

Irving Blumenthal, Vol. I
March 2, 2010

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

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

IRVING H. BLUMENTHAL, JR.,)
individually and on behalf of all)
similarly situated insureds of New)
York Life Insurance and Annuity)
Corporation,)

Plaintiff,)

v.)

NEW YORK LIFE INSURANCE AND)
ANNUITY CORPORATION,)

Defendant.)

No. 5:08-CV-00456-F

* * * * *

VOLUME I

VIDEOTAPE DEPOSITION OF IRVING BLUMENTHAL, JR.

taken on behalf of the

Defendant

on March 2, 2010

in Oklahoma City, Oklahoma

* * * * *

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**CONDENSED
TRANSCRIPT**

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2 (Pages 2 to 5)

1 APPEARANCES:
2 FOR THE PLAINTIFFS:
3 Shannon Emmons
4 Attorney at Law
5 Phillips Murrah
6 101 North Robinson
7 13th Floor
8 Oklahoma City, Oklahoma 73102
9
10 FOR THE DEFENDANTS:
11 Phillip E. Stano
12 Attorney at Law
13 Sutherland, Asbill & Brennan
14 1275 Pennsylvania Avenue, Northwest
15 Washington, DC 20004
16 Karen J. Lamp
17 Attorney at Law
18 New York Life Insurance Company
19 51 Madison Avenue
20 New York, New York 10010
21 ALSO PRESENT: Ben Savage, videographer
22
23
24
25

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1 -STIPULATIONS-
2 It is hereby stipulated and agreed by and
3 between the parties hereto, through their respective
4 attorneys, that the deposition of IRVING BLUMENTHAL, JR.,
5 may be taken pursuant to agreement on behalf of the
6 Defendant, on the 2nd day of March, 2010, at the offices
7 of Phillips Murrah, Oklahoma City, Oklahoma, by Retta M.
8 Brittain, a Certified Shorthand Reporter within and for
9 the State of Oklahoma.
10 It is further stipulated and agreed by and
11 between the parties hereto, through their respective
12 attorneys, that all objections, except as to form, to
13 questions propounded and answers thereto made, will be
14 made at the time of the trial, when said Deposition is
15 offered in evidence, with the same force and effect as if
16 said objections were made at the time of the taking of
17 this Deposition.
18 Whereupon, the said witness appeared and
19 testified as follows, to-wit:
20
21
22
23
24
25

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1 IRVING BLUMENTHAL, JR.
2 The witness, called on behalf of the Defendant,
3 having been first duly sworn to testify the truth, the
4 whole truth, and nothing but the truth, answered upon his
5 oath in reply to the questions asked, as follows, to-wit:
6 DIRECT EXAMINATION
7 BY MR. STANO:
8 **Q Would you state your name for the record, please.**
9 A Real name, Irving H. Blumenthal, Jr. Commonly
10 called Dunnie as a nickname.
11 **Q And how do you spell Dunnie?**
12 A D-u-n-n-i-e.
13 **Q Mr. Blumenthal, my name is Phillip Stano.**
14 A Phillip.
15 **Q I think we met just a few minutes ago. Correct?**
16 A We sure did.
17 **Q I represent New York Life Insurance and Annuity**
18 **Corporation.**
19 A Okay.
20 **Q And with me is my colleague, Karen Lamp.**
21 A All right.
22 **Q And I believe you met Ms. Lamp earlier -- a few**
23 **minutes earlier as well. Correct?**
24 A Right. Right. Absolutely.
25 **Q Okay. Have you ever been deposed before?**

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3 (Pages 6 to 9)

<p>1 A You know, I think I have. Making a deposition, you 2 mean? 3 Q Yes. 4 A I think I did one time, but I just barely remember 5 it. 6 Q Approximately how long ago? 7 A Years. I don't know. I can't remember exactly when 8 it was, but I know I've been in there, I think. 9 Q Sure. Well, let's just go over the ground rules, 10 and I'm sure your counsel has talked to you about the 11 ground rules for the deposition. I will try to ask my 12 questions as clearly as I can. 13 A Absolutely. Not a problem. 14 Q Okay. And if you don't understand them, feel free 15 to ask me to clarify. 16 A I'll be happy to do it. 17 Q And let's try not to talk over each other. 18 A Not a problem. 19 Q Sometimes I do that. 20 A Not a problem, Phillip. Not a problem. 21 Q And -- and if you need a break -- 22 A Sure. 23 Q -- just let us know. You're in control. 24 Is there any reason today why you cannot 25 testify truthfully and accurately?</p> <p style="text-align: right;">Page 6</p>	<p>1 vision. Like, your face right now -- 2 Q Uh-huh. 3 A -- looking directly at you, I couldn't make your 4 face out. But if I look over here -- they call it 5 peripheral vision -- I can see you better right like 6 this, but not direct. Or anybody, I can't -- I can see 7 this cup, but I couldn't read whatever is on there. 8 Q And for the record, we're about three feet apart 9 from each other. Correct? 10 A Yeah. But it's a common disease for people. 11 Q Now, the glasses you're wearing today, are they -- 12 A No. No. These are only to stop the glare, but they 13 don't -- it's not prescription. 14 Q Are you able to read documents, if I show you 15 documents? 16 A Not -- no. I cannot read the document. I can't 17 look direct at it, huh-uh. 18 Q How long have you been suffering from this 19 condition? 20 A About five years. 21 Q When did your counsel first become aware of this 22 condition? 23 A I don't know if I ever even discussed it with her, 24 but I might have. 25 THE WITNESS: Yeah. I think -- I guess I</p> <p style="text-align: right;">Page 8</p>
<p>1 A No. Not a reason. 2 Q Okay. Are you on -- are you on any medication? 3 A I take vitamins and stuff, but -- 4 Q No prescription drugs? 5 A Yeah. I take a few of them. 6 Q What are you taking? 7 A Well, I think it's blood thinner. 8 Q Coumadin? 9 A No. Plat something. I can't remember it, but it's 10 a name -- a common name. I don't remember the name, but 11 I've been doing it for years. 12 Q Any other prescription medications? 13 A Maybe a few, but I can't remember. Nothing serious. 14 Q Okay. I received an e-mail from your counsel 15 earlier this morning saying that you were suffering from 16 macular degeneration? 17 A No. 18 Q Let me spell that. M-a-c-u-l-a-r, degeneration. 19 A Maculate degeneration. 20 Q Okay. 21 A And it's an eye -- eye problem. 22 Q And what is that? 23 A Maculate degeneration is -- right behind your 24 eyeballs there are little thin veins, blood vessels, you 25 know, and they seep blood, and then it blocks your</p> <p style="text-align: right;">Page 7</p>	<p>1 did mention it to you. 2 Q (By Mr. Stano) When? 3 A Recently. Yesterday, the day before, something. 4 Q Have you told any of your other counsel in this case 5 about your condition? 6 A I don't think so. 7 What other counsel do I have? Just Shannon and 8 whatever the group is. What -- what does my eye 9 condition have to do with this case, is what I'm saying. 10 I just can't read it direct, period. It's a 11 common thing. I'm telling you, fellow. You might get 12 it. It's an age thing, primarily. 13 MR. STANO: Shannon, I'm going to reserve 14 the right to take this to the Court for instructions. If 15 we can -- if we attempt to do a deposition and he can't 16 read documents, then that destroys the effectiveness of 17 my deposition. I found out about this about an hour ago 18 from your e-mail. Okay? I'm going to -- 19 MS. EMMONS: I agree. 20 MR. STANO: I'll attempt the deposition. 21 But if I get a bunch of I don't knows or I can't read 22 that, then there's no point in wasting my time or my 23 client's time. And we'll take it to the Court, and we'll 24 figure out where we go from there. 25 MS. EMMONS: That's fine. And for the</p> <p style="text-align: right;">Page 9</p>

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4 (Pages 10 to 13)

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

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

Page 11

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

Page 12

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

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5 (Pages 14 to 17)

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

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

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

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

1 2 percent.
2 **Q Okay. And what does -- type of product does**
3 **Blumenthal Manufacturing produce?**
4 A Does light -- light transmissions, like, for
5 half-ton pickups, cars, anything that's small.
6 **Q I asked you an earlier question about gross**
7 **revenues, and you mentioned a figure of approximately 9**
8 **to 10 million?**
9 A Yeah.
10 **Q Did that revenue figure include the revenues from**
11 **the two companies you just mentioned?**
12 A Oh, yeah.
13 **Q Okay.**
14 A Absolutely.
15 **Q When you sign a contract, is it your practice to**
16 **read the contract before you sign it?**
17 A I don't read contracts.
18 **Q How are you now --**
19 A I've got people that do -- that read them for me.
20 **Q But back in 1999 --**
21 A In 1999 I never read a contract.
22 **Q Did you sign the contracts?**
23 A I could have signed it, but I never read it. I've
24 got somebody that -- that reads them. We had two
25 attorneys working.

Page 18

1 **Q Okay.**
2 A And just -- they did all that kind of stuff. Now we
3 have no attorneys, so -- in '99 we had two attorneys
4 buying land, this and that.
5 **Q Uh-huh.**
6 A And didn't have to -- I never signed a -- I mean,
7 never read the contracts.
8 **Q Sir, are you saying that in the entire time that**
9 **you've been president and chairman of the board of**
10 **Blumenthal Manufacturing, when you signed a contract, you**
11 **never read it?**
12 A Not that I can remember. There's no reason for me
13 to read it when I've got three people doing it and two
14 more on top of that.
15 **Q Prior to signing it, did those three people doing it**
16 **and the two more on top of that tell you what was in the**
17 **contract?**
18 A Yeah. Sure.
19 **Q So prior to signing it, you knew what was in the**
20 **contract. Correct?**
21 A Yeah. Most -- most of the time I didn't pay any
22 attention to it. We've got too many things going to --
23 for me to read a contract. We didn't have that many
24 contracts to sign.
25 **Q That wasn't my question. My question was, prior to**

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1 **the time that you signed these contracts without reading**
2 **them, was it your understanding that you knew what was in**
3 **the contract because --**
4 A No, no.
5 **Q -- because you had the assistance of the people you**
6 **mentioned?**
7 A Yeah. They'd tell me about it.
8 **Q If you had no one assisting you --**
9 A Then we had no contract.
10 **Q Let me finish my question.**
11 A Go ahead.
12 **Q If you had no one assisting you in signing a**
13 **contract, would you read it before you signed it?**
14 A Would I read it before I signed it?
15 **Q Yes, sir. In the situation where you had no**
16 **one assisting you --**
17 A According to the contract, but we -- but I've always
18 had people there.
19 **Q Okay.**
20 A So I never -- I've never run into that.
21 **Q I understand that.**
22 **Put yourself in a situation where you had no**
23 **one assisting you prior to signing the contract. Would**
24 **you then read it?**
25 A Possibly. I don't know. I've never done it.

Page 20

1 **Q Is there any reason why, as chairman of the board of**
2 **a company, that you would sign a contract without reading**
3 **it if you had no one to assist you?**
4 A It's never happened. I've always got somebody to
5 assist me because we've got a hundred people.
6 **Q I understand that. But I'm talking about the**
7 **situation where you said -- where there was no one**
8 **assisting you. You said, as I understand --**
9 A I didn't say there was no one assisting me.
10 **Q Sir, let me finish my --**
11 A Let me finish --
12 **Q Let me finish my question.**
13 A -- first.
14 I didn't say I've never -- I've never done
15 that, period. That's it.
16 **Q I understand that.**
17 A That's it.
18 **Q In the situation where there was no one to assist**
19 **you, is there a possibility that you would sign a**
20 **contract without reading it?**
21 A No. Absolutely not.
22 **Q So if there was no one to assist you, you would read**
23 **the contract before signing it. Correct?**
24 A I've never had that happen.
25 **Q I understand that. I didn't ask if that ever**

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7 (Pages 22 to 25)

<p>1 happened before.</p> <p>2 I'm saying in a situation where there's no one</p> <p>3 to assist you in reading a contract, would you read it</p> <p>4 before you signed it, or would you sign it without</p> <p>5 knowing what was in it?</p> <p>6 A No. No. I'd never do that, no. I'd probably read</p> <p>7 it.</p> <p>8 Q Thank you.</p> <p>9 Have you turned over to your counsel all --</p> <p>10 copies of all your insurance policies pertaining to your</p> <p>11 personal insurance coverages? And when I say insurance</p> <p>12 coverages, I'm talking about life insurance.</p> <p>13 A Yeah. I think we have.</p> <p>14 MR. STANO: Shannon, do we have that?</p> <p>15 MS. EMMONS: Uh-huh. You have all that</p> <p>16 I've been given.</p> <p>17 MR. STANO: All right. Thank you.</p> <p>18 Q (By Mr. Stano) In 1999 do you remember the</p> <p>19 insurance coverages you had on yourself or business for</p> <p>20 life insurance?</p> <p>21 A I don't remember exactly what it -- what I had.</p> <p>22 Q What do you remember? And I don't expect you to</p> <p>23 remember everything.</p> <p>24 A On life insurance?</p> <p>25 Q Yes, sir.</p> <p style="text-align: right;">Page 22</p>	<p>1 something.</p> <p>2 Q Around 1998, 1999, approximately?</p> <p>3 A Something in that area.</p> <p>4 Q Okay. How did you end up buying insurance from him?</p> <p>5 A He was there as a customer and we just started</p> <p>6 talking, and one thing led to another. And he was</p> <p>7 selling insurance. I was getting ready to buy some from</p> <p>8 another guy and ended up buying it from Ben because he</p> <p>9 had a good -- what I thought was a good policy.</p> <p>10 Universal Life, they called it.</p> <p>11 Q I'm sorry?</p> <p>12 A I think they called it Universal Life.</p> <p>13 (Exhibit No. 1 was marked for identification.)</p> <p>14 Q (By Mr. Stano) Mr. Blumenthal, to save some time</p> <p>15 and help you refresh your memory, let me show you what's</p> <p>16 marked as Exhibit 1. And I am going to read into the</p> <p>17 record the Bates numbers on these exhibits. Are you</p> <p>18 familiar with Bates numbers?</p> <p>19 A I've never heard of Bates.</p> <p>20 Q Let me -- let me show this to you, sir. In order</p> <p>21 for -- to be able to identify documents in lawsuits,</p> <p>22 attorneys put what's called a Bates number on the</p> <p>23 document.</p> <p>24 A Uh-huh.</p> <p>25 Q In this case it will be in the lower right-hand</p> <p style="text-align: right;">Page 24</p>
<p>1 A God, I don't remember hardly anything on life</p> <p>2 insurance. Never think about it.</p> <p>3 Q Okay. Do you remember your net worth in 1999,</p> <p>4 approximately?</p> <p>5 A Maybe -- I don't know -- 10 million, maybe,</p> <p>6 something like that. I'm guessing, but it's in that</p> <p>7 area.</p> <p>8 Q Sure. I understand.</p> <p>9 A But I've given away a lot of stuff since then, in</p> <p>10 case I die. I just gave it to my sons --</p> <p>11 Q Okay.</p> <p>12 A -- before I die. I'm going to do it anyway. I</p> <p>13 might as well give it to them now.</p> <p>14 Q Sure.</p> <p>15 A So I'm down to maybe two buildings, well, something.</p> <p>16 But anyway, go ahead.</p> <p>17 Q Who is Ben Marlin?</p> <p>18 A Ben Marlin is an insurance agent.</p> <p>19 Q And he is the insurance agent that sold you the</p> <p>20 insurance policy which is the subject of this lawsuit?</p> <p>21 A Right.</p> <p>22 Q When did you first meet Mr. Marlin?</p> <p>23 A Met Ben -- something was wrong with his</p> <p>24 transmission, and we fixed his transmission in some car.</p> <p>25 And that's been probably maybe 10, 12 years ago,</p> <p style="text-align: right;">Page 23</p>	<p>1 corner. That says NYLIAC 0582. What that means is that</p> <p>2 the insurance company produced this document, and this</p> <p>3 was page 582 that was produced. Sort of an arbitrary</p> <p>4 number.</p> <p>5 A Okay.</p> <p>6 Q And the next page is NYLIAC 583.</p> <p>7 A Okay.</p> <p>8 Q And just so you know, sir, this number was added to</p> <p>9 the document. Nothing else was changed. It's just a</p> <p>10 matter of identifying the document.</p> <p>11 A What document are you talking about, sir?</p> <p>12 Q Are you able to read this document?</p> <p>13 A No. I can't -- I can just barely make it -- I can't</p> <p>14 make any -- anything out of it.</p> <p>15 Q Okay.</p> <p>16 MR. STANO: Shannon, we need to come up</p> <p>17 with a way to -- to -- for me to cross -- for me to</p> <p>18 examine the witness. What I suggest is since you have a</p> <p>19 copy, I will read the parts --</p> <p>20 THE WITNESS: Sure.</p> <p>21 MR. STANO: -- of the document that I want</p> <p>22 to ask Mr. Blumenthal about.</p> <p>23 MS. EMMONS: Sure.</p> <p>24 MR. STANO: You can follow along to make</p> <p>25 sure I don't miss anything.</p> <p style="text-align: right;">Page 25</p>

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8 (Pages 26 to 29)

1 THE WITNESS: Okay.
2 MR. STANO: And if you think something
3 needs clarification, feel free to jump in.
4 **Q (By Mr. Stano) Is that acceptable to you, Mr.**
5 **Blumenthal?**
6 A Sure. Absolutely.
7 **Q Okay. The document before you, sir, is entitled,**
8 **quote, Financial Supplement to Application, close quote.**
9 **It's Bates No. 582, 583 NYLIAC.**
10 **Are you able to identify your signature at the**
11 **bottom in the lower right-hand corner? It reads, Irving**
12 **H. Blumenthal, Jr. And the date to the left of that is**
13 **January 18, 1999.**
14 A I can't make it out, but that doesn't -- I can see
15 something, but I can't tell what it is, huh-uh.
16 **Q You cannot identify that as your signature?**
17 A I can't see it. See, it's blanked right there when
18 I look direct. I see something there, but I can't make
19 out what it is, huh-uh. It's too little.
20 MR. STANO: Shannon, can you stipulate
21 that that's his signature? Otherwise, we're at an
22 impasse. I have --
23 THE WITNESS: If it is, it is.
24 MR. STANO: I have dozens of documents
25 like this.

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1 MS. EMMONS: Let's -- let's go off the
2 record.
3 (Off the record.)
4 **Q (By Mr. Stano) Mr. Blumenthal, we had an**
5 **off-the-record discussion where, I believe, it was your**
6 **testimony that you cannot at this point identify the**
7 **signature as yours, and that we are in the process of**
8 **looking for a magnifying glass to see if you can look at**
9 **it.**
10 A Yes.
11 **Q That's a fair statement?**
12 A Absolutely.
13 **Q Okay. When you applied for insurance coverage with**
14 **Mr. Marlin in January of 1999, do you recall completing a**
15 **financial supplement to the insurance application?**
16 A I don't recall that but probably did.
17 **Q Okay. On this financial supplement, sir, I will**
18 **represent this to you, that this is a document prepared**
19 **by Ben Marlin on or about July 18, 1999, and presumably**
20 **signed by you. It lists your current insurance**
21 **coverages. One of the policies is with Manulife in the**
22 **amount of \$1,944,444. Does that sound familiar?**
23 A You know, I don't recall that, but I'm sure it
24 happened. But I don't recall it. In the last ten years
25 my brain has decided to -- where I can't recall a lot of

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1 things. I don't know why, but --
2 **Q Okay.**
3 A -- I'm sure I -- if it's there, it's there.
4 **Q Are you saying you don't recall much about the sale**
5 **of the NYLIAC policy to you by Mr. Marlin?**
6 A No. I -- well, I know I bought the policy from Ben.
7 **Q Right.**
8 A But I don't remember the details of the policy at
9 that point except for the fact that Ben -- all I can
10 remember is that this Universal Life policy was supposed
11 to be a cash value thing, that you built up cash value.
12 And I do remember Ben telling me that if I died, get paid
13 the face value, plus the cash value comes back.
14 **Q Uh-huh.**
15 A And that's the main thing that I remember about this
16 policy. And I thought, that's good, because it's like a
17 savings account. And I think that 50,000 a year -- I
18 felt like I was saving something. And that's the only
19 reason I took it, was that it was supposed to be for
20 life. I didn't know that it was going to go to zero 17
21 years down the road, and that's what got me.
22 **Q What else do you remember about the sales process**
23 **with Mr. Marlin?**
24 A Well, I don't have a real good -- all I know is that
25 I liked the policy. I liked the thought of it. By

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1 putting out 50, or whatever it was, thousand a year for
2 20 years, I'm going to put a million dollars out. But if
3 I die, I'm going to get the million dollars back. I'm
4 not, but my wife is, plus the cash value.
5 That was the main thing. That's the reason I
6 took it, for Universal Life they called it or something,
7 period. Otherwise, I would have taken a term policy out.
8 **Q While we're waiting on the magnifying glass, is**
9 **there anything else you can remember about the sale?**
10 A Not really. Why would I -- why would I even
11 remember this? We've got -- think, I've been working for
12 60 years. I'm not going to remember one document and go
13 through it thoroughly.
14 I couldn't read it any -- I wouldn't understand
15 it anyway. Nobody can understand one of these insurance
16 things, that I know of. But I haven't taken this like
17 it's the only document in the world and I should know
18 every detail. There's no chance of me even doing it,
19 none, zero.
20 **Q Fair enough.**
21 A All I went was on Ben Marlin's say-so, because he
22 seemed like a nice, honest guy. And I -- I don't know
23 why he did this. And I don't know why there was no --
24 there was a zero in it, two zeros.
25 Cash value went bye-bye. Face value went

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9 (Pages 30 to 33)

<p>1 bye-bye. That's the whole -- that's what's happened to 2 the policy, period, whether you believe it or not. You 3 can read. 4 Q When you met Mr. Marlin in January of 1999, did you 5 understand what cash value was? 6 A Cash value is just like a savings account to me. 7 The cash value was nothing more than a savings account, 8 in my mind. What else is it supposed to be? 9 Q Do you understand cash value to be the money in the 10 policy that's available to -- for either a loan or 11 future -- payment of future premiums? 12 A I would think -- I didn't think about those future 13 premiums, but I know it was in there. 14 THE WITNESS: Thanks. That's a major one. 15 Oh, yeah. That's -- that's me. 16 Q (By Mr. Stano) So that's your signature on -- 17 A Yeah. 18 Q Okay. 19 A Absolutely. 20 Q And do you see the insurance that's listed on this 21 financial supplement? Do you see the -- it says New York 22 Life at 3 and a half million. And this is question No. 1 23 under A. It says -- 24 A Where is it? 25 Q -- New York Life --</p> <p style="text-align: right;">Page 30</p>	<p>1 information is true and" -- 2 A It could -- I'm not saying -- 3 Q -- "is complete and true." 4 A -- it wasn't true. 5 Q Sir, do you see this sentence? 6 A Go ahead. 7 Q Let's try not to talk over each other. 8 A Okay. Go ahead. 9 Q I'll read the sentence again. 10 A Okay. 11 Q It says, quote, therefore, those who sign this form 12 agree that to the best of their knowledge and belief, all 13 this information is complete and true, close quote. Do 14 you see that? 15 A I don't see that, but that -- I'm sure it's there. 16 It's right here? 17 Q Sir, it starts here with the word "therefore." 18 A Here? Oh, okay. Okay. I was looking in the wrong 19 spot. 20 Okay. So what? What does that mean? Valley 21 Forge Insurance, I might have -- probably had it. I 22 don't know if I had it or not. I don't recall it. 23 Q Would you have signed a form that contained 24 information that was incomplete or incorrect? 25 A Not on purpose.</p> <p style="text-align: right;">Page 32</p>
<p>1 A Okay. Says 1 million 900 and something. 2 Q That's for Manulife, Mr. Blumenthal. 3 A Okay. 4 Q But while you're on that, we can talk about it. 5 A I don't even recall that policy, but okay. The next 6 one down? Is that what you said? 7 Q Yes, sir. It says -- 8 A 1 million something. 9 Q The CNA Valley Forge that's not to be replaced, do 10 you see that? 11 A Is that it right there? 12 Q Yes, sir. It says, CNA not to be replaced. Do you 13 see that, CNA Valley Forge in the amount of \$1 million? 14 A C -- what is that? What does that mean, CNA? 15 Q Well, I'm asking you, sir. In January of 1999 did 16 you have an insurance policy with Valley Forge in the 17 amount of \$1 million? 18 A I don't recall it. I might have, but I don't recall 19 that policy. 20 Q Well, let me ask you this, Mr. Blumenthal. The 21 sentence immediately above your signature, let me read it 22 to you. You're welcome to follow along. 23 A That's all right. Go ahead. 24 Q It says, "Therefore, those who sign this form agree 25 that to the best of their knowledge and belief, all this</p> <p style="text-align: right;">Page 31</p>	<p>1 Q Okay. 2 A Why would I say -- why would I even -- I don't even 3 remember Valley Forge. I'm not even thinking about it. 4 Why -- what does that have to do with this case? 5 Q Do you have any reason to suspect that the 6 information on this form is incorrect? 7 A I have no -- I don't even know what it is, fellow. 8 And I don't have any reason to suspect that it's wrong or 9 that it's right. 10 MR. STANO: Shannon, we're getting no -- 11 let's stay -- 12 MS. EMMONS: Right. 13 MR. STANO: -- on the record this time. 14 MS. EMMONS: Right. 15 MR. STANO: We're getting nowhere quick. 16 I mean, I'm not going to burn seven hours on one piece of 17 paper. 18 THE WITNESS: Don't burn it. 19 MR. STANO: He's admitted it's his 20 signature. 21 MS. EMMONS: Right. 22 THE WITNESS: So what? 23 MR. STANO: These are his insurance 24 coverages that presumably he gave the agent. He signed 25 it immediately after the sentence saying, "All the</p> <p style="text-align: right;">Page 33</p>

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10 (Pages 34 to 37)

1 information is presumed to be true and correct," and I
2 can't get -- can you stipulate that the information on
3 the form is correct?
4 MS. EMMONS: Let me ask these --
5 MR. STANO: Otherwise -- otherwise, I'm
6 going to take it to the judge --
7 MS. EMMONS: Right.
8 MR. STANO: -- and I'm going to ask for
9 cost.
10 MS. EMMONS: Let me ask these questions.
11 Dunnie, this -- this document is titled a
12 Financial Supplement to Application, and your signature
13 is at the bottom. And in it, the statement immediately
14 above your signature states that everything in the form
15 was, to the best of your knowledge and belief, true and
16 correct. Now, you've stated you don't recall having a
17 Manulife Policy or CNA Valley Forge policy --
18 THE WITNESS: Right. That doesn't mean
19 that I didn't have them.
20 MS. EMMONS: Okay. And --
21 THE WITNESS: I just said I don't recall
22 it, period.
23 MS. EMMONS: Okay.
24 THE WITNESS: But I'm sure I had them if I
25 got it down there. I don't remember this at all.

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1 MS. EMMONS: So when you signed the
2 document, it was your belief that you did have these two
3 policies of insurance?
4 THE WITNESS: Evidently.
5 MS. EMMONS: Okay.
6 MR. STANO: Counselor, is there any reason
7 you're disputing the information in this form?
8 MS. EMMONS: No. We're not disputing it.
9 MR. STANO: Okay.
10 MS. EMMONS: We're saying to the best of
11 his knowledge, he had --
12 THE WITNESS: Yeah.
13 MS. EMMONS: -- those two policies at the
14 time.
15 THE WITNESS: It could have been.
16 MR. STANO: But I don't want to come back
17 and have an affidavit from somebody saying, I never said
18 that this was correct. And if you're disputing the
19 information --
20 MS. EMMONS: No. No.
21 MR. STANO: -- I want -- I want to know
22 now.
23 MS. EMMONS: I thought we took -- we went
24 through it to where, to the best of his knowledge at the
25 time he signed the form, that was -- knowledge was

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1 correct.
2 THE WITNESS: It probably was true.
3 MS. EMMONS: Is there any reason, sitting
4 here today, that you believe that you didn't have either
5 of those policies?
6 THE WITNESS: Not that I -- Shannon, I
7 don't recall this --
8 MS. EMMONS: Okay.
9 THE WITNESS: -- period.
10 MS. EMMONS: Okay.
11 THE WITNESS: And I probably had it if
12 it's on there.
13 MS. EMMONS: Okay.
14 THE WITNESS: We can go back and find out,
15 I'm sure.
16 MS. EMMONS: And there's --
17 THE WITNESS: If I had it, I had it.
18 MS. EMMONS: And there's no reason for you
19 to believe, sitting here today, that you didn't have
20 those two policies at the time you signed the form?
21 THE WITNESS: Evidently, Ben made this
22 out, and evidently I -- that -- I must have had it.
23 MS. EMMONS: Okay.
24 THE WITNESS: But that doesn't mean I
25 remember it.

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1 MS. EMMONS: Sure.
2 THE WITNESS: I'm not going to sit here
3 and say, oh, I remember that. If I don't remember it, I
4 don't remember it, period. Is that a crime? No.
5 MS. EMMONS: We're not disputing that the
6 information --
7 MR. STANO: Okay.
8 MS. EMMONS: -- in the form is correct --
9 THE WITNESS: No.
10 MS. EMMONS: -- with respect to those two
11 policies.
12 MR. STANO: All right. Let's go off the
13 record just for a moment.
14 (Off the record.)
15 MR. STANO: I'll mark them to try to save
16 some time.
17 We're back on?
18 THE VIDEOGRAPHER: Yeah. Go ahead.
19 MR. STANO: Shannon?
20 MS. EMMONS: Yes. Go right on.
21 MR. STANO: May I go?
22 MS. EMMONS: I'm shutting the door.
23 MR. STANO: Okay.
24 **Q (By Mr. Stano) Mr. Blumenthal, Exhibit 1 -- and I**
25 **know you're having difficulty reading it. Let me read it**

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11 (Pages 38 to 41)

1 for you.
2 A Okay.
3 **Q It shows that you had coverage with Manulife in the**
4 **amount of \$1,944,444. And you had apparently two**
5 **policies with CNA Valley Forge, one each for \$1 million.**
6 **Now, why were you buying or applying for coverage with**
7 **New York Life?**
8 A God, I don't even remember -- honest to God, I don't
9 remember those policies at all.
10 **Q Okay.**
11 A I don't know.
12 **Q I understand that. And I think we're --**
13 A I don't know. I just don't recall them.
14 **Q I understand that. But, sir, my --**
15 A Maybe I just -- maybe I wanted more insurance.
16 **Q And that was my question. You have policies listed**
17 **in the approximate amount of 3 to \$4 million.**
18 A You know, maybe I wanted another million dollars
19 worth of insurance.
20 **Q Actually, it shows a total of almost 5 and a half**
21 **million dollars.**
22 A Okay. 5 and a half million, whatever it was.
23 **Q Okay. And do you know why you were applying for**
24 **coverage with New York Life?**
25 A Why?

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1 **Q Yes.**
2 A The only thing I can think of is I must have wanted
3 more insurance --
4 **Q Okay.**
5 A -- period.
6 **Q You also --**
7 A Is that a crime that I wanted more insurance? No.
8 **Q Mr. Blumenthal, I'm not assuming anything. I'm just**
9 **trying to develop the facts.**
10 A Well, then develop them. Go ahead.
11 **Q Thank you, sir.**
12 **You also are replacing one of the CNA policies,**
13 **and the policies are in the face amount of \$1 million,**
14 **according to this financial supplement. Do you know why**
15 **you were replacing the CNA Valley Forge policy?**
16 A I have no idea.
17 **Q Do you know if you talked about that with Mr.**
18 **Marlin?**
19 A I don't recall it if we did, huh-uh.
20 **Q And other than wanting more insurance coverage, do**
21 **you have any particular reason as to why you were buying**
22 **the New York Life policy? When I say New York Life, I**
23 **mean New York Life Insurance and Annuity Corporation.**
24 A I bought it because I wanted more insurance.
25 **Q Okay. Let me show you what's marked as Exhibit 2.**

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1 **It's Bates No. NYLIAC 0594.**
2 A It doesn't matter. What's the number? What is
3 this?
4 MS. EMMONS: Well, Dinnie, he's stating
5 the record --
6 THE WITNESS: Oh, okay.
7 MS. EMMONS: He stated it on the record
8 for our benefit.
9 THE WITNESS: Okay. Good. Okay.
10 MS. EMMONS: It's not for yours.
11 THE WITNESS: All right.
12 MS. EMMONS: It's for ours --
13 THE WITNESS: Okay.
14 MS. EMMONS: -- and the Court's.
15 THE WITNESS: What is this? It's supposed
16 to be --
17 **Q (By Mr. Stano) Sir, it's entitled, Comparison of**
18 **the \$1,000,000 Policy."**
19 A Comparison to what?
20 MR. STANO: I don't want to spend dep time
21 having him compare documents.
22 THE WITNESS: I mean, what are we
23 comparing it to? We --
24 MR. STANO: I think we need to go off the
25 record and let him look at the document and then go back

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1 on. That way, we don't have a lot of chatter and clutter
2 in this deposition.
3 Shannon, do you agree to that?
4 MS. EMMONS: I agree to that. Would it --
5 would it be helpful from your side if you just described
6 the document to him?
7 MR. STANO: Why don't I do that off the
8 record, because the document speaks for itself.
9 MS. EMMONS: Okay.
10 MR. STANO: And we're going to end up
11 with a -- are we off the -- off the record?
12 THE VIDEOGRAPHER: We're still on.
13 MR. STANO: Let's go off.
14 THE VIDEOGRAPHER: Okay. We're off.
15 (Off the record.)
16 **Q (By Mr. Stano) Mr. Blumenthal, we, while off the**
17 **record, went over Exhibit 2.**
18 A Okay.
19 **Q Correct?**
20 A Yes.
21 **Q Do you understand at least the concepts --**
22 A Yeah.
23 **Q -- and the numbers in Exhibit 2?**
24 A Yeah.
25 **Q Do you recall seeing Exhibit 2 before?**

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12 (Pages 42 to 45)

<p>1 A No.</p> <p>2 Q Okay. Do you recall discussing this with Mr. Marlin in 1999?</p> <p>3</p> <p>4 A No. Huh-uh.</p> <p>5 Q Sir, in your supplemental responses in discovery -- I believe it was 5A -- you specifically refer to this document and this page number.</p> <p>6</p> <p>7 A I did?</p> <p>8 Q Your attorneys did. But your testimony today is you don't recall it. Correct?</p> <p>9</p> <p>10 A Wait a minute.</p> <p>11 Q Now all of the sudden you remember it?</p> <p>12</p> <p>13 A No. I don't remember it.</p> <p>14 Q Okay.</p> <p>15 A Why would I remember it?</p> <p>16 Q Sir, my question to you is, do you remember it or not?</p> <p>17</p> <p>18 A I don't, period.</p> <p>19 Q Okay. Thank you.</p> <p>20 Do you remember asking -- well, strike that.</p> <p>21 Do you know who Mark Cain is?</p> <p>22</p> <p>23 A Sure.</p> <p>24 Q Who is Mark Cain?</p> <p>25</p> <p>24 A He's our CPA.</p> <p>25 Q Was he your CPA in 1999?</p> <p style="text-align: right;">Page 42</p>	<p>1 that you and Mr. Marlin discussed during the sales process?</p> <p>2</p> <p>3 A I can't recall any documents that we discussed. I</p> <p>4 can only recall what Ben told me. And I can recall that,</p> <p>5 but I can't recall any documents we discussed, none.</p> <p>6 Q Sir, I'm curious. Are you saying that the documents that don't support your position -- and we'll get to those -- you don't recall, but the one oral statement that purportedly supports your position, you do recall?</p> <p>7</p> <p>8 Of all the -- of all the information thrown at you in the past ten years -- that was the point you made earlier --</p> <p>9</p> <p>10 A That --</p> <p>11 Q -- is that your testimony today?</p> <p>12</p> <p>13 A My testimony is that I can't recall a ten-year-old document.</p> <p>14 Q But you can recall parts --</p> <p>15</p> <p>16 A I can remember what Ben said, but I can't recall a ten-year-old document.</p> <p>17 Q Okay.</p> <p>18</p> <p>19 A Yes. That is exactly right. I do not recall this document --</p> <p>20 Q Thank you.</p> <p>21</p> <p>22 A -- period.</p> <p>23 Q Sir, let me show you what's marked as Exhibit 3,</p> <p style="text-align: right;">Page 44</p>
<p>1 A Yeah.</p> <p>2 Q Do you remember asking Mr. Marlin to discuss these figures with Mark Cain?</p> <p>3</p> <p>4 A I don't remember it.</p> <p>5 Q Is it possible it happened --</p> <p>6</p> <p>7 A It could --</p> <p>8 Q -- but you just don't remember?</p> <p>9</p> <p>10 A It could happen. I just don't recall it.</p> <p>11 Q Is it possible that you reviewed this document and you just don't recall it?</p> <p>12</p> <p>13 A Anything is possible. I don't recall this document, period.</p> <p>14 Q Okay. Fair enough.</p> <p>15 Was Mr. Marlin -- I'm sorry. Was Mr. Cain your CPA or comptroller in 1999?</p> <p>16</p> <p>17 A He's not a comptroller. Mr. Cain has been our CPA for 30 years at least, 40 maybe.</p> <p>18 Q Is he an outside CPA?</p> <p>19</p> <p>20 A Yeah. And he's still our CPA.</p> <p>21 Q Having reviewed Exhibit 2, the document we just got through with discussing, it doesn't bring back or refresh your memory in any way?</p> <p>22</p> <p>23 A Not one thing can I recall in this particular document.</p> <p>24 Q As you sit here today, do you recall any documents</p> <p style="text-align: right;">Page 43</p>	<p>1 Bates No. NYLIAC 0160 through 0162.</p> <p>2</p> <p>3 MR. STANO: And, Shannon, I suggest we go</p> <p>4 off the record while he has a chance to look at this.</p> <p>5</p> <p>6 MS. EMMONS: Okay. That's fine.</p> <p>7</p> <p>8 MR. STANO: And let me give you a copy.</p> <p>9</p> <p>10 (Off the record.)</p> <p>11 Q (By Mr. Stano) We had an off-the-record discussion regarding Exhibit 3. Mr. Blumenthal, I believe you have stipulated that your signature is on page 160 and 162. Is that correct?</p> <p>12</p> <p>13 A Absolutely.</p> <p>14 Q Do you recall signing this form?</p> <p>15</p> <p>16 A No.</p> <p>17 Q And this form would -- is dated January 18th, 1999?</p> <p>18</p> <p>19 A I have no recollection of that, period.</p> <p>20 Q Do you recall when you applied for coverage with NYLIAC with Mr. Marlin in January of 1999, that you signed various documents?</p> <p>21</p> <p>22 A You know, I don't really recall that. But I'm sure I did, because there they are. I don't recall it.</p> <p>23 Q Did you read those documents before you --</p> <p>24</p> <p>25 A No.</p> <p>26 Q -- signed them? Sir, let me finish my question.</p> <p>27</p> <p>28 A Go ahead.</p> <p>29 Q Did you read those documents before you signed them?</p> <p style="text-align: right;">Page 45</p>

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13 (Pages 46 to 49)

1 A No.
2 **Q Why not?**
3 A No reason. I couldn't understand it anyway. What
4 did I sign? It's nothing bad.
5 **Q Sir, if you can't understand it, how would you know**
6 **if it was bad or not?**
7 A I didn't even pay any attention to it, period. I
8 have no reason to worry about it. It's not -- it can't
9 be bad. I don't know what it was. I didn't -- I don't
10 recall it, period. That's it.
11 **Q You certainly had the chance to read it --**
12 A But --
13 **Q -- if you wanted. Sir --**
14 A I'm sure he did.
15 **Q Sir, let me --**
16 A I'm sure I did.
17 **Q Sir, let me finish my question, please.**
18 A Go ahead.
19 **Q You certainly had the chance to read it before you**
20 **signed it. Correct?**
21 A I'm sure I did. I didn't bother reading it.
22 **Q I understand that. But you --**
23 A But I did have a chance to read it. Absolutely.
24 Positively, I did --
25 **Q Okay.**

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1 A -- but I didn't.
2 **Q Fair enough. We're making progress.**
3 A Okay.
4 **Q Let me show you -- or turn to paragraph two of this**
5 **replacement statement. And I understand your eyesight is**
6 **impaired.**
7 A Right.
8 **Q What I propose doing is reading paragraph two --**
9 A Do it.
10 **Q -- and your counsel can follow along --**
11 A Yeah.
12 **Q -- to make sure I'm reading correctly.**
13 A No problem. Right. Yeah.
14 **Q It says, quote, it may not be advantageous to drop**
15 **or change existing life insurance in favor of new life**
16 **insurance whether issued by the same or a different**
17 **insurance company, close quote.**
18 A What does that mean, sir?
19 **Q You had the chance to read that before you --**
20 A So what?
21 **Q -- signed it. Correct? Sir, that's not my**
22 **question.**
23 A Okay. I've got you. But what point are you getting
24 to, sir? I didn't read this and I signed it. Put me in
25 prison. Hurry. Come on.

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1 MS. EMMONS: Let's take a break.
2 MR. STANO: Okay. I think we need a
3 break.
4 MS. EMMONS: We need to go over the
5 procedures of a deposition.
6 MR. STANO: Okay. This is -- this is
7 getting a little silly. And I'm -- Shannon, I am trying
8 with your client.
9 MS. EMMONS: I know.
10 MR. STANO: I need some cooperation here.
11 Let's go off the record.
12 (A break was taken.)
13 MR. STANO: Shannon, I'd like to put on
14 the record the stipulation we reached during the break.
15 And I do want to thank you for your help in moving this
16 deposition along.
17 Correct me if I'm wrong, but we stipulated that
18 we would go beyond a seven-hour period and go into the
19 next day and beyond, if necessary, due to the length of
20 time it's taking Mr. Blumenthal to review the documents.
21 And that length of time is due mainly to his poor
22 eyesight, and we understand that.
23 MS. EMMONS: True.
24 MR. STANO: We also understand that this
25 is not an endurance contest. And if we need to break at

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1 some time in the afternoon to continue the deposition,
2 we're happy to do that.
3 MS. EMMONS: Okay.
4 MR. STANO: We don't want to tire out
5 anyone.
6 THE WITNESS: All right. Okay. Go ahead
7 and we'll get through with this.
8 **Q (By Mr. Stano) Exhibit 3, Mr. Blumenthal, was**
9 **signed in January 18th, 1999, by you. In January of 1999**
10 **did you have the eye condition that you have today?**
11 A No.
12 **Q Your eyesight was very good in 1999?**
13 A Uh-huh. Yes.
14 **Q So you certainly had the means to read --**
15 A Yes.
16 **Q -- the exhibit, Exhibit 3 --**
17 A Absolutely. Absolutely. Any of them.
18 **Q Let me finish my question.**
19 A Yeah.
20 **Q You certainly had the means to read Exhibit 3 if you**
21 **wanted to. Correct?**
22 A Yes.
23 **Q And you chose not to?**
24 A Right.
25 **Q And that's true with regard to the other two**

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14 (Pages 50 to 53)

1 documents we've talked about --
2 A Yes.
3 Q -- correct, Exhibits 1 and 2?
4 A Yes.
5 Q Exhibit 3 talks about replacing your Valley Forge
6 policy in the amount of \$1 million. Do you recall if the
7 Valley Forge policy that was being replaced had cash
8 value?
9 A I don't recall that.
10 Q Do you recall if it was a term policy?
11 A I don't recall that.
12 Q Do you know what a term policy is?
13 A Absolutely.
14 Q What is your understanding of a term policy?
15 A You get a 10-year term or 20-year term or 5-year
16 term, and then you -- insurance is over.
17 Q When the term is up?
18 A Yeah.
19 Q There's no cash value?
20 A No cash value. Just it's a lot cheaper premium.
21 Q And if I asked you this, I apologize.
22 A Sure.
23 Q Do you know if the Valley Forge policy was term or
24 not?
25 A I don't know that.

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1 Q Okay. Do you recall how many times you met with Mr.
2 Marlin in January?
3 A I can't recall that.
4 Q Do you recall how many times you met with Mr. Marlin
5 prior to your New York Life Insurance and Annuity
6 Corporation policy being issued?
7 A Not really. No, I can't recall how many times. Are
8 you talking about 1999?
9 Q Yes, sir. And I should have been clearer.
10 A Yeah.
11 Q My mistake.
12 A We were fixing his vehicle, and we could have talked
13 two, three, four times, five times. I don't know.
14 Q So that the record is clear and so that my question
15 is clear --
16 A Yeah.
17 Q -- I'm asking only about meetings you had with Mr.
18 Marlin concerning your --
19 A The insurance?
20 Q -- your life insurance. Yes, sir.
21 A Oh, that was very few meetings. I don't recall
22 having -- one, maybe two, something, three tops.
23 Q Was anyone else present besides yourself and Mr.
24 Marlin?
25 A I don't recall that.

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1 Q If anyone else was present, do you have any idea who
2 it might be?
3 A I don't recall it at all.
4 Q Do you know if Mr. Marlin brought an associate with
5 him when he met with you to talk about --
6 A No --
7 Q -- your --
8 A -- not that I --
9 Q Sir, let me finish my --
10 A Okay.
11 Q Let me finish my questions, please.
12 A Sure.
13 Q Do you recall if Mr. Marlin brought an associate
14 with him when he met with you to talk about your life
15 insurance coverages?
16 A Not that I know of.
17 Q In 1999 was there someone at Blumenthal
18 Manufacturing or someone else who worked with you on your
19 life insurance?
20 A No.
21 Q You handled your life insurance matters by yourself.
22 Is that fair?
23 A I -- yeah.
24 Q Okay. Did you keep any notes of your meetings with
25 Mr. Marlin?

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1 A None. Had no reason.
2 Q Did you keep a calendar of your meetings?
3 A No.
4 Q In general, not just with Mr. Marlin, but --
5 A No.
6 Q -- do you keep a calendar of your appointments?
7 A No.
8 Q Did your secretary keep a calendar of your
9 appointments?
10 A Huh-huh. Not really, huh-uh.
11 Q You had a secretary, correct, in 1999?
12 A No. We had no secretaries. We had office workers
13 but not what we'd call a secretary.
14 Q Well, how did you keep up with your appointment
15 schedule? How did you stay organized? And I'm talking
16 about 1999.
17 A We had secretaries. We've got office workers.
18 Q All right.
19 A Plenty of people.
20 Q But you're the CEO of a corporation that's
21 involved -- that has approximately --
22 A It's --
23 Q -- 100 or so employees -- sir, let me finish.
24 How did you keep up with your schedule?
25 A It was easy. Everybody had a job doing something.

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15 (Pages 54 to 57)

1 **Q I understand that. But how did you keep up with**
2 **your schedule as chairman of the board and president of a**
3 **corporation that had dozens of employees?**

4 A They were -- we had people that ran the company. We
5 had people that ran different areas of the business. We
6 had a guy over heavy duty, a guy over light duty, a guy
7 over medium duty, a guy over this, that, and not --
8 that's it.

9 MS. EMMONS: I think what Mr. Stano is
10 asking is, how would you know that you have an
11 appointment at 10:00, like, on a Monday? Would you keep
12 a record or a calendar or --

13 THE WITNESS: Yeah. Well, something like
14 that. If I had an appointment, I'd just write it down.

15 **Q (By Mr. Stano) On what?**

16 A On a piece of paper or something. That was it.

17 **Q And what if you had an appointment three months from**
18 **today or three months in the future in 1999? How would**
19 **you keep a record of that?**

20 A God, I don't recall that right now. That's --
21 you're talking ten years ago. I can't remember that.
22 Never thought about it. We had plenty of people, I'd
23 just say. I don't remember that. I can't tell you.

24 **Q Okay. Were you pleased that you replaced your**
25 **Valley Forge policy in the amount of a million dollars?**

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1 **Q I'm not -- that's not my question, sir. My question**
2 **to you is, do you have any allegations of wrongdoing**
3 **against New York Life Insurance and Annuity Corporation**
4 **with regard to the replacement of your Valley Forge life**
5 **insurance policy?**

6 A Do I have any --

7 **Q Are you blaming New York Life Insurance and Annuity**
8 **Corporation?**

9 A For what?

10 **Q Are you --**

11 A No. I'm not --

12 **Q Sir, that's what I'm asking you. With regard to the**
13 **replacement of your --**

14 A No.

15 **Q Sir, let me finish. I'll try to be a little more**
16 **clear. And I apologize.**

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

20 A No.

21 **Q Okay. With regard to the replacement of any of your**
22 **insurance policies in 1999, are you claiming that you**
23 **were damaged in any way?**

24 A No. Not by New York Life, no.

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

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1 A I don't even recall Valley Forge as an insurer. I
2 know -- I don't even recall them.

3 **Q So you don't know if you were happy or unhappy about**
4 **if the policy was replaced, do you, as you sit here**
5 **today?**

6 A I didn't even think about it, and I -- why would I
7 think about that? No. I didn't think about it, period.

8 **Q I understand that, sir. But you filed a suit**
9 **against NYLIAC making certain allegations, and one of**
10 **those allegations involves the replacement of your**
11 **insurance coverages.**

12 **Now, this document shows that you replaced an**
13 **insurance policy. And I'm asking you, as you sit here**
14 **now, do you have any objections to the replacement of**
15 **this policy?**

16 A Of the Valley Forge policy?

17 **Q Yes, sir.**

18 A Do I have a what, now?

19 **Q Do you have any objections or any accusations to**
20 **make against New York Life Insurance and Annuity**
21 **Corporation with regard to the replacement of your Valley**
22 **Forge policy?**

23 A It's never come up. I don't even -- I cannot even
24 follow what you're talking about in this case. Why would
25 I have something against Valley Forge?

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1 **and Annuity Corporation.**

2 A Yeah. Whoever it is. No. I haven't seen it.

3 **Q Okay.**

4 A Haven't seen any damage that I know of.

5 **Q Thank you. And I'm sorry if my question wasn't**
6 **clear.**

7 A It wasn't.

8 **Q Let me show you what's marked as Exhibit 4. Sir,**
9 **this is Bates stamped NYLIAC 068 through NYLIAC 074.**

10 **Let me explain this a little bit, Mr.**

11 **Blumenthal, because of your -- your impaired eyesight.**
12 **This is a NYLIAC life insurance illustration.**

13 A Okay.

14 **Q When you purchased the NYLIAC policy which is the**
15 **subject of this lawsuit, do you recall discussing with**
16 **Mr. Marlin illustrations?**

17 A No. Well, I say no. Yeah. He explained what would
18 happen over a period of years with the cash value and the
19 face value and on and on and on, but he never mentioned
20 that it would disappear.

21 **Q Let's -- let me back up a little bit. When you say**
22 **he explained the cash value and --**

23 A Well, yeah.

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

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16 (Pages 58 to 61)

<p>1 A I don't know if he was or not. I don't have -- I 2 don't recall a document being involved, but -- 3 Q And, again, so that the record's clear, we're 4 talking about during the sales process in 1999. Prior to 5 the issuance of your NYLIAC policy which is the subject 6 of this lawsuit, did Mr. Marlin talk to you about cash 7 value in the policy? 8 A Yeah. Said the cash value would accumulate over a 9 period of years. 10 Q Okay. 11 A That's it. And if I died, I'd get the face value 12 and the cash value back. That's it. 13 Q That's all he said? 14 A That's about it. 15 Q Or that's all you remember? 16 A Yeah. What else -- nothing else to it. 17 Q Okay. Did he say how long you would be making 18 premium payments on the policy? And when I say 19 "policy" -- 20 A For life, I guess. 21 Q Okay. 22 A Yeah. 23 Q So at the time you purchased the NYLIAC policy, you 24 expected to be paying insurance premiums -- 25 A For life.</p> <p style="text-align: right;">Page 58</p>	<p>1 A What is this? 2 Q Why don't we start on page one -- 3 A Okay. 4 Q -- and let me explain this to you. And your counsel 5 will follow along and -- 6 A Okay. 7 Q -- help me when I leave something out. 8 This is entitled NYLIAC Protector Life 9 Insurance Illustration -- 10 A Okay. 11 Q -- and it's for you. It's for Dinnie Blumenthal. 12 Is it Dinnie? 13 A Dinnie. 14 Q Dinnie. I'm sorry. 15 A Okay. 16 Q For Dinnie Blumenthal. 17 A Okay. 18 Q And it says, presented by Ben Marlin. 19 A Okay. 20 Q Do you see that? 21 A Yeah. 22 Q And it's in small print, and I don't expect you to 23 be able to see it. But it's dated July 13, 1999 -- 24 A Okay. 25 Q -- and it's got Dinnie Blumenthal.</p> <p style="text-align: right;">Page 60</p>
<p>1 Q -- for life, and that when you died, you would get 2 back -- 3 A The face value and the cash value, whatever. That's 4 it. 5 Q Okay. Did you have an expectation in 1999 as to how 6 long you would live? 7 A Not really. 8 Q Did you -- 9 A I couldn't predict that. Nobody can. 10 Q I understand that. 11 Do you recall telling Mr. Marlin that you 12 didn't -- and this is in 1999 during the time you 13 purchased the policy -- that you thought you would live 14 for probably no more than ten years? 15 A No way. I never thought that. Never said that, 16 huh-uh. Nope. Huh-uh. 17 Q Is it possible you said it, but you don't remember 18 it? 19 A I don't think I've ever said that I was going to 20 live ten years, period. 21 Q Okay. Going back to Exhibit 4, do you recall seeing 22 a document like this during the time you purchased the 23 NYLIAC policy which is the subject of this lawsuit? 24 A I can't even tell what this is, sir. What is it? 25 Q Okay. I -- and I'm sorry, Mr. Blumenthal.</p> <p style="text-align: right;">Page 59</p>	<p>1 MS. EMMONS: The one I have is 2 January 13th. 3 MR. STANO: I'm sorry. January 13th. I 4 stand corrected. 5 THE WITNESS: Okay. 6 Q (By Mr. Stano) January 13th, 1999, Dinnie 7 Blumenthal, male, 67. In 1999 were you 67 years old? 8 A Evidently. 1999, '31. Yeah. Would be 68, 9 actually. 10 Q Do you recall going over a document like this -- 11 A No. 12 Q -- on or about January of 1999? 13 A I don't recall at that time any illustrations, 14 just -- I don't know. Huh-uh. 15 Q So it's possible Mr. Marlin showed you an 16 illustration. You just don't remember it. Is that -- 17 A That would -- 18 Q Would that be a fair statement? 19 A If he had showed me an illustration that said after 20 17 years everything goes to zero, face value and cash 21 value, then I would not have taken the policy, period. 22 So he didn't show me, as far as I remember, any 23 illustrations that said this is going to terminate itself 24 in 17 years, period. 25 Q Ever? He never ever showed you such an</p> <p style="text-align: right;">Page 61</p>

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17 (Pages 62 to 65)

<p>1 illustration. Is that your testimony?</p> <p>2 A No. Until we sent off and got one, and that's been</p> <p>3 maybe a year and a half, two years ago.</p> <p>4 Q Okay. We'll talk about that in just a minute.</p> <p>5 A Okay.</p> <p>6 Q But during the sales process in 1999, is it your</p> <p>7 testimony, Mr. Blumenthal, that Mr. Marlin never showed</p> <p>8 you an illustration that showed that the cash value and</p> <p>9 the policy would lapse at a certain period?</p> <p>10 A Never. Never, that I know, huh-uh. He never showed</p> <p>11 it to me, no, sir. I never saw an illustration that said</p> <p>12 it would lapse and would go to zero. If I had, I don't</p> <p>13 think I would have been dumb enough to take this policy.</p> <p>14 Q Your Valley Forge policy was a ten-year term</p> <p>15 policy --</p> <p>16 A That doesn't matter.</p> <p>17 Q -- wasn't it? Sir --</p> <p>18 A A term policy is different than this policy. It has</p> <p>19 nothing to do with this policy. We're talking this</p> <p>20 policy, not a term policy --</p> <p>21 Q Okay.</p> <p>22 A -- period. So don't bring a term in. I know term.</p> <p>23 MS. EMMONS: Okay. Okay.</p> <p>24 Q (By Mr. Stano) If Mr. Marlin had showed you an</p> <p>25 illustration during the sales process, would you have</p> <p style="text-align: right;">Page 62</p>	<p>1 Q Mr. Blumenthal, let me show you what's marked as</p> <p>2 Exhibit 5, and it's Bates stamped NYLIAC 1 through NYLIAC</p> <p>3 9.</p> <p>4 A Okay.</p> <p>5 Q Sir, is that your signature?</p> <p>6 A Yes, sir.</p> <p>7 Q And the date is January 18th, 1999?</p> <p>8 A Yes.</p> <p>9 Q Is that your handwriting on the date?</p> <p>10 A Yes.</p> <p>11 Q Do you see the box that's checked in the upper third</p> <p>12 of the -- of the page?</p> <p>13 A Yeah. Uh-huh.</p> <p>14 Q Read along with me as I read that. It says, quote,</p> <p>15 an illustration was presented to me, but the policy</p> <p>16 applied for is different than is illustrated, period,</p> <p>17 close quote. Do you see that?</p> <p>18 A Yeah.</p> <p>19 Q Do you know if that's your checkmark?</p> <p>20 A I couldn't tell if it's mine.</p> <p>21 Q You couldn't tell?</p> <p>22 A No. There's no chance of it. I could not tell</p> <p>23 that. I know I signed it.</p> <p>24 Q You signed it --</p> <p>25 A Yeah.</p> <p style="text-align: right;">Page 64</p>
<p>1 looked at it?</p> <p>2 A Absolutely.</p> <p>3 Q Okay.</p> <p>4 A I would have looked at it.</p> <p>5 Q I'm sorry. Before we leave Exhibit 4 -- but, for</p> <p>6 the record, you don't recall ever seeing Exhibit 4. Is</p> <p>7 that correct?</p> <p>8 A I'm not sure. It was ten years ago -- or 11 now.</p> <p>9 Q I understand.</p> <p>10 A It's very difficult for me to recall one of these</p> <p>11 things when I wouldn't -- had very little interest in</p> <p>12 insurance and still have very little interest, because I</p> <p>13 just took it out for protection.</p> <p>14 Q Mr. Blumenthal, I certainly understand what you're</p> <p>15 saying. But so that the record is clear, as you sit here</p> <p>16 today, you don't recall seeing Exhibit 4. Correct?</p> <p>17 A I don't recall seeing Exhibit 4. Mr. Marlin never</p> <p>18 showed me any exhibits like that, that I know of.</p> <p>19 Q Okay. Is it possible he showed you something, and</p> <p>20 you just don't remember it?</p> <p>21 A I doubt it, no. I would say I've never seen -- if I</p> <p>22 had seen the zeros, it would never -- we wouldn't be</p> <p>23 sitting here.</p> <p>24 Q Okay.</p> <p>25 A I mean, it doesn't make economic sense.</p> <p style="text-align: right;">Page 63</p>	<p>1 Q -- indicating that an illustration was indeed</p> <p>2 presented to you. Correct?</p> <p>3 A If it was, I don't recall it, sir.</p> <p>4 Q I understand that. It's been ten years.</p> <p>5 A Eleven.</p> <p>6 Q Eleven.</p> <p>7 So is it possible, sir, having seen this</p> <p>8 document, that illustrations were indeed presented to</p> <p>9 you, and you just don't remember them?</p> <p>10 A I doubt -- I would remember, sir -- if it was a zero</p> <p>11 balance and I saw the illustration, I would remember it.</p> <p>12 I did not see any in this illustration that told me that</p> <p>13 we're going to zero in 19 -- or 2000, whatever it was,</p> <p>14 seventeen years later. I only put out 900,000 and get</p> <p>15 zero.</p> <p>16 Q Let's turn to the last page --</p> <p>17 A Okay.</p> <p>18 Q -- of Exhibit 5. And, for the record, it's Bates</p> <p>19 stamped NYLIAC 009. Let's look at the last column in the</p> <p>20 right-hand corner.</p> <p>21 A Okay.</p> <p>22 Q I'll point it out to you so you'll see what I'm</p> <p>23 talking about.</p> <p>24 A Over here?</p> <p>25 Q Do you see where it says "cash value" there, Mr.</p> <p style="text-align: right;">Page 65</p>

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18 (Pages 66 to 69)

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

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

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

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

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19 (Pages 70 to 73)

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

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

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

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

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20 (Pages 74 to 77)

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

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

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

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

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21 (Pages 78 to 81)

1 A Sure.
2 **Q -- if you're fatigued or if you need to take a**
3 **break. Or if you need --**
4 A Right.
5 **Q -- to stop the deposition --**
6 A I appreciate that.
7 **Q -- for any reason, you just let me know.**
8 A Yeah.
9 **Q We were on Exhibit 6. The second paragraph, the**
10 **first sentence, it says, I have also received and**
11 **reviewed an illustration for this policy. Do you see**
12 **that?**
13 A I see -- this one right here?
14 **Q Yes, sir. I have also received and reviewed an**
15 **illustration for this policy. Do you see that?**
16 A I can't make it out even with this thing, but --
17 **Q Well --**
18 MS. EMMONS: I can --
19 THE WITNESS: Well --
20 MS. EMMONS: I can tell you --
21 THE WITNESS: Okay.
22 MS. EMMONS: -- Dunnie, that's what it
23 says.
24 THE WITNESS: Okay. All right.
25 MS. EMMONS: And just to kind of

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1 re-refresh or get our bearings back after lunch, this is
2 a policy delivery receipt that was delivered with the
3 policy in July of 1999. And it does say --
4 THE WITNESS: You know, I could -- I must
5 have received it, without a doubt. I don't know if I
6 reviewed it. I don't think I did. But I wouldn't have
7 any reason to review it, but I know I received it.
8 **Q (By Mr. Stano) Now, you had testified earlier**
9 **today that you had never received an illustration.**
10 **Are you --**
11 A No. I'm not saying that. I said I don't recall --
12 **Q Okay.**
13 A -- receiving an illustration telling me that it had
14 a zero balance. That's it.
15 **Q Okay.**
16 A I just don't recall it. But that doesn't mean I
17 didn't get it.
18 **Q Sure. So it's possible --**
19 A It's possible.
20 **Q -- you received such an illustration --**
21 A Absolutely.
22 **Q Let me finish, sir.**
23 A Go ahead.
24 **Q It's possible you received such an illustration.**
25 **You just don't remember it as you sit here today.**

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1 **Correct?**
2 A That could be possible.
3 **Q Okay. Now, let me read this sentence in small**
4 **bites --**
5 A Sure.
6 **Q -- because you have a hard time reading it.**
7 **The rest of that sentence reads, in effect, I**
8 **understand that the policy value shown in the**
9 **illustration are based on guaranteed and nonguaranteed**
10 **elements. Do you need me to repeat that?**
11 A Huh-uh.
12 **Q What's your understanding of the guaranteed and**
13 **nonguaranteed elements in the illustration that you**
14 **received?**
15 A The illustration that I received showed me that the
16 face value and the cash value disappears after 16 or 17
17 years. It says --
18 **Q This is the illustration you received in July of**
19 **1999?**
20 A Oh, no. No. Not in '99, no. No. I don't --
21 huh-uh. '99?
22 MS. EMMONS: I'm sorry. I'm confused now,
23 Phillip. Are you talking about the term cash value or
24 the actual cash value for the policy?
25 MR. STANO: Well, he signed a statement

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1 saying that he understands that the illustration -- or
2 the values shown in the illustration --
3 THE WITNESS: Could fluctuate.
4 MR. STANO: -- are based on guaranteed and
5 nonguaranteed elements.
6 MS. EMMONS: Okay.
7 **Q (By Mr. Stano) Do you understand that to mean,**
8 **Mr. Blumenthal, that the values in the policy could**
9 **fluctuate? That's what you just said. Is that --**
10 A Yeah. I would think that if I read this, I'm not
11 sure I would understand how it fluctuates.
12 **Q I understand.**
13 A If I had read it and understood what it meant and
14 saw an illustration that said, this and this is going to
15 happen, then I would not have taken the policy, Phil,
16 period.
17 **Q So if you had read this, you would have known that**
18 **the values fluctuated, but you wouldn't know why. Is**
19 **that a fair statement?**
20 A I still don't know why it would fluctuate.
21 **Q I understand that. I'm not asking you --**
22 A Yeah.
23 **Q -- do you know why they fluctuate. I'm asking**
24 **you --**
25 A According to business.

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22 (Pages 82 to 85)

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

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

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

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

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23 (Pages 86 to 89)

1 **Q We talked about a guaranteed interest rate of 4**
2 **percent?**
3 A Right.
4 **Q Do you see that there where it says, guaranteed**
5 **charges? And below that it reads, guaranteed interest**
6 **rate of 4 percent. Do you see that, Mr. Blumenthal?**
7 A That's pretty small. I can't make that out, but --
8 **Q Well, if I'm not reading it correctly --**
9 A Okay. That's good.
10 **Q -- I'm sure your counsel --**
11 A Yeah.
12 **Q -- will correct me.**
13 A Yeah. I'm sure that it's right if you say it is.
14 **Q And if you go down to year 73, which would have been**
15 **your age, do you see zeros? Do you see, policy year six,**
16 **age 73?**
17 A Policy year six?
18 **Q Yes, sir. If the policy year -- if the policy was**
19 **taken out in 1999, that would be the beginning of policy**
20 **year one. You were 67, I believe --**
21 A Okay.
22 **Q -- in 1999. Six years later in policy year six, you**
23 **would have been approximately 73 years old. Correct?**
24 A Right.
25 **Q So in policy year six, when you're 73 years old, do**
Page 86

1 **you see that the illustration shows a cash value of zero?**
2 A If I had seen this, I'd never taken the policy out,
3 sir, period. This is stupid. I have never seen this
4 until, like, whenever we got the illustration. I've
5 never seen this particular illustration until -- until we
6 got it.
7 **Q Sir, you just testified that that's your signature**
8 **on the page.**
9 A But it's on this page, not on this page. I signed
10 this. I had no idea what was behind it. Never -- might
11 not have been there. Ben could have taken it off. I
12 don't know. I've never seen this thing that says it goes
13 to zero after so many years. Never seen it.
14 That's the reason that I canceled the policy,
15 because I thought I had something that would last my
16 life, whatever it was a month, period. Not this, that I
17 end up with zero after spending \$900,000.
18 **Q Okay. Let's turn back to the page with your**
19 **signature on it.**
20 A Okay.
21 **Q Now, you've certainly seen this page. Your**
22 **signature is on it. Correct?**
23 A Yeah. I must have seen it. Probably didn't pay any
24 attention, but I -- I'll admit I did see this one.
25 **Q And when you say "this one," you're talking about**
Page 87

1 **Bates No. 081?**
2 A I don't know. 6 -- page 6. I don't know what --
3 **Q Page 6 of 7?**
4 A Okay. Whatever, yeah.
5 **Q Okay. Let's look at the page with your signature on**
6 **it. Let's go again to the column with guaranteed**
7 **charges. Do you see that?**
8 A I can't see that one, but it's there. Okay.
9 **Q With a guaranteed interest rate of 4 percent?**
10 A See, I've never seen this. Even though I signed it,
11 I've still never seen it. I mean, I've never studied it.
12 I don't know what it was. Ben could have come and said,
13 sign this. I say, okay, I'll sign it. What's this say?
14 **Q That's irrelevant, sir. I'm looking at the -- I'm**
15 **looking at the -- at the numbers that are on the form.**
16 A Okay.
17 **Q Let's look at year ten, policy year ten, age -- you**
18 **would have been 77 in year ten. Correct?**
19 A Yeah.
20 **Q And what is the cash value --**
21 A No, no, no. Wait a minute. Yeah. Yeah. You're
22 right. Okay.
23 **Q You were 67 when the policy was taken out.**
24 A Okay. Yeah.
25 **Q Ten years later you were 77.**
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1 A Okay.
2 **Q And what is the cash value, Mr. Blumenthal, in year**
3 **ten when you were 77?**
4 A This shows zero. Huh-uh. Huh-uh. I must have
5 signed this, but I --
6 **Q You must have.**
7 A I did sign it, but I didn't know what I was signing,
8 whether you believe it or not. I don't care if you
9 believe it or not. I'm just telling you I never would
10 have done this if there was no cash value in the policy.
11 I'm going to tell you one more time that I had no idea
12 that the cash value disappeared in ten years, six years,
13 17 years, none.
14 **Q Did you have the opportunity to read that page**
15 **before you signed it?**
16 A I could have had the opportunity, but I didn't read
17 it. If I had read it and saw that -- I just probably
18 signed it because Ben brought it around. But if I had
19 read, no cash value in seven years or 17 years or
20 whatever it is, I would have never done this. It would
21 have been stupid.
22 **Q Are you responsible for documents you sign?**
23 A Well, could have been. But this is -- I'm not
24 saying I'm -- Ben must have brought this thing around and
25 said, just sign it, or something. I said okay. I don't
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24 (Pages 90 to 93)

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

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

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

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

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25 (Pages 94 to 97)

1 A Oh, I'm looking in the wrong spot.
2 **Q Do you see that, Mr. Blumenthal?**
3 A I can't make that out.
4 **Q It reads \$4,420.50.**
5 A I can't see it. Shannon can.
6 **Q I'll represent to you --**
7 MS. EMMONS: And I'll stipulate that it --
8 the --
9 THE WITNESS: Okay. So it's there.
10 Right?
11 MS. EMMONS: The second page of Exhibit --
12 THE WITNESS: Yeah.
13 MS. EMMONS: -- 7 does state that there's
14 a plan premium of \$4,000 -- \$4,420.50.
15 THE WITNESS: Okay.
16 **Q (By Mr. Stano) Do you recall if that was the**
17 **amount of monthly premium you paid for your NYLIAC**
18 **policy?**
19 A I knew it was 50,000 a year, so I didn't pay any
20 attention to the monthly thing.
21 **Q Okay. Do you recall that you paid on a monthly**
22 **basis?**
23 A I don't -- you know, I don't really recall that. I
24 know we paid. I don't know whether it was monthly. It
25 probably was.

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1 **Q Was it paid out of your personal checking account?**
2 A Oh, yeah.
3 **Q Do you recall if that was the premium that was on**
4 **your application for the policy?**
5 A I have no idea if it was. I knew it was
6 50-something thousand. I never figured it out by the
7 month.
8 **Q 50-something thousand on an annual basis?**
9 A Yeah.
10 **Q Correct?**
11 A 50-something.
12 **Q Let's turn to the next page, page 3. Did you**
13 **understand you were buying a NYLIAC protector policy as**
14 **opposed to a NYLIAC accumulator policy?**
15 A A NYLIAC --
16 **Q Protector.**
17 A -- protector.
18 **Q That's what the policy that you purchased was**
19 **called, a protector policy. Do you recall discussing**
20 **that --**
21 A I thought it was a Universal Life policy.
22 **Q Yes, sir. They're both Universal Life policies, the**
23 **accumulator and the protector.**
24 A I've never heard of protector or the accumulator.
25 **Q Okay.**

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1 A I've heard of only Universal Life.
2 **Q What's your understanding of Universal Life?**
3 A I just thought it was a life policy. You kept
4 paying on it until you died, and then your beneficiary
5 collects whatever, and that's it.
6 **Q Okay.**
7 A But I thought it was a life policy that would be,
8 you know, in force for life.
9 **Q Right. As long as you paid the premium?**
10 A Yeah. Well, absolutely. I didn't expect it to
11 be -- come on, that's a stupid question.
12 **Q Sometimes I ask stupid questions.**
13 A I realize that.
14 MS. EMMONS: Okay. Okay. We've asked and
15 answered that question. We don't need to add comments.
16 THE WITNESS: Go ahead, Phil. You're
17 next.
18 **Q (By Mr. Stano) Mr. Blumenthal, if I can bring**
19 **some humor into your life, I'm happy to do that.**
20 A Do it. No problem.
21 **Q And I will try to make this as painless as possible,**
22 **sir.**
23 A All right.
24 **Q Let's -- let's look at the second paragraph.**
25 A Okay.

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1 **Q And I will read it in small phases, because you're**
2 **having a hard time reading it, and I understand that and**
3 **I apologize.**
4 A Okay.
5 **Q The first sentence of the second paragraph reads,**
6 **"The following pages provide a summary and year-by-year**
7 **figures for cash value, cash surrender values, and death**
8 **benefits for the policy you have chosen, based on your**
9 **anticipated premium outlay and net outlay."**
10 **Did you understand that's what an illustration**
11 **was meant to do, is to provide you, among other things,**
12 **year-by-year figures for the items I mentioned, cash**
13 **value, cash surrender value, and so forth?**
14 A Never thought about it.
15 **Q The second sentence reads, "Because the current**
16 **interest rate and charges may change, we show how your**
17 **policy would perform under three different assumptions."**
18 **Okay? Do you understand that?**
19 A Okay.
20 **Q We talked about --**
21 A Yeah.
22 **Q We talked --**
23 A Yeah.
24 **Q We talked about how interest rates could fluctuate?**
25 A Yeah. Absolutely.

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26 (Pages 98 to 101)

<p>1 Q Correct?</p> <p>2 A Yeah.</p> <p>3 Q And that that would affect --</p> <p>4 A Right.</p> <p>5 Q -- the value of -- the cash value?</p> <p>6 A Exactly.</p> <p>7 Q Okay. And so because rates do fluctuate, the</p> <p>8 illustration is saying it will give you three different</p> <p>9 assumptions. And that's the three different assumptions</p> <p>10 on the last page we looked at. Remember? The</p> <p>11 guaranteed, the current, and the midpoint?</p> <p>12 A That's this one?</p> <p>13 Q On the second to the last page they have guaranteed,</p> <p>14 they have current, and in the middle they have midpoint,</p> <p>15 three different assumptions.</p> <p>16 A Okay.</p> <p>17 Q One assumption is to guarantee you an interest rate</p> <p>18 of 4 percent. The policy always guaranteed that they</p> <p>19 would pay at least 4 percent --</p> <p>20 A Okay.</p> <p>21 Q -- on the cash value. And then there was the</p> <p>22 current rate, whatever was being credited --</p> <p>23 A Right.</p> <p>24 Q -- on today --</p> <p>25 A Yeah.</p> <p style="text-align: right;">Page 98</p>	<p>1 of them do, I guess.</p> <p>2 Q Okay. You've --</p> <p>3 A That's not what -- that's not the point of this.</p> <p>4 Really, Phil, you're off the thing.</p> <p>5 What happened was I didn't know it was going to</p> <p>6 run out. That's the whole scenario. I didn't know the</p> <p>7 cash would go away and the face value would go away. If</p> <p>8 I had known it, I wouldn't have taken the policy, and</p> <p>9 anybody that would take it is crazy, is stupid. Take</p> <p>10 something else, not this thing. This is ridiculous.</p> <p>11 Q Well, let's cut to the chase. You would have known</p> <p>12 it if you had read this page that has your signature.</p> <p>13 Correct?</p> <p>14 A Well --</p> <p>15 Q If you had read it --</p> <p>16 A -- if I under -- if I had looked at it, probably,</p> <p>17 I'd -- I didn't have any -- I don't know.</p> <p>18 Q Sir --</p> <p>19 A I can't remember that.</p> <p>20 Q It's a pretty straight question, Mr. Blumenthal.</p> <p>21 You signed the page. It says zero. If you had read it,</p> <p>22 you would have known it. Correct?</p> <p>23 A No. I wouldn't have ever taken the policy if I had</p> <p>24 read it and understood it.</p> <p>25 Q Right.</p> <p style="text-align: right;">Page 100</p>
<p>1 Q -- for example. And then there was a midpoint rate,</p> <p>2 which was the average between what was guaranteed --</p> <p>3 A Okay.</p> <p>4 Q -- and the current that was credited. It's called</p> <p>5 the midpoint.</p> <p>6 A Okay.</p> <p>7 Q And that's what the illustration says on page -- on</p> <p>8 the second paragraph of the second sentence on page 78.</p> <p>9 "Because the current interest rate and charges may</p> <p>10 change, we show how your policy would perform under three</p> <p>11 different assumptions, the guaranteed interest rate and</p> <p>12 guaranteed policy charges, an average of the guaranteed</p> <p>13 and currently illustrated interest rate and policy</p> <p>14 charges, and the interest rate and the charges we are</p> <p>15 currently illustrating."</p> <p>16 That's what we just talked about.</p> <p>17 A Right.</p> <p>18 Q Now, have you -- if you had read this illustration</p> <p>19 when you received it, you would have realized you were</p> <p>20 getting those three different assumptions. Correct?</p> <p>21 If you had read it. I know you say you didn't.</p> <p>22 A Yeah.</p> <p>23 Q But if you had read it, you would have known that</p> <p>24 you were getting the three -- the three assumptions?</p> <p>25 A Probably. That's common. You know, that's what all</p> <p style="text-align: right;">Page 99</p>	<p>1 A Ben might have just shoved this in my face or</p> <p>2 something, and I might not have -- I probably never -- I</p> <p>3 didn't look at this thing or the other page.</p> <p>4 Q Mr. Blumenthal, you created -- you completed high</p> <p>5 school, didn't you?</p> <p>6 A I completed college, sir. So what?</p> <p>7 Q Where did you get -- you got an undergraduate</p> <p>8 degree?</p> <p>9 A No. I got a graduate degree.</p> <p>10 Q What's your undergraduate degree in?</p> <p>11 A Accounting.</p> <p>12 Q From what school?</p> <p>13 A OU.</p> <p>14 Q Oklahoma?</p> <p>15 A University of Oklahoma. It's called OU.</p> <p>16 Q Okay.</p> <p>17 A Oklahoma University.</p> <p>18 Q And you have --</p> <p>19 A It's right down the street.</p> <p>20 Q Okay. And you have a graduate degree?</p> <p>21 A I graduated --</p> <p>22 Q Okay.</p> <p>23 A -- with a degree, yeah.</p> <p>24 Q Did you practice accounting once you got out of</p> <p>25 school?</p> <p style="text-align: right;">Page 101</p>

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27 (Pages 102 to 105)

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

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

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

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

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28 (Pages 106 to 109)

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

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

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

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

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29 (Pages 110 to 113)

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

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

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

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

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30 (Pages 114 to 117)

1 **Q And I just made that up.**
2 A Yeah. That's fine.
3 **Q And let's assume you took a loan out of 100,000.**
4 A Okay.
5 **Q Then the cash surrender value would go from 200 --**
6 A Yeah.
7 **Q -- minus 100 --**
8 A Yeah.
9 **Q -- down to 100.**
10 A Yeah.
11 **Q Did you understand that?**
12 A Yeah. Anybody would understand that.
13 **Q Okay. So you knew that if you took out a loan**
14 **against the policy, there would be less money --**
15 A Well, absolutely.
16 **Q -- in the cash surrender value -- let me finish --**
17 A Go ahead.
18 **Q -- there would be less money to keep the premium in**
19 **force. Correct?**
20 A Exactly right.
21 **Q Okay.**
22 A But I took a loan on the policy when I got ready to
23 cancel it. Thought I'd better get the money, if I can,
24 out of the cash value thing -- or surrender -- they call
25 it surrender value. And I did that and just canceled the

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1 policy. But that's after I found out that it was going
2 to be zero in three years or six years or whatever it
3 was.
4 It's misrepresentation, Phil, on only the --
5 the guy just missrep -- you know, didn't tell me what he
6 should have told me. He should have said, here's a
7 policy for X dollars, and it's going to go for Y years.
8 **Q Uh-huh.**
9 A And I would have said, okay. I'll either do it or I
10 won't. I would not have done it at that high of a
11 premium, because I knew about term policies.
12 **Q So just to make sure I understand, your beef or your**
13 **complaint is with what Mr. Marlin told you --**
14 A Exactly.
15 **Q -- not with -- let me finish -- not with what's --**
16 A Huh-uh.
17 **Q -- not with what's in the documents?**
18 A Uh-huh.
19 **Q Correct?**
20 A Documents are --
21 **Q Documents are fine?**
22 A Yeah.
23 **Q Okay.**
24 A But not -- Ben Marlin tells me -- who do you -- he's
25 the rep.

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1 **Q Correct.**
2 A And you're supposed to trust the rep to tell you the
3 truth and what's happening with the policy, right or
4 wrong, and that is -- that is really Universal.
5 **Q Okay. Let me show you -- if you could turn to page**
6 **507. It's NYLIAC 080. And let me just read you --**
7 A Okay. Go ahead.
8 **Q I'm trying to help you out here.**
9 A Okay. Go ahead.
10 **Q It talked -- the heading is the third heading from**
11 **the bottom, and it reads, quote, Annual Premium Necessary**
12 **to Guarantee Coverage. Let me read that.**
13 **Quote, The annual premium outlay to guarantee**
14 **coverage for the term of the policy (age 100) subject to**
15 **the maximum premiums allowable to qualify as a life**
16 **insurance policy is \$200,276.89 annually.**
17 A Where is that?
18 **Q Sir, it's right here.**
19 A Okay.
20 **Q In other words --**
21 A I've never heard of that. But that doesn't matter
22 because the policy went to zero.
23 **Q I understand.**
24 A That's the whole thing right here, zero, whack.
25 **Q Right.**

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1 A I'm out of it.
2 **Q We've talked about that.**
3 **But if you had read that sentence --**
4 A No.
5 **Q -- you would understand that the annual premium**
6 **necessary to keep the policy in force, to guarantee the**
7 **policy would be in force would be \$200,276.89. Correct?**
8 A That could have happened, yeah.
9 **Q Well, that's what it says.**
10 A Okay. That's what it says. I didn't know it.
11 **Q But if you had read it, you would have known it.**
12 **Correct?**
13 A Could have, yeah. But it wouldn't have mattered to
14 me.
15 **Q I thought you said you'd pay any premium --**
16 A I said --
17 **Q -- to keep the policy?**
18 A -- it wouldn't have mattered if it was 200,000 or
19 100,000 or 10,000.
20 **Q You just needed to know what it was?**
21 A Yeah.
22 **Q Okay.**
23 A But I didn't know it was going to cancel itself out.
24 **Q Well, it did.**
25 A At the beginning of the policy, Ben tells me it's a

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31 (Pages 118 to 121)

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

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

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

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

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32 (Pages 122 to 125)

1 A Okay.
2 **Q It has your signature on the page that shows --**
3 A Right.
4 **Q -- it's going to zero. Correct?**
5 A Uh-huh.
6 **Q Have you heard of the expression, you can lead a**
7 **horse to water, but you can't make it drink?**
8 A I have heard that, sir.
9 **Q Okay. Would that be applicable here? You signed**
10 **the very page that shows it going to zero --**
11 A And that is stupid on my part. Ben could have just
12 said, sign this, and I would have signed it.
13 **Q Okay.**
14 A He didn't explain a thing, period. Whether you
15 believe it or not, that is the truth.
16 **Q Do you need a break?**
17 A No.
18 THE VIDEOGRAPHER: Can we take a break for
19 one minute just to switch a tape?
20 MR. STANO: Sure.
21 (A break was taken.)
22 **Q (By Mr. Stano) Mr. Blumenthal, who is David M.**
23 **Sanderford?**
24 A I have no idea.
25 **Q You've never talked to him before?**

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1 A Not that I know of. David M. -- huh-uh.
2 **Q Sanderford, S-A-N-D-E-R-F-O-R-D.**
3 A I don't know. I don't know if -- I don't know the
4 guy, whoever he is. I don't.
5 **Q Other than your counsel, have you talked to anybody**
6 **about this case? And I'm not asking about conversations**
7 **with counsel.**
8 A I don't think anybody, because nobody has any
9 interest in it. I don't -- huh-uh. Not that I know of.
10 David M. --
11 **Q Sanderford, S-A-N-D-E-R-F-O-R-D.**
12 A I don't know. I don't know him.
13 **Q Okay. I will represent to you, Mr. Blumenthal, that**
14 **he has been represented to us as your expert witness in**
15 **this case.**
16 A An expert witness?
17 **Q Yes, sir.**
18 A Not that I know of.
19 **Q Okay.**
20 A I don't know a David Sander -- whoever it is.
21 **Q It's Sanderford.**
22 A Whoever it is, I don't -- I've never heard of him,
23 if he's an expert witness.
24 **Q Have you talked to anyone in this case?**
25 A I've never talked to a David Sanders, so --

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1 **Q Okay.**
2 A Wherever you heard that is -- I don't know where you
3 heard it. Never heard of him.
4 **Q It's not true?**
5 A Huh-uh.
6 **Q When you said, huh-uh, you need to say yes or no.**
7 A No. It is not true.
8 **Q Okay. Sir, your -- Mr. Sanderford has provided**
9 **what's called an expert witness written report in this**
10 **case, in which he has said that he has interviewed you.**
11 **Now, would that not be correct?**
12 A If he's interviewed me, I don't know about it.
13 **Q Well, is it possible to interview you without you**
14 **knowing about it?**
15 A I don't see how he could do it, no. I -- can't be
16 happening.
17 **Q Okay.**
18 A And he's an expert witness, huh?
19 **Q You didn't know you had an expert witness --**
20 A No.
21 **Q -- in this case?**
22 A I had no idea.
23 **Q No one ever told you that?**
24 A Huh-uh.
25 **Q Did you speak with your counsel in preparation for**

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1 **this deposition? And I'm not asking you what you said to**
2 **them, because I am not entitled to know.**
3 A Are you talking about her, the counsel?
4 **Q When you say her, who are you referring to?**
5 A Yeah.
6 **Q Ms. Emmons?**
7 A That's --- she's the counsel, yeah. I've talked to
8 her.
9 **Q Okay. And what is her name?**
10 A Shannon.
11 **Q Okay. And you've talked to her about your**
12 **deposition?**
13 A Briefly.
14 THE WITNESS: We haven't talked much about
15 it, have we?
16 **Q (By Mr. Stano) I'm not asking you, sir, what**
17 **was said.**
18 A Okay.
19 **Q I'm prohibited from knowing that.**
20 **When did you talk with Ms. Emmons?**
21 A Oh, several times over maybe a month or so or three
22 months. I don't know.
23 **Q Did you talk to her today before your deposition?**
24 A Yeah. I called her.
25 **Q Okay. Did you talk to her yesterday?**

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33 (Pages 126 to 129)

1 A Yeah.
2 **Q Did you talk to her the day before yesterday?**
3 A The day before yesterday, and this is Tuesday, no.
4 **Q Prior to talking to Shannon Emmons yesterday, when**
5 **was the last time you had talked to Ms. Emmons or any of**
6 **your other lawyers who are working on this case?**
7 A I don't know of any other lawyers that are working
8 on this case.
9 **Q Okay. Ms. Emmons is your only contact?**
10 A She is the only counsel that we -- that I know
11 about.
12 **Q Do you know who are the law firms representing you**
13 **in this case?**
14 A I know who this law firm is. It's the only one
15 that's doing it.
16 **Q Okay. And what's the name of this law firm?**
17 A The name of the firm is Phillips Murray [sic].
18 **Q Okay. Do you know if there are any other law firms**
19 **working on this case, your case, against NYLIAC?**
20 A I have never talked to any other law firm.
21 **Q I understand that. But do you know if there -- if**
22 **there are any other law firms working on this case? I'm**
23 **trying to get the universe of people working on your**
24 **case.**
25 A If there is --

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1 **Q You don't know about it?**
2 A I -- I don't know any other law firm that's working
3 on this case myself, but -- I don't know. There might
4 be, but if I know it, I don't know them.
5 **Q Okay. And prior to talking to Ms. Emmons yesterday,**
6 **when was the last time you had talked to Ms. Emmons prior**
7 **to yesterday? Has it been weeks? Months? Days?**
8 A I'd say weeks, something like -- yeah. Probably
9 weeks.
10 **Q Okay.**
11 A We've been talking about when you're coming up.
12 **Q Right. And, again, I don't want to get into that.**
13 A Yeah. Okay.
14 **Q And prior to talking to Ms. Emmons about a**
15 **deposition or whatever it was -- and I'm not asking --**
16 **when was the last time you had talked to Ms. Emmons**
17 **before that?**
18 A Oh, God. I don't remember it. I can't remember
19 that.
20 **Q Months?**
21 A Maybe. Could be. I don't know. I can't remember
22 that, when we talked last before that.
23 **Q It's been a long time. Correct?**
24 A I don't know. Can't remember it.
25 **Q Okay. Who is Chuck Dahlgren (phonetic)?**

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1 A Chuck Dalwin (phonetic) is a guy that -- what does
2 Chuck do? He's a friend of one of my sons.
3 **Q Okay. Do you know what line of work he's in?**
4 A You know, I think -- I'm not sure what he's in. I
5 think he's -- might be an insurance guy.
6 **Q But you don't know?**
7 A I think -- I think he is, but I -- I don't know
8 what he -- who he works for.
9 **Q Do you know what company he works for?**
10 A Huh-uh.
11 **Q Do you know if he represents New York Life Insurance**
12 **and Annuity Corporation?**
13 A I don't know. I don't think so.
14 **Q Do you know of any company that he -- assuming he's**
15 **an insurance agent, and I'm not saying he is.**
16 A Yeah. I'm not --
17 **Q I'm not saying he's not.**
18 A I think he is. I don't know who he works for.
19 **Q Okay. But assuming he's an insurance agent, you**
20 **don't know what company he works for?**
21 A Huh-uh.
22 **Q Have you ever done business with Mr. Dahlgren,**
23 **insurance business?**
24 A I haven't, but my sons have.
25 **Q Okay.**

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1 A That's where I know him is through my sons.
2 They've -- they've done insurance business with him.
3 **Q Okay. How -- how do you know that?**
4 A They told me.
5 **Q Who told you? Your son?**
6 A My sons, yeah.
7 **Q Okay.**
8 A Took out some kind of a -- I can't remember what it
9 is now -- but, like, an annuity or something.
10 **Q Yeah. Do you know if your sons have ever taken out**
11 **insurance on you without telling you?**
12 A I don't think they did. I don't know it if they
13 did.
14 **Q Okay.**
15 A Huh-uh. I don't know why they would. If they was
16 going to take insurance out, I'm sure they'd tell me.
17 **Q And I'm not saying they did or they didn't. I'm**
18 **just asking.**
19 A Yeah. No.
20 **Q Have you ever consulted Mr. Dahlgren for insurance**
21 **advice? And if I've asked you that, I apologize.**
22 A No.
23 **Q Okay.**
24 THE WITNESS: Shannon, do you got a
25 marker?

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34 (Pages 130 to 133)

1 MS. EMMONS: A marker? There you go.
2 THE WITNESS: I want this guy's name that
3 I'm supposed to have been in contact with. What was his
4 name again?
5 **Q (By Mr. Stano) Are you referring to David M.**
6 **Sanderford?**
7 A Yeah.
8 **Q It's David M. Sanderford, S-A-N-D-E-R-F-O-R-D.**
9 THE WITNESS: Thank you, ma'am. That's --
10 I'll try to find out who that is.
11 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**
12 **what's marked as Exhibit 8.**
13 A Okay.
14 **Q And, for the record, it's Bates stamped NYLIAC 041**
15 **to 048. And, Mr. Blumenthal, I will represent to you,**
16 **sir, that this is the application you filled out for**
17 **insurance coverage with New York Life Insurance and**
18 **Annuity Corporation for the policy which is the subject**
19 **of your lawsuit.**
20 A Okay. So what?
21 **Q If you would, turn to page 5 or NYLIAC 045. And**
22 **maybe I should find it for you.**
23 A No. Hold it.
24 **Q I think it's two more pages in. One more page after**
25 **that, please, sir. And do you see the two signatures in**
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1 the lower right-hand corner?
2 A Right here? Yeah.
3 **Q Yes, sir. Are those your signatures?**
4 A That one -- those don't look like I wrote them, but
5 I might have. But I don't think so. That doesn't look
6 like -- the top one.
7 MR. STANO: Shannon, if he's going to
8 contest his signatures, we're going to ask for a
9 handwriting expert, and we're going to ask that the cost
10 be paid by Mr. Blumenthal. I don't know if you need to
11 go off the record or what, but --
12 THE WITNESS: Yeah. I'm not -- I could
13 have signed them. I'm just saying maybe -- I just don't
14 think I did, but I might have. I don't know why I
15 wouldn't have signed them.
16 MR. STANO: We're being very patient, and
17 we appreciate your help, but we're not going to play
18 these games. I just want to say that --
19 THE WITNESS: There is no game to play.
20 MS. EMMONS: Well, I don't think it's a
21 game. I think he's just trying to determine --
22 THE WITNESS: I'm trying to figure out --
23 MS. EMMONS: -- if it is.
24 THE WITNESS: -- if I signed them.
25 MS. EMMONS: It's a blurry copy.
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1 THE WITNESS: I could have done it.
2 **Q (By Mr. Stano) Sir, if it would help, maybe if**
3 **you turn to the next page, your signature is on that**
4 **page as well.**
5 A Oh, good.
6 **Q And I'm referring to NYLIAC 046.**
7 A Huh?
8 **Q Take your time, Mr. Blumenthal.**
9 A I don't know why I wouldn't have signed these. It
10 just doesn't look like I signed them, but it doesn't
11 matter because -- this is an application for the policy?
12 **Q Yes, sir. I'll represent to you it's --**
13 A Okay.
14 **Q -- the first application you filed or you signed for**
15 **the policy.**
16 A I could have done that, but --
17 **Q And, for the record, you're on page 46 now. Is that**
18 **your signature on page 46? I'm sorry, sir. Yes.**
19 A Right here?
20 **Q Yes, sir.**
21 A It could be right. This looks -- I probably did
22 this.
23 **Q And if you look at the next page, page 47, there's**
24 **your signature again.**
25 A Yeah.
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1 **Q Here, sir --**
2 A I've got it.
3 **Q -- if I may point it out to you.**
4 A Yeah. I -- I'm sure I signed it.
5 **Q Okay.**
6 A But it just don't look --
7 **Q And then if you look on the page 48.**
8 A Yeah. The last one, yeah.
9 **Q Yes, sir. Is that your signature?**
10 A Yeah. That's it. Okay.
11 **Q So these are your signatures on this?**
12 A Yeah. It looks like it.
13 **Q Okay. Thank you. And you signed it --**
14 A Yeah.
15 **Q -- five times --**
16 A Okay. So --
17 **Q -- on all these pages. Correct?**
18 A Yeah.
19 **Q Is that -- that's a yes?**
20 A Yes.
21 **Q Okay. Now, if we could turn to page 42, which is**
22 **the second page in.**
23 A Is that it?
24 **Q That may have been one page beyond it, but -- that**
25 **may be 43.**
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35 (Pages 134 to 137)

1 A Is that it?
2 Q Yes, sir.
3 A Okay.
4 Q And if you look at 5, question No. 5 is replacement,
5 and let me read that to you. The question is, "Is the
6 insurance applied for intended to replace in whole or in
7 part any existing insurance or annuity?" And the "yes"
8 box is checked. Do you see that?
9 A Right here?
10 Q I'm sorry, sir.
11 A Okay. All right.
12 Q Right there.
13 A Okay. So --
14 Q This application shows that you're replacing the
15 Valley Forge policy --
16 A Okay.
17 Q -- which was a ten-year term policy.
18 A Okay.
19 Q Was that your understanding of when you applied for
20 the NYLIAC policy? You would be replacing your Valley
21 Forge policy?
22 A I'm going to say yes, I guess. I don't know.
23 Q Okay. I'm not asking --
24 A Yeah.
25 Q -- you to --

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1 A Yeah. I don't know. Probably, yes. Let's just say
2 yes. Okay?
3 Q Okay. Let's turn to page 5.
4 A Okay.
5 Q I'm sorry. It's 0045.
6 A Okay. Where is it? Is that it?
7 Q It may be one more, sir.
8 A Okay. That's it. All right.
9 Q If you look at the first sentence in the middle of
10 the page, under the line across the page, it says, those
11 persons who sign below agree that -- do you see that?
12 A Okay.
13 Q It says by signing below, you agree to the
14 statements one through five listed below. Do you see
15 that?
16 A I don't see it, but --
17 Q I'm sorry. I don't want you to say something if you
18 don't see it. It's in all caps. Those persons who sign
19 below agree that --
20 A Okay.
21 Q Do you see that?
22 A All right.
23 Q You signed below. Agree to that?
24 A Yeah. Okay.
25 Q And I believe you testified that it's your

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1 signature --
2 A Yeah.
3 Q -- down below. Is that correct?
4 A It looks like it.
5 Q Okay. Now, if you look at the second condition that
6 you've agreed to by giving your signature twice, it says,
7 "No agent or medical examiner has any right to accept
8 risk, make or change contracts, or give up any of
9 NYLIAC's" -- I'm sorry -- "or give up any of NYLIC's or
10 NYLIAC's rights or requirements." Do you see that?
11 A I can't see that, but --
12 Q Well, let me read it to you.
13 A You already did.
14 Q I'll read it slowly. Now, I'll read the part only
15 pertaining to ages and not medical examiners. That will
16 shorten it a little bit.
17 A Okay.
18 Q And your counsel can follow along to make sure I'm
19 reading it correctly. "No agent has any right to make or
20 change contracts or accept risks or give up any of
21 NYLIAC's rights or requirements." It's basically saying
22 that the agent cannot change the contract. Do you
23 understand that?
24 A Okay.
25 Q Did you read this application before you signed it?

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1 A Not that I remember.
2 Q You could have read it. You just don't remember?
3 It's been a long time. Correct?
4 A Is this back in 1999?
5 Q Yes, sir.
6 A It's been 12 years, 11, whatever.
7 Q But you certainly had the opportunity to read it if
8 you wanted to?
9 A Uh-huh.
10 Q You just don't remember if you did or not. Correct?
11 A Huh-uh.
12 Q When you said "huh-uh," you need to answer that.
13 A Okay. No. I don't remember.
14 Q Okay.
15 A Huh-uh.
16 Q But your signature, sir, certainly signifies that
17 you agree to that term because you signed it. Correct?
18 A I have no idea what I signed, sir.
19 Q But when you sign something -- when you sign a
20 contract, you're agreeing to its terms. Correct?
21 A Well --
22 Q I mean, that's how business works, isn't it?
23 A -- normally, yeah. Normally, that would happen. In
24 this case it's a little bit different. Because if I did
25 read this -- which I didn't, but if I did -- and I go

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36 (Pages 138 to 141)

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

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

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

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

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37 (Pages 142 to 145)

<p>1 I believe it's right there. Excuse me.</p> <p>2 A Right here, isn't it? Right there?</p> <p>3 Q Correct. Lower right-hand corner.</p> <p>4 A Somebody signed Dunnie Blumenthal over here. It</p> <p>5 wasn't me. Okay. Signed Dunnie Blumenthal.</p> <p>6 Q Dunnie, D-U-N-N-I-E?</p> <p>7 A Yeah. Right here. That wasn't me. But this looks</p> <p>8 like me here, Irving H. Blumenthal, Jr. I don't know</p> <p>9 what this is, but --</p> <p>10 Q But the signature on the right --</p> <p>11 A Yeah. Is definitely mine. It looks like it.</p> <p>12 Q Where it reads, Irving H. Blumenthal, Jr., that's</p> <p>13 your signature?</p> <p>14 A Yeah.</p> <p>15 Q While we're on that same page, if you could go to --</p> <p>16 there's some conditions or numbered paragraphs --</p> <p>17 paragraph number two. The last sentence of paragraph</p> <p>18 number two on page 58 reads, quote, the policy or</p> <p>19 policies will lapse at the end of the grace or late</p> <p>20 period if the premium remains unpaid.</p> <p>21 You understood that, didn't you, that if you</p> <p>22 didn't pay the premiums, the policy would lapse?</p> <p>23 A Certainly.</p> <p>24 Q Okay. I'm going to ask you to turn to page 54. In</p> <p>25 the middle of the page -- about a third of the way down,</p> <p style="text-align: right;">Page 142</p>	<p>1 Q -- pertaining to the insurance agents. And follow</p> <p>2 along with me. "No agent has any right to accept risks,</p> <p>3 make or change contracts, or give up any of NYLIAC's</p> <p>4 rights or requirements."</p> <p>5 It's basically saying the insurance agent can't</p> <p>6 change the insurance policy.</p> <p>7 A I don't think he ever -- he didn't change anything.</p> <p>8 Q Well, we'll get to that in a minute. But you</p> <p>9 understand the agent can't change the insurance policy,</p> <p>10 correct, without approval in writing --</p> <p>11 A Yeah.</p> <p>12 Q -- from the company?</p> <p>13 A Okay.</p> <p>14 Q Do you understand that?</p> <p>15 A Yeah.</p> <p>16 Q Okay.</p> <p>17 A Okay.</p> <p>18 Q Your insurance policy with NYLIAC was a contract</p> <p>19 between you and the company. You understand that, don't</p> <p>20 you?</p> <p>21 A Okay. Let's say I do.</p> <p>22 Q Well, do you? Do you understand that --</p> <p>23 A I knew it was a policy. I didn't know it was a</p> <p>24 contract.</p> <p>25 Q Okay. It's an agreement between you and the</p> <p style="text-align: right;">Page 144</p>
<p>1 actually, there's a line across the page. And just below</p> <p>2 that line on page 54 it reads, "Those persons who sign</p> <p>3 below agree that." Do you see that sentence there,</p> <p>4 "Those persons who sign below agree that"?</p> <p>5 I'm sorry, Mr. Blumenthal. I'm not --</p> <p>6 A Where is it?</p> <p>7 Q I'm not being very clear.</p> <p>8 A Okay. That's all right.</p> <p>9 Q "Those persons who sign below agree that." Do you</p> <p>10 see that?</p> <p>11 A I don't see it, but it's on there somewhere, I</p> <p>12 guess.</p> <p>13 Q Well, I want to make sure that you're comfortable</p> <p>14 with what I'm saying.</p> <p>15 A Signed below -- something. Okay.</p> <p>16 Q Okay. And you signed below. Correct?</p> <p>17 A It sure looks like it.</p> <p>18 Q Okay. So you're agreeing to the conditions in 1</p> <p>19 through 4. Correct?</p> <p>20 A Absolutely. Evidently, I did it, not having no idea</p> <p>21 what I was signing. But that doesn't matter, evidently.</p> <p>22 Q Let's look at condition No. 2. And I'm only going</p> <p>23 to read the part -- it deals with agents and medical</p> <p>24 examiners. I'm only going to read the part --</p> <p>25 A Okay.</p> <p style="text-align: right;">Page 143</p>	<p>1 insurance company, the terms and conditions --</p> <p>2 A Yeah. It's a policy that -- I don't think it's a</p> <p>3 contract, but it's a -- I don't know what it is. It's</p> <p>4 just a policy.</p> <p>5 Q Okay. But the terms and conditions of the policy</p> <p>6 are contained within the policy's language. Correct?</p> <p>7 A I guess. I don't know that.</p> <p>8 Q Well, where else would it be?</p> <p>9 I mean, if you wanted to know what the policy</p> <p>10 said or what its requirements were or what its conditions</p> <p>11 were, you'd read the policy, wouldn't you?</p> <p>12 A Uh-huh.</p> <p>13 Q Correct?</p> <p>14 A (Witness nods head.)</p> <p>15 Q Is that a yes?</p> <p>16 A I'm thinking about it.</p> <p>17 Q Oh, I'm sorry. I'm sorry. Take your time. I</p> <p>18 couldn't tell.</p> <p>19 A Well, I don't know. But go ahead.</p> <p>20 Q Well --</p> <p>21 MS. EMMONS: We'll stipulate that the</p> <p>22 policy is a contract under Oklahoma law.</p> <p>23 MR. STANO: Thank you.</p> <p>24 THE WITNESS: It is?</p> <p>25 MS. EMMONS: Uh-huh.</p> <p style="text-align: right;">Page 145</p>

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38 (Pages 146 to 149)

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

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

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

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

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39 (Pages 150 to 153)

<p>1 another three years or four years or something. It was 2 going to expire and go to zero later, not then. But I 3 didn't feel like there was any reason to carry it further 4 if it's going to zero. 5 Q When Mr. Marlin told you the policy was going to 6 lapse or cancel, what -- 7 A No. Not cancel. Just going to zero is what it was. 8 Q He said it was going to go to zero. Is that his -- 9 A Yeah. That's it. 10 Q Is that his term? 11 A No. It's black and white right there, zero, boom. 12 Q I'm not being clear, and I'm sorry. 13 What term did he use when he said the policy 14 was going to stop being in effect? 15 A I don't know. I can't remember what -- exactly what 16 term he used. 17 Q The go-to-zero term, is that your term? 18 A That's my term. I don't know what he used. 19 Q Did you ask for Mr. Marlin to prepare you an 20 illustration to show how it would go to zero? 21 A Yeah. We had one. 22 Q I'm going to show you what's marked as Exhibit 10, 23 Bates numbered Blumenthal 37 through Blumenthal 43. Have 24 you seen this illustration before? 25 Well, given your eyesight, let me see if we Page 150</p>	<p>1 produced this document. And it was an illustration that 2 Mr. Blumenthal obtained approximately in late November, 3 early December of 2006. And it was produced by him in 4 this case. 5 Q (By Mr. Stano) Mr. Blumenthal, it says, NYLIAC 6 Protector Universal Life Insurance Inforce 7 Illustration for Irving H. Blumenthal. 8 A Okay. 9 Q Now, until today you haven't seen this, have you? 10 A Huh-uh. 11 Q When you say "huh-uh," you need to -- 12 A No. No. I've not seen this. 13 Q Okay. 14 MS. EMMONS: Dunnie, wait until you've 15 seen the entire document. 16 MR. STANO: Well, let's not coach the 17 witness. 18 THE WITNESS: No. 19 MR. STANO: Looking at the first -- 20 THE WITNESS: I can't see. 21 MS. EMMONS: Well, he's saying -- 22 THE WITNESS: I don't remember seeing this 23 writing. I might -- 24 MS. EMMONS: Okay. 25 Q (By Mr. Stano) Okay. Well, we're going to go Page 152</p>
<p>1 can help out -- help you out here. Do you see the 2 handwriting on the first page of the illustration? 3 A Up here? 4 Q Yes, sir. 5 A What is that? I can't make that out. It's too 6 little. 7 Q Is it your handwriting? 8 A No. 9 Q On the first page there are numbers marked 1 through 10 7, and there's a dash after each number, and then there's 11 words written. Is that your handwriting? 12 A No. 13 Q Do you recognize the handwriting? 14 A No. What does it say? 15 Q Well, for each number there is an explanation or 16 identifying comment about each number. And we'll go 17 through those. Did someone go through this illustration 18 with you? 19 A Not that I know of. I've never seen this before. 20 What is it? 21 Q It's -- well, it speaks for itself. But let me -- 22 since you're having a hard time reading, let me go 23 through it a little bit. 24 MS. EMMONS: If it will hasten things a 25 little bit, we produced -- we'll stipulate that we Page 151</p>	<p>1 very slow -- 2 A Yeah. Okay. 3 Q -- on this. 4 A Okay. Good. 5 Q And we're not going to rush anybody at all. 6 A Okay. 7 Q Would you like me to read the writing to you as 8 you -- as you follow along -- and you follow along? 9 Would that help? 10 A That would help. 11 Q I'll start with No. 1. 12 A Okay. 13 Q It's No. 1, dash, and we're looking at the top up 14 here. 15 A Okay. I've got it. 16 Q It says, "Does the rate apply? Will not apply since 17 less being taken out than was put in." Does that ring a 18 bell with you? 19 A Huh-uh. 20 Q When you say "huh-uh," sir, you need to -- 21 A No. 22 Q I'm sorry. I hate to be so -- 23 A That's all right. 24 Q -- picky, but -- 25 A No problem. I keep forgetting it. Go ahead. Page 153</p>

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40 (Pages 154 to 157)

1 Q Yeah. The court reporter has to --
2 A Yeah. I got you.
3 Q Okay. No. 2, total premiums paid, does that ring a
4 bell with you?
5 A No.
6 Q No. 3, cash value after surrender charge, does that
7 ring a bell with you?
8 A No.
9 Q No. 4, cost of insurance per month, hyphen --
10 MR. STANO: Shannon, help me out. It's --
11 I'm sorry -- goes up monthly?
12 MS. EMMONS: Yes.
13 Q (By Mr. Stano) No. 4 is, cost of insurance per
14 month goes up monthly.
15 MS. EMMONS: And, for the record, it's not
16 my handwriting.
17 THE WITNESS: Whose is it?
18 MR. STANO: That's -- that's for later.
19 THE WITNESS: Okay.
20 Q (By Mr. Stano) No. 5 is, charged -- charged
21 interest rate no more than 2 percent.
22 A (Witness shaking head.)
23 Q You're shaking your head no, as if --
24 A No. I've never heard of it.
25 Q Never heard of it. Okay.

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1 No. 6 is, guaranteed length of policy, 79.
2 Presumably, age 79?
3 A (Witness shakes head.)
4 Q And No. 7 is, best case as of today, and the 83 is
5 written there. I believe that's meant to be your age,
6 83. You've never seen any of this?
7 A Huh-uh. No.
8 Q Okay. Now, what I'm going to do is I'm going to
9 repeat those numbers, and I'm going to show you where in
10 the illustration these numbers are marked. Think of them
11 as footnotes or markers.
12 A Okay.
13 Q On the very next page -- and, again, I'll repeat
14 what No. 1 said.
15 A Yeah.
16 Q "Does the rate apply? Will not apply since less
17 being taken out than was put in." There's a No. 1 --
18 excuse me, Mr. Blumenthal -- right there. There's a 1
19 and then an arrow pointing to attached rate --
20 A Okay.
21 Q -- of 28 percent. It says, owner tax rate
22 28 percent, No. 1. And we're on page Blumenthal 38. Do
23 you see that No. 1?
24 A Yeah.
25 Q No. 1. And there's an arrow pointing toward

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1 the sentence that -- or the phrase that reads, owner tax
2 rate, 28 percent. Do you see that?
3 A I can barely see it.
4 Q Okay. But that doesn't ring a bell?
5 A It's there.
6 Q Again, it doesn't ring a bell --
7 A No.
8 Q -- with you. Correct?
9 A Huh-uh.
10 Q You said "huh-uh."
11 A No.
12 Q Okay. I'm sorry.
13 A That's all right. Keep reminding me.
14 Q No. 2 on the front page reads, total premiums paid.
15 And there's a No. 2 there pointing to the total
16 premiums --
17 A Okay. Okay.
18 Q -- paid of \$393,420.50.
19 A Okay.
20 Q Does that ring a bell with you?
21 A No.
22 Q No one has ever gone over this or explained it to
23 you. Correct?
24 A I don't remember this at all.
25 Q Okay. Turning to the next page, No. 3 -- and I'll

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1 go back to the first page and read what No. 3 said. No.
2 3 reads, cash value after surrender charge. And there's
3 a No. 3 with an arrow, and it shows a cash value after
4 surrender charge of \$185,562.57.
5 A Okay.
6 Q No one explained that or discussed that with you?
7 A Nope.
8 Q Okay. We're almost done. No. 4 is on the same
9 page, lower right-hand corner.
10 A Okay.
11 Q Do you see the 4 and the arrow?
12 A Yeah.
13 Q And the amount is \$3,357.66. And No. 4 reads,
14 quote, cost of insurance per month, hyphen, goes up
15 monthly, close quote. No one talked to you about that?
16 A Nope.
17 Q And No. 5 is two pages later. And I appreciate you
18 bearing with me, Mr. Blumenthal.
19 It reads, loans and loan interest. And No. 5
20 on the front page reads, change -- I'm sorry -- charged
21 interest rate no more than 2 percent. And there's a
22 paragraph with a 5 by it which discusses the loan spread
23 is guaranteed not to be more than 2 percent.
24 A Okay.
25 Q Have you ever read that before?

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41 (Pages 158 to 161)

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

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

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

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

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42 (Pages 162 to 165)

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

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

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

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

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43 (Pages 166 to 169)

1 A I thought it was all black and white. Didn't need
2 to read it.
3 **Q Did you understand that the policy was**
4 **nonparticipating? Rather, I meant -- by that, I mean it**
5 **did not pay -- did not pay dividends?**
6 A Yeah.
7 **Q You knew that?**
8 A (Witness nods head.)
9 **Q Okay.**
10 A Wasn't even thinking about dividends. Never brought
11 up.
12 **Q Okay. And, for the record, it says on the first**
13 **page, the last line, policy is nonparticipating.**
14 **Let's turn to page 3. Do you need a break,**
15 **sir? Because this is going to be awhile.**
16 A Huh-uh. Go ahead.
17 **Q Okay.**
18 MR. STANO: We're going to what time,
19 Shannon?
20 MS. EMMONS: What time? 4:30, Dunnie?
21 THE WITNESS: Yeah. I told the guy I'd
22 meet him at 4:30, so around 4:00 or 4:15.
23 MR. STANO: Okay. So it's about 3:00.
24 MS. EMMONS: Are you meeting him at the
25 shop?

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1 THE WITNESS: Well, not that shop.
2 Another one.
3 MS. EMMONS: Okay. But close by?
4 THE WITNESS: Oh, yeah. I'll have a guy
5 come by and get me.
6 MS. EMMONS: Okay.
7 (Electronic interruption.)
8 MR. STANO: We're even.
9 (Off the record.)
10 MR. STANO: All right. Back on the
11 record.
12 **Q (By Mr. Stano) Do you see the plan premiums amount**
13 **listed at \$4,420.50?**
14 A Okay. I see that.
15 **Q That was the amount listed in your application,**
16 **wasn't it?**
17 A I don't know. I didn't see it in there, but it
18 doesn't matter. Probably. It sounds like it.
19 **Q Okay. Do you see that your policy had a five-year**
20 **no-lapse guarantee?**
21 A What do you mean, no-lapse guarantee?
22 **Q The policy was guaranteed not to lapse for five**
23 **years if the premium was paid. Do you see that?**
24 A I don't see that, but --
25 **Q Well, sir --**

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1 A Yeah. Okay.
2 **Q -- we're going to -- I want to make sure you can see**
3 **it. I don't want to talk about something you haven't had**
4 **a chance to read or could read. It says five-year**
5 **no-lapse guarantee. Do you see that expiring date of**
6 **June 12th of 2004?**
7 A Okay. I don't see it, but that doesn't matter if I
8 can see it or not.
9 MR. STANO: Can we stipulate to that?
10 Because --
11 MS. EMMONS: Yes. Hold on. Page 3, plan
12 premium?
13 MR. STANO: Page 3. It's the -- it's
14 about the eighth line down.
15 MS. EMMONS: Required monthly minimum
16 premium level?
17 MR. STANO: Right. The line below that,
18 the first year --
19 MS. EMMONS: Yes. We'll stipulate that
20 the policy that's marked as Exhibit 11 states on page 3,
21 five-year no-lapse guarantee, expiry date 6/12/2004.
22 **Q (By Mr. Stano) And if you look up, Mr.**
23 **Blumenthal, your policy began as of June 12th, 1999,**
24 **and so it had a five-year no-lapse guarantee for five**
25 **years. So five years added to 1999, June 12th, would**

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1 **be June 12th, 2004 --**
2 A Right.
3 **Q -- which is what it says?**
4 A Uh-huh.
5 **Q Now, if you had read your policy, you would have**
6 **known that you had a five-year no-lapse guarantee.**
7 **Correct?**
8 A That's not what I thought I had, sir.
9 **Q I -- that's not my question.**
10 A I know it. If I had read it --
11 **Q You would have known it?**
12 A -- and could have understood it, yes. I then would
13 have known it.
14 **Q Okay.**
15 A But --
16 **Q But you didn't read it?**
17 A I didn't read it because I'd never understand it.
18 **Q Well, how would you know unless you actually read it**
19 **and tried?**
20 A Well, I did try to look at the -- I couldn't
21 understand it.
22 **Q Well, that's not what you said earlier.**
23 A Well, I've looked at them, but I'm just --
24 **Q Are you telling me when you received the policy --**
25 A No. I -- no. I don't know if I looked at it that

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44 (Pages 170 to 173)

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

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45 (Pages 174 to 177)

1 understood.
2 **Q Well, this is a life policy. It says if you pay**
3 **your premiums and if the premiums are sufficient, you can**
4 **have coverage for life.**
5 A That says -- that right there says it doesn't matter
6 if you pay the premiums or not. They could still cancel
7 you out.
8 **Q That's what -- that's how you understand that?**
9 A I understand that right there.
10 **Q Now that you've read it?**
11 A Yeah. They could cancel it out. I didn't know
12 that.
13 **Q You didn't know it because you didn't read the**
14 **policy. Correct?**
15 A Well, what I understood from Mr. Marlin, that a life
16 policy and whatever the premiums were is what they were,
17 and it was supposed to go until I was 99 or some figure.
18 **Q Right. 99 --**
19 A That's it.
20 **Q -- whatever.**
21 A Yeah. But that was what he told me. I did not read
22 the policy because I couldn't understand it, and I did
23 not think about reading it. Ben says, don't worry about
24 it. Just got a policy. So I took him at face value.
25 **Q So the crux of your case is -- is the statements Mr.**
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1 **Marlin made to you during the sale? Is that what it**
2 **boils down to?**
3 A That's what it boils down to, yeah. What he
4 represented to me is not what's in this policy --
5 **Q Okay.**
6 A -- boom. I never even thought about the company
7 canceling it out, even if it was paid.
8 **Q He says one thing. The policy says something else?**
9 A That's evidently what's happened.
10 **Q Okay.**
11 A That is what happened.
12 **Q Let's go to page 8 if you would, please.**
13 A Sure.
14 **Q That's 4. That's 5.**
15 A Is that 8? I bet it is.
16 **Q Yes, sir. And 1.5 again talks about the maturity**
17 **date, and I'm going to read that to you.**
18 A Okay.
19 **Q And the question -- it's in question-and-answer**
20 **form. And the question is, "What is the maturity date?"**
21 **And the answer is, "The maturity date of this**
22 **policy is the policy anniversary nearest the insured's**
23 **age 100." That's that June 12th of --**
24 A Yeah. Right. That could be.
25 **Q -- of 2032 --**
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1 A Yeah. Right. Right.
2 **Q -- that we talked about earlier.**
3 **Now, I'll read the next sentence and let me**
4 **[sic] follow along. "It is possible that coverage under**
5 **this policy may not continue to the maturity date even if**
6 **scheduled premiums are paid in a timely manner."**
7 A See, I didn't know that.
8 **Q That's basically the same sentence that we just read**
9 **on --**
10 A Yeah.
11 **Q -- page 3 --**
12 A Yeah.
13 **Q -- Blumenthal 3.**
14 **So for the second time the policy is telling**
15 **you that --**
16 A That's exactly right.
17 **Q Let me finish. For the second time the policy is**
18 **telling you that even if you pay your scheduled premiums,**
19 **the policy may not continue to the maturity date.**
20 **Correct?**
21 A That's exactly right.
22 **Q That's exactly what it said?**
23 A Yeah. That's what this says.
24 **Q Right. When you say "this," you're pointing to --**
25 A Yeah.
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1 **Q -- Blumenthal 8?**
2 A Well, not Blumenthal 8. Just No. 8.
3 **Q The policy?**
4 A Yeah.
5 **Q Section 1.5 of the policy?**
6 A Yeah. Whatever it is.
7 **Q So for the second time the policy has told you that**
8 **payment of scheduled premiums in a timely manner may not**
9 **be sufficient to keep the policy in force. Correct?**
10 A That's what it looks like to me, sir.
11 **Q Okay.**
12 A But, again, I was going under the integrity of Ben
13 Marlin telling me it's a lifetime policy.
14 **Q I understand.**
15 **Let's go to Blumenthal 20, so you're going to**
16 **have to turn a couple --**
17 A What is this?
18 **Q It's -- I'll turn it, if I may. I'm sorry, sir. I**
19 **went too far.**
20 A That's okay.
21 **Q My mistake. Blumenthal 20, and we're looking at**
22 **section 8.1 at the top.**
23 A Okay.
24 **Q Now, we talked about your policy being a contract**
25 **between you and the insurance company. Do you remember**
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46 (Pages 178 to 181)

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

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

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

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

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47 (Pages 182 to 185)

<p>1 MR. STANO: Shannon is watching me like a 2 hawk, so -- 3 THE WITNESS: That's good. Okay. 4 Q (By Mr. Stano) Let me read it again, sir. 5 A That's okay. 6 Q So do you understand the policy is saying that on an 7 annual basis, you will get an annual report without 8 charge pertaining to the policy? Do you understand that? 9 A Yeah. I don't think I've ever gotten one. But if I 10 did, I don't know it. 11 Q Well, it's NYLIAC's practice to send out annual 12 reports to you on an annual basis, showing you the 13 policy's components, its values, and so forth. Do you 14 recall receiving those? 15 A I don't. 16 Q You could have received them. You just don't 17 remember. Correct? 18 A No. I don't think I've ever seen an annual report 19 on a -- on policies. 20 Q Is it possible you received the annual reports, but 21 you just don't remember them? 22 A No. Not in this case, because I would remember 23 that. If I got an annual report on this policy, I'm -- 24 I'm confident I would know it. 25 Q Do you know what an annual report looks like?</p> <p style="text-align: right;">Page 182</p>	<p>1 I don't ever remember that one. I think it was this one 2 that turned me on. I believe it was this one. 3 Q Okay. What exhibit number are we talking about? 4 A I don't know which one it is. 5 Q Let's look to the first page. It's Exhibit 7? It's 6 the one with your name on it -- excuse me -- it's the one 7 that you've testified that it was your signature? 8 A Yeah. I think it is. 9 Q You did receive this illustration? 10 A I might have received. If I did this one, I didn't 11 pay any attention to it. This is the -- 12 Q We're not talking about whether you paid attention 13 to it. 14 A Yeah. Okay. I'm just saying -- 15 Q The question is, did you receive it? It's got your 16 signature on it. 17 A Yeah. I must have received it. 18 Q Okay. And we're referring to Exhibit 7, Bates 19 numbered NYLIAC 76 through NYLIAC 82. Correct? 20 A It looks like it, yes. 21 Q Okay. You testified that on page 81 NYLIAC, that 22 was your signature. Correct? 23 A It sure looks like it, sir. Let me look again. I'd 24 say that's it. 25 Q Okay. And I may have asked you this, and if I did,</p> <p style="text-align: right;">Page 184</p>
<p>1 A It would have to be a report on what's going on in 2 the policy. 3 Q You -- you had testified this morning with a lot of 4 conviction that you had never received an illustration, 5 when it turns out you had. Remember? 6 A Well, no. I've got -- I've got one illustration. I 7 got one illustration that I know of. 8 Q The one you signed for? The one that has your 9 signature on it? 10 A Could be. No, no, no. Not that. I don't know if 11 it's that one. No. I don't think it's that one. I 12 don't remember which one it is. There's two different 13 ones, but I can't remember which one it is. 14 (A break was taken.) 15 Q (By Mr. Stano) Mr. Blumenthal, just before 16 break you said something that intrigued me, and I 17 want to clarify it. You said you had received one 18 illustration. And I don't mean to put words in your 19 mouth. 20 Is this the illustration you received? This is 21 the one that you talked about earlier, Exhibit 7, that 22 has your -- 23 A This one? 24 Q Yes, sir. That has your signature -- 25 A No. This is -- I think this is the one. That one,</p> <p style="text-align: right;">Page 183</p>	<p>1 I apologize. Is that -- the date, the July 20th of 1999, 2 is that your handwriting to the immediate -- 3 A No. 4 Q -- right of your signature? 5 A That's not my writing. 6 Q Okay. 7 A I didn't -- I didn't put the date -- I don't know 8 that. 9 Q Okay. Okay. Did you -- 10 A That was in 1999? 11 Q Yes, sir. 12 A No. I didn't do the -- I didn't do that. The 13 signature is mine. 14 Q Okay. Other than Exhibit 7, which we just talked 15 about, are there any other illustrations you recall 16 receiving? 17 A Huh-uh. That's it. 18 Q That means no. Correct? 19 A Huh? 20 Q You said -- 21 A No. 22 Q No. 23 A But we got -- that one, I don't remember, the one I 24 signed for -- 25 Q Right.</p> <p style="text-align: right;">Page 185</p>

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

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49 (Pages 190 to 193)

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

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

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

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

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<p>1 Q Say your -- you have three sons working with you?</p> <p>2 A Yeah. I told my sons about it, yeah. But that's --</p> <p>3 I didn't make a major issue over it.</p> <p>4 Q It wasn't a big deal?</p> <p>5 A Well, it was big enough. It cost a lot of money. I</p> <p>6 wasn't too happy about it.</p> <p>7 Q Did you ever think about telling Ben to fix it?</p> <p>8 A God, I don't even -- no. I don't -- I haven't</p> <p>9 talked to Ben since then. I don't know what happened,</p> <p>10 huh-uh. I cannot remember exactly what happened with</p> <p>11 that.</p> <p>12 Q Do you think Mr. Marlin is a trustworthy individual?</p> <p>13 A Huh-uh.</p> <p>14 Q Do you think he lied to you?</p> <p>15 A Uh-huh.</p> <p>16 Q Is it possible you just misunderstood? I'm saying</p> <p>17 is it possible?</p> <p>18 A No. Not in my mind.</p> <p>19 Q Not in your mind?</p> <p>20 A Huh-uh. Not misunderstood. The simple thing -- I</p> <p>21 just thought I had a life policy. That's it.</p> <p>22 Q Uh-huh.</p> <p>23 A And I got that from Mr. Marlin.</p> <p>24 Q I'm sorry. From Mr. who? Mr. Marlin?</p> <p>25 A Ben Marlin.</p> <p style="text-align: right;">Page 194</p>	<p>1 6. It's Blumenthal 6. And there -- there is a -- this</p> <p>2 page is entitled Table of Guaranteed Maximum Monthly Cost</p> <p>3 of Insurance Rates. And there's a column of -- with ages</p> <p>4 listed. And at age 67, there's an arrow there.</p> <p>5 A Okay.</p> <p>6 Q Is that your handwriting?</p> <p>7 A I don't think so. I've never seen this before.</p> <p>8 Q Okay. Did you ever ask anyone -- well, strike that.</p> <p>9 The column to the right has a similar set of</p> <p>10 numbers, and there's a number marked 6.67. And there's</p> <p>11 handwritten next to that number an arrow and then 3.36.</p> <p>12 A Doesn't mean a thing to me, sir. Doesn't mean a</p> <p>13 thing.</p> <p>14 Q Okay. You don't know whose handwriting that is?</p> <p>15 A I have no idea. 3.36, what does that mean?</p> <p>16 Q (Indicating.)</p> <p>17 A You don't know who d</p> <p>18 know who d</p> <p>19 Q You do at?</p> <p>20 A Huh-uh.</p> <p>21 Q You ne</p> <p>22 kind of giv</p> <p>23 A No.</p> <p>24 Q Either</p> <p>25 A Huh-uh.</p> <p style="text-align: right;">Page 196</p>
<p>1 Q Okay. So let me get this straight. You're mad at</p> <p>2 Mr. Marlin because he, according to you, made</p> <p>3 misrepresentations to you. You didn't -- he promised you</p> <p>4 something that wasn't being delivered, but you never</p> <p>5 confront him? You never tell him?</p> <p>6 A Yeah. I told him. I said, hell, I'm going to</p> <p>7 cancel the policy. And --</p> <p>8 Q And what --</p> <p>9 A -- that was it.</p> <p>10 Q What did Mr. Marlin say?</p> <p>11 A He said nothing, as far as I can remember. So --</p> <p>12 Q He just let a client go by the wayside --</p> <p>13 A Evidently, I went by the wayside.</p> <p>14 Q Did you tell him that in person?</p> <p>15 A No. I talked to him on the phone.</p> <p>16 Q Did you write him a letter? Any followup?</p> <p>17 A No. Huh-uh. Nope.</p> <p>18 Q Did you yell at him over the phone?</p> <p>19 A God, I don't remember if I yelled at him or not. I</p> <p>20 can't -- I don't think I did.</p> <p>21 Q Was anybody in the office with you when you had that</p> <p>22 conversation with Mr. Marlin?</p> <p>23 A God, I don't remember that, Phil. I don't -- I</p> <p>24 don't know if anybody was in there or not. I doubt it.</p> <p>25 Q Sure. Let's go back to the policy, Exhibit 11, page</p> <p style="text-align: right;">Page 195</p>	<p>1 Q Okay. When you -- getting back to your conversation</p> <p>2 with Mr. Marlin when you first discovered that the policy</p> <p>3 was going to go to zero, you called him up, and you said</p> <p>4 you were upset. You said you were mad. What did you</p> <p>5 tell him?</p> <p>6 A Oh, shit, I don't know. I just told him I wanted to</p> <p>7 cancel the policy. It's going to zero and -- God, I</p> <p>8 can't remember exactly what I told him.</p> <p>9 Q Did you mention the illustration from 2005, 2006</p> <p>10 that you -- that you --</p> <p>11 A Yeah. I told him I was -- that we got an</p> <p>12 illustration, and it showed that it was going to zero.</p> <p>13 Q How do you know that Mr. Marlin knew what going to</p> <p>14 zero meant?</p> <p>15 A The cash value and the face value were disappearing</p> <p>16 at some age, 83 or 80 something, and went to zero. It</p> <p>17 was right there in the illustration.</p> <p>18 Q Based on that illustration you had seen?</p> <p>19 A Yeah.</p> <p>20 Q Did you keep that illustration?</p> <p>21 A Yeah. I think we did, yeah. We got one somewhere.</p> <p>22 I don't know where it is.</p> <p>23 MR. STANO: I don't think you've produced</p> <p>24 it.</p> <p>25 MS. EMMONS: It's that -- it's Defendant's</p> <p style="text-align: right;">Page 197</p>

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<p>1 Exhibit 10 -- I mean -- yeah -- Defendant's Exhibit 10. 2 MR. STANO: He's testified that he's never 3 seen that before. 4 THE WITNESS: No, I didn't. No. I -- 5 which one is that? 6 MR. STANO: Look, no coaching here, guys. 7 THE WITNESS: No. No. I mean, which one 8 is that? I can't see it. 9 MS. EMMONS: It's the one with the 10 handwriting on it, the eight different -- seven different 11 handwriting notes, the illustration. It was for the 12 period of November 2006. 13 THE WITNESS: That's -- I think that's the 14 one I seen. 15 Q (By Mr. Stano) What -- 16 A Let me see it. 17 Q We went over this extensively -- 18 A Yeah. 19 Q -- line by line, item by item. 20 A There's two of these things, and I've seen one of 21 them. Where is it? Here it is. No. I don't think this 22 is the one that I've seen. This is another one. 23 Q Okay. Good. 24 A I think it is. I'm not sure. But the other one 25 I've seen. I've seen one of these.</p> <p style="text-align: right;">Page 198</p>	<p>1 MR. STANO: Look, should we take a break 2 and let you go prep him outside? 3 THE WITNESS: No. She -- 4 MR. STANO: It would be more sufficient 5 that way. 6 THE WITNESS: No. Huh-uh. I thought -- I 7 know there's two of those illustrations in existence. 8 Q (By Mr. Stano) Okay. 9 A And we had them right here. I just saw one. 10 Q Was it an exhibit in this deposition, Mr. 11 Blumenthal? 12 A Yeah. It was right in here someplace. It just 13 showed without any writing -- 14 Q Was it the 1999 illustration? 15 A I don't know when it was. Could -- I don't know -- 16 I doubt if it was -- it might have been the '99. I 17 don't know. It might be. 18 Q Is it the one you signed? 19 A I don't -- no. Not the one I signed. I think it's 20 in there. There's two of those illustrations. And I 21 could be mistaken. I think it's this one that I saw 22 in -- is that one? 23 Q Let me show you what's marked as -- is that it, Mr. 24 Blumenthal? 25 A I don't know. I'll have to look.</p> <p style="text-align: right;">Page 200</p>
<p>1 Q But not this one? 2 A I don't think it was that one. 3 Q And by "this one" I mean what Ms. Emmons just showed 4 you. 5 A I don't think I've seen that one. 6 Q Okay. 7 A It's the other one that I've seen. 8 Q So it's Exhibit 10 that you haven't seen. That's 9 what she showed you, and that's the one you haven't seen. 10 It was the other one that you've seen? 11 A Yeah. 12 Q Okay. Did you give that other one -- by "other 13 one," we're talking -- 14 A Yeah. 15 Q -- about the other illustration. Did you give that 16 to Ms. Emmons? 17 A Yeah. It's here. Right here. 18 MS. EMMONS: Exhibit 10 is what was 19 provided to me by Mr. Blumenthal at the -- outside of 20 this case. 21 MR. STANO: Okay. 22 MS. EMMONS: This is what he gave me. 23 MR. STANO: He's testified twice -- 24 THE WITNESS: Okay. I could -- I could be 25 wrong, Phil.</p> <p style="text-align: right;">Page 199</p>	<p>1 Q Is that it? 2 A I think that's it. 3 Q Bingo. 4 A This is the one -- 5 Q Let me see it, please, sir. 6 A -- with the zeros. 7 Q For the record -- 8 A I'm not sure that's it. It's -- the one I've 9 seen -- 10 Q Mr. Blumenthal, I need your testimony. It can't be 11 what you think your lawyer would like you to give. I'm 12 not saying your lawyer is coaching -- 13 A Yeah. No. I'm just saying -- 14 Q I'm not saying that. 15 A No. She's not coaching me. 16 MS. EMMONS: Well, it would help if you 17 gave the dates of the illustrations. 18 Q (By Mr. Stano) But I need you, sir, to look at 19 me and not -- 20 A Okay. 21 Q -- look elsewhere -- 22 A Yeah. 23 Q -- and talk about -- 24 A Yeah. 25 Q -- what should I be testifying to.</p> <p style="text-align: right;">Page 201</p>

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52 (Pages 202 to 205)

<p>1 A No, no, no. I'm not doing that.</p> <p>2 Q Sir, let's call a spade a spade.</p> <p>3 Is this the illustration, Exhibit 4, that you</p> <p>4 were referring to?</p> <p>5 A I think it is. But now I'm not sure because there's</p> <p>6 two of them. Which one did I see? I think it's this</p> <p>7 one.</p> <p>8 Q When you say, "this one," you mean Exhibit 4, which</p> <p>9 is what you're looking at?</p> <p>10 A Okay. I don't know the exhibit.</p> <p>11 Q Well, it's on the front page. Trust me. It's</p> <p>12 Exhibit 4.</p> <p>13 Is that the illustration you had seen</p> <p>14 previously, Mr. Blumenthal, during the sales process --</p> <p>15 or prior to this deposition?</p> <p>16 MS. EMMONS: At what point prior?</p> <p>17 MR. STANO: Let's see if this is the one</p> <p>18 he's seen. Is this the --</p> <p>19 THE WITNESS: I'm not --</p> <p>20 MS. EMMONS: No. Wait. Wait. He's</p> <p>21 testified he's seen -- which -- at which point prior are</p> <p>22 you asking where he saw it?</p> <p>23 THE WITNESS: Yeah. The one I seen --</p> <p>24 MR. STANO: Well, let me ask the</p> <p>25 questions. You can take him on cross.</p> <p style="text-align: right;">Page 202</p>	<p>1 A Let's see. Is that one?</p> <p>2 Q I'm asking you, sir.</p> <p>3 A Let me look. There's no name on this one. No.</p> <p>4 This isn't it. Well, sir, it's -- this one -- nobody</p> <p>5 signed this. There's another one somewhere that I</p> <p>6 signed.</p> <p>7 Q Okay. And that's the one you're referring to?</p> <p>8 A No. That -- the one that I signed is not the one</p> <p>9 that we got. This looks like it right here.</p> <p>10 Q Okay. So that's it?</p> <p>11 A I think.</p> <p>12 Q Let's -- let's get the one out of the way that's not</p> <p>13 the one you're talking about.</p> <p>14 A Okay. That would be the one I signed.</p> <p>15 Q Okay. We'll get that one out of the way.</p> <p>16 A Yeah. I think it's this one that we got back in '06</p> <p>17 or something --</p> <p>18 Q And we'll --</p> <p>19 A -- or one that looked like it, if not.</p> <p>20 Q Sir, this one would have been produced in 1999.</p> <p>21 A Okay. Then it's not it. But I can't tell the</p> <p>22 difference hardly without being able to see good, sir.</p> <p>23 Q Fair enough.</p> <p>24 A And --</p> <p>25 Q Fair enough.</p> <p style="text-align: right;">Page 204</p>
<p>1 THE WITNESS: The one that I've seen is</p> <p>2 the one that we got two years ago and --</p> <p>3 Q (By Mr. Stano) Is it an exhibit in this</p> <p>4 deposition?</p> <p>5 A I think -- it looked like it to me.</p> <p>6 Q Have you seen it during this deposition?</p> <p>7 A I think I have, yeah.</p> <p>8 Q Was it marked as an exhibit?</p> <p>9 A I don't know that.</p> <p>10 Q Did I ask you questions about it during this</p> <p>11 deposition?</p> <p>12 A I think you did. I'm not sure now. You've asked so</p> <p>13 many questions. It's hard to keep up with you.</p> <p>14 Q True.</p> <p>15 A You're doing good.</p> <p>16 Q Thank you, sir. The --</p> <p>17 A I don't know if that's the exact one, because I'm a</p> <p>18 little bit dingy from sitting here for four hours with</p> <p>19 you or something, which is okay. But don't forget I'm 78</p> <p>20 years old. My brain is leaving me.</p> <p>21 Q Sure. And I don't want to --</p> <p>22 A Yeah. And so I don't want to tell you something</p> <p>23 that I don't believe. But it's either this one or</p> <p>24 another one that looks like it. Phil, I don't know --</p> <p>25 Q Would it be this one, sir? It has your name on it.</p> <p style="text-align: right;">Page 203</p>	<p>1 A You know, I'm not trying to fish you around, or</p> <p>2 whatever you call it. But I can't see it that good even</p> <p>3 through this thing here. I'll bring my own magnifying</p> <p>4 glass tomorrow. I can see better. But the one I saw</p> <p>5 looked like this. It might not be it, but it looked like</p> <p>6 that.</p> <p>7 Q When you say it looked like that --</p> <p>8 A But it's 1999 -- if it's 1999, then it can't be it.</p> <p>9 It's got to be the one that we saw in '06 or -- '05 or '6</p> <p>10 or something.</p> <p>11 Q '05 or '06. We have illustrations that we'll show</p> <p>12 you, and we'll see if we can't narrow that down.</p> <p>13 A Yeah.</p> <p>14 Q But do you recall if you've seen that illustration</p> <p>15 today?</p> <p>16 A I think I've seen it today. I thought we had it</p> <p>17 here, but I could be wrong again.</p> <p>18 MS. EMMONS: Phillip, it's marked as</p> <p>19 Exhibit 10.</p> <p>20 MR. STANO: He's -- wait a minute. Don't</p> <p>21 coach the witness.</p> <p>22 THE WITNESS: She's not.</p> <p>23 MR. STANO: She's -- he has testified</p> <p>24 twice that is not the exhibit --</p> <p>25 MS. EMMONS: Okay.</p> <p style="text-align: right;">Page 205</p>

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March 2, 2010

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

53 (Pages 206 to 209)

1 MR. STANO: -- that that is not the
2 illustration.
3 THE WITNESS: Which one? Which one?
4 MR. STANO: Look, she can take you on
5 cross-examination later.
6 THE WITNESS: No, no, no.
7 MR. STANO: She -- she can have her time
8 to ask you questions. Right now this is my time.
9 THE WITNESS: Okay. But the point is this
10 that -- I'm just telling you it looks like this one. It
11 could look like that one. I can't tell one from another,
12 sir. There's no way. I can't see that good.
13 **Q (By Mr. Stano) Okay. I understand that, sir.**
14 **A** And I'm not trying to do something --
15 **Q I understand.**
16 **A** If I could see better, it'd help a bunch. But I
17 can't tell if it's this one or that one.
18 **Q Or some other one?**
19 **A** Or some other one. All I know is what it looks like
20 that I can remember.
21 **Q And they all look alike to you?**
22 **A** No. This one looks -- this one looks like that one,
23 but not the one I signed. It's different completely.
24 It's a different one. But these -- this one and that one
25 looks alike, but I don't know which one's which. Never
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1 had no reason to know.
2 **Q When you say, "this one and that one," you're**
3 **referring to Exhibit 4 and Exhibit 10? I'll represent**
4 **for the -- represent that that's what you just referred**
5 **to.**
6 **A** That could --
7 THE WITNESS: Is that -- is that 10 --
8 MS. EMMONS: This is my copy of 10.
9 THE WITNESS: -- and this is 4?
10 **Q (By Mr. Stano) Yes, sir. It's 10 and 4.**
11 **A** Okay.
12 **Q Okay. We're --**
13 **A** Back on track, sir.
14 MR. STANO: Why don't we take a break for
15 a minute? Or is it close to --
16 MS. EMMONS: It's close to 4:00.
17 THE WITNESS: Is it?
18 MS. EMMONS: It's a quarter till.
19 MR. STANO: A quarter till.
20 (Off the record.)
21 MR. STANO: Why don't we take a break for
22 now? And we may end up --
23 MS. EMMONS: Breaking for tomorrow?
24 MR. STANO: Yes. Because we have a lot of
25 confusion here, and we're incurring a lot of dep pages
Page 207

1 without much progress. Why don't we go off the record?
2 MS. EMMONS: Okay.
3 (Volume I concluded.)
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Page 208

1 JURAT
2
3 I, IRVING BLUMENTHAL, JR., hereby certify that
4 I have read in its entirety the foregoing transcript of
5 my deposition taken March 2, 2010, in Oklahoma City,
6 Oklahoma, and that the same is a full, true, and correct
7 transcript of my testimony so given at said time and
8 place with the exception of the corrections which I have
9 noted on the sheet provided.
10
11
12
13 IRVING BLUMENTHAL, JR.
14
15 Subscribed and sworn to before me this ____ day
16 of _____, 2010.
17
18
19 NOTARY PUBLIC
20
21 My commission expires:
22
23
24
25
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Irving Blumenthal, Vol. I
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54 (Pages 210 to 211)

1	ERRATA SHEET	
2		
3	I, IRVING BLUMENTHAL, JR., desire to make the	
4	following corrections:	
5	PAGE	LINE CORRECTION
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____
18	_____	_____
19	_____	_____
20	_____	_____
21	_____	_____
22	_____	_____
23	_____	_____
24	_____	_____
25	IRVING BLUMENTHAL, JR.	Date
	Page 210	
1	CERTIFICATE	
2	I, Retta M. Brittain, Certified Shorthand	
3	Reporter within and for the State of Oklahoma, do hereby	
4	certify there came before me the deponent herein, namely	
5	Irving Blumenthal, Jr., who was by me duly sworn to	
6	testify to the truth and nothing but the truth concerning	
7	the matters in this case.	
8	I further certify that the foregoing transcript	
9	is a true and correct transcript of my original	
10	stenographic notes.	
11	I further certify that I am neither attorney or	
12	counsel for, nor related to or employed by any of the	
13	parties to the action in which this deposition is taken;	
14	and furthermore, that I am not a relative or employee of	
15	any attorney or counsel employed by the parties hereto or	
16	financially interested in the action.	
17	Whereof, I have hereunto set my hand and	
18	affixed my seal this 15th day of March, 2010.	
19		
20		
21		
22	_____	
23	RETTA M. BRITTAIN	
24	CSR # 1838	
25	Page 211	

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Dunnie Blumenthal, Vol. II
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Blumenthal vs. New York Life
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Page 1

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

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

* * * * *

VOLUME II

VIDEOTAPE DEPOSITION OF DUNNIE BLUMENTHAL

Taken of behalf of the

Defendant

On March 3, 2010

In Oklahoma City, Oklahoma

* * * * *

WORD FOR WORD REPORTING, L.L.C.
3520 CHASE BANK BUILDING
100 NORTH BROADWAY
OKLAHOMA CITY, OKLAHOMA 73102

**CONDENSED
TRANSCRIPT**

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

Dunnie Blumenthal, Vol. II
March 3, 2010

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

2 (Pages 2 to 5)

1	A P P E A R A N C E S	1	EXHIBIT INDEX
2	For the Plaintiff:	2	(Continued)
3	Shannon Emmons	3	
4	Phillips Murrah	4	Exhibit
5	101 North Robinson	5	25
6	Thirteenth Floor	6	26
7	Oklahoma City, Oklahoma 73102	7	27
8		8	28
9	For the Defendant:	9	
10	Phillip E. Stano	10	
11	Sutherland Asbill & Brennan	11	
12	1275 Pennsylvania Avenue, Northwest	12	
13	Washington, DC 20004-2415	13	
14	For the Defendant:	14	
15	Karen J. Lamp	15	
16	Attorney at Law	16	
17	New York Life Insurance Company	17	
18	51 Madison Avenue	18	
19	New York, New York 10010	19	
20	Also Present:	20	
21	Ben Savage, Videographer	21	
22	*****	22	
23		23	
24		24	
25		25	
	Page 2		Page 4
1	T A B L E O F C O N T E N T S	1	S T I P U L A T I O N S
2	PAGE	2	
3	STIPULATIONS.....4	3	It is hereby stipulated and agreed by and
4	EXAMINATION BY MR. STANO.....5	4	between the parties hereto, through their respective
5		5	attorneys, that the deposition of DUNNIE BLUMENTHAL may be
6	JURAT.....131	6	taken on behalf of the Defendants on March 3, 2010 in
7	ERRATA SHEET.....132	7	Oklahoma City, Oklahoma by Chrystal H. Vance, Certified
8	REPORTER'S CERTIFICATE.....133	8	Shorthand Reporter for the State of Oklahoma, pursuant to
9	EXHIBIT INDEX	9	the Federal Rules of Civil Procedure.
10	PAGE	10	It is further hereby stipulated:
11	Exhibit	11	MS. EMMONS: The first stipulation is that
12	12	12	the parties have agreed to reserve all objections except
13	13	13	to form in the deposition. The second stipulation is that
14	14	14	the plaintiff has stipulated that the signature of Irving
15	15	15	Blumenthal on Pages 116 and 121 of Blumenthal 116 and 121,
16	16	16	are, in fact, his signature. And that at the time he
17	17	17	signed his signature, he was attesting to the accuracy and
18	18	18	the truthfulness of the information provided by him and
19	19	19	contained in the application for the Prudential Life
20	20	20	insurance policy.
21	21	21	MR. STANO: And, further, that all the
22	22	22	information contained in Blumenthal 110 through 125 was
23	23	23	true and accurate to the best of Mr. Blumenthal's
24	24	24	knowledge and belief at the time he signed the
25	25	25	application.
	Page 3		Page 5

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13 (Pages 46 to 49)

<p>1 A Okay. Go ahead.</p> <p>2 Q Do you see where it lists as insured Irving H.</p> <p>3 Blumenthal, Jr.?</p> <p>4 A I don't see it, but it doesn't matter. I'm sure</p> <p>5 it's there.</p> <p>6 Q Your counsel's reading along.</p> <p>7 MR. STANO: Can you stipulate, Shannon --</p> <p>8 MS. EMMONS: Yes.</p> <p>9 MR. STANO: -- just to keep this along,</p> <p>10 moving, that if something I represent is not correct,</p> <p>11 you'll correct me?</p> <p>12 MS. EMMONS: Absolutely.</p> <p>13 MR. STANO: Okay.</p> <p>14 Q (By Mr. Stano) Just to speed things up,</p> <p>15 Mr. Blumenthal.</p> <p>16 A Okay. Go ahead.</p> <p>17 Q This document, Exhibit 12, shows that -- you</p> <p>18 listed as the insured, it shows your policy number as</p> <p>19 62776533, which is your --</p> <p>20 A Okay.</p> <p>21 Q -- NYLIAC policy. It shows the planned</p> <p>22 Check-O-Matic premium, monthly premium of 4,420.50. Do</p> <p>23 you recall that?</p> <p>24 A No, I don't recall it, but go ahead.</p> <p>25 Q Do you have any reason to think that that premium</p> <p style="text-align: right;">Page 46</p>	<p>1 reviewed it?</p> <p>2 A Probably. What does that have -- what does the</p> <p>3 cash value have to do with what we're talking about?</p> <p>4 Q Sir, was that a "yes" -- answer to my last</p> <p>5 question, which was, if you had received this document,</p> <p>6 would you have reviewed it?</p> <p>7 A Yes.</p> <p>8 Q Let's turn to the last page. And this is</p> <p>9 Blumenthal 072.</p> <p>10 A Okay.</p> <p>11 Q I will read along -- I'll read it to you,</p> <p>12 Mr. Blumenthal. Feel free to follow along. I'm going to</p> <p>13 ask you about Paragraph No. 1, first, and the sentence</p> <p>14 before Paragraph No. 1, Page Blumenthal Page 072, reads as</p> <p>15 follows: "If you make no future partial surrenders or</p> <p>16 loans, your policy will continue in force until," colon.</p> <p>17 Do you see that?</p> <p>18 A I don't see it, but I can't --</p> <p>19 Q It's right there above No. 1.</p> <p>20 A Okay.</p> <p>21 Q It reads, quote, "If you make no future partial</p> <p>22 surrenders or loans, your policy will continue in force</p> <p>23 until" colon.</p> <p>24 A Colon?</p> <p>25 Q There's a colon.</p> <p style="text-align: right;">Page 48</p>
<p>1 amount for the monthly premium; is not correct?</p> <p>2 A No, I'm sure it was.</p> <p>3 Q Okay. It lists the death benefit as</p> <p>4 \$1,064,913.86. Was it your understanding that your death</p> <p>5 benefit was increasing from a million dollars up?</p> <p>6 A No, I didn't know that.</p> <p>7 Q Did you think it was a level death benefit?</p> <p>8 A I just thought it was million dollars insurance</p> <p>9 policy. I didn't know it went up.</p> <p>10 Q You never discussed that with Mr. Marlin?</p> <p>11 A Huh-uh.</p> <p>12 Q That one of the advantages of the NYLIAC policy</p> <p>13 was that your death premium would increase, your death --</p> <p>14 I'm sorry, your death benefit will increase?</p> <p>15 A I never -- I don't recall ever discussing the</p> <p>16 death benefit going up.</p> <p>17 Q And it was your understanding, then, that the</p> <p>18 death benefit of a million dollars would be level</p> <p>19 throughout the life of the policy?</p> <p>20 A That's what I thought, it was a million dollar</p> <p>21 policy. Period.</p> <p>22 Q Okay. Thank you. This document on the first</p> <p>23 page also lists a cash surrender value of \$16,338.86.</p> <p>24 A Okay. So what?</p> <p>25 Q If you had received this document, would you have</p> <p style="text-align: right;">Page 47</p>	<p>1 A Oh, colon.</p> <p>2 Q I'm sorry. My accent might be -- I apologize.</p> <p>3 Paragraph No. 1, it says that, "The policy will</p> <p>4 lapse December 16th" -- I'm sorry, "December, 2016,</p> <p>5 assuming you make planned Check-O-Matic premium payments</p> <p>6 \$420.50 and that the current interest rate is credited and</p> <p>7 the fees and charges that are currently utilized continue</p> <p>8 to be deducted", period, closed quote. Do you see that?</p> <p>9 A Okay.</p> <p>10 Q You do see that?</p> <p>11 A Yeah.</p> <p>12 Q Okay. Do you understand what I just read?</p> <p>13 A Yeah.</p> <p>14 Q It's saying that your policy will continue in</p> <p>15 force until December of 2016, if you continue to make</p> <p>16 premium payments.</p> <p>17 A And --</p> <p>18 Q And the interest is credited --</p> <p>19 A Okay.</p> <p>20 Q -- and the -- so does this not put you on notice</p> <p>21 that your policy will not --</p> <p>22 A It will, if I'd have seen it. I've never seen it</p> <p>23 before. It would absolutely put me on notice, but I've</p> <p>24 never seen this.</p> <p>25 Q How do you know that, Mr. Blumenthal, if you</p> <p style="text-align: right;">Page 49</p>

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Blumenthal vs. New York Life
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15 (Pages 54 to 57)

1 A No, I don't know where he searched. Somewhere.
2 **Q Did he bring the file to you?**
3 A No, I don't know where he brought a file. He
4 brought -- I don't even -- he just said he had it and --
5 **Q Did he show it to you?**
6 A I don't know if he showed it to me or not. I
7 think he did, but not -- I didn't look through the policy.
8 **Q Right. Did you -- did he send it to your counsel**
9 **or did you send it to your counsel or did someone else?**
10 A He did.
11 **Q Do you know if he pulled your policy out of**
12 **another --**
13 A No, I don't know that.
14 **Q Is it possible you have other insurance documents**
15 **related to NYLIAC --**
16 A No.
17 **Q -- at your office?**
18 A No.
19 **Q How do you know that?**
20 A I don't think we did. Why would he?
21 MR. STANO: Shannon, could I ask if
22 Mr. Blumenthal -- would you ask your client if he would
23 search again?
24 MS. EMMONS: Yes, I'll ask him to search
25 again.

Page 54

1 Mr. Blumenthal about the other four or five disclosures.
2 Can we stipulate that those -- to save time that those
3 disclosures -- the annual summaries, excuse me, for the
4 years I believe 2003 through 2007, can we stipulate
5 that -- well, they speak for themselves. I will represent
6 they have similar disclosures. Can we stipulate that he
7 would have known that the policy would have lapsed if he
8 had read it and if he had received it?
9 MS. EMMONS: Stipulate that they are similar
10 disclosures, but whether that --
11 MR. STANO: Well, then, never mind. I'll
12 just ask him -- just trying to save time. Thank you,
13 anyway.
14 (Exhibit 14 marked for identification.)
15 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**
16 **what's marked as Exhibit 14 Bates stamp 61 through --**
17 **Blumenthal 61 through Blumenthal 64. It's the annual**
18 **policy summary for June 12, 2003. Have you had a chance**
19 **to look it over?**
20 A I don't see even through these things.
21 **Q Okay. Let me --**
22 A Anyway, what's the point?
23 **Q Well, let's identify the document first.**
24 A Okay. Identify it.
25 **Q Mr. Blumenthal, this is the annual policy summary**

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1 MR. STANO: All right. Thank you.
2 THE WITNESS: What are we searching for?
3 MS. EMMONS: To see if we've overlooked any
4 documents in your office that, maybe, you hadn't found
5 before.
6 **Q (By Mr. Stano) Let's turn to the last page of**
7 **this Exhibit 13, Mr. Blumenthal. It's Page 68. It has**
8 **the same type of disclosure -- summary disclosure as**
9 **Exhibit 12.**
10 A Okay.
11 **Q Let me read it to you. It, basically, says --**
12 **well it does say, quote, "If you make no future partial**
13 **surrenders or loans, your policy will continue in force**
14 **until." And then under Paragraph No. 1, the date listed**
15 **is November 16th. Assuming you continue to make your**
16 **premium payments and assuming the current interest rate is**
17 **going to credit any charges -- will continue to be**
18 **deducted. Do you understand that this puts you on notice,**
19 **had you read this, that your policy would only last until**
20 **November 2016?**
21 A If I'd have read it, I would have known it. I
22 didn't read it. Never seen it.
23 **Q Never seen it?**
24 A Huh-uh.
25 MR. STANO: Shannon, I'm going to ask

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1 **that is promised to be sent to you according to the policy**
2 **that you have. It's very similar to the two previous**
3 **exhibits we've talked about. It was sent to your address**
4 **at Blumenthal's Manufacturing 501 Southwest 9th Street,**
5 **Oklahoma City.**
6 A Okay. I've never seen it.
7 **Q It's dated June 12th of --**
8 A I don't care when it was dated. I've never seen
9 it. Period.
10 **Q Sir, is it your testimony that you've never seen**
11 **any --**
12 A I've never noticed --
13 **Q Let me finish the question, please.**
14 A Go ahead.
15 **Q Is it your testimony, Mr. Blumenthal, that you**
16 **haven't seen any of the annual policy summaries that were**
17 **sent to you by NYLIAC between 2001 and 2007?**
18 A I've never seen these, no. I've never seen --
19 they got them -- they put them somewhere. I've never seen
20 them.
21 **Q They who? Who is "they"?**
22 A Whoever --
23 **Q Your staff?**
24 A Yeah, whoever opened the mail or got the mail.
25 **Q Filed it away or threw it away or whatever?**

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Dunnie Blumenthal, Vol. II
March 3, 2010

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

18 (Pages 66 to 69)

1 A No, this is -- no, I don't know -- I don't think
2 this is the one that I saw. Does it show up when -- when
3 I took a loan out on the surrendered value or something?
4 **Q We'll get to that in a moment. We'll get to that**
5 **in a moment.**
6 A Yeah, that's when -- that's when I discovered
7 it. I don't know what year it was.
8 **Q Going back to the Exhibit 18, was Blumenthal's**
9 **Manufacturing operating at 501 Southwest 9th Street in**
10 **June of 2006?**
11 A That's four years ago.
12 **Q Less than.**
13 A Yeah, a little less, but I can find that out
14 whenever we moved. I'm not sure if it was '06 or '07.
15 **Q Is it possible you've seen Exhibit 18, the annual**
16 **policy summary for June of 2006?**
17 A I don't think it was that one. The one I
18 remember is -- we had a copy of it yesterday. It looked
19 like what I remember, but I've -- I've never seen these,
20 the annual reports. I've never seen any of them. I'd
21 have cancelled it when the first one, if I'd have seen
22 it. I don't know, you know, if whoever opened the mail or
23 did whatever, didn't think it was important to look. And,
24 at that time, it never -- it wasn't -- think about it.
25 **Q The 2006 annual statement -- I'm sorry, annual**
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1 **policy summary, has the same disclosure that the policy --**
2 A Yeah, yeah.
3 **Q -- February of 2016 --**
4 A Right, yeah.
5 **Q -- based on the conditions and certain --**
6 A Whatever, yeah, yeah.
7 **Q -- we talked about earlier?**
8 A Yeah, I've never seen that.
9 **Q Okay.**
10 **(Exhibit No. 19 marked for identification.)**
11 **Q (By Mr. Stano) Mr. Blumenthal, let me show you**
12 **what's marked as Exhibit 19. It's Bates stamp NYLIAC,**
13 **N-Y-L-I-A-C, 653 through 658.**
14 A Is this '06 or '07?
15 **Q Sir, this is '01. It's -- let me tell you what**
16 **it is. It's a NYLIAC Protector Life Insurance Inforce**
17 **Illustration -- it's an illustration issued when your**
18 **policy was already in existence or in force. It was**
19 **prepared for you by Mr. Ben Marlin. And it's prepared on**
20 **or about March 6 of 2001.**
21 A This?
22 **Q Yes, sir.**
23 A We get back to 2001?
24 **Q Well, I'm asking -- we're going to work up to**
25 **2006, again.**
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1 A Okay.
2 **Q You weren't sure about which illustration --**
3 A Yeah.
4 **Q And I'm showing some of the --**
5 A Well -- yeah.
6 **Q Now, I believe you testified yesterday that after**
7 **the policy was sold and in force, that you met with**
8 **Mr. Marlin on occasion to talk about your insurance**
9 **coverage. Is that a fair statement?**
10 A Ben came around, yeah.
11 **Q Came around a good bit, didn't he?**
12 A I don't remember how many times he came -- come
13 around, but --
14 **Q Did he not come around at least a half dozen, a**
15 **dozen times a year?**
16 A Oh, I don't know if it that's many.
17 **Q He certainly came around pretty regularly, didn't**
18 **he?**
19 A I don't know how regular he came around, several
20 times in a year. I don't remember exactly how many times
21 he came around. I don't know that.
22 **Q I understand. You called him at times to come by**
23 **and talk to him about your insurance coverage, didn't you?**
24 A I don't know if I did or not.
25 **Q But when you say he came around, he didn't just**
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1 **show up uninvited?**
2 A He called or something. I don't know.
3 **Q Sometimes you called him, sometimes he called**
4 **you, correct?**
5 A I don't know that.
6 **Q Did you ever call him to come by and talk about**
7 **your insurance coverage once the policy was in force after**
8 **July 1999?**
9 A I might have. Could have. I don't know.
10 Probably did.
11 **Q Okay. And at times when he came by, when you**
12 **called him, even when he called you, he would bring**
13 **illustrations with him, would he not?**
14 A I don't remember that.
15 **Q He talked about your insurance policy with**
16 **NYLIAC, correct?**
17 A I don't remember that, that -- that we never
18 discussed what was -- yeah, I can't remember that.
19 **Q But he only sold you one insurance policy with**
20 **NYLIAC, correct?**
21 A Yeah.
22 **Q When he came by to talk to you, didn't you talk**
23 **about the very policy he sold you?**
24 A What is to talk about? He never -- we never
25 really got in depth on this policy.
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Dunnie Blumenthal, Vol. II
March 3, 2010

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

19 (Pages 70 to 73)

1 **Q Sure.**
2 A Except that it was supposed to be a life policy.
3 **Q Right.**
4 A That was it. And --
5 **Q Was he coming by to sell you more insurance?**
6 A I don't think so.
7 **Q Well, when you called him and asked him to come**
8 **by, what were you -- why were you --**
9 A I'm not sure that I -- if I called him to come
10 by. God, I don't even remember that. I might have. It's
11 so -- I don't know what -- what happened.
12 **Q Regardless of who called who --**
13 A Yeah.
14 **Q -- when you got together with Mr. Marlin, what**
15 **did you talk about? And this is after the policy was in**
16 **force starting June or July of 1999.**
17 A I don't remember what we talked about.
18 **Q You talked about insurance, of course, right?**
19 A Maybe. I don't know that. I can't say that we
20 talked about insurance. We could have talked about the
21 weather. I don't know what we talked about. And how in
22 the hell am I going to remember what me and Ben or me and
23 somebody talked about five years ago or ten years ago?
24 **Q You say you remembered what you talked about ten**
25 **years ago when you were doing the sell.**

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1 A Okay. Look here, this is it.
2 MS. EMMONS: Let's take a break.
3 THE WITNESS: Yeah, yeah, we've got to -- I
4 don't know what you're -- what point you're getting to.
5 MS. EMMONS: Why don't we break for lunch.
6 MR. STANO: That's fine with me.
7 MS. EMMONS: Okay. You want to be back here
8 at --
9 MR. STANO: Well, we'd like to finish up
10 today, so we don't --
11 MS. EMMONS: 12:15?
12 MR. STANO: I have no idea what time it is.
13 MS. EMMONS: It's 11:15.
14 MR. STANO: Yeah. Let's go off the record.
15 (A lunch recess was taken, after which the
16 following proceedings were had:)
17 THE WITNESS: Before we start, I just made a
18 couple of calls and found out that when we were at 501
19 Southwest 9th, we left there in March of '04 and moved to
20 the 301 South Western. And talking to Scott, my son, I
21 said, "Did we ever receive any documents that you know of
22 at 501 Southwest 9th Street from New York Life that would
23 be like a yearly annualization?" And he says, "No, not
24 that I can remember. We never received any documents."
25 But that doesn't mean that they wasn't sent,

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1 we just never saw them. If I'd have seen any of these
2 documents, I'd have cancelled it on the spot. That's not
3 what I was looking for.
4 **Q (By Mr. Stano) Mr. Blumenthal, when -- thank you**
5 **for telling me that.**
6 A Yeah.
7 **Q When I asked you about the annual policy**
8 **summaries and I asked you who opened your mail during that**
9 **time period, you never mentioned your son.**
10 A No, he wasn't opening the mail. I just asked him
11 if he ever saw any documents that -- he didn't open the
12 mail, but --
13 **Q When you moved your -- the facilities at**
14 **Blumenthal's Manufacturing, did you send a change of**
15 **address notice to --**
16 A Sure.
17 **Q Let me finish. Did you send a change of address**
18 **notice to New York Life Insurance and Annuity Corporation?**
19 A No, I don't know that. We should have.
20 **Q Okay. Did you leave a change of address notice**
21 **with the post office, so that your mail --**
22 A Yeah, that, we did.
23 **Q -- would be forwarded?**
24 A Yeah. That we made a forwarding thing, but that
25 didn't mean the post office brought it.

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1 **Q Correct. Doesn't mean it didn't bring it,**
2 **either, right?**
3 A Yeah, that's right. It could have trying to
4 figure out who might have seen it. I also talked to
5 Debbie and she doesn't remember ever receiving any --
6 **Q And who is Debbie?**
7 A Debbie was our -- like a bookkeeper-type.
8 **Q She's still there?**
9 A Yeah.
10 **Q That raises an interesting point. Did**
11 **Blumenthal's Manufacturing have a bookkeeper --**
12 A Yeah.
13 **Q -- person who performed the bookkeeping --**
14 A Yeah.
15 **Q Was that Debbie's role?**
16 A Yeah.
17 **Q And Debbie's last name is?**
18 A Sellers.
19 **Q And she's been at Blumenthal's Manufacturing for**
20 **how many years approximately?**
21 A Thirty-something.
22 **Q These annual policy summaries that we've talked**
23 **about, Exhibit 12 through Exhibit 18, I believe, they're**
24 **basically annual financial reports.**
25 A Yeah, what it were -- what it is.

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