdrawal</p> <p>21 fee, and the policy for any premiums that might have</p> <p>22 been paid during the early years.</p> <p>23 Q. Okay. Well, let me stop you there. You're</p> <p>24 saying the July 1999 illustration was provided 38 days</p> <p>25 after the policy was provided?</p>

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106	<p>1 A. After the policy issue date.</p> <p>2 Q. Okay. And how do you know that?</p> <p>3 A. Because the policy issue date is June 12th,</p> <p>4 1999.</p> <p>5 Q. Okay.</p> <p>6 A. The signing of that illustration is July 19th,</p> <p>7 1999.</p> <p>8 Q. Do you know when the policy was delivered?</p> <p>9 A. Couldn't tell you.</p> <p>10 Q. Did you ever ask that of Plaintiff's counsel?</p> <p>11 A. Of why they would have withheld delivery of</p> <p>12 the policy? I have no idea.</p> <p>13 Q. No. Did -- I didn't ask anything about --</p> <p>14 A. No.</p> <p>15 Q. -- withholding delivery of policy. I said,</p> <p>16 Did you ever ask Plaintiff's counsel as to when the</p> <p>17 policy was delivered?</p> <p>18 A. No, but that doesn't disturb the conclusion</p> <p>19 that that illustration is of absolutely no force and</p> <p>20 effect to providing disclosures in a sales process prior</p> <p>21 to committing the payment for the policy.</p> <p>22 Q. What -- and what if the illustration -- the</p> <p>23 July 1999 illustration was provided the same day the</p> <p>24 policy was delivered, during the free look period? Are</p> <p>25 you familiar with the free look period --</p>	108	<p>1 to this specific policy, and if so, why would that stamp</p> <p>2 have taken place?</p> <p>3 The second question is this. The free</p> <p>4 look provision is a consumer benefit provision, additive</p> <p>5 to every other right and remedy that a customer has at</p> <p>6 law or equity, and it is not an insurance company</p> <p>7 protection device. It simply gives one basis on which a</p> <p>8 policy can be returned. There is no implication in the</p> <p>9 legislative -- now, I haven't looked at Oklahoma</p> <p>10 specifically, but I've looked at a number of states --</p> <p>11 Q. Uh-huh. Uh-huh.</p> <p>12 A. -- when they enacted the free look provisions.</p> <p>13 There is no expectation that a consumer must crunch all</p> <p>14 the numbers, review every statement that may have been</p> <p>15 made for its reasonableness, and either object then or</p> <p>16 somehow waive or get penalized in some fashion at a</p> <p>17 hearing like this.</p> <p>18 Q. Have you looked at Oklahoma law on this point?</p> <p>19 A. Well, I think my question to you says, I don't</p> <p>20 know whether Oklahoma exempts this type of policy from a</p> <p>21 free look provision or not. But the copy of the policy</p> <p>22 I have seen, in the documents provided to me by counsel,</p> <p>23 has stamped across it, and it would appear to have been</p> <p>24 done by New York Life, "This Provision Doesn't Apply."</p> <p>25 Q. Have you looked at Oklahoma law on this issue</p>
107	<p>1 A. Yes, I am.</p> <p>2 Q. -- that concept?</p> <p>3 Okay. You understand that during the free</p> <p>4 look period the policy owner can look at the policy,</p> <p>5 decide whether they want to keep it or not, and if they</p> <p>6 don't want to keep it, they send it back and they get</p> <p>7 their money back. You understand that -- you understand</p> <p>8 that concept, don't you?</p> <p>9 A. Oh, I do exactly.</p> <p>10 Q. Okay. And if the policy was -- and the</p> <p>11 illustration were delivered simultaneously, where the</p> <p>12 policyholder could look at the July 1999 illustration</p> <p>13 during the free look period, look at the time that the</p> <p>14 policy would have lapsed, depending on whatever</p> <p>15 assumptions were being made, why isn't that sufficient?</p> <p>16 A. I've got two answers for you.</p> <p>17 Q. Okay.</p> <p>18 A. The first is -- might require some input from</p> <p>19 New York Life as to why did they stamp "This Provision</p> <p>20 Does Not Apply" on the page -- front page of the</p> <p>21 contract, right across the free look provision? That's</p> <p>22 answer number one.</p> <p>23 Q. Right.</p> <p>24 A. So my implied question is: Does or does not</p> <p>25 the free look provision in the state of Oklahoma apply</p>	109	<p>1 with regard to --</p> <p>2 A. No.</p> <p>3 Q. -- the free look period?</p> <p>4 A. No.</p> <p>5 Q. Have you looked at any Oklahoma law and how it</p> <p>6 would apply to Mr. Blumenthal's case?</p> <p>7 A. Well, I've done -- yes, indirectly.</p> <p>8 Q. What Oklahoma statutes or regs have you looked</p> <p>9 at?</p> <p>10 A. Well --</p> <p>11 Q. Just name -- just tick them off for me.</p> <p>12 A. No. I'll -- I'll take the advice of your</p> <p>13 expert, who said the NAIC Model Illustration Act was</p> <p>14 passed virtually verbatim to the model act. So I</p> <p>15 reviewed the model act instead of the Oklahoma statute.</p> <p>16 Q. When you drafted your report?</p> <p>17 A. That's correct.</p> <p>18 Q. Did you look at the Oklahoma regulation when</p> <p>19 you drafted your report?</p> <p>20 A. I just told you what I did.</p> <p>21 Q. Sir, did you -- would you please answer the</p> <p>22 question? It will make this deposition go a lot --</p> <p>23 along a lot quicker.</p> <p>24 Did you look at --</p> <p>25 A. No. I looked at the --</p>

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110	<p>1 Q. -- the Oklahoma --</p> <p>2 A. -- NAIC Model Act.</p> <p>3 Q. Okay. That's an easy way to answer the</p> <p>4 question. So the answer is, no, you did not look at the</p> <p>5 Oklahoma regulation, correct?</p> <p>6 A. Well, I could answer this how many times?</p> <p>7 Q. Well, did -- did you look -- my question is</p> <p>8 did you -- I didn't ask you what you looked at. My</p> <p>9 question to you, sir, was: Did you look at the Oklahoma</p> <p>10 regulation?</p> <p>11 A. No.</p> <p>12 Q. Thank you.</p> <p>13 (Recess 11:22 a.m. to 11:27 a.m.)</p> <p>14 Q. (BY MR. STANO) Mr. Sanderford, is it your</p> <p>15 understanding that the 10-day free look provision in</p> <p>16 Mr. Blumenthal's policy does not apply?</p> <p>17 A. I do not know whether it does or not.</p> <p>18 Q. Well, the opinion you gave just a minute ago</p> <p>19 assumed it didn't apply, correct?</p> <p>20 A. I told you that it presented a question for me</p> <p>21 as to whether the Oklahoma 10-day free look applied to</p> <p>22 this policy under these circumstances.</p> <p>23 Q. And why did you have that question?</p> <p>24 A. Because I don't know who stamped that</p> <p>25 provision as not applicable.</p>	112	<p>1 did not provide adequate information.</p> <p>2 Q. Okay. Did it not state when the policy would</p> <p>3 lapse, based on certain assumptions?</p> <p>4 A. It did.</p> <p>5 Q. Did Mr. Blumenthal look at the July 1999</p> <p>6 illustration?</p> <p>7 A. I don't know.</p> <p>8 Q. Did he receive it?</p> <p>9 A. He received it and signed it.</p> <p>10 Q. Okay. Do you know if he looked at it?</p> <p>11 A. I do not know if he looked at it.</p> <p>12 Q. Did he say if he looked at it or not?</p> <p>13 A. I don't know whether he looked at it or not.</p> <p>14 Q. In your opinion, is he held to the information</p> <p>15 contained in the illustration, if he -- if he received</p> <p>16 it and signed it?</p> <p>17 A. Not necessarily.</p> <p>18 Q. Because?</p> <p>19 A. Same reason why people aren't held to the</p> <p>20 information in a prospectus when they receipt for that.</p> <p>21 The fact that you make an illustration and certify it as</p> <p>22 compliant with Oklahoma law, with regard to such</p> <p>23 illustration, doesn't relieve the company from its --</p> <p>24 from the effects of its own negligence or fraud.</p> <p>25 Q. Are you saying the illustration is violative</p>
111	<p>1 Q. Did you look up Oklahoma law to determine if</p> <p>2 there was any type of free look provision in Oklahoma?</p> <p>3 A. No. Whether or not the free look provision</p> <p>4 applied to this policy does not affect my opinion or</p> <p>5 report in any fashion.</p> <p>6 Q. Thank you, sir, but try to listen to the</p> <p>7 question. The question was: Did you look up Oklahoma</p> <p>8 law to determine if the -- if the 10-day free look or</p> <p>9 any other free look applied? That was my question.</p> <p>10 A. I did not.</p> <p>11 Q. Okay. Thank you. Are you aware of New York</p> <p>12 Life Insurance & Annuity Corporation's practice of</p> <p>13 stamping duplicate policies with the notice, "This</p> <p>14 Provision Does Not Apply"?</p> <p>15 A. I am not aware of their policy.</p> <p>16 Q. Okay. Did you look at Mr. Blumenthal's</p> <p>17 original policy?</p> <p>18 A. It may -- I don't know. It could be that I</p> <p>19 was only provided a copy of a duplicate.</p> <p>20 Q. Okay. Now, you say that the July 1999</p> <p>21 illustration was inadequate, or did not have adequate</p> <p>22 disclosures. Is that a -- is that a fair statement?</p> <p>23 A. In my opinion, no.</p> <p>24 Q. No, it's not a fair statement?</p> <p>25 A. Excuse me. My answer would have been, no, it</p>	113	<p>1 of Oklahoma law?</p> <p>2 A. I didn't say that.</p> <p>3 Q. Well, I'm asking you: Are you saying that the</p> <p>4 July --</p> <p>5 A. I'm --</p> <p>6 Q. Let me finish my question, sir.</p> <p>7 Are you saying that the July 1999</p> <p>8 illustration violates Oklahoma law in any fashion?</p> <p>9 A. I'm not saying that.</p> <p>10 Q. Okay. You don't know if it does or not, do</p> <p>11 you, because you haven't looked at Oklahoma law in this</p> <p>12 case, have you?</p> <p>13 A. I reviewed the NAIC Model Act, which your</p> <p>14 expert says is the Oklahoma law verbatim.</p> <p>15 Q. At the time you reviewed the NAIC Model Act,</p> <p>16 did you know that Oklahoma -- that --</p> <p>17 A. I told you that I reviewed --</p> <p>18 Q. -- it's similar to Oklahoma law --</p> <p>19 A. -- the NAIC --</p> <p>20 Q. Sir --</p> <p>21 THE REPORTER: Sorry, I can only take one</p> <p>22 at a time.</p> <p>23 Q. (BY MR. STANO) -- sir, you're talking over</p> <p>24 me. Let me finish my question. Okay?</p> <p>25 A. Okay.</p>

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114	<p>1 Q. Prior to reading the expert's report, did you 2 know that the NAIC Model Act was similar to the Oklahoma 3 reg on this issue? 4 A. No. I assumed it was. 5 Q. Okay. Are you offering any opinions on 6 Oklahoma law? 7 A. Any law? 8 Q. I said Oklahoma law. 9 A. Any Oklahoma law? 10 Q. Yes, sir. 11 A. I don't think I've been asked to give an 12 opinion on any Oklahoma law. 13 Q. Okay. And you're not an Oklahoma lawyer, are 14 you? 15 A. No. 16 Q. Tell me how the July 1999 illustration is 17 inadequate under Oklahoma law. 18 A. I didn't say that it was inadequate under 19 Oklahoma law. 20 Q. Can you tell me if it's inadequate? 21 A. No. 22 Q. Do you have an opinion as to whether it's 23 adequate or not under Oklahoma law? 24 A. Under Oklahoma law, I have no opinion. 25 Q. Okay. Thank you. And I ask that same</p>	116	<p>1 A. I do have an opinion. 2 Q. Okay. Well, have you been asked to provide 3 that opinion in this case? 4 A. Not yet. 5 Q. Okay. Thank you. Just so the record is 6 clear, have you ever practiced in Oklahoma at all? 7 A. I think we've gone over in detail that I've 8 never practiced law in any state. 9 Q. Including Oklahoma? 10 A. I guess that would include Oklahoma. 11 Q. Okay. That was my question, sir. 12 Have you stated all the reasons, in your 13 opinion, as to why the July 1999 illustration provided 14 inadequate disclosures? I don't want to -- I didn't 15 mean to cut you off. Is there any other reasons that -- 16 that you have that you haven't provided today? 17 A. I believe so. 18 Q. And you're looking at -- 19 A. I'm looking at my report, Page 7, actually. 20 I've listed four specific issues, which I would repeat. 21 Q. You're on Page 7? 22 A. I'm now on Page 9. "These are disclosures 23 that I think would have been necessary to make a full 24 and fair communication to Blumenthal of the facts 25 relevant to his purchase decision. The first is that</p>
115	<p>1 question with regard to any illustration New York Life 2 Insurance & Annuity Corporation provided to 3 Mr. Blumenthal in this case. Are you offering any 4 opinion on any other illustration, as to whether it 5 complies with Oklahoma law or not? 6 A. This limited to Oklahoma law? 7 Q. Yes, sir. 8 A. Okay. Here's what I would tell you. 9 Q. I'm not asking your opinion. I'm asking are 10 you offering an opinion. You either are or you're not. 11 A. I make no opinion as to whether or not there 12 is a technical compliance with the Oklahoma law, 13 requiring, if you do provide illustrations, of these 14 illustrations meeting Oklahoma law. 15 Q. Okay. Are you offering any opinion regarding 16 the sales materials in this case with regard to whether 17 they comply with Oklahoma law? 18 A. No, because it begs the question of whether 19 Oklahoma law is adequate -- 20 Q. What law -- 21 A. -- for the protection of consumer rights. 22 Q. Oh, okay. I see. 23 Do you have an opinion as to whether 24 Oklahoma law is adequate with regard to the protection 25 of consumer rights?</p>	117	<p>1 New York Life, without regard for improvements in its 2 financial condition, would likely decrease the credited 3 rates to the policy, rendering its cash value as 4 inadequate to support the policy for more than an 5 average life expectancy at issue of about 13 to 17 6 years." 7 Q. Okay. And the other opinions or other -- 8 A. Yes. 9 Q. -- you have are the three bullet points 10 following that? 11 A. That's correct. "Lower credited interest 12 would accelerate the policy's lapse, and Blumenthal 13 would forfeit any remaining cash value at lapse, having 14 paid by the 17th year approximately \$900,000. Thirdly, 15 that it would require an unknown but sizeable amount of 16 additional premiums to keep the policy in force until 17 death or maturity. And that lastly, that there were 18 other purchase opportunities with respect to providing 19 \$1 million of life insurance coverage, for a person of 20 his age and circumstances at that time, that would have 21 been economically to his advantage." 22 (Exhibit No. 5 marked.) 23 Q. (BY MR. STANO) Let me show you what's marked 24 as Exhibit 5, please, sir. 25 A. Okay.</p>

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118	<p>1 Q. Do you recognize this document?</p> <p>2 A. It appears to be the July 19, 1999,</p> <p>3 illustration.</p> <p>4 Q. Can you turn to Page 7 of 7, please, which is</p> <p>5 Bates stamped number --</p> <p>6 A. Sure.</p> <p>7 Q. -- NYLIAC 82?</p> <p>8 Do you see the various columns dealing</p> <p>9 with Guaranteed, Nonguaranteed, Current Interest Rates,</p> <p>10 and the Midpoint?</p> <p>11 A. I do.</p> <p>12 Q. You understand what that information is, don't</p> <p>13 you, in terms of the assumptions made with regard to how</p> <p>14 long the policy will be in effect, based on certain</p> <p>15 assumptions, a guaranteed interest rate of 4 percent, a</p> <p>16 current credited rate of 6.16, and a midpoint?</p> <p>17 A. Well, 6.15, yes.</p> <p>18 Q. 6.15? Okay.</p> <p>19 A. Yes, I do.</p> <p>20 Q. Does this illustration, dated July 19th, 1999,</p> <p>21 show when the policy -- or how long the policy would be</p> <p>22 in effect under the guaranteed interest rate assumption</p> <p>23 of 4 percent?</p> <p>24 A. Five years.</p> <p>25 Q. So the policy owner, if they received and read</p>	120	<p>1 not to reveal. It's designed to sell products.</p> <p>2 Q. And how do you know that?</p> <p>3 A. I'm telling you why.</p> <p>4 Q. Okay. Well, we'll take it point by point.</p> <p>5 A. Well, you know, let me explain.</p> <p>6 Q. Okay.</p> <p>7 A. You asked the question.</p> <p>8 Q. Okay.</p> <p>9 A. Now, if somebody read this, they would already</p> <p>10 have read their way through the actuarial absurdity that</p> <p>11 I described earlier, that to keep this policy guaranteed</p> <p>12 in force through age 100, you would have to pay</p> <p>13 \$200,286.89 a year, a total of \$6,600,000, to own -- for</p> <p>14 the pleasure of owning a life insurance policy with a</p> <p>15 \$1 million death benefit.</p> <p>16 That is tailor-made for an agent to say,</p> <p>17 This is something we have to do. And of course, nobody</p> <p>18 would believe that that's the case. What you should</p> <p>19 believe is what we currently do because we're a good,</p> <p>20 strong insurance company, and that's how we make our</p> <p>21 money is making people like you satisfied.</p> <p>22 Q. Let me stop you there. Do you know if the</p> <p>23 agent said that in this case?</p> <p>24 A. No. You asked why. I'm telling you why.</p> <p>25 Q. Okay.</p>
119	<p>1 this -- and you've testified that Mr. Blumenthal</p> <p>2 received this, correct?</p> <p>3 A. He has acknowledged its receipt by signing it.</p> <p>4 Q. Okay.</p> <p>5 A. I don't know whether he read or understood it.</p> <p>6 Q. I understand that. But having received it, he</p> <p>7 certainly had the ability to read it, if he wanted to,</p> <p>8 correct?</p> <p>9 A. Sure.</p> <p>10 Q. Okay. And the illustration shows how long the</p> <p>11 policy would be in effect, based on the guaranteed</p> <p>12 interest rate assumption of 4 percent, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Is that not adequate disclosure of the -- how</p> <p>15 long the policy would remain in effect?</p> <p>16 A. No, it's not.</p> <p>17 Q. Telling someone how long a policy would last</p> <p>18 is not adequate, in your mind?</p> <p>19 A. No.</p> <p>20 Q. And tell me why.</p> <p>21 A. Okay. I'll tell you why. And you'll have to</p> <p>22 take the time to listen, now that you've asked the</p> <p>23 question.</p> <p>24 Q. Okay.</p> <p>25 A. This illustration is designed not to disclose,</p>	121	<p>1 A. And I've not completed my answer yet, please.</p> <p>2 Q. Okay. Go ahead. Go ahead.</p> <p>3 A. Now, the same holds true for the guaranteed</p> <p>4 charges at 4 percent, showing no cash values -- no cash</p> <p>5 surrender values from Day 1, taking a \$48,000 withdrawal</p> <p>6 fee with only the promise of a death benefit extending</p> <p>7 through Year 5, which is the minimum under your</p> <p>8 five-year guaranteed in force rider. Nobody -- nobody,</p> <p>9 not one person in this United States, would buy this</p> <p>10 policy if that were the reasonable expectation of what</p> <p>11 New York Life would do.</p> <p>12 So in the sales process, this six-page</p> <p>13 narrative, highly complex, highly technical, with the</p> <p>14 actuarial absurdity that I've described of showing an</p> <p>15 illustration that nobody -- nobody expects would ever</p> <p>16 occur, is guaranteed to shift the buyer over to the</p> <p>17 right-hand columns. That's for a person that chose to</p> <p>18 read it.</p> <p>19 I don't know whether he read it or not. I</p> <p>20 don't know whether Mr. Blumenthal felt those exact</p> <p>21 things or not. But if you believe that preparing an</p> <p>22 illustration that technically meets the requirements of</p> <p>23 Oklahoma law of a recording illustration, somehow</p> <p>24 inoculates New York Life and Mr. Marlin from providing</p> <p>25 adequate disclosures relative to his individual</p>

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122	<p>1 circumstances, I would say it does not. So I've 2 finished my exposition. 3 Q. Okay. Are -- your -- your answer assumed -- 4 that the -- that this disclosure is not adequate, 5 assumes that the agent would make that type of 6 explanation or justification, correct? 7 A. I assume there is going to be a conflict in 8 testimony about what the agent did or did not do -- 9 Q. Sir, that -- 10 A. -- in that regard. 11 Q. Please listen to my question. My question is 12 not what the testimony will be. My question is: You're 13 assuming that Mr. Marlin explained away these numbers in 14 the -- in the way that you described, correct? That's 15 my question. 16 A. I'm -- I'm assuming that he took advantage of 17 the positioning of New York Life -- 18 Q. Okay. 19 A. -- and the information it determined, on its 20 own discretion, that it should provide to meet Oklahoma 21 requirements. 22 Q. Do you know Mr. Marlin? 23 A. I absolutely wouldn't know him if he walked in 24 the room. 25 Q. Okay. So you're speculating as to what he</p>	124	<p>1 MS. SHERRILL: Move to strike. 2 Q. (BY MR. STANO) If this document, this 3 illustration is designed to sell policies, as you say, 4 why would it disclose that the policy would lapse, based 5 under -- under the guaranteed interest rate assumption 6 of 4 percent, in the sixth year, when Mr. Blumenthal 7 would only be 73 years old? 8 A. Because it's explained as that would never 9 happen. It's never happened in New York Life's history. 10 Q. Okay. And that's the assumption that you're 11 making -- 12 A. That's the assumption and speculation that 13 I've made. 14 Q. Okay. And going beyond the sale to 15 Mr. Blumenthal, were you assuming -- are you speculating 16 that this -- this statement would have been made in 17 every sale by every NYLIAC agent to every policyholder 18 having a universal life policy? 19 A. Well -- 20 Q. Are you extrapolating that assumption to -- 21 A. I'll tell you exactly what I'm extrapolating 22 and speculating. 23 Q. No. I'm asking -- 24 A. No. 25 Q. -- you: Are you extrapolating --</p>
123	<p>1 did, correct? 2 A. I am talking about agents in the sale process, 3 of which I do know quite a bit about. 4 Q. Sir, I'm talking about Mr. Marlin's sale of 5 the policy to Mr. Blumenthal. Do you know -- do you 6 have any facts -- any personal information about that -- 7 about that sale? 8 A. I do not. 9 Q. Okay. So you're speculating, correct? 10 A. I am telling you, based upon my experience 11 with agents in the sales process, in the sale of 12 financial products. 13 Q. And you're applying that experience to a sale 14 that you -- that you know very little about, correct, in 15 terms of the particulars of what was said -- 16 A. Well, whether it's -- 17 Q. -- at the sale? 18 A. -- a little or a lot, I've -- I've told you 19 what I know about it and -- 20 Q. Do you know what was discussed at the sale 21 between Mr. Blumenthal and Mr. -- and Mr. Marlin? 22 A. No, I do not. 23 Q. Okay. Thank you. Where I come from, sir, 24 that's called speculation. You can call it what you 25 want.</p>	125	<p>1 A. I would -- 2 Q. -- that? You either are or you aren't. 3 A. No. 4 Q. Are you -- 5 A. But here's what I -- 6 Q. -- extrapolating that assumption? 7 A. -- know -- here's what I know. I'm not 8 speculating. I know that if any agent, any New York 9 Life captive, trained agent operating in the United 10 States during this same period of time, had requested an 11 illustration, this is the illustration they would have 12 gotten. And that's what they would have been given by 13 New York Life to work with. 14 Q. Okay. That -- I'm not asking what 15 illustration they received, sir. Try to listen to my 16 question. Okay? 17 A. Okay. 18 Q. My question is not what illustration they 19 received. My question to you, sir, is: Are you 20 assuming that this same explanation would have been made 21 by every New York Life agent to every policyholder or 22 applicant who purchased the NYLIAC policy that's at 23 issue in this case today? 24 A. I'm assuming the following things. 25 Q. No, sir, I --</p>

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126	<p>1 A. I'm assuming -- you asked me what I'm 2 assuming --</p> <p>3 Q. Right. No, I --</p> <p>4 A. -- as opposed to not --</p> <p>5 Q. I didn't ask you what you're assuming. I'm 6 saying: Are you assuming that that same assumption that 7 you made, that -- that you made with regard to the 8 Blumenthal sale, are you extrapolating that assumption 9 to every other sale made in the United States by 10 NYLIAC's agents? That's my question.</p> <p>11 A. Okay.</p> <p>12 Q. Are you extrapolate -- you either are or you 13 aren't. Are you extrapolating that assumption --</p> <p>14 A. No, I --</p> <p>15 Q. -- to everybody else?</p> <p>16 A. I beg to differ with you. I'm not limited to 17 one-word answers --</p> <p>18 Q. I'm not saying you are.</p> <p>19 A. -- as an expert witness.</p> <p>20 Q. But I'm not saying: Are you extrapolating -- 21 are you applying that assumption across the board?</p> <p>22 A. And I'll answer your question, but it won't be 23 in one word.</p> <p>24 Q. Okay.</p> <p>25 A. I am assuming that every New York Life agent</p>	128	<p>1 A. New York -- New York Life has a lot of very 2 wonderful career agents, I'm sure.</p> <p>3 Q. I agree with you. We found something we can 4 agree on.</p> <p>5 So how would you determine if this 6 improper, unlawful steering or -- occurred in a 7 particular sales presentation, versus the product being 8 sold the way you think it ought to be sold? How would 9 you -- how would you make that determination?</p> <p>10 A. It looks like you go to court and have a trier 11 of facts sift through it.</p> <p>12 Q. For each case -- for each sale?</p> <p>13 A. No. It depends. They all work with the 14 illustration.</p> <p>15 Q. We're saying that, but we're beyond that. 16 We're beyond the sale -- I'm not talking about a sales 17 illustration. I'm talking about the oral statements, 18 the discussion between the agent and the prospect or the 19 applicant. Forget this. We've already covered this. 20 How do you determine what was said during the sales 21 presentation, whether there was improper steering or 22 whether the product was sold, in your mind, properly? 23 How do you determine that, sir?</p> <p>24 A. Well, you look at what New York Life chose to 25 do in the compilation of its illustration. Okay?</p>
127	<p>1 has the same illustration to work with at any point in 2 time, provided and controlled exclusively by New York 3 Life. That illustration, my assumption, is overly 4 technical and not developed --</p> <p>5 Q. Uh-huh.</p> <p>6 A. -- to provide real disclosure, meaningful 7 disclosure to people who are making purchase decisions. 8 And that New York Life agents -- I'm not attributing 9 them as being good, bad, or indifferent -- they have a 10 system within they work, and they have sales goals to 11 make, and they are discussing this in whatever way they 12 see fit with customer -- potential customers that come 13 across them. And it is an opportunity for anyone or 14 some among them --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- to get signatures of people who haven't had 17 it explained, to provide oral explanations of what it 18 means, that may not comport with what New York Life 19 intended it to mean, and who may direct or steer the 20 customer to provisions in the illustration to the 21 absence of others. Now, that's what I'm speculating.</p> <p>22 Q. Are you assuming that in every sales 23 presentation that that steering that -- that --</p> <p>24 A. Absolutely not.</p> <p>25 Q. Okay. It would depend --</p>	129	<p>1 Q. You go back to the illustration to determine 2 what was said during the sales presentation?</p> <p>3 A. No.</p> <p>4 Q. No. My question to you is this -- strike my 5 last question.</p> <p>6 A. Okay.</p> <p>7 Q. How do you determine what was said during the 8 sales presentation? How do you determine that?</p> <p>9 A. You get testimony from a customer, you get 10 testimony from the agent, and you have them both bring 11 whatever documents and supporting evidence they have, 12 and you reach a determination.</p> <p>13 Q. All right.</p> <p>14 A. And many of the components of that are going 15 to be common to customers of New York Life, who are 16 within the same relative age category, who get the same 17 form of illustration, and who get it from agents that 18 are trained and -- and managed in exactly the same way.</p> <p>19 Q. Do you know how the New York Life agents are 20 trained?</p> <p>21 A. No, not fully.</p> <p>22 Q. At all? Have you ever read any New York Life 23 training materials?</p> <p>24 A. I read what they say about themselves in their 25 website.</p>

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130	<p>1 Q. That's not what I asked you. I asked you:</p> <p>2 Have you read any New York Life agent training</p> <p>3 materials?</p> <p>4 A. Well, quite frankly, I would regard some of</p> <p>5 the things on the New York Life website as New York Life</p> <p>6 training materials.</p> <p>7 Q. So you're regarding the New York Life website</p> <p>8 as the training materials for New York Life agents?</p> <p>9 A. No. It's --</p> <p>10 Q. All right. Let me ask you --</p> <p>11 A. -- a component, though.</p> <p>12 Q. -- this, sir. Let's assume that, just for --</p> <p>13 as a hypothetical --</p> <p>14 A. Okay.</p> <p>15 Q. -- that a prospect, an applicant insured</p> <p>16 was -- was improperly sold the policy, that this</p> <p>17 improper steering that you talk about occurred by</p> <p>18 Agent A in State B. Does that necessarily mean that</p> <p>19 Agent B in State Z, in a different time zone, across the</p> <p>20 other side of the country, that that agent made an</p> <p>21 improper sale? Are you reaching that -- are you making</p> <p>22 that assumption, that just because one agent allegedly</p> <p>23 inappropriately sold a policy -- and I emphasize</p> <p>24 allegedly -- are you assuming that every agent for</p> <p>25 New York Life would have made an improper sale? Is that</p>	132	<p>1 describe as potentially predatory pricing practices of</p> <p>2 New York Life with respect to the protector policy and</p> <p>3 how it plans to credit interest rates, and how it plans</p> <p>4 to charge cost of insurance to that policy. And those</p> <p>5 might be very much in common to every buyer of protector</p> <p>6 within a certain time frame, while those practices of</p> <p>7 New York Life existed.</p> <p>8 Q. We'll talk about the policy form in a minute.</p> <p>9 I'm talking about the sales representations and the --</p> <p>10 and the discussion during the sale. Perhaps you didn't</p> <p>11 understand my question.</p> <p>12 A. Perhaps.</p> <p>13 Q. I'm saying: Are you assuming that because one</p> <p>14 agent allegedly misold or misstated how a policy should</p> <p>15 be sold, a protector to an applicant, that an agent</p> <p>16 across the country or an agent next door in a different</p> <p>17 agency, that that agent also made an improper sale? Is</p> <p>18 that your assumption? In whole or in part, is that your</p> <p>19 assumption?</p> <p>20 A. I can't answer that question yes or no, based</p> <p>21 upon my prior answer. If New York Life -- that agent</p> <p>22 may have tried to make every disclosure he felt was</p> <p>23 appropriate.</p> <p>24 Q. That's an assumption by you. Go ahead.</p> <p>25 A. That's an assumption by me.</p>
131	<p>1 your assumption?</p> <p>2 A. You're going to have to put with a non -- with</p> <p>3 an answer that is not as short as you would like it.</p> <p>4 Q. Well, let me ask you this.</p> <p>5 A. Because the answer is yes, conditionally.</p> <p>6 Okay?</p> <p>7 Q. So you're -- let me make sure I understand</p> <p>8 what you're -- you're saying --</p> <p>9 A. Yes, conditionally.</p> <p>10 Q. -- you're saying -- all right. What are the</p> <p>11 conditions?</p> <p>12 A. The conditions are these. There is a whole</p> <p>13 classification of people who ultimately bought the</p> <p>14 protector life insurance policy.</p> <p>15 Q. Uh-huh.</p> <p>16 A. A low premium, high death benefit policy, more</p> <p>17 volatile to changes in credited rate and cost of</p> <p>18 insurance charges, that is likely to lapse at or about</p> <p>19 or close to the life expectancy of the customer that</p> <p>20 have been sold a policy not appropriate for their</p> <p>21 circumstances. And that has nothing to do with how good</p> <p>22 the agent was, or how bad the agent was. It has much to</p> <p>23 do -- I won't say nothing to do; it has almost nothing</p> <p>24 to do.</p> <p>25 It has a lot to do with what I would</p>	133	<p>1 Q. Okay.</p> <p>2 A. But as long as New York Life was offering this</p> <p>3 product, based upon its pricing decisions, and had a</p> <p>4 predetermination that it would make unsupportable</p> <p>5 interest crediting rate changes downward, and increase</p> <p>6 the cost of insurance upward, so that there is a</p> <p>7 predictable lapse of the policy, if the customer</p> <p>8 continues to pay their negotiated premium at time of</p> <p>9 issue, at or around their life expectancy, I would say</p> <p>10 that has more in common with New York Life than it does</p> <p>11 the individual agent representations.</p> <p>12 Q. Are you saying New York Life engaged in</p> <p>13 predatory pricing by selling the protector policy?</p> <p>14 A. To certain people for certain purposes,</p> <p>15 without a disclosure of -- of that obvious fact.</p> <p>16 Q. That that's -- that that's your opinion?</p> <p>17 A. I would say that I have not been asked to</p> <p>18 provide opinion on that question yet.</p> <p>19 Q. Uh-huh. It sounds like you've reached the</p> <p>20 opinion already though, correct?</p> <p>21 A. I have made some evaluations of the interest</p> <p>22 crediting rates to Blumenthal, and there is some</p> <p>23 information that I understand has not been discovered</p> <p>24 about historical interest crediting rates to people who</p> <p>25 bought the protector policy in years before and after</p>

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134	<p>1 Blumenthal.</p> <p>2 When that information is discovered,</p> <p>3 should it be discovered, it will provide an interesting</p> <p>4 insight into the pricing practices and intentions of</p> <p>5 New York Life, and there is further information about</p> <p>6 the increase or decreases in the current cost of</p> <p>7 insurance charges, and how they're applied over the</p> <p>8 years as an insured ages, as to whether or not there is</p> <p>9 a present intention to increase those at a rate -- well,</p> <p>10 that's reflected at the 2006 illustration.</p> <p>11 Q. Yeah. Well, that -- that's more speculation</p> <p>12 on your part, correct?</p> <p>13 A. Like I say, it's subject to more research.</p> <p>14 Q. Let me ask you this.</p> <p>15 A. And documents that would -- which have not yet</p> <p>16 been discovered.</p> <p>17 Q. Okay. We'll deal with that later.</p> <p>18 Going back to the July 19, 1999</p> <p>19 illustration, we both agree that Mr. Blumenthal received</p> <p>20 this illustration. He signed for it, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. I assume that's his signature.</p> <p>24 Q. Well, he -- let's assume -- let's assume it</p> <p>25 is.</p>	136	<p>1 policy would lapse, based -- during the time frame</p> <p>2 that's listed in the 2006 illustration?</p> <p>3 A. My working assumption is that that</p> <p>4 illustration was delivered, signed for, and probably not</p> <p>5 reviewed at depth with Mr. Blumenthal at all. The</p> <p>6 policy had already been purchased. It's probably a</p> <p>7 requirement of New York Life to see that an illustration</p> <p>8 arrives at or about the time of delivery.</p> <p>9 Q. Uh-huh.</p> <p>10 A. And I don't know that it was read, understood,</p> <p>11 or discussed with Agent Marlin at any level.</p> <p>12 Q. Are you assuming it was or it wasn't --</p> <p>13 A. I'm assuming --</p> <p>14 Q. -- read and understood?</p> <p>15 A. I'm assuming that it was not fully understood,</p> <p>16 absolutely.</p> <p>17 Q. Well, could I --</p> <p>18 A. Because --</p> <p>19 Q. Go ahead. Go ahead.</p> <p>20 A. No, go ahead.</p> <p>21 Q. I thought you said you were a neutral in this</p> <p>22 case, and that you weren't an -- you were not an</p> <p>23 advocate for Mr. Blumenthal.</p> <p>24 A. You are correct.</p> <p>25 Q. Why is it -- I'm just curious. Why is it that</p>
135	<p>1 A. I assume it is.</p> <p>2 Q. It is. I will represent to you, sir, that it</p> <p>3 is, and that he agrees that it is. So we -- we've --</p> <p>4 that's not at issue. If he had read this illustration,</p> <p>5 he would have known that, based under guaranteed</p> <p>6 interest rates of 4 percent, his policy could have</p> <p>7 lapsed in the sixth year at age 73, correct? Whether</p> <p>8 it's right, wrong, or different, if he had read this,</p> <p>9 he --</p> <p>10 A. If he --</p> <p>11 Q. -- would have known that.</p> <p>12 A. No. If he had read it, and if he would have</p> <p>13 understood it. Those are two different things.</p> <p>14 Q. Right. But he certainly had the information</p> <p>15 available to make that determination, that if -- under</p> <p>16 the current assumption -- under the assumption of the</p> <p>17 guaranteed interest rate of 4 percent, his policy would</p> <p>18 have lapsed in the sixth year --</p> <p>19 A. A person determined enough and knowledgeable</p> <p>20 enough could have found out that fact.</p> <p>21 Q. Okay. Thank you.</p> <p>22 Well, did he know that from looking at the</p> <p>23 July -- at the November 2006 illustration?</p> <p>24 A. Did he know what?</p> <p>25 Q. Did he not know that it would -- that his</p>	137	<p>1 every time you make assumptions, you assume a fact in</p> <p>2 favor of Mr. Blumenthal and not in favor of New York</p> <p>3 Life Insurance & Annuity Corporation? And there seems</p> <p>4 to be a pattern developing here, Mr. Sanderford.</p> <p>5 He received the illustration, the</p> <p>6 July 1999 illustration. He signed for it. He's a</p> <p>7 chairman and CEO of a very successful business. He has</p> <p>8 a degree in accounting. He had took some courses in law</p> <p>9 school. And yet you assumed that, even though he</p> <p>10 received it and signed for it, that he didn't understand</p> <p>11 it. Now, why is that?</p> <p>12 A. Well, we have physicians, lawyers, scientists</p> <p>13 who sign prospectus receipts every day --</p> <p>14 Q. I'm not talking --</p> <p>15 A. -- in our financial services.</p> <p>16 Q. -- about those people. Let's talk about</p> <p>17 Mr. Blumenthal.</p> <p>18 A. I'm talking about people equally as</p> <p>19 educated --</p> <p>20 Q. Okay.</p> <p>21 A. -- equally as successful in business, who do</p> <p>22 that every day, and do not have any understanding.</p> <p>23 Q. And don't we have --</p> <p>24 A. Now --</p> <p>25 Q. Don't we have people who have those same --</p>

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138	<p>1 A. And I assume --</p> <p>2 Q. -- credentials who sign --</p> <p>3 A. And I assume.</p> <p>4 Q. -- for things and do understand it?</p> <p>5 A. Well --</p> <p>6 Q. Don't we -- don't we have people who -- who</p> <p>7 understand things they sign?</p> <p>8 A. That is possible.</p> <p>9 Q. And so that is possible? You mean --</p> <p>10 A. That is possible.</p> <p>11 Q. Okay. And so why is it --</p> <p>12 A. I bet you haven't --</p> <p>13 Q. -- the assumption --</p> <p>14 A. -- read your mortgage.</p> <p>15 Q. So why is it the assumption that someone may</p> <p>16 or may not understand it, but yet you assume they don't?</p> <p>17 I mean, there's the possibility -- I mean, the options</p> <p>18 are, yes, they understand it, or, no, they don't. You</p> <p>19 seem to always come down on the side --</p> <p>20 A. No. I think he has --</p> <p>21 Q. -- that they don't understand it.</p> <p>22 A. Mr. Blumenthal has the burden of proof. And I</p> <p>23 assume that he'll discharge that burden, or he will fail</p> <p>24 in his lawsuit.</p> <p>25 Q. But you've reached the assumption he didn't</p>	140	<p>1 A. There's also some number -- my number might be</p> <p>2 slightly higher than your number -- of people who will</p> <p>3 do anything to make a sale.</p> <p>4 Q. Like there's a lot of good and bad lawyers,</p> <p>5 too?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. You don't know Mr. Marlin at all, do</p> <p>8 you? Ben Marlin, the agent --</p> <p>9 A. I do not know --</p> <p>10 Q. -- in this case.</p> <p>11 A. -- Mr. Marlin.</p> <p>12 Q. So you don't know if he's one of the -- in the</p> <p>13 good category or the bad category, do you?</p> <p>14 A. I do not.</p> <p>15 Q. Yet you assumed he's in the bad category,</p> <p>16 correct? Just based on your testimony --</p> <p>17 A. No.</p> <p>18 Q. -- you just gave, sir.</p> <p>19 A. No. I'm telling you an assumption, that the</p> <p>20 odds are, the sale having been made --</p> <p>21 Q. Okay.</p> <p>22 A. -- the policy having commission, the</p> <p>23 commission having been paid, that there is no practical</p> <p>24 reason for an agent to force the customer to read a</p> <p>25 large, long technical document like this.</p>
139	<p>1 understand it, correct, or he didn't read it or didn't</p> <p>2 understand it?</p> <p>3 A. No. I've -- I make the assumption that this</p> <p>4 is a highly technical, highly complex document</p> <p>5 containing calculations that the --</p> <p>6 Q. Okay.</p> <p>7 A. -- average person, even an educated</p> <p>8 professional, could easily --</p> <p>9 Q. Okay.</p> <p>10 A. -- not understand.</p> <p>11 Q. Fair enough. Well, I won't say "fair enough,"</p> <p>12 but I'm just -- fair enough as to what -- I understand</p> <p>13 what you're saying. Do you also assume that the agent</p> <p>14 didn't explain it to him?</p> <p>15 A. Here's what I'm assuming. The agent made the</p> <p>16 sale, has been paid a commission, and there is no</p> <p>17 practical advantage for him to point out something that</p> <p>18 would cause that person to regurgitate the sale.</p> <p>19 Q. You don't have a very good -- high opinion of</p> <p>20 insurance agents, do you?</p> <p>21 A. I think I understand them.</p> <p>22 Q. Do you have a high opinion of them?</p> <p>23 A. Like I say, there's a lot of wonderful</p> <p>24 salespeople, including insurance agents.</p> <p>25 Q. Okay.</p>	141	<p>1 Q. And you consider yourself a neutral.</p> <p>2 MS. SHERRILL: Well, move to strike.</p> <p>3 THE WITNESS: I didn't realize the bells</p> <p>4 went off like that.</p> <p>5 MR. STANO: I think that's to emphasize</p> <p>6 my last comment.</p> <p>7 THE WITNESS: The angels?</p> <p>8 Q. (BY MR. STANO) Are you familiar with</p> <p>9 Actuarial Standard of Practice No. 24?</p> <p>10 A. No.</p> <p>11 Q. Ever read it?</p> <p>12 A. I may have, but I don't recognize it by the</p> <p>13 name you -- title that you've assigned to it.</p> <p>14 Q. Okay. Do you know if it has any -- plays any</p> <p>15 role in this case at all?</p> <p>16 A. I couldn't tell you.</p> <p>17 Q. Okay. The Oklahoma illustration regulation,</p> <p>18 what's -- what's its purpose, if you know? What does it</p> <p>19 regulate?</p> <p>20 A. Well --</p> <p>21 Q. I'm talking about the Oklahoma regulation.</p> <p>22 A. You asked me its purpose.</p> <p>23 Q. Yes, sir.</p> <p>24 A. Its purpose was to extract both regulators and</p> <p>25 the insurance industry from the very messy and</p>

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<p style="text-align: right;">142</p> <p>1 embarrassing situation involving the use of vanishing 2 premium illustrations. That was its purpose. 3 Q. You know that how? And I'm referring to the 4 Oklahoma regulation. 5 A. Okay. Well, I -- 6 Q. How do you know -- 7 A. I am speculating that that was the purpose of 8 the Oklahoma regulation. 9 Q. Sir -- sir -- I asked -- do me a favor. I 10 mean, don't speculate. Either tell me you know, or if 11 you don't know, say I don't know, but let me speculate. 12 So -- because when you answer a question, you're forcing 13 me to say, Do you know that, or are you speculating? So 14 it would save some time. 15 So you don't -- to cut -- to cut to the 16 quick, you don't know the history behind the Oklahoma 17 regulation, do you, that deals with illustrations? 18 A. No. I'm assuming it's similar to the history 19 of many other states, some of which I am very familiar 20 with. 21 Q. Okay. But you talked about the legislative 22 history of the regulation. What regulation were you 23 referring to, if you recall? 24 A. I was talking specifically -- when I referred 25 to legislative history, I was talking about the free</p>	<p style="text-align: right;">144</p> <p>1 A. No, but I assume that they did. 2 Q. Okay. Does that impact your opinion in any 3 way? 4 A. Not at all. 5 Q. Why not? 6 A. Having an illustration certified by a 7 certifying actuary does not in any way inoculate 8 New York Life from -- or its agent from any liability 9 for not discharging a duty they had with respect to the 10 sale of a policy, the design of a policy, or even if 11 it's later found out that the illustrations in some 12 respect didn't comply with state law. 13 Q. What -- what -- 14 A. Now -- 15 Q. I'm sorry, I interrupted you. Please go 16 ahead. 17 A. Okay. Now, actuaries from all over the 18 industry stood up when vanishing premium illustrations 19 were being criticized and testified that they were 20 meeting the requirements of state law, so they shouldn't 21 be held responsible. And the fact that that's been sort 22 of statutorily embraced, to require an actuary to sign 23 that the illustrations do comply with state illustration 24 law, doesn't get past my point that the illustration law 25 itself may be inadequate.</p>
<p style="text-align: right;">143</p> <p>1 look provision. 2 Q. Okay. And was that adopted by states in 3 statutory form? 4 A. I believe every state has. If not, there 5 would only be one or two outliers. There are a few 6 distinctive differences in free look provisions. 7 Q. Did -- what are the distinctions in Oklahoma, 8 if you know? And if you don't know, we can just move 9 on. 10 A. I don't know. 11 Q. Oh, thank you. Have you ever submitted an 12 illustration actuary certification? 13 A. No. 14 Q. Are you familiar with what I'm talking about? 15 A. I have some awareness, yes. 16 Q. I'm sorry? 17 A. Some awareness, yes. 18 Q. With regard -- 19 A. But I know very little about the 20 certification -- 21 Q. Do you know if a -- 22 A. -- process. 23 Q. Thank you. Do you know if an illustration 24 actuary made a certification in this case with regard to 25 the policy at issue?</p>	<p style="text-align: right;">145</p> <p>1 Q. Are you saying that either NYLIAC or 2 Mr. Marlin violated a duty under Oklahoma law, when this 3 policy -- a duty to the policyholder, Mr. Blumenthal, 4 during the sale or -- of the policy? 5 A. Yes, I am. 6 Q. What duty of the -- under Oklahoma law did 7 they violate? And that's my question. It's not -- 8 A. Okay. It -- it could be -- 9 Q. -- Texas law. 10 A. It could be one of general negligence. There 11 is a duty under Oklahoma law with respect to negligence. 12 There's one under fraud. There is one -- I assume there 13 is -- assume that there is some equivalent to a 14 Deceptive Trade Practices Act. I assume that there are 15 other provisions not associated with the Oklahoma 16 illustration regulation that require certain standards 17 with respect to the solicitation and sale of insurance 18 products and the replacement of insurance products. So 19 there's clearly quite a list of opportunities to not 20 discharge an obligation or duty under Oklahoma law, 21 which may have occurred. 22 Q. Okay. I know there's this -- there's this 23 potpourri of possible duties out there. I'm not asking 24 for a course -- 25 A. You're talking about the illustration.</p>

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<p style="text-align: right;">146</p> <p>1 Q. -- a course on torts. I'm asking about what 2 duties under Oklahoma law, if any, are you saying that 3 the agent and/or NYLIAC violated. And before you -- 4 before you answer the question, tell me what research 5 you've done to -- to lead to that conclusion. Research 6 of Oklahoma law, sir, because this is an Oklahoma case. 7 So I'm not worried about Texas law. We'll deal with 8 that later. 9 A. I have not made the research with respect to 10 Oklahoma law. 11 Q. Thank you. Did you consult any actuaries when 12 you prepared your report? 13 A. I did not. 14 Q. Are there any actuaries -- actuaries at the 15 Maxford Company? 16 A. No, not hardly. 17 Q. Okay. How many employees at the Maxford 18 Company? 19 A. Two, myself and my wife. 20 Q. Okay. What are -- what were the revenues -- 21 gross revenues of the Maxford Company last year, 2009? 22 Approximately. 23 A. Okay. Here again, you'll get an answer that's 24 slightly longer than you expect. Last year -- well, 25 each of the last two years I have restricted my practice</p>	<p style="text-align: right;">148</p> <p>1 Q. (BY MR. STANO) Let's go through your report, 2 if we might. Sir, I know we talked about your billing, 3 and I know you haven't reduced your billing to an hourly 4 listing, but give me your best guess as to how much -- 5 how many hours you put in on this case today. 6 A. Let me respond in this way. Is that a problem 7 for you if -- by your reaction. I just want to say, if 8 I could be given the time to think over lunch -- 9 Q. Sure. 10 A. -- I could call my wife, and I could try to 11 collect an idea and give you a number -- an estimated 12 number immediately following, when we pick up after 13 lunch. 14 Q. Is she at the office? 15 A. No. She's at North Star (sic) Mall. I'm 16 scared to death. 17 Q. How would she know, if she doesn't have access 18 to the file? 19 A. I would talk to her about issues that I've 20 worked on, which she may have some knowledge, and she's 21 a good observer of my work, and I could tell her what 22 I'm thinking I'm estimating. She would reflect on what 23 she knows, and I think together we could give you a 24 reasonable estimate. 25 Q. Fair enough. Thank you for doing that. I</p>
<p style="text-align: right;">147</p> <p>1 in a couple of certain ways for personal reasons. The 2 last two years revenues were between 30 and \$50,000. 3 Q. Uh-huh. 4 A. But on average, when I take cases that are 5 presented to me, the average revenues over the period of 6 time have been about 100 to \$120,000. And full-time 7 business, for me, is working about half the time. 8 Q. So the revenues in 2009 were about \$30,000? 9 A. About that, yes. 10 Q. And in 2008 about \$30,000? 11 A. Or a little bit more. 12 Q. Okay. Did you take all the business that was 13 offered to you? 14 A. No. 15 Q. Okay. And the revenues in 2007? 16 A. Probably would have been 60 to 80,000, and 17 before that, when I took cases that were presented to 18 me, between 100 and 120,000. 19 Q. Are you retired? 20 A. Mostly. 21 Q. Okay. You say in your report -- and I'm going 22 to go ahead and offer it. Do you have a copy in front 23 of you? 24 A. Yes. 25 (Exhibit No. 6 marked.)</p>	<p style="text-align: right;">149</p> <p>1 appreciate it. 2 Turning to your report on Page 2, going 3 back to the conversation you had with Mr. Blumenthal, 4 you say his business was profitable. Obviously, you got 5 that information from him, I assume. And I'm looking at 6 Roman numeral III, the parties to the litigation. I'm 7 about one, two -- about five lines into the paragraph. 8 You talk about his degree in accounting, attended some 9 first year law classes. And you say his business was 10 profitable. He told you that during the conversation? 11 A. He tried to sell me on bringing my Corvette up 12 and having him work on it. The -- I'm not sure he said 13 successful. It could have been that Shannon Emmons gave 14 me that description. 15 Q. Okay. 16 A. I don't know how much money he made, you know, 17 or -- 18 Q. Understood. 19 A. Or what the financial results of his company 20 were. 21 Q. Okay. You also say that "Plaintiff has" -- in 22 the next sentence "has numerous investments in 23 registered and unregistered products, including 24 insurance." How did you know that? 25 A. I asked him just a general background</p>

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151	<p>1 Q. -- you said that, but did he tell you -- 2 A. Where -- 3 Q. -- that he was -- 4 A. Where are you reading? 5 Q. I'm sorry, I'm the next sentence down. 6 "Plaintiff was 67 years of age and believed that, to 7 preserve his estate, he might require additional life 8 insurance." I assume he told you that, or did you -- 9 A. I'm not sure he said that. He may have, but I 10 believe "preserve his estate" was a phrase taken from 11 one of the application documents, or something I saw 12 that's -- you know, would be in here. 13 Q. Okay. Do you know how much life insurance he 14 had at the time he applied for coverage with NYLIAC? 15 A. I've only seen two things. One, some tangible 16 evidence that he had a term life policy from -- I 17 believe the company's name was Valley Forge. 18 Q. Uh-huh. 19 A. There was one reference, I believe, on the 20 New York Life application or -- or medical documents 21 that indicated that he might have owned another New York 22 Life policy. 23 Q. Uh-huh. 24 A. But I haven't confirmed that. 25 Q. Do you think term insurance is a deceptive</p>	153	<p>1 A. Well, let's look at his circumstances at -- 2 Q. No. My question -- 3 A. -- the time the product was -- 4 Q. Sir, my question was: Did the illustration 5 say that \$53,000 annually would be adequate to keep the 6 policy in force? Did it make that kind of 7 representation? And I'm talking about the July 1999 8 illustration. Did it make that representation? 9 A. In those words, no. 10 Q. Did -- did -- 11 A. But what it does do -- 12 Q. My question is -- 13 A. -- it -- it laid -- it laid such a stark -- 14 Q. -- did it make the representation. 15 A. -- alternative of the guarantees that it 16 forces you to think of the current columns as being 17 reflective of what the company will do. 18 Q. So you're -- you're saying that the 19 illustration is defective because it tells you, in very 20 clear and stark language, that the policy might lapse? 21 A. For -- 22 Q. Come on. 23 A. For you to call that clear and unambiguous 24 language is -- is -- 25 Q. Well, we --</p>

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<p style="text-align: right;">154</p> <p>1 A. -- difficult for me to respond to. I don't 2 think anybody about it is clear. 3 Q. Well, when it says on Page 7 of 7, that we 4 looked at, that in Year 6 -- Policy Year 6 at age 73, 5 the values go down to zero, that's pretty clear to me, 6 isn't it? 7 A. Oh, sure. It's something -- 8 Q. That's pretty clear. 9 A. It's something that you know is not going to 10 happen, just like you know you're not going to pay 11 \$200,276.89 to keep a \$1 million death benefit policy in 12 force. You know that will not happen. It -- it 13 automatically decertifies that guaranteed results column 14 in the reasonable person's mind, my opinion, of being a 15 logical result. 16 Q. Did you look at the -- at the language of the 17 July 1999 illustration? Did you read it? 18 A. I -- yes. 19 Q. Did you read it cover to cover? 20 A. Cover to cover. 21 Q. And you're saying that because there were, in 22 effect, so many disclaimers in the illustrations, saying 23 that, among other things, that the crediting rate is not 24 guaranteed, that results may -- may -- results of future 25 experience is not guaranteed, that because there were so</p>	<p style="text-align: right;">156</p> <p>1 unreadable. I will say it is impossible to read and 2 fully understand a -- if the goal is to have a 3 knowledgeable buyer buy a product that is suitable for 4 their circumstances. 5 Q. And if this illustration is in compliance with 6 Oklahoma law, are you saying that Oklahoma law is 7 defective? 8 A. Absolutely. 9 Q. Okay. Thank you. Give me an example of where 10 the language is unreadable and not understandable. 11 A. Okay. There appears to be -- 12 Q. And what page are you on? 13 A. I'm on Page 3 of 7. 14 Q. Okay. 15 A. There appears to be a paragraph, if you read 16 it, and I have, that attempts to give the reader a clear 17 understanding of the differences between the protector 18 and the accumulator policy, and that's under the bold, 19 underlined heading, Choosing the Protector. 20 Q. Okay. 21 A. So it's not an option to the buyer that this 22 is being given a dispassionate -- you know, here -- here 23 is one, here is the other; here's what you think, good 24 or bad, about one; here's what you think, good or bad, 25 about the -- in effect, choosing the protector. They're</p>
<p style="text-align: right;">155</p> <p>1 many disclaimers, that it becomes unbelievable. Is that 2 what you're saying? 3 A. It becomes unreadable. That's what I'm 4 saying. 5 Q. It becomes unreadable. 6 A. Yeah. For -- 7 Q. Give me -- give me -- 8 A. But now if you -- 9 Q. -- a for example -- 10 A. Okay. 11 Q. -- of where the language in here is 12 unreadable. 13 A. Well -- 14 Q. And when I -- 15 A. You can physically read it, so perhaps we're 16 arguing -- 17 Q. No, sir. You say that it becomes unreadable. 18 The July 19, 1999 illustration, give me an example of 19 the language that you -- that you -- in your opinion, is 20 unreadable? 21 A. I will say unreadable and not capable of being 22 clearly understood. Obviously, unreadable, if I -- if 23 that's taken to mean you cannot read the language, I 24 misspoke. You can read any words in the English 25 language. So I will take back my reference to</p>	<p style="text-align: right;">157</p> <p>1 being steered and guided by the -- by the structure of 2 the illustration to the product that they want to have 3 sold and, in fact, have sold. 4 Q. Point out language that steers -- point out 5 language in that paragraph that steers the buyer to -- 6 A. No. I'm talking about the heading. 7 Q. Oh, the heading itself -- 8 A. Exactly. 9 Q. -- is defective because it steers the buyer to 10 the protector? 11 A. Exactly. 12 Q. Okay. 13 A. Or reinforces a decision already made to buy 14 the protector as -- why is there any purpose to talk 15 about the accumulator in this paragraph at all? He's 16 already bought the protector. 17 Q. So there should be no language about the -- 18 about the accumulator in the -- in -- 19 A. After the sale? 20 Q. -- the illustration? 21 A. What's the purpose? 22 Q. Does it not say, You should consult your agent 23 to help understand -- 24 A. This is -- 25 Q. -- about both --</p>

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1 A. This is after the sale.
 2 Q. To make sure the person is comfortable with
 3 the decision he or she made.
 4 A. It's to reinforce the direction that the agent
 5 put them in, in the protector.
 6 Q. And you know that how?
 7 A. Because they chose one of the products to
 8 represent. This is not properly labeled. This is not a
 9 dispassionate discussion of two alternatives for a
 10 person --
 11 Q. Uh-huh.
 12 A. -- to consider.
 13 Q. In your opinion.
 14 A. Well, you asked me to point to something.
 15 Q. Right, right.
 16 A. Okay?
 17 Q. Is that the best --
 18 A. I'm following your instruction.
 19 Q. -- you can do?
 20 A. Is that -- is that the best example
 21 that --
 22 A. Example --
 23 Q. -- you have?
 24 A. No. If you'll turn over, Page 5, Annual
 25 Premium Necessary to Guarantee Coverage.

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1 Q. Just a moment.
 2 A. I want you to tell me how a reasonable person
 3 would read and understand this, having agreed 38 days
 4 previously to pay an annual premium for a \$1 million
 5 death benefit, of how a reasonable person would
 6 understand this statement that says: If you really want
 7 to keep this coverage for as long as you live, you've
 8 got to pay almost five times as much annual premium.
 9 You know that would be \$6,600,000 over that lifetime --
 10 Q. Isn't that --
 11 A. -- if they live to 100.
 12 Q. Isn't that a very clear way of telling the
 13 person that the annual premium you're paying may not be
 14 sufficient? Isn't -- doesn't that put the person on
 15 notice?
 16 A. No. It doesn't --
 17 Q. Oh, it doesn't?
 18 A. It doesn't say that at all.
 19 Q. Well, if it says the only way to guarantee
 20 it -- the policy is to pay --
 21 A. Is to pay --
 22 Q. Let me --
 23 A. -- \$6,600,000?
 24 Q. Let me finish my question, sir.
 25 A. Okay.

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1 Q. If the illustration says the only way to
 2 guarantee coverage is to pay \$200,000 a year, doesn't
 3 that, in stark terms, paraphrasing your language in your
 4 report, let the individual know that the premium that he
 5 is paying -- in this case, Mr. Blumenthal of 53,000
 6 annually -- that he may not be paying enough to keep the
 7 policy in force? Doesn't that tell him that --
 8 A. No. It --
 9 Q. -- if it says \$200,000 is adequate, and you're
 10 only paying 53, it may not be adequate?
 11 A. It does not tell me that. What it tells me
 12 is --
 13 Q. Uh-huh.
 14 A. -- that that is such an absurd calculation
 15 that would cause anybody that actually believed -- read
 16 it and believed it, to not buy this policy, that he was
 17 directed to the nonguaranteed elements of the
 18 illustration. That's the only purpose I can see for
 19 such a figure.
 20 Q. And again, that's your opinion, correct?
 21 A. That would be my opinion.
 22 Q. Okay. Have you ever bought a universal life
 23 policy?
 24 A. Yes, I have.
 25 Q. Do you have one now?

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1 A. Yes, I do.
 2 Q. Did you get a similar -- with what company?
 3 A. I would withhold that information.
 4 Q. For what reason?
 5 A. Because it's personal information of mine.
 6 Q. Well, if you have a policy with New York Life
 7 Insurance Company, I have a right to know that.
 8 A. It's a non-New York Life policy.
 9 Q. Okay. Do you have any other examples of
 10 language that, in your opinion, is unreadable and
 11 unbelievable?
 12 A. Sure.
 13 Q. Well, let me strike that question. Going to
 14 Page -- the last page -- which again, we've talked about
 15 this, the Page 7 of 7, which talks about the policy not
 16 being in effect in the sixth policy year at age 73. Do
 17 you -- under the assumption of the guaranteed interest
 18 rate of 4 percent. Do you find that to be a believable
 19 piece of information?
 20 A. Believable?
 21 Q. Yes, sir.
 22 A. No.
 23 Q. If someone read it, could they -- would they
 24 not rely on it? It says zero.
 25 A. I don't think so.

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<p style="text-align: right;">162</p> <p>1 Q. Wow. Why am I not surprised? And why would 2 they not be able to rely on that? 3 A. Because they would -- if they chose to read 4 that and understand it -- 5 Q. Uh-huh. 6 A. -- and the implications of it, they would ask 7 the agent, before putting pen to paper. What's the 8 likelihood of this happening? What's the agent's 9 natural response? Well, that's never happened in the 10 history of New York Life. We have never immediately 11 taken an interest rate down to the contractual minimum 12 and applied the maximum amount of cost of insurance 13 charges. We've never done that. 14 Q. Well, that's getting back to those nasty 15 assumptions you made about insurance agents that we've 16 talked about, correct? 17 A. Well, not nasty. Those would be, to some 18 level, correct statements. 19 Q. Are you making that assumption against every 20 agent again? And again, I know we've covered this, but 21 I just want to -- for the record, I want to be clear as 22 to where you're coming from. Do you assume every agent 23 says that? 24 A. No. I assume -- I assume that every New York 25 Life agent would not answer the question: Is my policy</p>	<p style="text-align: right;">164</p> <p>1 A. And it's subsequently mentioned in your 2 expert's report -- 3 Q. Correct. 4 A. -- sort of very positively, as this being a 5 contractual feature and a design that benefits 6 consumers. Well, he had a life expectancy at the issue 7 date of the policy of 13.8 years. To say that, just 8 disregard what practice we have in taking your credited 9 interest rates down to a minimum of 4 percent because 10 we're going to give you back more interest seven years 11 after your life expectancy expires, is, I think, 12 contrived. 13 It's a benefit that's illusory and not 14 enjoyed to any significant degree by any but the tiniest 15 percentage of New York Life policyholders. When the 16 21st year clicks in, he will be, what, 20 -- 88 years 17 old. And so he would only get that increased interest 18 rate for the amount of time he lives past 88. 19 Q. But having received this illustration, which 20 is not in dispute, he had the opportunity to know -- to 21 read and understand that, correct? 22 A. There's nothing in this illustration that I'm 23 aware of, having read it, that highlights policy 24 features and benefits as benchmarked against a person's 25 life expectancy.</p>
<p style="text-align: right;">163</p> <p>1 going to lapse at the end of five years because the 2 company is going to slam down the contractual credited 3 rates and slam up cost of insurance charges? I would 4 expect them to defend New York Life and their practices, 5 and say, No, that has never happened in the history of 6 this company. That's what I would expect. 7 Q. And that's an assumption on your part, 8 correct? 9 A. That's an assumption on my part. 10 Q. Okay. Thank you. 11 (Discussion off the record.) 12 A. You asked me about another item, and maybe we 13 want to finish it. 14 Q. (BY MR. STANO) Well, go ahead and answer 15 then. 16 A. Okay. Page 2 of 7. There appears -- there 17 appears to be -- this is falling on Page 2, as opposed 18 to Page 7 -- an important element for a person to know 19 in acquiring a protector policy, that New York Life is 20 going to elevate their credited rate at Year 21. Do you 21 see that? 22 Q. Where -- where are you looking? 23 A. The middle of the page, under the heading 24 Policy Years. 25 Q. Okay.</p>	<p style="text-align: right;">165</p> <p>1 Q. It certainly is available -- the information 2 in the illustration is available to Mr. Blumenthal and 3 anyone else who receives it, correct? 4 A. I guess everything is available. 5 MR. STANO: Okay. That's my point. 6 (Recess 12:30 p.m. to 1:16 p.m.) 7 Q. (BY MR. STANO) Mr. Sanderford, I think you 8 during the break you had -- you were going to acquire 9 some information regarding billing on this case. 10 (Discussion off the record.) 11 Q. (BY MR. STANO) Do you have some billing 12 information? 13 A. I do. My initial retainer was \$2,500 -- 14 Q. Uh-huh. 15 A. -- billing against the rate of \$200 an hour. 16 Up through the completion of the report, the best 17 estimate I have is 26 to 30 hours total. Since that 18 time -- this will require just a moment of explanation. 19 Six hours plus one day. My retainer agreement says that 20 when at hearing, deposition, or trial my presence is 21 required, that I'll bill for one day at \$2,500. So in 22 addition to the initial 26 to 30 hours, there is six 23 hours following the report plus today, which is \$2,500 24 flat fee for today. 25 Q. Sir, we intended to pay you at the rate of</p>

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166	<p>1 \$200 an hour. That was the report -- that was the 2 amount stated in your expert report. We've had no 3 discussions with your counsel about paying a \$2,500 fee. 4 A. Okay. 5 Q. We looked -- we looked at your hourly rate in 6 the report and -- 7 A. And what if -- 8 Q. -- it was 200 -- 9 A. -- I spent 12 hours today preparing for and 10 giving this deposition? I'm sure you would rather have 11 the lower fee, wouldn't you? 12 Q. Sir, I'm -- we're paying for the time of this 13 deposition. Whether you prepared or not is -- 14 A. Okay. Fine. 15 Q. That's -- 16 A. Fine. I'm not going to argue with you. 17 MR. STANO: And before I miss -- or so 18 that I don't forget, we are keeping this deposition open 19 until we receive the documents that we talked about 20 earlier today. 21 MS. SHERRILL: Correct. 22 Q. (BY MR. STANO) Mr. Sanderford, on Page 3 of 23 your report you refer to sales literature, 24 illustrations, and promotional materials used by 25 Mr. Marlin to sell the product which is at issue in this</p>	168	<p>1 A. The first two in that last. 2 Q. The product comparison, is it your 3 understanding, or is it your assumption that it was 4 created by New York Life? 5 A. I'm not certain who's the author of that. It 6 appears to be a comparison of a term life policy, which 7 my assumption is it's the one that Mr. Blumenthal owned 8 at the time, and a policy that he was being solicited to 9 buy. 10 Q. Are you assuming it was being created by 11 New York Life? 12 A. I'm assuming -- I'm assuming that it was 13 created by either an agent or some ability of New York 14 Life. 15 Q. You talk about in your report about 16 conflicting testimony regarding the presale 17 illustrations. What are you referring to? 18 A. I'm referring to what I understand to be 19 Mr. Blumenthal's claim, that he was told or represented 20 during the solicitation of the protector policy that his 21 annual premium would be sufficient to keep that policy 22 in force for his life. 23 Q. And what's the testimony that conflicts with 24 that, or the conflicting -- 25 A. I am assuming that Mr. Marlin's testimony will</p>
167	<p>1 case. What sales literature did you review in this 2 case, if any? 3 A. The only thing that I've reviewed -- and I put 4 them all in the category of sales literature -- and that 5 is the illustrations that were made, the product 6 comparisons for a replacement between the existing term 7 life policy and the product being sold, the New York 8 Life marketing and sales material relative to the 9 protector product, which is in my file, which is made 10 available for the use of New York Life agents. Let's 11 see if I can think of anything else. I believe that's 12 all. 13 Q. Which of these marketing materials were used 14 in the sale to Mr. Blumenthal for the policy at issue in 15 this case? 16 A. My assumption is that the January 1999 17 illustration was. My assumption is that the comparison 18 of a New York Life product to his existing term policy 19 was. And my assumption is that authorized and published 20 material by New York Life may have been used, but would 21 have -- would be an accurate, corporate-sponsored 22 definition of the product. 23 Q. What marketing materials do you know were used 24 by New York Life Insurance & Annuity Corporation in the 25 sale to Mr. Blumenthal?</p>	169	<p>1 conflict with that, and, from the pleadings, it would 2 appear that that's the position of New York Life as 3 well. 4 Q. You don't know what Mr. Marlin's testimony 5 will be, do you? 6 A. No. I'm speculating. 7 Q. Okay. 8 (Exhibit No. 7 marked.) 9 MR. STANO: Jennifer, this is the 10 document I talked about earlier during the break. It's 11 the -- 12 Q. (BY MR. STANO) Mr. Sanderford, let me show 13 you what's marked as Exhibit 7, dated -- Bates stamped, 14 excuse me, NYLIAC 0075. It's the policy delivery 15 receipt, and I will stipulate to you, sir, that that is 16 Mr. Blumenthal's -- I'll represent to you that that is 17 Mr. Blumenthal's signature. 18 A. Sure. 19 Q. Have you seen this document before? 20 A. I have not. 21 Q. Can you take a moment and look at it? 22 A. I just did. 23 Q. Okay. You've had a chance to look it over? 24 A. I just did, yes. 25 Q. Okay. What is a policy delivery receipt?</p>

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<p style="text-align: right;">170</p> <p>1 A. It provides proof that the customer was given 2 or mailed a policy, that it was distributed to them. 3 Q. This policy delivery receipt, what else does 4 it address, in addition to delivery of the policy? 5 A. This policy receipt also asks for the customer 6 to affirm certain representations with respect to his 7 understanding about the policy. 8 Q. And do you see that Mr. Blumenthal has signed 9 a statement saying that he has received and reviewed the 10 illustration -- 11 A. I do. 12 Q. -- for this policy? 13 Do you -- do you understand that he has 14 signed this statement, stating that he understands that 15 the policy values shown in the illustration are based on 16 nonguaranteed and guaranteed elements? 17 A. I do. 18 Q. Okay. And that he understands that 19 nonguaranteed elements will fluctuate and affect the 20 policy's values? 21 A. I understand that. 22 Q. Okay. And more importantly, he understands 23 that? 24 A. That's what he signed. 25 Q. Okay.</p>	<p style="text-align: right;">172</p> <p>1 contract law." 2 Q. Can you narrow it down to a particular 3 country? 4 A. Let's say the United States. 5 Q. Okay. Thank you. 6 Do you see the last sentence before 7 Mr. Blumenthal's signature, "Furthermore, the 8 nonguaranteed midpoint section of the illustration 9 provides an example of how a reduction in the 10 nonguaranteed elements could affect the future values of 11 this policy." Do you see that? 12 A. I do. 13 Q. All right. Do you agree this policy delivery 14 receipt, does it -- does it affect your opinion in any 15 way as to whether Mr. Blumenthal had adequate 16 disclosures with regard to the purchase of this policy? 17 A. It does not. 18 Q. Wow. Why not? 19 A. I have testified at some length previously 20 about the illustration document itself, even meeting 21 what you and I might agree are the requirements of the 22 State of Oklahoma, with respect to illustrations, as 23 being inadequate. 24 Q. Sir -- 25 A. And --</p>
<p style="text-align: right;">171</p> <p>1 A. The document speaks for itself. 2 Q. Is he not held to what he signs? 3 A. The document speaks for itself. 4 Q. Do you have an opinion as to whether someone 5 is held to a document they sign, as to the -- held to 6 the contents of the document, if they have the 7 opportunity to read -- 8 A. Sometimes they are, and sometimes they're not, 9 depending upon context and other factors. 10 Q. Are you applying Oklahoma law when you say 11 that? 12 A. No. 13 Q. What law are you applying? 14 A. I'm applying certain standards of the federal 15 securities regulations and opportunities for litigation 16 there under arbitration procedures. 17 Q. Okay. 18 A. I'm also making reference to Texas law. 19 Q. Okay. 20 A. I'm also making reference to my -- a general 21 understanding of what I believe to be general contract 22 law. 23 Q. Okay. When you say "general contract law," 24 are you talking about the law of what jurisdiction? 25 A. I didn't say "jurisdiction." I said "general</p>	<p style="text-align: right;">173</p> <p>1 Q. Just so the record is clear, I don't agree 2 whatsoever that your opinion that the requirements of -- 3 A. No. I -- 4 Q. -- Oklahoma are inadequate. 5 A. I said you and I discussed -- 6 Q. Oh. 7 A. -- at great length. 8 Q. I thought you said agreed. 9 A. No. I -- 10 Q. I misunderstood you. 11 A. No. I wouldn't say that at all. 12 Q. Thank you. 13 A. We haven't agreed about much today, but we'll 14 forge ahead. My view, about which we discussed -- 15 Q. Uh-huh. 16 A. -- is that the illustrations produced by 17 New York Life, which it believes comports with the 18 Oklahoma regulation -- 19 Q. Uh-huh. 20 A. -- on illustrations, is inadequate to describe 21 this product for this classification of customer, and 22 it's not rehabilitated by the fact that he signed a 23 policy delivery acknowledgement saying that he read and 24 understood it. There could be context and fact -- 25 factors not known today that make that not true.</p>

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1 Q. Could be.
 2 A. Could be.
 3 Q. Are you assuming that there are? You say this
 4 is inadequate, so you've reached some kind of
 5 assumption -- some kind of conclusion.
 6 A. No. I said the illustration --
 7 Q. Okay.
 8 A. -- was inadequate.
 9 Q. Now, let me ask you this. Mr. Blumenthal
 10 appears to be saying that he understands that there are
 11 nonguaranteed and guaranteed elements of his policy, and
 12 he understands the implications of those guarantees and
 13 nonguarantees.
 14 A. It says what it says.
 15 Q. I understand it says what it says. Are you
 16 saying that despite Mr. Blumenthal's signature, despite
 17 the fact that he has a degree in accounting, despite the
 18 fact that he's a chairman of the board and president of
 19 a very successful family-owned but large corporation,
 20 that for some reason he does -- does not understand what
 21 he says he understands? Is that --
 22 A. You want me --
 23 Q. -- your opinion?
 24 A. You want me to speculate about that?
 25 Q. I want -- I'm asking you is that your opinion.

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1 A. Is that my speculation? I would say I could
 2 speculate that, if you want me to.
 3 Q. I would rather -- give me your -- yeah, give
 4 me your opinion as to Mr. Blumenthal's understanding of
 5 this.
 6 A. I don't know.
 7 Q. Very good. Thank you. Are you saying the
 8 Oklahoma legislature and the Oklahoma insurance
 9 department sort of dropped the ball on protection of
 10 insurance consumers by not having appropriate
 11 disclosures in that state?
 12 A. I'm not going to characterize their actions as
 13 one way or the other about dropping the ball.
 14 Q. But you're saying the laws and regulation in
 15 Oklahoma were inadequate?
 16 A. In my opinion.
 17 Q. Okay. Thank you. I appreciate that. What
 18 would you put -- strike that.
 19 What disclosures would you put in the
 20 illustration or in this policy receipt -- let's start
 21 with the policy receipt, since we're looking at it, the
 22 policy delivery receipt. What disclosures would you put
 23 in the policy delivery receipt that would make it
 24 adequate?
 25 A. I have no opinion about that.

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1 Q. But, sir, if you say something's inadequate,
 2 then you must have some opinion as to what's missing to
 3 make it adequate, correct?
 4 A. This document, whether it contained half as
 5 many words, whether it contained twice as many words,
 6 whether it addressed two or three issues more that I
 7 could list or you could list --
 8 Q. Okay.
 9 A. -- but is always subject to the issue of
 10 context and other outside influences as to whether this
 11 person signing it knew, read, understood, and fully
 12 agreed to its contents. Now, if you want to hold
 13 Mr. Blumenthal strictly accountable for it, I'm sure
 14 that's what you'll attempt to do. I can't do that.
 15 Q. Okay. So you're saying whether a disclosure
 16 is adequate depends on a variety of circumstances, and
 17 it would -- you have -- would have to determine that on
 18 a case-by-case basis? Is that -- is that a fair
 19 summary?
 20 A. No.
 21 Q. You're not saying that at all? It seems like
 22 you did. Didn't you say something about it would depend
 23 on the context --
 24 A. No. It's the same issue of prospectus
 25 receipts. It's the same issue of when you deliver your

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1 car and get a disclosure disclaiming liability about a
 2 parking garage.
 3 Q. Uh-huh.
 4 A. It's the same ability of a person who doesn't
 5 fully read and understand their mortgage.
 6 Q. Yeah.
 7 A. All of those are possible. Some are made more
 8 possible by the complexity and the technical nature of
 9 the disclosure they are being asked to acknowledge. And
 10 I'm saying that the illustration form itself --
 11 Q. Uh-huh.
 12 A. -- is overly technical. It is too long. It
 13 does not address many factors, which I have listed in my
 14 report, which should be meaningful to any buyer
 15 proposing to purchase or being solicited for the
 16 purchase of the protector life insurance policy.
 17 Q. You seem to be adopting a Goldilocks approach
 18 here, sir, by -- and by that I mean you seem to be
 19 saying, you know, the porridge is either too hot or too
 20 cold. The illustration is too complex. Is this policy
 21 delivery receipt a complex document, in your opinion?
 22 A. This is not too complex. The document that it
 23 refers to, the illustration, is too complex.
 24 Q. But in this document he is saying, I
 25 understand that guaranteed and nonguaranteed elements

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178	<p>1 could affect policy values. He's saying that -- that he 2 understands it.</p> <p>3 A. It says what it says.</p> <p>4 Q. And you're saying that understanding that he's 5 attributing -- that he's conceding to is not sufficient 6 for Mr. Blumenthal, that whatever he says he 7 understands, it's not enough, in your opinion.</p> <p>8 A. We -- you and I could talk about other 9 examples of complex financial products.</p> <p>10 Q. And I would rather not. I would rather talk 11 about what's before us in this case.</p> <p>12 A. Okay. But we have examples before us every 13 day of complex prospectuses, acknowledgements by people 14 who are sold complex investments, where they are not 15 made to understand the nature of what they have agreed 16 to. In fact, sometimes it works in just the opposite 17 way. The more pages you publish, the more complex you 18 make it, the less likely a typical, normal customer may 19 read it.</p> <p>20 Q. So are you comparing the illustrations in this 21 case, the 2006 illustration, the 1999 illustration, to a 22 prospectus, in terms of complexity and -- and the lack 23 of understanding?</p> <p>24 A. Well, not exactly. They're different.</p> <p>25 Q. Okay. But that was the example you used.</p>	180	<p>1 disclosure and the summary doesn't help you understand 2 that either.</p> <p>3 Q. So you're assuming that NYLIAC had improper or 4 nefarious motives with regard to reducing its credited 5 interest rates?</p> <p>6 A. I'm not sure I would call them nefarious 7 because it's fairly common in the insurance industry. 8 It has been with companies --</p> <p>9 Q. What -- what is fairly common?</p> <p>10 A. -- that I'm aware of. What?</p> <p>11 Q. What is -- I interrupted you, but I --</p> <p>12 A. Oh.</p> <p>13 Q. What is fairly common in the insurance 14 industry?</p> <p>15 A. Oh, of having a pricing model for a product 16 that is driven by the corporate expectation that certain 17 components of the product will be managed to the 18 company's benefit, regardless of the reasonable 19 expectation of the buyer. Take credited rates, for 20 example.</p> <p>21 Q. All right. Well, what knowledge do you have 22 with regard to NYLIAC's intention on credited insurance 23 rates?</p> <p>24 A. Okay. Glad you asked me. That exhibit that I 25 brought, this.</p>
179	<p>1 A. But it invokes a similar response by a 2 customer.</p> <p>3 Q. What about the annual policy summary, do you 4 view that as a document that's overly complex that 5 people can't understand? I mean, isn't that what tipped 6 off Mr. Blumenthal to the fact that he was --</p> <p>7 A. See --</p> <p>8 Q. -- caused him to worry about his --</p> <p>9 A. See, actually, it's not the format so much 10 that's overly complex. It's the concept and the 11 actuality of what they're trying to display, that is 12 not -- as cannot -- is very difficult to capture in that 13 format.</p> <p>14 Q. Okay.</p> <p>15 A. I found the summaries pretty darned 16 interesting, not as complex as many I've seen in the 17 financial industry. I think there were certain attempts 18 made to give some people useful information. But if you 19 don't know of whether the insurance company has a 20 predetermined idea about how they're going to take your 21 interest rates down to contractual minimums, this 22 doesn't help you understand that. And if the company is 23 bound to a pattern of increasing cost of insurance 24 charges in their relationship to the maximum allowable 25 charges in a way that is potentially profiteering, this</p>	181	<p>1 Q. Let's mark it, please.</p> <p>2 (Exhibit No. 8 marked.)</p> <p>3 A. Okay. First, I will address this document 4 with saying I've never been a participant in a New York 5 Life pricing meeting.</p> <p>6 Q. (BY MR. STANO) In a pricing --</p> <p>7 A. New York Life pricing meeting --</p> <p>8 Q. Okay.</p> <p>9 A. -- where they've discussed credited rates. 10 What I'm doing is I am making an observation, and 11 imputing certain understandings to New York Life, from 12 what I see. I realize that your expert would like to 13 have us look at yield -- industry yields and New York 14 Life yields, as reported in insurance accounting 15 practices, as being a driver of what rates they credit, 16 and that lowering Mr. Blumenthal's credited rate was 17 just a reflection of their bad luck in the economy.</p> <p>18 Now, what I would show you, if you want a 19 more accurate, reasonable, and representative composite 20 of what interest rates were doing, my attempt at showing 21 that is to show the average of ten-year treasuries, 22 triple-A rated bonds, and B double-A rated bonds, giving 23 a composite, and then tracking --</p> <p>24 Q. Uh-huh.</p> <p>25 A. -- this against the New York Life credited</p>

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182	<p>1 rates. What this shows is that the policy issued in 2 June 1999, I took six-month intervals, and there were 3 18 such intervals until that policy was ultimately 4 lapsed or surrendered. 5 Q. Okay. 6 A. Nine of them, interest rates, the composite 7 that I measure went up. Nine of them, they went down. 8 There were four contraindicated periods of at least six 9 months or longer. where interest rates went up, where 10 this indicates that the New York Life took rates down or 11 didn't move them from the contractual minimum, when the 12 rate increase occurred. These four contra periods 13 covered 42 months in this entire nine-year cycle. In 14 those 42 months, the New York Life investment committee 15 met and made 42 decisions about the credited rate to 16 Mr. Blumenthal and never once increased the credited 17 rate in the entire policy history. 18 Q. What do you know about the New York Life 19 Insurance & Annuity Corporation's investment committee? 20 A. I've read that they meet monthly and make 21 monthly decisions on credited rate. 22 Q. Okay. You know they meet monthly. What else 23 do you know? Is that about it? 24 A. That's it. 25 Q. Do you know who's on the committee?</p>	184	<p>1 A. It is not indexed. 2 Q. Okay. But my question is: Is the -- is the 3 credited rates -- the rates credited on the -- on the 4 Plaintiff's policy based on the overall performance of 5 NYLIAC's portfolio? 6 A. It's not indexed. 7 Q. Meaning what? 8 A. There is not a formula, produced or published 9 by New York Life, that if this series of investments 10 that we hold increase in value, that we will make a 11 direct and related increase in rates to customers, or by 12 going down in value, that we make a rate decrease. It 13 is not indexed. But if you would ask me the sister 14 question to that, is it reflective of market rates in 15 general, the answer is not only, yes, it should be. My 16 answer is every customer would have that reasonable 17 expectation. 18 Q. Is it reflective of market rates in general, 19 the rates credited on the NYLIAC policy at issue? Do 20 you know if -- if it's reflective -- 21 A. It does not appear to be, by the research I've 22 done. Now, I'm not saying that this is the only way to 23 measure interest rates, but I'm saying it is my attempt 24 to so, and, I think, creates a fair and representative 25 picture of where rates were while Mr. Blumenthal's</p>
183	<p>1 A. No. 2 Q. Do you know what its charges -- what it's 3 charged to do? Don't speculate. I asked you do you 4 know, not my assumption is. Do you know? There's a 5 difference. 6 A. Oh, I can base certain conclusions on what I 7 see, and my conclusion, without knowing exactly, is that 8 their purpose is to make money. 9 Q. You're assuming that, right? 10 A. Oh, yes. 11 Q. Okay. Okay. Is the rates credited on the 12 NYLIAC policy based on NYLIAC's performance -- overall 13 performance of its portfolio? Is that your assumption? 14 A. Yes. 15 Q. And do you know if that's the case? 16 A. Here again -- 17 Q. It's another assumption coming at me, I have a 18 feeling, and maybe I'm just -- 19 A. Well, that's the business that New York Life 20 chooses to be in. They make assumptions all the time. 21 Q. Well, I'm not asking about New York Life's 22 assumptions, sir. I'm asking you: Do you know if the 23 rates credited on the -- on the NYLIAC policy at issue 24 in this case is based on NYLIAC's performance of its 25 portfolio? That's -- that's my question.</p>	185	<p>1 policy was being taken down to the contractual minimum. 2 Q. Do you know if there are dedicated assets 3 supporting the liabilities created by the NYLIAC 4 protector policy? 5 A. Well, there always are, whether it's a 6 separate account for certain variable and registered 7 products, or whether it's a general account for general, 8 nonregistered liability products. Now -- so there's 9 always a fund of assets somewhere whose net total 10 return, in conjunction with the overall operating 11 results of New York Life, would be a driver of what they 12 choose to credit in the way of dividends to 13 participating policies, or of the amount of interest 14 they might pay to a -- 15 Q. Okay. Well, tell -- 16 A. -- nonparticipating policy. 17 Q. Tell me your understanding of how NYLIAC 18 credits interest on the protector policy. Tell me what 19 you know. 20 A. There's a monthly meeting. 21 Q. We -- we've established that. 22 A. Okay. 23 Q. And how are rates credited? Based on what -- 24 A. We don't -- 25 Q. -- what performances?</p>

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186	<p>1 A. We don't know.</p> <p>2 Q. That's --</p> <p>3 A. We don't know.</p> <p>4 Q. -- my point, sir. But you're saying, however</p> <p>5 it's done, it's not right?</p> <p>6 A. It would be apparently not right.</p> <p>7 Q. Based on the rates credited by NYLIAC versus</p> <p>8 certain returns that are listed in Exhibit 8?</p> <p>9 A. This is information from the Federal Reserve</p> <p>10 statistic release. I didn't --</p> <p>11 Q. I didn't ask where it was from. I'm saying --</p> <p>12 you're saying it's not right, however it's done. And</p> <p>13 I'm asking you, based on what? Based on your assumption</p> <p>14 or belief of what it should be?</p> <p>15 A. I think my testimony has indicated how I came</p> <p>16 to that belief. But there is substantial approximately</p> <p>17 the same number of reporting periods where the interest</p> <p>18 rates generally moved up, as when they generally moved</p> <p>19 down. 42 monthly investment committee decisions were</p> <p>20 made. Not one out of 42 were ever to the benefit of</p> <p>21 Mr. Blumenthal or, I would imagine, any other person in</p> <p>22 his position.</p> <p>23 Q. You say -- or do you say there are assets</p> <p>24 backing the -- the protector liabilities?</p> <p>25 A. Now, I'm not trying to provoke you.</p>	188	<p>1 Q. Okay.</p> <p>2 A. -- we would develop a pricing process and</p> <p>3 structure that was ours -- just like New York Life has</p> <p>4 one that's theirs -- in that we have a pricing model</p> <p>5 where our investment committee brought information about</p> <p>6 our yields, and sometimes we regarded these products as</p> <p>7 being representative of a book of business.</p> <p>8 Q. Sir, my question --</p> <p>9 A. So when you ask --</p> <p>10 Q. -- may not have been clear. I'm not asking</p> <p>11 about your prior companies' operations. I'm asking you</p> <p>12 what do you know about New York Life's interest</p> <p>13 crediting rates practices. If you don't know anything,</p> <p>14 tell me.</p> <p>15 A. I think your question is a little bit more</p> <p>16 specific. You said were they tied to any general</p> <p>17 assets.</p> <p>18 Q. Yes. And let's talk --</p> <p>19 A. Was that your question?</p> <p>20 Q. -- about New York Life. Let's talk about --</p> <p>21 let's talk about New York Life. Are they --</p> <p>22 A. Okay.</p> <p>23 Q. -- tied to particular assets?</p> <p>24 A. My question -- my answer is --</p> <p>25 Q. Is it to talk about it?</p>
187	<p>1 Q. You're -- I'm not -- I'm --</p> <p>2 A. Insurance -- insurance accounting --</p> <p>3 Q. -- I'm not being provoked at all. I'm just</p> <p>4 asking you --</p> <p>5 A. Insurance accounting, we see different</p> <p>6 companies take wildly different approaches.</p> <p>7 Q. Who is we?</p> <p>8 A. People who have a legal background in</p> <p>9 insurance.</p> <p>10 Q. Sir, I'm not deposing them.</p> <p>11 A. Yes, you are.</p> <p>12 Q. I'm deposing you.</p> <p>13 A. And I have a legal background in insurance.</p> <p>14 Q. Okay. You said "people." I'm -- I'm deposing</p> <p>15 an individual.</p> <p>16 A. Okay.</p> <p>17 Q. I want your opinion. I don't --</p> <p>18 A. Okay.</p> <p>19 Q. -- want the opinion --</p> <p>20 A. Fine.</p> <p>21 Q. -- of -- of a --</p> <p>22 A. Fine.</p> <p>23 Q. -- consensus group out there.</p> <p>24 A. All right. We would develop in our -- our</p> <p>25 senior management of the companies that I was in --</p>	189	<p>1 A. -- in one sentence.</p> <p>2 Q. Is your -- because --</p> <p>3 A. In one sentence. It will be --</p> <p>4 Q. -- I don't want to --</p> <p>5 A. -- in one sentence.</p> <p>6 Q. Okay. Thank you.</p> <p>7 A. I don't know.</p> <p>8 Q. Okay.</p> <p>9 A. But if they follow the practice of companies</p> <p>10 that I have experience with, they create models --</p> <p>11 Q. Okay.</p> <p>12 A. -- and books of business about the assets that</p> <p>13 come under a protector --</p> <p>14 Q. Rather than giving me a long answer, do you</p> <p>15 know if they follow the models of companies you're</p> <p>16 familiar with?</p> <p>17 A. I do not.</p> <p>18 Q. Okay. So then all that testimony is really</p> <p>19 not helpful to me. Thank you.</p> <p>20 If there were assets dedicated to the</p> <p>21 protector liabilities, do you know if those assets are</p> <p>22 earning current market rates as indicated in Exhibit 8?</p> <p>23 A. I assume New York Life is a good investment</p> <p>24 manager and earns as much as anybody.</p> <p>25 Q. But that's not my question. I didn't ask you</p>

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190	<p>1 what you assumed. I said: Do you know, if there are</p> <p>2 dedicated assets to the protector liabilities, are they</p> <p>3 earning current market rates? It's -- the question is</p> <p>4 do you know. It's not let's assume something.</p> <p>5 A. I do not know --</p> <p>6 Q. Thank you.</p> <p>7 A. -- if New York Life earns less than other</p> <p>8 companies.</p> <p>9 Q. Okay. Do you know the types of assets</p> <p>10 generally that are in an insurance company's general</p> <p>11 account?</p> <p>12 A. It's different for other companies. New York</p> <p>13 Life's about any -- depending on the year, 55 to</p> <p>14 65 percent bonds.</p> <p>15 Q. Did you go look that up?</p> <p>16 A. Yes.</p> <p>17 Q. When?</p> <p>18 A. Oh, I can't say. Maybe a week or two ago.</p> <p>19 Q. Okay. And what are the length of these bonds?</p> <p>20 Does it vary?</p> <p>21 A. Well, I would imagine that the totality of</p> <p>22 their bond portfolio conducts what's a seasoned</p> <p>23 portfolio. Some have shorter durations to maturity,</p> <p>24 some longer.</p> <p>25 Q. Okay.</p>	192	<p>1 Q. Exactly. A bond could have been bought</p> <p>2 15 years ago. Probably was, right? Some. Would you</p> <p>3 agree to that?</p> <p>4 A. No, not probably, but could have.</p> <p>5 Q. Could have. Okay. And the rate 10 or</p> <p>6 15 years ago, or 5 years ago could be far different from</p> <p>7 current market rates today, correct?</p> <p>8 A. Exactly.</p> <p>9 Q. Okay. Let's assume a bond was bought 10 years</p> <p>10 ago, and it was paying 4 percent. And I don't know if</p> <p>11 it was or not, but let's assume that. Can we do that?</p> <p>12 A. We can assume whatever you like.</p> <p>13 Q. Okay. Assuming it was paid --</p> <p>14 A. As long as you're doing it, not me.</p> <p>15 Q. Well, let's assume -- well, I'm asking you to</p> <p>16 assume that it was -- a part of New York Life's general</p> <p>17 account is composed of bonds, as you said it is, and</p> <p>18 some of those bonds are --</p> <p>19 A. Right.</p> <p>20 Q. -- of varying lengths, and -- and the return</p> <p>21 on the bonds is going to vary, based on the rate of</p> <p>22 return at the time the bond was purchased, correct?</p> <p>23 A. Of course.</p> <p>24 Q. Okay. So the rate that was being paid five or</p> <p>25 10 years ago, when the bond was purchased, may not be</p>
191	<p>1 A. Some are going to be sold prior to maturity,</p> <p>2 some are not.</p> <p>3 Q. Okay.</p> <p>4 A. But -- but seasoned bond portfolio is what I</p> <p>5 used in my interest.</p> <p>6 Q. Did you look at the varying lengths of the</p> <p>7 bonds in New York Life's portfolio?</p> <p>8 A. No. They have various lengths.</p> <p>9 Q. Okay. Such as?</p> <p>10 A. Well, there are some bounds that are going to</p> <p>11 mature very quickly. There are some bonds that are --</p> <p>12 may have 20 years --</p> <p>13 Q. Are you referring to --</p> <p>14 A. -- to maturity.</p> <p>15 Q. -- New York Life's investment portfolio?</p> <p>16 A. Sure.</p> <p>17 Q. Okay. So some of these bonds could have been</p> <p>18 bought yesterday, right?</p> <p>19 A. Sure, and undoubtedly were. They're bought</p> <p>20 every day.</p> <p>21 Q. And some are bought --</p> <p>22 A. And sold every day.</p> <p>23 Q. And some are bought 10, 20 years ago, correct?</p> <p>24 A. And some mature today and some mature</p> <p>25 tomorrow.</p>	193	<p>1 the rate that -- that's -- of return in the market today</p> <p>2 for other investments, correct?</p> <p>3 A. Of course.</p> <p>4 Q. Okay. So the overall rate of return on</p> <p>5 New York Life's portfolio is going to be based on a</p> <p>6 variety of investments, correct? Correct? Following --</p> <p>7 are you following me?</p> <p>8 A. Yes. And if --</p> <p>9 Q. Okay.</p> <p>10 A. -- in your illustration rates have been going</p> <p>11 the other direction, exactly the opposite result would</p> <p>12 have occurred. Now --</p> <p>13 Q. Well, let me -- let me finish my thought.</p> <p>14 A. -- the issue is --</p> <p>15 Q. Let me finish my thought. Since you have an</p> <p>16 overall return on NYLIAC's investment portfolio or</p> <p>17 general account, based on many different investments,</p> <p>18 with many different rates of return, with many different</p> <p>19 periods of which the investment is in existence, plus as</p> <p>20 you indicated yourself, oftentimes bonds are purchased</p> <p>21 or sold prematurely -- or sold prematurely for whatever</p> <p>22 reason, then can you not -- do you not agree or can you</p> <p>23 not agree that the overall return on New York Life's</p> <p>24 investment portfolio may or may not reflect some of the</p> <p>25 other indices that you have on Exhibit 8?</p>

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194	<p>1 A. What I would agree is New York Life's total 2 return for any portfolio would be a reflection of what 3 the portfolio contains and its pricing at that moment in 4 time, which may not be the same as 10 year treasury 5 only -- 6 Q. Exactly. 7 A. -- yield, may not be the same as a triple-A 8 bond. It may not be same of the B triple-A. 9 Q. All right. 10 A. All what -- all I have attempted to do is to 11 characterize the general concept, are rates going up, 12 are rates going down. 13 Q. Okay. Now, do you know the composition of 14 NYLIAC's general account? When I say "composition," I 15 mean the types of investments. You mentioned bonds. 16 What else is in the -- in the general account, if you 17 know? I'm not something you to speculate. My question 18 was do you know? And do you? 19 A. I do know generally. 20 Q. So tell me -- 21 A. I can't give you the percentage -- 22 Q. Tell me -- 23 A. -- amount for -- for a given year, but I have 24 looked up the -- 25 Q. Types of investments?</p>	196	<p>1 A. No, I didn't. Some would be higher, some 2 would be lower -- 3 Q. I understand that. 4 A. -- than the interest rate. 5 Q. I didn't ask if some were higher or lower. I 6 just asked if you looked at it, and I think you said no. 7 A. Not with respect to any analysis for New York 8 Life. 9 Q. Okay. Is it your opinion that the protector 10 policy that's at issue in this case was designed to 11 reduce credited interest rates in the future? 12 A. I would say, reflecting on what I've seen with 13 respect to rates, and the credited rate in the 14 Blumenthal policy, I -- I would -- I would be presently 15 of that opinion. 16 Q. Are you saying then -- obviously, policies 17 don't reduce the rates themselves. There has to be 18 someone who does that. Are you saying it was -- 19 NYLIAC's senior management at some place, some point in 20 time designed this policy with the intent to reduce 21 credited interest rates in the future and cause policies 22 to lapse? 23 A. Not to cause policies to lapse. The perfect 24 result from an insurance company management, in my 25 opinion --</p>
195	<p>1 A. -- portfolio composition, and I can tell 2 you -- 3 Q. The types of investments? 4 A. Yes. 5 Q. What -- what did -- what did you see when you 6 looked it up? 7 A. Like I said -- 8 Q. You mentioned -- 9 A. -- depending on -- depending on -- 10 Q. -- bonds. What else? 11 A. -- the year, 55 to 65 percent bonds. 12 Q. What else? 13 A. 5 to -- 14 Q. Just by category here? 15 A. 5 to 10 percent in equities. 16 Q. Okay. 17 A. 5 to 10 percent in mortgage-backed securities. 18 Q. Okay. 19 A. 5 percent, give or take 2 or 3 or 4 percent in 20 real estate. 21 Q. Okay. 22 A. That's about all the categories that come to 23 mind. 24 Q. And did you look at the return on each of 25 these categories of investments?</p>	197	<p>1 Q. Okay. 2 A. -- in my opinion -- 3 Q. Okay. 4 A. -- is for people to stand the investment 5 credited interest -- 6 Q. Right. 7 A. -- decisions that they make, and keep their 8 policy in force. 9 Q. Uh-huh. 10 A. That's what they would like, and keep paying 11 premiums. 12 Q. And you're saying it was -- 13 A. And -- 14 Q. -- NYLIAC's intention to do this with the 15 intent -- 16 A. And -- well, the -- 17 Q. This is -- the intent was to reduce credited 18 interest rates to cause the -- 19 A. By the information available to me. 20 Q. Okay. And the information is in this exhibit. 21 We have Exhibit -- what is your file? It's Exhibit 3. 22 It's in there. 23 A. Sure. 24 Q. Okay. Do you have any particular individual 25 or office or department that did this?</p>

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<p style="text-align: right;">198</p> <p>1 A. No, sir.</p> <p>2 Q. Okay. But certainly, the -- and this is --</p> <p>3 you're saying this was NYLIAC's intention from the day</p> <p>4 they designed this policy and started to sell it, was to</p> <p>5 reduce the interest rates credited in order to make --</p> <p>6 A. Profit to an extraordinary degree.</p> <p>7 Q. Okay. So you're assuming that the NYLIAC</p> <p>8 protector policies nationwide will start to lapse, as</p> <p>9 the credited rates go down and people refuse to pay the</p> <p>10 premiums. Do you expect to see a lot of lapses going on</p> <p>11 in the -- on this policy?</p> <p>12 A. I would expect to see people similarly</p> <p>13 positioned as Mr. Blumenthal, where they are faced with</p> <p>14 that very cruel decision --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- of lapsing their policy and incurring many</p> <p>17 thousands of dollars of withdrawal fees, or to continue</p> <p>18 to rely upon the corporate generosity of New York Life</p> <p>19 to credit them higher interest rates than what they did</p> <p>20 Mr. Blumenthal.</p> <p>21 Q. Now, you've been in the insurance industry a</p> <p>22 long time, obviously? You realize insurance companies</p> <p>23 are -- look for long-term relationships with their</p> <p>24 customers, correct?</p> <p>25 A. All -- all insurance companies say they do,</p>	<p style="text-align: right;">200</p> <p>1 pretty expensive little experiment for them.</p> <p>2 Q. Is this a vanishing premium case?</p> <p>3 A. No.</p> <p>4 Q. Are there vanishing premium allegations --</p> <p>5 A. This is a protector case.</p> <p>6 Q. Let me ask you this. Have you read the</p> <p>7 complaint in this case?</p> <p>8 A. I have at some point.</p> <p>9 Q. Are there vanishing premium allegations --</p> <p>10 A. Of course not.</p> <p>11 Q. -- in the case? I'm sorry?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Okay. What about the allegation that the --</p> <p>14 Mr. Blumenthal was told that, if he paid his premium for</p> <p>15 a certain time, eight or nine years in -- I think is how</p> <p>16 the complaint states it, that the premium -- or the --</p> <p>17 that premium obligation would POP, and he wouldn't have</p> <p>18 to pay any more premium?</p> <p>19 A. Well, interesting you should bring that up.</p> <p>20 The POP program creates an environment where an agent,</p> <p>21 who wished to do so, could point to this as a way that</p> <p>22 that magic alchemy of vanishing premiums can happen. I</p> <p>23 have been employed on cases, post vanishing premiums,</p> <p>24 where the next stage were historically self-funded</p> <p>25 instead of using the term "vanishing premium."</p>
<p style="text-align: right;">199</p> <p>1 yes. And actually, I would say New York Life is --</p> <p>2 probably has a pretty good record, better than most in</p> <p>3 that regard.</p> <p>4 Q. So if New York Life has a record better than</p> <p>5 most insurance companies, and they're doing what you</p> <p>6 claim they're doing, you don't have a very high opinion</p> <p>7 of the industry overall, do you?</p> <p>8 A. I don't know that I would necessarily conclude</p> <p>9 that. Insurance companies are as different as the</p> <p>10 people that walk down the street. There are companies</p> <p>11 that are mutual companies, that are stock companies.</p> <p>12 There are companies that specialize in annuities. There</p> <p>13 are companies that specialize in life. There's some</p> <p>14 that have captive agencies forces.</p> <p>15 Q. I understand --</p> <p>16 A. There are some that --</p> <p>17 Q. -- all that, sir.</p> <p>18 A. -- use third parties. Each one is uniquely</p> <p>19 different, and I'm not characterizing New York Life</p> <p>20 as -- as representative of the worst of any of them.</p> <p>21 What I'm saying is it's a long company -- it's a</p> <p>22 long-term company. It's been around a long time. And I</p> <p>23 think they probably do a lot of things right. But as we</p> <p>24 know from the experience of New York Life, they don't</p> <p>25 always do things right. Vanishing premiums were a</p>	<p style="text-align: right;">201</p> <p>1 Q. Sir -- let -- I want --</p> <p>2 A. Yeah.</p> <p>3 Q. I wasn't clear in my question. Are you</p> <p>4 familiar with the POP allegation in the complaint?</p> <p>5 A. Yes.</p> <p>6 Q. Was Mr. Blumenthal told that? Was he told</p> <p>7 that if -- if he paid his premiums for a certain period</p> <p>8 of time, and the complaint alleges eight or nine years,</p> <p>9 that his premium would POP? Was he told that by</p> <p>10 Mr. Marlin?</p> <p>11 A. I don't know.</p> <p>12 Q. Did you ever ask him?</p> <p>13 A. No.</p> <p>14 Q. Are you offering any opinions on that, on the</p> <p>15 POP issue?</p> <p>16 A. No, except that the POP program creates a</p> <p>17 palette on which an unscrupulous agent could paint.</p> <p>18 Q. Is there any direct relationship between</p> <p>19 NYLIAC's profitability in a particular year and the</p> <p>20 interest rates to be credited? I'm not asking should</p> <p>21 there be. I'm saying is there.</p> <p>22 A. Oh, did they make any promise that if we make</p> <p>23 a lot of money, we're going to credit higher rates? No.</p> <p>24 They make no public promise.</p> <p>25 Q. Do you know if there's any relationship</p>

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1 between NYLIAC's profitability in Year 1 and the
2 interest rates to be credited --
3 A. Well, what I'm saying is you can't hang crepe
4 on one hand and say the industry and NYLIAC had -- it's
5 just struggling, difficult. That's the reason why
6 interest rates were credited low. And then have banner
7 years with champagne corks popping and confetti being
8 thrown. There is a disconnect there. NYLIAC is highly
9 profitable. It's become more and more so in the period
10 in which Mr. Blumenthal's policy was owned. That
11 profitability is the product of many Mr. Blumenthals, as
12 well as a lot of other people.
13 Q. Are you saying there should be a direct
14 relationship between NYLIAC's profitability and the --
15 A. You say "direct." We can quibble about that
16 word. These are not indexed products.
17 Q. All right. Are you saying there should --
18 there is a -- should be a relationship -- leaving out
19 the word direct, should there be a connection between
20 the profits of NYLIAC and --
21 A. There should be a reasonable relationship. I
22 wouldn't say that every time interest rates quiver, that
23 rates ought to be taken up. I think insurance companies
24 have clearly both the discretion and probably the
25 responsibility to not move too quick, too fast.

1 Q. But it --
2 A. And when you ask me should rates reflect what
3 the company is experiencing, the answer is yes.
4 Q. Are you familiar with the concept of spread?
5 A. Yes.
6 Q. All right. What -- what is your understanding
7 of spread?
8 A. Well, I thought I had an understanding of it
9 till I read your expert's report --
10 Q. Okay. Well --
11 A. -- but it kind of blew it up.
12 Q. Okay. Are you being frivolous, or are you --
13 A. No. I -- I tried to put that point and a half
14 to two point spread he discussed against the -- and
15 compare it to the industry yields and the New York Life
16 yields that he quoted as supporting sort of the bad
17 investment performance or lackadaisical --
18 Q. Uh-huh.
19 A. -- investment performance of New York Life,
20 and quite frankly, I could see no connection at all.
21 Q. Do you know how New York Life calculates the
22 spread it pays that exist on these policies?
23 A. The answer is no.
24 Q. Does that matter to you in rendering your
25 opinion? Are you going to render this opinion

1 regardless of whether you have all the facts or not?
2 A. Of what pricing spread that they don't make
3 available to me to know about? Yeah.
4 You're right. That doesn't matter to me.
5 If y'all want to make it known to me and give me
6 historical credited rate information about new protector
7 policies that were purchased each and every year, and
8 what their credited rates and when, that could be very
9 revealing, and to see if they were all consistent on the
10 same spread theory. It would be very helpful.
11 Q. You say you found the annual policy summaries
12 to be easier to read than the illustration or -- is that
13 correct? Is that a fair -- I don't mean to put words in
14 your mouth, sir. I'm just --
15 A. Oh, I thought so.
16 Q. Do you think the annual policy summaries
17 explain the -- clearly the implications of -- well, can
18 you pull one out? Let me see if we can find one.
19 A. Here, if you'll allow me to dig -- dig in
20 here, I can access it very easily. There's a file that
21 has them all in it.
22 Q. Tell me what year you're looking at, when you
23 find it.
24 A. Okay. Sure.
25 Q. Tell you what. Do you have the 2006?

1 A. Oh, I'm sure it's in there.
2 Q. I have one here.
3 A. There it is. Okay.
4 Q. This is the annual policy summary that tipped
5 off Mr. Blumenthal as to his concerns he had with his
6 policy, correct? June --
7 A. I think what I --
8 Q. -- 12, 2006?
9 A. -- indicated was that it --
10 Q. Led him to --
11 A. -- pricked -- pricked --
12 Q. -- pick up further --
13 A. -- that bubble of concern.
14 Q. Fair -- fair enough. That's a -- that's a
15 fair statement.
16 A. Okay. I'm looking at it.
17 Q. Okay. You -- you mentioned, I think,
18 Footnote 2 in a report you may have done, and maybe you
19 were looking at the last page, Blumenthal 52.
20 A. I think that's probably right.
21 (Discussion off the record.)
22 Q. (BY MR. STANO) Do you have it in front of
23 you, sir?
24 A. Yes, sir, I do.
25 Q. And I believe it's Blumenthal 52, the lower

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206	<p>1 right-hand corner?</p> <p>2 A. It doesn't have a -- it's not Bates stamped.</p> <p>3 Q. Okay.</p> <p>4 A. But I am looking at Page 5 of 5 from the</p> <p>5 product summary dated June 12, 2006.</p> <p>6 Q. Is it marked up? Do you mind looking at mine?</p> <p>7 I would like you to be referring to Blumenthal 52. I'm</p> <p>8 sure it's the same, but I just want to make sure the</p> <p>9 record is clear. Do you see any differences? And feel</p> <p>10 free to compare them. I don't think there are, but I</p> <p>11 just want to make sure we have an accurate record.</p> <p>12 A. It appears to be the same.</p> <p>13 Q. Okay. And I think you refer to Footnote 2,</p> <p>14 but I'm not trying to limit you to any of these</p> <p>15 footnotes. But do these -- we're referring to them as</p> <p>16 footnotes. Do the Footnotes 1 through 4 on Page</p> <p>17 Blumenthal 52, do they not clearly inform the</p> <p>18 policyholder as to the implications of -- as stated</p> <p>19 within each footnote in a fairly direct and succinct</p> <p>20 way?</p> <p>21 A. It -- I think it works in the right direction.</p> <p>22 Now, the idea is that you some footnotes where, because</p> <p>23 of the nature of the assumptions, the date given doesn't</p> <p>24 change or changes at a -- at a different rate than in</p> <p>25 other footnotes. What I did in my opinion was say that,</p>	208	<p>1 that, says, Well, there's a dynamic in the change of</p> <p>2 this lapse date when I continue paying premiums. The</p> <p>3 lapse date under Footnote 2, which is the one applicable</p> <p>4 to keep paying, says that even if they take it down, it</p> <p>5 keeps getting further and further out. There's never an</p> <p>6 indication that there will be a point where it starts</p> <p>7 retreating on itself and you're faced with immediate</p> <p>8 lapse. Now, that's just me.</p> <p>9 Q. But these illustrate -- these annual policy</p> <p>10 summaries certainly do not promise that, if you pay your</p> <p>11 annual premiums or your plan premiums, that you'll have</p> <p>12 coverage for life. Nowhere do they say that, do they?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Thank you.</p> <p>15 A. Are you through with these summaries for the</p> <p>16 moment?</p> <p>17 Q. Yes, sir. And thank you.</p> <p>18 You say New York Life was negligent in the</p> <p>19 design of the policy. And this is on Page 5 of your</p> <p>20 report, first page.</p> <p>21 A. Right.</p> <p>22 Q. Any other reasons that it was negligent that</p> <p>23 you haven't already testified to today?</p> <p>24 A. The only thing that comes to mind, since I</p> <p>25 wrote that statement, is the negligence occurs either in</p>
207	<p>1 as a reasonable policyholder, who fully intended to make</p> <p>2 all future premium payments --</p> <p>3 Q. Uh-huh.</p> <p>4 A. -- Footnote 2 seemed the most applicable to</p> <p>5 the circumstances of that policyholder. And that in</p> <p>6 prior years, as you continued making premium payments,</p> <p>7 the date -- quote, the lapse state that is identified --</p> <p>8 kept moving further -- kept being pushed further and</p> <p>9 further out.</p> <p>10 Q. All right.</p> <p>11 A. Now, it looks to me like that date keeps</p> <p>12 getting shorter and shorter, you know, as more annual</p> <p>13 summaries were received.</p> <p>14 Q. In other words, as the --</p> <p>15 A. And it looked like Mr. Blumenthal had an</p> <p>16 accumulation of information at that time of owning a</p> <p>17 protector for this many years, making his premium</p> <p>18 payments, getting annual summaries, and that an</p> <p>19 identification of 2011, as being a push-out from 2010 in</p> <p>20 the prior year, represented some concern to him. In the</p> <p>21 early years it was at least two years, if I -- if I</p> <p>22 recall correctly.</p> <p>23 Q. Okay.</p> <p>24 A. And what I said in my report, which I feel</p> <p>25 today, is that a reasonable policyholder, looking at</p>	209	<p>1 the design or in making a design that New York Life</p> <p>2 intended to be a much smaller universe of potential</p> <p>3 customers than what it was actually -- than were</p> <p>4 actually solicited, and somehow, not directing their</p> <p>5 agents in their training to focus on that narrower</p> <p>6 universe of people who wanted and were willing to cope</p> <p>7 with the minimum premium, maximum death benefit design,</p> <p>8 which is designed to lapse between the 13th and</p> <p>9 17th year unless future payments are made.</p> <p>10 Q. Is there any information, in any of the</p> <p>11 documents that you reviewed, that support that</p> <p>12 contention?</p> <p>13 A. Would you mind repeating that question?</p> <p>14 Q. The concern you just stated, that you said</p> <p>15 you'd had -- that came to you after you wrote your</p> <p>16 report, is it based on any information in the NYLIAC</p> <p>17 documents that you reviewed as part of your case?</p> <p>18 A. No. It was just a reflection on my part that</p> <p>19 NYLIAC could properly have designed a very narrow</p> <p>20 product for a very narrow segment of the community --</p> <p>21 Q. Uh-huh.</p> <p>22 A. -- and trained their agents to sell it to only</p> <p>23 those people. And I believe Mr. Blumenthal was -- his</p> <p>24 facts and circumstances were not appropriate for that.</p> <p>25 His intention was to buy a product that he could pay a</p>

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210	<p>1 predictable premium on for the rest of his life, I 2 believe his testimony would be. And so it was either 3 negligently designed by New York Life for a 4 Mr. Blumenthal, or New York Life intended properly for 5 it to be given to a narrower universe of prospects, 6 whose circumstances were more appropriate for that 7 product, but their agents didn't follow through on it. 8 Q. And these are assumptions on your part, 9 correct? 10 A. They are. 11 Q. Couldn't you just as equally well assume that 12 New York Life had the best of intentions, and that 13 market rates went down in a way that no one foresaw? I 14 mean, that would be an assumption on your part, if you 15 were to assume that, correct? 16 A. It would be contrary to the facts as I know 17 them. Interest rates just didn't go down -- 18 Q. Well, over a period -- 19 A. -- continuously. 20 Q. Over a period of years they went down, did 21 they not? 22 A. Well, we have my chart. We can look at mine, 23 or we can look at yours. Now, I've shown you mine, but 24 you haven't shown me yours. 25 Q. You're talking about interest rates for assets</p>	212	<p>1 A. Well, if there is, I neither know it nor can't 2 quite imagine it, based upon their operating results. 3 Q. Well, you're not familiar with New York Life's 4 operating results, are you? 5 A. Well, I am kind of familiar. 6 Q. You're kind of familiar? 7 A. Well, I've read -- I've read their news 8 releases -- 9 Q. Okay. 10 A. -- which come out every March and April -- 11 Q. Uh-huh. 12 A. -- for the five years ending in 2008, when 13 Mr. Blumenthal -- and they're in here. I have charted 14 in my legal pad notes, which you have and are able to 15 see, the net operating earnings for New York Life each 16 and every year of those five years, of the increase in 17 surplus each and every year of those five years, and the 18 NYLIAC operating revenues for each and every one of 19 those five years. Pretty good years. Pretty good 20 years. 21 Q. That's overall for their portfolio, correct? 22 A. Yes. In the narrative of New York Life 23 management -- like I say, popping champagne corks and 24 throwing confetti, setting new records. 25 Q. Uh-huh.</p>
211	<p>1 other than what's in New York Life's portfolio, correct? 2 A. I'm talking about for assets that are 3 representative of a very large contributing segment of 4 New York Life's portfolio. 5 Q. I thought you told me you didn't know the 6 length of the bonds in New York Life's portfolio. You 7 said it was all over the place -- 8 A. Well, what I have said is I've used seasoned 9 portfolios. That means some short durations, some 10 longer durations; some short maturities, some longer 11 maturities; some that are intended to be sold before 12 maturity, some that are intended to be held to 13 maturity -- exactly what you've described as the 14 New York Life's portfolio. This isn't just a snapshot 15 of what you can buy at that moment. This is of a 16 seasoned portfolio. 17 Q. And so you've reached conclusion that New York 18 Life acted improperly, just based on returns on some 19 portfolios in your exhibit? 20 A. It's certainly rebuttable, but that's the way 21 I see it. 22 Q. Okay. When you say "it's rebuttable," you're 23 saying there could be a good reason out there for why 24 New York Life credited the rates it did, and you just 25 don't know. Is that what you're saying?</p>	213	<p>1 A. I mean, they're really happy. They're really 2 happy. 3 Q. Do you know what percentage of the return that 4 showed in these press releases, and in other statements 5 that you mentioned, are from New York Life's -- NYLIAC's 6 overall operations versus its return on investments? 7 A. There is a separate segregated paragraph with 8 respect to the domestic life and annuity business, which 9 I believe is the -- a way they refer to NYLIAC. So I 10 can't quote it to you, but I -- it's there. We can both 11 look at it. 12 Q. It's in your -- it's in Exhibit 4? 13 A. Yes. I intended -- 14 Q. I'm sorry, Exhibit 3? 15 A. Yes. I intended to download each of those 16 press releases in its entirety, and you'll see that they 17 follow sort of a similar pattern each and every year. 18 They refer to the overall corporate results, they refer 19 to NYLIAC, they -- and there's a few general statements. 20 But there -- I tried to pick out, in comparison with the 21 statistics I gave you, three things that they refer to 22 as benchmarks for their success. 23 Q. I asked you this, and I apologize for having 24 to ask you again. I apologize, but I don't remember 25 your answer. Do you know if there are assets dedicated</p>

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214	<p>1 to the NYLIAC protector policy's liabilities? Do you 2 know? It's not do you assume. 3 A. No. 4 Q. Okay. You say in your report on Page 5 5 that -- and you're talking about the accumulator and 6 protector policy -- it's the one, two, three -- fourth 7 bullet point down, that the policy with the lower 8 premiums can be expected to have a commensurately lower 9 cash value. Do you see that? 10 A. Yes, I do. 11 Q. Is that true in all cases? 12 A. It would be an extremely rare case where it 13 wasn't because, remember, I'm talking about with 14 matching features, you know, two policies, matching 15 death benefits, matching premium amounts, age and sex 16 the same, yada, yada, yada. 17 Q. Do you know if the -- 18 A. So -- 19 Q. -- commission structure is the same for the 20 protector and NYLIAC -- protector and accumulator 21 policies? 22 A. Well, I believe it's been represented in your 23 expert's report that it is the same. 24 Q. Do you know if the cost of insurance is the 25 same in both policies?</p>	216	<p>1 of a general account portfolio that they simply regard 2 as a book of business, not separated because of a 3 segregated asset. 4 Q. Tell me what it means to you. I don't want to 5 hear -- know all the possibilities of what it could mean 6 to somebody else. Tell me what it means to you, sir. 7 I'm not deposing those other people. I'm deposing you. 8 A. Sure. I'm -- I'm trying desperately to recall 9 your original question as to -- are you talking about 10 spread -- you're talking about spread in a separate -- 11 Q. No. Spread in relation -- we're talking 12 about -- 13 A. -- a segregated account? 14 Q. -- crediting an account -- crediting of 15 interest rates on universal life policies. What does 16 the term "spread" mean in that -- in that context? 17 A. It would mean there's some gross investment 18 number from which they deduct a spread, which is 19 designed to amortize their cost of putting the policy in 20 place and to profit. And after deducting the spread, 21 that there is an implication that the net number will be 22 the credited rate to that -- to policies in that book of 23 business. 24 Q. You say on your -- in this same page -- this 25 is the third bullet point from the bottom, or the third</p>
215	<p>1 A. I haven't seen the equivalent to the maximum 2 cost of insurance table that's in the Blumenthal policy, 3 but my expectation is that it would be slightly 4 different. Because there is general representations by 5 companies, and including, I believe, New York Life on 6 its website, and its descriptions of the accumulator and 7 protector policy, that the cost of insurance might be 8 lower for a period of time under the protector policy. 9 And that's the only thing I have to go on. 10 Q. I had asked you about what the term "spread" 11 meant in relation to the crediting of interest on a 12 universal life policy. And what -- what is that -- what 13 is your understanding? 14 A. Do you want me to tell you what it means to 15 me? 16 Q. I want -- I want to know your understanding, 17 yes. 18 A. Okay. My understanding is this. My 19 understanding is that investment committees, whether 20 it's New York Life's or any others, is driven by a 21 pricing model and some discipline with respect to 22 analyzing the yields in the portfolio that it believes 23 is supporting that product. 24 Q. Okay. 25 A. Now, keep in mind that it could be a segment</p>	217	<p>1 bubble from the bottom -- "Credited interest comes from 2 the insurer's gain from operations." Do you see that? 3 "On a current basis, credited" -- it's the third bubble 4 from the bottom on Page 5 of your report. "Credited" -- 5 A. Yes, and I -- I know your expert took 6 exception to that. 7 Q. Well, are you speaking -- it says from the 8 insurers. What insurer are you referring to, insurers 9 generally or NYLIAC? 10 A. No. That's a general statement of insurance 11 company application. 12 Q. Okay. Let's talk about NYLIAC. 13 A. Okay. Well -- 14 Q. Do credited interest rates come from NYLIAC's 15 gain from operations? 16 A. I would say, as a general statement, yes, but 17 there -- it's not required to. 18 Q. Sir, I'm asking do you know what -- 19 A. I do not know. 20 Q. Thank you. 21 (Recess 2:19 p.m. to 2:22 p.m.) 22 Q. (BY MR. STANO) Mr. Sanderford, do you know 23 when NYLIAC started selling the protector policy? 24 A. It seems that I have read a reference to that 25 in the pleadings of being perhaps 1998, but I could be</p>

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218	<p>1 wrong about that.</p> <p>2 Q. Fair enough. Did you rely on any actuarial</p> <p>3 data when you prepared your report? You said you didn't</p> <p>4 talk to any actuaries.</p> <p>5 A. No, I did not, except -- oh, let me take that</p> <p>6 back.</p> <p>7 Q. Uh-huh.</p> <p>8 A. I've made a couple of references to data that</p> <p>9 you might regard as actuarial data. I referred to the</p> <p>10 Internal Revenue Service mortality tables when looking</p> <p>11 at the life expectancy issues that I quoted for</p> <p>12 Mr. Blumenthal.</p> <p>13 Q. Okay. Is that information in Exhibit 3?</p> <p>14 A. Unfortunately, not. You know, in that tax</p> <p>15 book, I just turned to the page and looked it up on the</p> <p>16 table.</p> <p>17 Q. Sir, this is another item that you relied on,</p> <p>18 a piece of information that's not in -- in your file.</p> <p>19 That's not the way experts are supposed to report -- are</p> <p>20 supposed to practice. I have a right to see everything</p> <p>21 you relied on in the formation of your opinions. It's</p> <p>22 not up to you, sir, to decide what I need to see. Now,</p> <p>23 I've asked you this three or four times. I'll ask you</p> <p>24 one more time, for the record: Is there anything else</p> <p>25 that you relied on, in forming your opinions, that's not</p>	220	<p>1 A. Not without pulling out the article and making</p> <p>2 reference to it.</p> <p>3 Q. Please do.</p> <p>4 A. Okay.</p> <p>5 MR. STANO: Jennifer, are you keeping a</p> <p>6 list of what's promised to us?</p> <p>7 MS. SHERRILL: Yes, I am, and I will get</p> <p>8 that to you as soon as possible.</p> <p>9 MR. STANO: Thank you. I appreciate you</p> <p>10 doing that.</p> <p>11 A. Okay.</p> <p>12 MR. STANO: And I appreciate all your</p> <p>13 courtesy, Jennifer. Thank you.</p> <p>14 A. The article referred to -- and then I'll take</p> <p>15 a minute to look at it, if you don't mind --</p> <p>16 Q. (BY MR. STANO) No. Please take your time.</p> <p>17 A. -- is -- is this, for observation purposes.</p> <p>18 Q. Is that one of the articles referenced in</p> <p>19 Exhibit D, I believe, of the --</p> <p>20 A. I believe it is.</p> <p>21 You'll notice on Page 262 of this article</p> <p>22 is the, in effect, chart from which that first bubble</p> <p>23 was designated. And the table on Page 263, there are</p> <p>24 two tables from which the statements in the second and</p> <p>25 third bubbles are directed.</p>
219	<p>1 in Exhibit 3 of this deposition?</p> <p>2 A. Not that I recall at this time.</p> <p>3 Q. And I recall that was your earlier answers,</p> <p>4 plural, when I asked that same question.</p> <p>5 A. Well, you should feel relieved that I'm honest</p> <p>6 enough to admit to any issue that comes up, that is</p> <p>7 drawn to my attention, where some piece of data doesn't</p> <p>8 fall within that question.</p> <p>9 Q. Sir, your honesty is not at question at this</p> <p>10 point; it's your thoroughness. Looking at -- at your</p> <p>11 report, Page 5, the second bubble from the bottom, you</p> <p>12 refer to "per 1997 actuarial data." Do you see that?</p> <p>13 A. Where are you looking?</p> <p>14 Q. I'm sorry, Page 5 of your report, the second</p> <p>15 bubble from the bottom, and I'm calling the little</p> <p>16 circles bubbles. I don't know what else to call them.</p> <p>17 I guess it's March Madness time, so I'm thinking</p> <p>18 bubbles. Do you see that? I'll read the sentence. "Of</p> <p>19 these four sources of gains (per 1997 actuarial data)."</p> <p>20 A. Oh. I -- it's in here. That's one of the</p> <p>21 articles that I referred to, noted as such by that</p> <p>22 reference, I believe.</p> <p>23 Q. Okay. And then the last bubble says</p> <p>24 "extrapolated, it can concluded from this data." Can</p> <p>25 you extrapolate that for me, please?</p>	221	<p>1 Q. Uh-huh. Is New York Life Insurance & Annuity</p> <p>2 Corporation specifically mentioned in that article?</p> <p>3 A. It is.</p> <p>4 Q. And this is per 1997 data?</p> <p>5 A. It happens to be, yes.</p> <p>6 Q. And I think you just testified that the</p> <p>7 protector policy did not start being sold until the</p> <p>8 following year.</p> <p>9 A. I said I had -- believe that I read something</p> <p>10 to that effect, but was not positive. Actually, the</p> <p>11 reference to New York Life is found on Page 259, where</p> <p>12 it gives some examples of litigation awards.</p> <p>13 Q. And what does that have to do with what we're</p> <p>14 talking about?</p> <p>15 A. Well, no, you asked me if this mentioned</p> <p>16 New York Life, and I said yes.</p> <p>17 Q. Okay. And you wanted to get in the fact that</p> <p>18 there were some litigation awards against New York Life?</p> <p>19 A. Oh, of course not.</p> <p>20 Q. And you just happened to mention it by</p> <p>21 mistake, I guess. Okay.</p> <p>22 A. No. I was calling your attention to it.</p> <p>23 Q. Well, let's just play that a little bit. Do</p> <p>24 you draw any conclusions from those litigation awards?</p> <p>25 Did that affect your opinion in this case?</p>

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222	<p>1 A. No. The only conclusion I draw, that even a 2 good company can have a problem.</p> <p>3 Q. Okay. Do you know anything about those cases? 4 Were they settlements or jury awards, if you know?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. We're not going to spend time on it. 7 Turning to Page 6 of your report.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Top of the page, you conclude, "From the above 10 points" -- and I assume the above points are the bullet 11 points on Page 5.</p> <p>12 A. That's correct, and earlier, that addressed 13 the concept of minimum premium, maximum death benefit.</p> <p>14 Q. Uh-huh. That it -- you're -- you've concluded 15 that New York Life has intentionally designed a 16 defective product, knowing that it's going to collapse 17 at some point. Is that your conclusion?</p> <p>18 A. Well, they either did it negligently or 19 intentionally.</p> <p>20 Q. Based on all the information in Exhibit 3, 21 huh? Is that true? I mean, that's all you've looked 22 at.</p> <p>23 A. That's all I've looked at.</p> <p>24 Q. Okay. So is it your opinion that eventually 25 all protector policies are going to collapse?</p>	224	<p>1 question I've asked that he answered directly.</p> <p>2 Q. (BY MR. STANO) Oh, okay. Going down to the 3 bullet point in the middle of the page, "Notes on 4 interest rates," what amount of discretion does New York 5 Life have with respect to crediting interest rates?</p> <p>6 A. Full discretion, except they can't lower them 7 below 4 percent in the protector policy.</p> <p>8 Q. So it's your understanding -- or it's your 9 opinion that, subject to the 4 percent minimum, they can 10 lower the rates at any time they want down to 4 percent?</p> <p>11 A. It is not contractually forbidden to do that.</p> <p>12 Q. Okay. Say the rate is 6 percent in January. 13 You're saying they -- since they change rates on a 14 monthly basis, they could lower it to 4 percent the next 15 month and no one could stop them. Is that your opinion?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. Is there any notice or filings that 18 New York Life has -- or NYLIAC has to make, in order to 19 do that?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Do you know that for a fact? Do you know if 22 there are any filings --</p> <p>23 A. No, I do not know that for a fact.</p> <p>24 Q. Okay.</p> <p>25 A. My answer is I don't believe so.</p>
223	<p>1 A. Only those that were treated as New York Life 2 has treated Mr. Blumenthal.</p> <p>3 Q. What do you mean by that? I mean, they were 4 all sold to different people with different ages.</p> <p>5 A. But they are credited rate -- crediting rate 6 histories.</p> <p>7 Q. Are they crediting different rates to 8 different policyholders?</p> <p>9 A. Well --</p> <p>10 Q. If you know.</p> <p>11 A. That's probably subject to future discovery.</p> <p>12 Q. Well, do you know? I'm not asking you is it 13 subject to future discovery. Please, sir, listen to my 14 question. Are they crediting different rates to 15 different policyholders simultaneously?</p> <p>16 A. The only person who would know that is 17 New York Life.</p> <p>18 Q. Does that mean -- having to ask a second 19 question -- that you don't know?</p> <p>20 A. That's correct.</p> <p>21 Q. That's what I asked you. Do you have a fear 22 of saying you don't know the answer to a question?</p> <p>23 A. Not exactly.</p> <p>24 MS. SHERRILL: Object to the question.</p> <p>25 MR. STANO: He answered -- it's the only</p>	225	<p>1 Q. Okay. Do you know if Mr. Blumenthal's policy, 2 or the protector policy, was lapse supported?</p> <p>3 A. As I understand that term, I think not, but 4 don't know.</p> <p>5 Q. How do you understand that term, "lapse 6 supported"?</p> <p>7 A. There's a predetermination of the price of 8 policy, so that some out of the group will survive, 9 based on the economics of those that have lapsed to 10 cause profit to the company.</p> <p>11 Q. Do you know what the lapse rate assumptions 12 were on this product -- on this product?</p> <p>13 A. I do not.</p> <p>14 Q. Do you know what would be an appropriate lapse 15 rate assumption for this product?</p> <p>16 A. No, I don't.</p> <p>17 Q. So if you knew what the lapse rate was, you 18 wouldn't know if that was accurate or appropriate or 19 not, would you? Since you don't know what an 20 appropriate lapse rate assumption would be.</p> <p>21 A. Well, what I'm saying is that New York Life 22 has stated that this is not a lapse-rated policy, and I 23 take them at their word.</p> <p>24 Q. Well, for a company that you claim has 25 deliberately designed effective policies -- designed</p>

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<p style="text-align: right;">226</p> <p>1 defective policies, why would you take them at their 2 word on that, as opposed -- 3 A. I said they were -- 4 Q. -- to some -- 5 A. -- either negligent -- they either did so 6 negligently or intentionally. 7 Q. Okay. Couldn't lapse rate be part of that 8 negligence or intent? 9 A. It could be. If a company designed a policy 10 with an overenthusiastic or optimistic lapse rate, and 11 market -- marketed the policy based on that feeling, and 12 then found out, realistically, that the lapse rate was 13 not at all what it should have been, that could be a 14 form of negligence. 15 Q. But you assumed here that New York Life had 16 the correct lapse rate; you just said that. 17 A. Well, I -- I said I didn't know. 18 Q. I see. 19 A. The phrase you love to hear. 20 Q. At the bottom of Page 6 you say that "NYL" -- 21 I think you mean NYLIAC, and we understand that -- "knew 22 that the protector design was more likely to fail than 23 other policy designs." Do you see that? 24 A. Yes. 25 Q. It's the last sentence on Page 6 of your</p>	<p style="text-align: right;">228</p> <p>1 Q. You're assuming that the protector policy 2 lapse rate is higher than the accumulator policy lapse 3 rate? 4 A. Well, I would assume that. And I could be 5 proven wrong, but I would assume that. 6 Q. As someone who's objective, wouldn't the 7 appropriate answer be to say I don't know, as opposed 8 to, Yes, I'm assuming that this policy is defective? I 9 mean, I'm not hearing a lot of objectivity here, sir. 10 A. That wasn't a question. 11 Q. No, it wasn't. 12 Is it your belief that all universal life 13 policies are defective? 14 A. No. 15 Q. Do you know of other companies' universal life 16 policies that are defective? 17 A. No. 18 Q. Only New York Life's? 19 A. That's the only one I've looked at. 20 Q. Okay. Are there any other reasons -- and I 21 want to make sure I covered everything in this 22 deposition -- that support your conclusion or your 23 opinion that New York Life knew that the protector 24 policy was defective? 25 A. Yes.</p>
<p style="text-align: right;">227</p> <p>1 report. What other policy designs are you talking 2 about? 3 A. The accumulator. 4 Q. And the reason it was most likely to fail is 5 because of what? 6 A. Because that's what happens to minimum 7 premiums, where the attraction to the customer is to pay 8 the lowest amount possible to put a high death benefit 9 into effect. 10 Q. And by fail, what do you mean? 11 A. To lapse or to cause the customer to withdraw, 12 based on failed expectations. 13 Q. The fact that a policy lapses, does that mean 14 it was improperly designed? 15 A. No, not necessarily. 16 Q. What are the reasons why a policy might lapse? 17 A. Well, a required premium payment might not be 18 made. That's the most common reason. The policy was 19 designed to be supported by the payment of a certain 20 level of premium, and the policyholder chose not to do 21 it. 22 Q. Okay. Do you know if any other -- do you know 23 the number of protector policies that lapsed? 24 A. No. I don't know that that information has 25 been forthcoming.</p>	<p style="text-align: right;">229</p> <p>1 Q. Well, what is that? I want to make sure, when 2 this deposition is over, I have every -- 3 A. Sure. 4 Q. I want all your bases. 5 A. Okay. 6 Q. Again, are there any -- go ahead. 7 A. There are a series of moving parts in any 8 universal life policy, some of which are fixed, but can 9 be changed by the client, like premium payment and death 10 benefit. Some are -- can be changed to certain levels 11 by the company, but are not as significant in their 12 effect, like administrative fees and charges. 13 Q. Uh-huh. 14 A. But two of the moving parts of universal life 15 process -- pricing are totally at the discretion of the 16 company to certain minimum levels, and who dramatically 17 affect both the benefits to the customer and the 18 profitability to the company. Those two are credited 19 interest rates and the cost of insurance. It is my 20 position, based upon the opinion that I've written with 21 respect to the credited rates -- 22 Q. Uh-huh. 23 A. -- that they were taken to contractual 24 minimums without a supported -- reasonably supportable 25 basis by New York Life.</p>

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230	<p>1 Q. What would have been a reasonably supportable</p> <p>2 basis to take the credited interest rates to contractual</p> <p>3 minimums?</p> <p>4 A. Well, the interest rates generally would have</p> <p>5 been more like your expert described, being -- not going</p> <p>6 up, that yields were the only thing to factor, in</p> <p>7 determining New York Life's obligations to a customer,</p> <p>8 when actually, interest rates generally were going up</p> <p>9 for significant periods of time, with investment</p> <p>10 decisions never made in the favor of the customer, but</p> <p>11 always made in the favor of New York Life. So I've</p> <p>12 taken that position.</p> <p>13 Q. Well, when you say interest rates going up,</p> <p>14 what are you referring to?</p> <p>15 A. Per my exhibit, interest rates, in a general</p> <p>16 sense, were not continuously going down over the period</p> <p>17 of time that Mr. Blumenthal's credited interest rates</p> <p>18 were taken from 6.15 percent to 4 percent and then left</p> <p>19 there. In fact, there's a period, after he was at</p> <p>20 contractual minimum rate of 4 percent, where the</p> <p>21 composite rate, in my research, was even higher than the</p> <p>22 point where he was being given 5 and a quarter percent.</p> <p>23 Q. When you say "interest rates," you're talking</p> <p>24 about current interest rates being earned in the market?</p> <p>25 A. I'm talking about the interest rates that I've</p>	232	<p>1 that is no.</p> <p>2 Q. Thank you. Go ahead.</p> <p>3 A. The second movable feast for an insurance</p> <p>4 company in terms of determining whether to provide</p> <p>5 benefits at reasonable cost to the owner of the life</p> <p>6 insurance policy, or profits to itself, is what it</p> <p>7 chooses to charge for cost of insurance. Let me give</p> <p>8 you an example. The schedule in the policy has the</p> <p>9 maximum rates it can charge by age.</p> <p>10 Q. I've seen it.</p> <p>11 A. It go -- and it goes up each and every year.</p> <p>12 Q. Right.</p> <p>13 A. Its current charge with Blumenthal, and I</p> <p>14 would imagine like all other purchasers, was much lower</p> <p>15 than that. In fact, at the first year of issue the</p> <p>16 current charge was about 42 percent of what it could</p> <p>17 have charged, according to the schedule. Now, this</p> <p>18 current rate could go up, just like the maximum rate in</p> <p>19 the schedule could go up, and you would expect, if it</p> <p>20 went up at the same rate, you would be charging</p> <p>21 42 percent of the maximum you could. But what I see is</p> <p>22 a trend, that New York Life begins scheduling their</p> <p>23 current rate of charges at an ever-higher percentage of</p> <p>24 what they could charge.</p> <p>25 Q. Within the maximum rate permitted --</p>
231	<p>1 extracted.</p> <p>2 Q. Right. For the time periods --</p> <p>3 A. From --</p> <p>4 Q. -- listed in Exhibit 8?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. But we've talked about how the fact</p> <p>7 that --</p> <p>8 A. Of seasoned portfolios.</p> <p>9 Q. Right.</p> <p>10 A. In effect, these are not interest rates,</p> <p>11 market driven, that's what you can buy today.</p> <p>12 Q. Uh-huh.</p> <p>13 A. I understand fully what you've talked about in</p> <p>14 terms of having earlier purchased bonds, that what they</p> <p>15 can be sold at today and their yield to maturity is</p> <p>16 quite different than a bond you might buy today.</p> <p>17 Q. Now -- but again, your whole assumption is</p> <p>18 based on the investment portfolio of NYLIAC, as opposed</p> <p>19 to assets that may be backing these liabilities,</p> <p>20 correct? You're -- you can only -- you haven't looked</p> <p>21 at any particular assets backing the NYLIAC protector</p> <p>22 policies, have you?</p> <p>23 A. I am --</p> <p>24 Q. Have you?</p> <p>25 A. -- talking about applying -- the answer to</p>	233	<p>1 A. Within the maximum rate --</p> <p>2 Q. -- by the policy, correct?</p> <p>3 A. -- permitted by the policy.</p> <p>4 Q. Is it --</p> <p>5 A. Now, by --</p> <p>6 Q. -- your opinion was that --</p> <p>7 A. -- the time the policy was -- was lapsed, they</p> <p>8 were up to 53 percent.</p> <p>9 Q. Was that a breach of any contractual --</p> <p>10 A. Absolutely not.</p> <p>11 Q. -- provision? Thank you.</p> <p>12 A. Absolutely not.</p> <p>13 Q. Did New York Life breach any of the</p> <p>14 contractual provisions --</p> <p>15 A. I haven't quite completed my answer --</p> <p>16 Q. Okay.</p> <p>17 A. -- if that's okay.</p> <p>18 Q. No, absolutely. I apologize. Go ahead.</p> <p>19 A. What you can do, in terms of projecting that</p> <p>20 present condition at that time to what they might do in</p> <p>21 the future, is look at the illustration for</p> <p>22 November 2006 under the right-hand columns, and it shows</p> <p>23 how the cash surrender value for the next two years gets</p> <p>24 increasingly smaller and then starts becoming less and</p> <p>25 less as the policy lapses.</p>

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234	<p>1 Now, here's what I take from that. The 2 death benefit remains the same. The premium payments 3 remain the same. You're at the contractual guaranteed 4 rate of 4 percent. The administrative fees couldn't 5 change enough to make a hill of difference. The only 6 thing capable of producing that dramatic fall-off of 7 cash surrender value and lapsing is changes in the cost 8 of insurance.</p> <p>9 Q. And did those -- and you're saying those 10 changes occurred?</p> <p>11 A. I'm -- I'm saying the policy was lapsed prior 12 to reaching the point where the policy loan was taken 13 out, so there was inadequate cash surrender values for 14 that reason. But if the policy had been -- had stayed 15 in place, what we would have seen is a cost of insurance 16 change each and every year. And my hypothesis, which 17 you -- you may choose to ignore, is that the current 18 cost of insurance charges, as illustrated in the 19 November 2006 illustration, were planned by New York 20 Life to become an ever increasingly higher percentage of 21 the maximum allowable charges.</p> <p>22 Now, they're not prevented by contract 23 from doing that, and I'm sure that's your next question. 24 The idea is at what point do these increases represent, 25 in conjunction with lowering the crediting rates down,</p>	236	<p>1 project future rate increases?</p> <p>2 A. No. They imply it.</p> <p>3 Q. Have you reviewed Mr. Blumenthal's insurance 4 policy?</p> <p>5 A. I've seen a copy of it. You're talking about 6 the New York Life policy?</p> <p>7 Q. Yes, sir.</p> <p>8 A. Protector policy?</p> <p>9 Q. Yes, sir.</p> <p>10 A. Yes, sir.</p> <p>11 Q. You have reviewed it?</p> <p>12 A. I have.</p> <p>13 Q. All right. And you've read it?</p> <p>14 A. Yeah, I -- yes, I've read it.</p> <p>15 Q. Okay. Did NYLIAC breach any of its 16 provisions?</p> <p>17 A. Well, let me think. None that I am aware of.</p> <p>18 Q. Thank you. On Page 9 of your report, sir --</p> <p>19 A. Yes, sir.</p> <p>20 Q. -- you have four bullet points, the bubbles, 21 for lack of a better expression, under the first bullet 22 point. Do those four bubbles under the first bullet 23 point, do they represent what -- in your opinion, what 24 would have been an adequate disclosure to make a full 25 and fair communication to Mr. Blumenthal?</p>
235	<p>1 and I say inappropriately during the period of time of 2 nine years, to the contractual minimum, and jacking the 3 cost of insurance up, at what point does that become a 4 behavior, intentional or negligent, that is designed to 5 profit the company at the inappropriate expense of a 6 customer who thought that their policy would stay in 7 place, at the time it was purchased, for its annual 8 premium quoted. That's the nub of it.</p> <p>9 Q. Is it -- did I understand you to say, at least 10 in part, that if the policy had stayed in effect, 11 New York Life would have raised Mr. Blumenthal's cost of 12 insurance rates?</p> <p>13 A. Current cost of insurance rates.</p> <p>14 Q. They would have raised the rates?</p> <p>15 A. Yes. You can predict that by the projections 16 in the illustration.</p> <p>17 Q. Do the projections in the illustration, do 18 they predict future rate increases?</p> <p>19 A. I haven't made those calculations yet, but 20 I --</p> <p>21 Q. I didn't ask you if you'd made calculations. 22 I said --</p> <p>23 A. Oh, pardon me.</p> <p>24 Q. -- does the projections -- do the projections 25 or do the cost of insurance rates in the illustration</p>	237	<p>1 A. Not those words in quotes, but words in a 2 disclosure document to that effect, yes.</p> <p>3 Q. So if the first disclosure is that they would 4 have to -- that New York -- that New York Life would -- 5 or NYLIAC -- and I'm looking at the first bubble and I'm 6 paraphrasing it, and I don't mean to twist your 7 wording -- that NYLIAC would -- regardless of its 8 financial condition, regardless of its financial returns 9 or track record, NYLIAC might decrease credited interest 10 rates?</p> <p>11 A. Yes. I think the word -- phrase I used is 12 "would likely." And I think a disclosure to that effect 13 designed to gain the understanding of the insured, would 14 be appropriate.</p> <p>15 Q. Well, how would NYLIAC know what would happen 16 to its interest rates to be credited in the future? 17 Wouldn't it --</p> <p>18 A. No. It would be a hypothetical disclosure, 19 that if our interest rates that we pay to you might 20 decrease, even in the face of our increasing yields and 21 profitability.</p> <p>22 Q. Well, doesn't the illustration say that 23 interest rates aren't guaranteed, they could change?</p> <p>24 A. I know. What's the expectation of the buyer 25 when they're sold a protector policy?</p>

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<p style="text-align: right;">238</p> <p>1 Q. Well, sir, if -- using your language, you're 2 going to -- you're going to -- I mean, if we had had 3 language that you had -- that you had indicated should 4 be in there, would you not give the same answer, that 5 even though, yes, it says we will decrease interest 6 rates, but the agent would say, Oh -- whisper in the ear 7 of the applicant, That's just -- 8 A. No. When you say -- 9 Q. -- something we have to say? 10 A. -- Yes, you will, that's a lot different than 11 what you say. 12 Q. Well, wouldn't the agent just whisper in the 13 ear of the applicant and say, Don't worry about that, 14 that's just something we have to say? 15 A. An agent could always do something perhaps. 16 Q. And wouldn't we be right back here with you 17 insisting on additional language? 18 A. I -- 19 Q. Why would that magic word somehow dispel the 20 influence of the agent over the applicant, that you 21 claim exists, as opposed to the current disclosure that 22 says, Interest rates are not guaranteed? Are we not -- 23 A. Well, I -- 24 Q. -- splitting hairs here? 25 A. I don't think so.</p>	<p style="text-align: right;">240</p> <p>1 Q. -- which I heartily disagree with, by the way. 2 The second bubble, it says, "Lower 3 credited" -- "Lower credited interest rate would 4 accelerate the policy's lapse." You don't think 5 Mr. Blumenthal understood that? 6 A. You have to, in effect, combine that with 7 No. 1, that it is likely that, regardless of the 8 interest rate trends, that New York Life is going to 9 lower you to the contractual minimum. The second 10 knowledgeable disclosure is that, when you receive lower 11 interest rates, your policy is more likely to lapse and 12 will lapse sooner. 13 Q. You're saying in the first bubble that NYLIAC 14 should have disclosed that interest rates would likely 15 decrease, using your words, rendering the cash values 16 inadequate to support the policy for more than an 17 average life expectancy at issue by 13 to 17 years. 18 Didn't NYLIAC go further with -- than that in its 19 illustration of the July 1999? And it showed that the 20 policy would not last more than six or seven years, if I 21 recall. So isn't that even a more enhanced disclosure 22 that what you're suggesting? 23 A. I don't believe so. 24 Q. Why am I not surprised? If you wanted to put 25 the policy owner on notice that his policy may lapse,</p>
<p style="text-align: right;">239</p> <p>1 Q. Well, you're saying -- you seem to say that no 2 matter what's in the illustration, the agent is going to 3 impact and affect the outcome and control it, no matter 4 what the disclosure says. 5 A. I didn't say that. 6 Q. What -- 7 A. I said if you use an illustration that's 8 inherently too complex and inherently capable of being 9 misunderstood, it is easily used by an agent. 10 Q. Well, what -- 11 A. Now, what I'm not -- what I didn't say is that 12 if you make a disclosure that I recommend, every agent 13 will still be affected in exactly the same way. I don't 14 say that at all. 15 Q. You -- using your analysis and rationale, 16 having this disclosure that NYLIAC would likely decrease 17 the credited rates, is as unbelievable, using your 18 analogy, as saying that the premium, in order to 19 guarantee the policy, would be \$200,000 a year. 20 Wouldn't you not come back and say, Oh, that's just 21 something they tell us to put in the disclosure form, 22 ignore it? I mean, you -- I don't see any difference in 23 your -- in what you're suggesting here, sir, based on 24 your own rationale -- 25 A. Well, the --</p>	<p style="text-align: right;">241</p> <p>1 and it may not cover his life expectancy, and 2 Mr. Blumenthal's life expectancy, according to your 3 testimony, is about 13.8 years, would not telling the 4 applicant at the time of policy delivery that the 5 illustration -- that the policy may not lapse more than 6 even half that -- 7 A. Well, I think I -- 8 Q. -- may not last for half that? 9 A. I think I answered your question in my report. 10 Q. Okay. 11 A. Some disclosures that you make are hidden in 12 plain sight. 13 Q. I don't know what you mean by that, but please 14 tell me. 15 A. Well, I said it in my report. 16 Q. Something about the bedcovers and the -- 17 A. Uh-huh. 18 Q. -- quilt and the -- 19 A. You bet. 20 Q. Okay. Okay. Well, we'll -- we'll let the 21 judge sort that one out, if it gets that far. 22 The third bubble, that it would require an 23 unknown but sizable amount of additional premiums to 24 keep the policy in force until death or maturity. That 25 was the third disclosure that you're saying should be --</p>

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<p style="text-align: right;">242</p> <p>1 A. That's correct.</p> <p>2 Q. Did they -- did the illustration of July 1999</p> <p>3 not say that, to guarantee the policy, you would need a</p> <p>4 premium of \$200,000 a year? Is that not an additional</p> <p>5 premium to keep the policy in force? Is that not the</p> <p>6 very disclosure you're looking for?</p> <p>7 A. No, it's not.</p> <p>8 Q. I would have been shocked if you would have</p> <p>9 agreed with me. And the reason is?</p> <p>10 A. That's a question?</p> <p>11 Q. Yeah. The reason -- the reason --</p> <p>12 A. The reason is -- is that there is a premium</p> <p>13 payment process that he undertakes, \$4,400 and something</p> <p>14 a month. This will go on for an indefinite period of</p> <p>15 time. What we want this customer, or any customer, in</p> <p>16 my mind, to know, is that doing what was bargained at</p> <p>17 the time of sale is buying you a policy not much better,</p> <p>18 perhaps much worse, than a 15-year level premium term.</p> <p>19 Q. I'm looking at the third bubble.</p> <p>20 A. Okay.</p> <p>21 Q. You're saying the disclosure should be that an</p> <p>22 additional -- there should be a disclosure that there is</p> <p>23 an additional -- additional and sizable amount of</p> <p>24 premium needed to keep the policy in force.</p> <p>25 A. Well, I would be excited to hear any defense</p>	<p style="text-align: right;">244</p> <p>1 Q. Because they use a specific amount, as opposed</p> <p>2 to saying "sizeable" --</p> <p>3 A. No, because they used an amount that, when</p> <p>4 total it up, adds up to \$6,600,000.</p> <p>5 Q. Now, if they had said, "In order to guarantee</p> <p>6 that your policy would stay in force an unknown but</p> <p>7 sizable amount of additional premium is -- would be --</p> <p>8 may be necessary," would that have satisfied you, sir?</p> <p>9 A. See, keep in mind that all of these bubbles</p> <p>10 are additive. They're not one at a time. You can do</p> <p>11 one that makes everything okay.</p> <p>12 Q. But with regard to that bubble, would that</p> <p>13 have satisfied your disclosure requirements?</p> <p>14 A. Would you please say it --</p> <p>15 Q. Sure. Sure. I'll -- I'm paraphrasing what</p> <p>16 you said, just to --</p> <p>17 A. Okay.</p> <p>18 Q. -- show that -- just to be clear with you. If</p> <p>19 the -- if the disclosure had said, "In order to</p> <p>20 guarantee that your policy will stay in force, an</p> <p>21 unknown but sizable amount of additional premium may be</p> <p>22 necessary or will be necessary to keep the policy in</p> <p>23 force."</p> <p>24 A. That would be an eminently better disclosure</p> <p>25 than the reference to \$200,000 a year.</p>
<p style="text-align: right;">243</p> <p>1 of that \$200,000 annual premium, as to how that</p> <p>2 calculation was made.</p> <p>3 Q. Sir, that's -- well, that's not --</p> <p>4 A. But I --</p> <p>5 Q. -- what we're talking about. We're not</p> <p>6 talking about the adequacy of the premium. We're</p> <p>7 talking about disclosures here. You're saying --</p> <p>8 A. Yes, we are.</p> <p>9 Q. -- in the third bubble that, to have an</p> <p>10 adequate disclosure, NYLIAC should have disclosed that</p> <p>11 an unknown or -- but sizable amount of additional</p> <p>12 premium is necessary to keep the policy in force.</p> <p>13 NYLIAC disclosed that, in order to guarantee the policy</p> <p>14 would be in force, a sizable annual premium would be</p> <p>15 needed, \$200,000. But you --</p> <p>16 A. Well, I think --</p> <p>17 Q. -- but you're saying --</p> <p>18 A. I -- I --</p> <p>19 Q. -- that that is not the disclosure you're</p> <p>20 looking for.</p> <p>21 A. Oh, I think you've got me there. That is</p> <p>22 exactly a type of disclosure directed at that subject.</p> <p>23 It's not the kind of disclosure that would result in any</p> <p>24 meaningful purchase information being disclosed to the</p> <p>25 buyer. Now, you can --</p>	<p style="text-align: right;">245</p> <p>1 Q. In your opinion?</p> <p>2 A. In my opinion.</p> <p>3 Q. Okay. The fourth bubble, where did you get</p> <p>4 the data about term policies --</p> <p>5 A. Well --</p> <p>6 Q. -- being 30 percent of the cost of the riskier</p> <p>7 and costlier protector?</p> <p>8 A. Well, generically, the same sources that your</p> <p>9 expert identified. May I --</p> <p>10 Q. Absolutely. It's in Exhibit 3?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Okay. I'm just asking you where it is. I'm</p> <p>13 not asking you any questions about it. Sir, the</p> <p>14 information is in Exhibit 3; is that correct?</p> <p>15 A. Yes, sir, it is.</p> <p>16 Q. Okay.</p> <p>17 A. May I admit to a mistake while we're here?</p> <p>18 Q. Absolutely.</p> <p>19 A. Okay. I made an input error on my</p> <p>20 calculation, and I misstated the amount as 40 percent.</p> <p>21 Q. Uh-huh.</p> <p>22 A. The actual quote that I got would have been</p> <p>23 44 percent, and I think that's an inappropriate margin</p> <p>24 of error, and so I want to correct that statement.</p> <p>25 Q. Thank you very much. Now, what happens after</p>

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<p style="text-align: right;">246</p> <p>1 the 15-year level term premium is -- after -- say, a 2 15-year level term premium policy is purchased. What 3 happens in Year 16 to the -- to the level term coverage? 4 A. 16, you're on to the next stage of your life, 5 whatever you had planned to do after your -- 6 Q. I'm not -- 7 A. -- 15 years' worth of insurance that you 8 purchased for a bargained lower fee has -- that bargain 9 has been made and met. 10 Q. The term policy expires, correct? 11 A. Yes. 12 Q. Unless renewed in some fashion -- 13 A. Correct. 14 Q. -- at a much, much higher premium rate, 15 correct? 16 A. That would always happen. 17 Q. So whether a term policy would be appropriate 18 for a particular plaintiff -- or a particular 19 individual, it would depend on whether he lived or died 20 during the 15-year term, correct? I mean, if he -- if 21 he lived and didn't die during the 15 years term -- 22 A. No. Actually -- 23 Q. -- he had the -- 24 A. -- that's not the comparison or statement I 25 would make. The comparison or statement I would make is</p>	<p style="text-align: right;">248</p> <p>1 A. Not every person who bought a protector is 2 necessarily better off with any term life policy. 3 Q. Okay. Thank you. Do you know if the Oklahoma 4 illustration regulation requires that an illustration be 5 presented to the applicant or the policyholder at the 6 time of policy delivery? 7 A. I don't believe it does, but I think, when you 8 file a policy, you have to indicate whether it will be 9 sold with an illustration or not, if it comports with 10 the NAIC model regulation. 11 Q. Under Oklahoma law, do you know? 12 A. No. 13 Q. On Page 11 you talk about the free look 14 provision, the first -- the first bubble. Do you -- do 15 you view the free look provision as a consumer benefit? 16 A. That's its intention, yes. 17 Q. Sir, I did not ask you the intention. I said 18 do you. 19 A. I do. 20 Q. Okay. Thank you. When you say this was not 21 the legislative intent of the free look provision, what 22 legislature are you referring to? 23 A. The State of Texas. 24 Q. Okay. Does -- does Texas law apply in this 25 case?</p>
<p style="text-align: right;">247</p> <p>1 that buying 15 years' worth of term coverage for 2 44 percent of the premium of protector, for example, and 3 having it only 15 years and having nothing thereafter, 4 is probably better than paying hundreds of thousands of 5 dollars more for a universal life product and having it 6 lapse in Year 17, two years later. 7 Q. That would depend on each individual's 8 circumstances, wouldn't it? 9 A. There would be differences in some respects. 10 Q. I'm asking -- 11 A. But the expectation for a male, a female are 12 driven by ages and genders, and how they push out the 13 numbers. But I can make the case easily, I believe, 14 that the term policy is seriously better than the 15 protector that was actually sold. 16 Q. Would that -- wouldn't that depend on each 17 individual's situation, for various reasons, financial, 18 otherwise, family commitments? Some people may want 19 the -- 20 A. As to the choice of term or universal life -- 21 Q. Yes. 22 A. -- there are numerous individual issues that 23 would come into play. 24 Q. So it would depend on the individual's 25 situation?</p>	<p style="text-align: right;">249</p> <p>1 A. I don't believe it does. 2 Q. Do you consider yourself an expert on Oklahoma 3 legal requirements? 4 A. No, I don't. 5 Q. Do you consider yourself an expert on the 6 Oklahoma regular -- insurance regulatory requirements? 7 A. No, I don't. 8 Q. Are you offering any legal opinions on 9 Oklahoma law? 10 A. No, I am not. 11 Q. Are you saying that NYLIAC breached any -- 12 (Discussion off the record.) 13 Q. (BY MR. STANO) Are you saying that NYLIAC 14 breached any duty under Oklahoma law, any duty to the -- 15 to Mr. Blumenthal? I'm not asking what -- the duties 16 that were breached. I'm saying, are you -- are you 17 offering -- are you saying that NYLIAC did breach a 18 duty? 19 A. I am saying that I believe they have, and I 20 believe those duties are ones under general 21 relationships, as opposed to violations of Oklahoma law 22 or regulation. They are principled after my 23 understandings of general tort law, and the duty owed in 24 similar circumstances, both in Oklahoma and in other 25 states.</p>

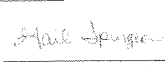
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254	<p>1 you what's marked as Exhibit -- Deposition Exhibit 9. 2 It's a two-page document, and if you could just state 3 for the record what that is, please, sir. 4 A. This is a statistical spreadsheet, actually, 5 two versions that would supplement and replace those in 6 my earlier report. They're entitled Interest Worksheet 7 No. 1, and Interest Worksheet No. 2. 8 Q. All right. Thank you, sir. Mr. Sanderford, 9 I'm showing you the notes from your telephone 10 conversation with Mr. Blumenthal. 11 A. Yes, sir. 12 Q. I'm going to have to point to it, and I 13 apologize. You have something on -- I think it says 14 EFT -- it's EFT sent? 15 A. EFT. 16 Q. What does that mean? 17 A. That's a good question. EFT. 18 Q. Electronic funds transfer? I'm speculating 19 now. 20 A. Oh, that could be, but it doesn't -- I'm not 21 hearing him say that, but maybe he did. I'm not 22 positive, but that could be an answer. 23 Q. And the loan -- you also have "loan taken" 24 with an amount. Did -- was Mr. Blumenthal aware of that 25 amount when you spoke with him?</p>	256	<p>1 it's -- if it's necessary, may I get back in touch with 2 them, and they usually say yes, that sometimes there's a 3 need to, sometimes there's not. 4 Q. Did you make that request to him, about being 5 able to get back to him if necessary? 6 A. Oh, I think so because I normally do say that. 7 Q. Did he -- do you -- was he cooperative in 8 saying -- 9 A. Oh, I'm sure he was cooperative through the 10 whole conversation. 11 Q. Did you tell him your rate -- your hourly 12 rate? 13 A. No. We didn't discuss that. 14 Q. Okay. Do you know who's paying your rate? Is 15 he paying -- your fee, is he paying it? For the report, 16 not for today. 17 A. I don't know what arrangements the law firms 18 have made for him to pay, or whether they pay, in the 19 expectation that he may pay them later. I have no idea. 20 Q. Okay. The cell numbers that are listed, 21 whose -- whose numbers are those? There's a cell number 22 and an 800 number. Is that Mr. Blumenthal's? 23 A. I think so. I think that may be the 24 800 number for his business and his cell. 25 Q. Was he expecting your call when you called</p>
255	<p>1 A. Well, I think he would have had to have been, 2 for me to have copied it in my notes. Now, remember, we 3 were discussing the point as to whether Shannon was also 4 on the call. And while I didn't recall specifically 5 getting that input from her, you know, it's possible -- 6 Q. Okay. 7 A. -- that she -- 8 Q. Was there anyone else on the call from 9 Mr. Blumenthal's office, or could you tell? 10 A. Excuse me, just one more thing. It looks like 11 I wrote down 198,000 originally, then marked through the 12 zeroes and put 832, you know -- 13 Q. Okay. 14 A. -- to a specific amount. So somebody 15 corrected me there. Whether it was either 16 Mr. Blumenthal or Shannon, I'm not certain. 17 Q. Understood. Do you know if there was anyone 18 with Mr. Blumenthal during the telephone call? 19 A. I don't know that at all. No -- nobody else 20 actively participated on his end, that I'm aware of. 21 Q. Where did you leave it with Mr. Blumenthal 22 when you hung up? 23 A. Well, I think that I said what I usually do in 24 client interviews similar to this. I say -- I thank 25 them, tell them that I've got some work to do, and if</p>	257	<p>1 him? 2 A. No. I don't -- I don't try to create that 3 expectation. I just want to have an opening that if -- 4 you know, if I really need to for some reason, that I 5 could and then nobody's surprised. 6 Q. No. And my question may not have been clear. 7 Was the call set up for a designated time? 8 A. Oh, yes. 9 Q. Okay. 10 A. Yes. 11 Q. So Shannon told you that the call would take 12 place at whatever -- at a particular time on a 13 particular day -- 14 A. Right. 15 Q. -- and Mr. Blumenthal made himself 16 available -- 17 A. Right. 18 Q. -- for the call? 19 A. That's my understanding. 20 Q. Okay. You just didn't call him out of the 21 blue and he picked up? 22 A. No. Oh, no. I would always schedule any 23 contact with the attorney. 24 MR. STANO: Okay. I have no other 25 questions.</p>

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<p style="text-align: right;">258</p> <p>1 MS. SHERRILL: I have no questions. 2 (Proceedings concluded at 3:20 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">260</p> <p>1 SIGNATURE BY WITNESS 2 I, DAVID SANDERFORD, have read the foregoing 3 deposition and hereby affix my signature that same is 4 true and correct, except as noted above. 5 6 7 DAVID SANDERFORD 8 9 THE STATE OF _____) 10 COUNTY OF _____) 11 Before me, _____, on this day 12 personally appeared DAVID SANDERFORD, known to me (or 13 proved to me under oath or through _____ 14 (description of identity card or other document) to be 15 the person whose name is subscribed to the foregoing 16 instrument and acknowledged to me that they executed the 17 same for the purposes and consideration therein 18 expressed. 19 Given under my hand and seal of office this 20 _____ day of _____, 2009. 21 22 23 24 NOTARY PUBLIC IN AND FOR 25 THE STATE OF TEXAS</p>
<p style="text-align: right;">259</p> <p>1 CHANGES AND SIGNATURE 2 PAGE LINE CHANGE REASON 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>	<p style="text-align: right;">261</p> <p>1 STATE OF TEXAS) 2 COUNTY OF DALLAS) 3 4 5 I, GAIL McELDUFF SPURGEON, Certified Shorthand 6 Reporter in and for the State of Texas, certify that the 7 foregoing deposition of DAVID SANDERFORD was reported by 8 me stenographically at the time and place indicated, 9 that the transcript is a true record of the testimony 10 given by the witness. 11 I further certify that review by the witness 12 and signature were requested at the time of taking this 13 deposition. 14 I further certify that the time used by all 15 counsel is as follows: 16 JENNIFER F. SHERRILL - 0 Hours 0 Minutes 17 PHILLIP E. STANO - 4 Hours 57 Minutes 18 I further certify that I am neither counsel 19 for nor related to any party in this cause 20 and am not financially interested in its outcome. 21 Given under my hand this the _____ day of 22 _____, 2010. 23 24 25</p> <p style="text-align: right;"> <small>Digitally signed by Gail Spurgeon Date: 2010.03.19 12:37:11 -07:00 Reason: I am the author of this document Location: Dallas, TX</small>  GAIL McELDUFF SPURGEON Texas CSR 1718 Expiration Date: 12/31/11 Firm No. 371 Word for Word P.O. Box 181298 Dallas, Texas 75218-8298 214.887.6300</p>

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