

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF PIMA

3
4 STATE OF ARIZONA,)
5 Plaintiff,) 2 CA-CR 20100164
6 vs.) CR-20084012
7 RONALD YOUNG,)
8 Defendant.)
9 _____)

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MARCH 3, 2010
JURY TRIAL - DAY SEVEN

BEFORE: THE HONORABLE CHRISTOPHER BROWNING, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

24 Barbara Smith, RPR
25 Certified Court Reporter 50249
Pima County, Arizona

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On Behalf of the State:

WILLIAM MCCOLLUM, ESQ.
SHAWN JENSVOLD, ESQ.

On Behalf of the Defendant:

WALTER PALSER, ESQ.
JOEL FEINMAN, ESQ.
MAGGIE HIGGINS, 38(d)

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1 THE COURT: Let the record reflect
2 that the Court is in receipt of a written motion
3 for mistrial, which was filed this morning. June,
4 Rhonda has your copy for filing, and has talked
5 with the State about a briefing schedule. I think
6 the State believes it can have a response to the
7 Court by Friday?

8 MR. MCCOLLUM: Yes, Your Honor.

9 THE COURT: All right. And then the
10 Court, upon receipt of -- the review of the
11 defendant's motion to the State's response, will
12 determine whether or not a hearing is necessary
13 and we'll either set a hearing or issue a ruling
14 without a hearing, depending on what the pleadings
15 say and what the Court's preference is at that
16 point.

17 With that said are we ready for the jury,
18 counsel?

19 MR. MCCOLLUM: Yes, Your Honor.

20 THE COURT: Thank you very much.

21 (Whereupon the jury entered the
22 courtroom.)

23 THE BAILIFF: All rise for the jury.

24 THE COURT: Please be seated, ladies
25 and gentlemen.

1 Let the record reflect the presence of all
2 members of the jury, counsel and Mr. Young. This
3 is CR-20084012. State versus Young. And at this
4 time the State may call its next witness,
5 Mr. McCollum.

6 MR. MCCOLLUM: Correct, Your Honor.
7 The State will call Heather Triano.

8 THE COURT: All right. Come up and
9 be sworn, please.

10 HEATHER KLINDSWORTH,
11 having been first duly sworn to state the truth,
12 the whole truth and nothing but the truth, was
13 placed under oath and testified as follows:

14 THE COURT: Mr. McCollum.

15 MR. MCCOLLUM: Yes, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. MCCOLLUM:

18 **Q** Would you please state your name and spell
19 your last name?

20 **A** Heather Klindworth, K-L-I-N-D-W-O-R-T-H.

21 **Q** And that is your married name, correct?

22 **A** Yes.

23 **Q** And I misspoke earlier when I called you
24 to the stand by saying you were Heather Triano?

25 **A** I still go by Triano-Klindworth. It's

1 okay.

2 Q With that said, who was Gary Triano to
3 you?

4 A He was my father.

5 Q All right. Now, picking a place to start,
6 let's start with the fact -- who is your mom?

7 A Mary Triano.

8 Q Okay. And how old are you?

9 A How old am I now?

10 Q Yeah.

11 A Thirty-nine.

12 Q Thirty-nine. Do you have a brother?

13 A I do.

14 Q Brian?

15 A Yes.

16 Q And both of you are children of the
17 marriage between Gary Triano and Mary Triano?

18 A Yes.

19 Q Mary Cram?

20 A Yes.

21 Q And her name is spelled C-R-A-M. When did
22 you first meet Pamela Phillips?

23 A I'm not sure when I first met her. My
24 parents were divorced. So I'm bad with dates, but
25 I think I was probably around 13.

1 **Q** What year were your parents divorced, that
2 would be Mary Cram and Gary Triano? If you can
3 recall.

4 **A** I was 13, so I don't know what that would
5 be. I can't recall the exact dates.

6 **Q** Okay. How long before -- well, after the
7 divorce where did you live?

8 **A** With my mom.

9 **Q** With your mom? Along with Brian?

10 **A** Yes.

11 **Q** Did you visit with your dad?

12 **A** Yes.

13 **Q** Where was he living at the time? Do you
14 recall?

15 **A** Yeah, he lived in El Dorado Coutry Club.

16 **Q** Up on Speedway?

17 **A** Yes.

18 **Q** Would you visit with him there often?

19 **A** Yes.

20 **Q** When did you -- do you recall when he
21 married Pamela Phillips?

22 **A** I think it was probably two years later.

23 **Q** Two years later after the divorce?

24 **A** Yes.

25 **Q** When he married Ms. Phillips, did you

1 visit?

2 **A** Yes.

3 **Q** Did you get to know her?

4 **A** Yes.

5 **Q** Where were they living when they got
6 married?

7 **A** Skyline Coutry Club.

8 **Q** And that's here in town?

9 **A** Yes, it's the top of Craycroft, I think,
10 Sunrise.

11 **Q** Did there come a time when they moved to
12 Woodland Avenue?

13 **A** Yes.

14 **Q** That's also here in town?

15 **A** It's off Tanque Verde.

16 **Q** Do you happen to remember the specific
17 address?

18 **A** No, I don't remember the address.

19 **Q** All right. Now, during the time that you
20 would visit with your dad would you ever visit at
21 the La Paloma Country Club?

22 **A** All the time.

23 **Q** Tell us about that.

24 **A** My father was an avid golfer, so therefore

25 --

1 MS. HIGGINS: Objection, relevance.

2 THE COURT: Overruled.

3 BY MR. MCCOLLUM:

4 A My brother and I would golf with him often
5 and meet him there for lunch or dinner, go to the
6 pool, spend lot of time there.

7 Q Your dad would go there quite often?

8 A Yes.

9 Q Now, when we spoke a moment ago about
10 Woodland Avenue, how often would you go to that
11 address?

12 A Quite often, a few times a week probably,
13 if not more.

14 Q Where were you living, what part of town,
15 when your dad lived at Woodland Avenue? Do you
16 recall?

17 A I believe I was still living with my
18 mother then, so east side, like Speedway, Speedway
19 and Craycroft.

20 Q All right. Let me ask you this, when you
21 would visit with your dad on Woodland Avenue, what
22 kind of relationship did you have with him?

23 A At first it was hard, she was a new
24 stepmother, so I think that, sort of across the
25 board for everybody, and then we became friends

1 and she was my stepmother.

2 Q She treated you okay?

3 THE COURT: You have to say yes or
4 no.

5 THE WITNESS: Oh, sorry.

6 THE COURT: That's all right.

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 BY MR. MCCOLLUM:

10 Q And during this time period what would you
11 estimate to be the year when your dad moved to
12 Woodland Avenue?

13 A Probably '88 maybe, '87, '88. I'm not
14 really sure.

15 Q You were familiar with some of your dad's
16 finances, were you not?

17 A Yes.

18 Q And whose name was the house in on
19 Woodland Avenue?

20 A I believe it was in Pamela's name.

21 Q Do you know why?

22 A I think it was because when they purchased
23 it my father's finances weren't doing so well so
24 in case he had to claim bankruptcy it wouldn't get
25 taken away.

1 **Q** Let's move ahead then to -- well, let me
2 show you first a diagram, State's Exhibit Number
3 33, it's a map of town. I'll put it up here and
4 ask you to take a look at that and see whether or
5 not you will agree that -- there are various
6 addresses on the map. Would you let us know if
7 you agree with the location, for example, 4889
8 Woodland Avenue?

9 **A** Yes.

10 **Q** Is that the location of where your dad
11 lived with Pamela Phillips and where you would
12 visit?

13 **A** Yes.

14 **Q** Okay. You can have a seat. Let's leave
15 it up there for a minute. Were they -- do you
16 recall when they started getting divorced, that
17 would be Pamela Phillips and your dad, Gary
18 Triano?

19 **A** Yes.

20 **Q** Were they living on Woodland Avenue?

21 **A** Yes, they were.

22 **Q** What happened with the house on Woodland
23 Avenue?

24 **A** From what I recall they got separated,
25 Pamela sold the house and left and moved to Aspen.

1 **Q** And she took the money?

2 **A** She took the kids and the money, yes.

3 **Q** She took the kids, meaning?

4 **A** My brother and my sister, my half brother
5 and sister, Trevor and Lois.

6 **Q** Okay. Let's talk about that for a moment.
7 Were you around for the birth of both Trevor and
8 Lois?

9 **A** Yes.

10 **Q** And did you guys behave like brother and
11 sister during the marriage?

12 **A** Yes.

13 **Q** And you got along?

14 **A** Oh, yeah.

15 **Q** Yesterday you heard testimony about your
16 dad being abusive to Pamela Phillips. Was he ever
17 abusive to you?

18 **A** No.

19 **Q** Or the other kids?

20 **A** No.

21 **Q** Did you ever notice abuse of Pamela
22 Phillips during their relationship on Woodland?

23 **A** No.

24 **Q** As the divorce drew close did you ever see
25 arguments between Pamela Phillips and you dad?

1 **A** No, I didn't really.

2 **Q** Did you feel isolated away from that or
3 was it something you were just totally unaware of?

4 **A** I would say I was probably unaware.

5 **Q** Okay. Now, near the house on Woodland
6 Avenue is a Ramada Inn, is there not?

7 **A** Yes.

8 **Q** Why are you familiar with that Ramada
9 Inn?

10 **A** Well, we had a prom party there once when
11 I was in high school.

12 **Q** And I'd like to have you approach the same
13 map and identify whether or not you would agree
14 with the designation that the Ramada Inn was at
15 6649 East Tanque Verde Road?

16 **A** Yes.

17 **Q** Point to it, please.

18 **A** Yes.

19 **Q** That was nearby the Woodland address?

20 **A** Yes.

21 **Q** Do you also see the La Paloma designation
22 there on the left-hand corner?

23 **A** Yes.

24 **Q** And do you agree with that?

25 **A** I do.

1 **Q** All right. You can put that down. Now,
2 after the divorce where did your dad live?

3 **A** After he divorced Pamela?

4 **Q** Yes.

5 **A** He lived with some friends for a while and
6 then on Airway Drive, which is on the map as well.

7 **Q** Okay. Would you point to it for us?

8 **A** Right there.

9 **Q** Did you ever visit with your dad when he
10 lived on Airway?

11 **A** Oh, of course, yes.

12 **Q** Did you testify at the divorce proceedings
13 at all?

14 **A** I did not.

15 **Q** Okay. Now, you mentioned earlier in your
16 testimony that after the divorce Pamela
17 Phillips -- or after she sold the house, was that
18 before or after the divorce? Do you recall?

19 **A** I think it was when they were separated, I
20 believe. I'm not even sure if they were divorced
21 at that time.

22 **Q** Okay. After she sold the house she moved
23 to Aspen. Talk to us a little bit about Aspen.

24 **A** It's a ski town, very ritzy, lots of
25 people from all over the world live there.

1 **Q** Now, when she moved to Aspen had you ever
2 been there before?

3 **A** Yes.

4 **Q** Okay. During the marriage between Pamela
5 Phillips and your dad did they travel to Aspen?

6 **A** Yes, they had a rental house there that we
7 spent winters at on a few occasions.

8 **Q** And you would go as part of the family?

9 **A** Yes.

10 **Q** Would Brian go also?

11 **A** Yes.

12 **Q** So it would be you, Brian, Pamela, your
13 dad and Trevor and Lois?

14 **A** Yes, and my brother and I might take some
15 friend with us too.

16 **Q** About how many times would you say they
17 went to Aspen together, meaning your dad and
18 Pamela Phillips?

19 **A** I can't recall the exact amount of times
20 but I know I was there at least three times with
21 them.

22 **Q** When you would go up there, how long would
23 you stay?

24 **A** A few weeks.

25 **Q** What about school?

1 **A** It was usually when -- we went during
2 break.

3 **Q** All right. Now, you mentioned that your
4 dad rented the house there?

5 **A** Yes.

6 **Q** Was that an all yearlong rental or just
7 for the season?

8 **A** I believe it was just for the season. I'm
9 not sure because I was only up there during the
10 winter.

11 **Q** Now, your dad was also a pilot, was he
12 not?

13 **A** Yes.

14 **Q** Did he fly you to Aspen or would you take
15 a commercial airline?

16 **A** I think he did fly at least one time and
17 we took commercial as well, both.

18 **Q** After the divorce did you visit Pamela
19 Phillips in Aspen?

20 **A** After the divorce?

21 **Q** Right.

22 **A** Yes.

23 **Q** Say the first year after the divorce did
24 you go to Aspen?

25 **A** Yes, I was living there for a while.

1 **Q** Tell us about that.

2 **A** I actually lived there -- I took a break
3 from college and moved to Aspen and then Pamela
4 was living there. She wasn't very nice to me then
5 though.

6 **Q** So you didn't stay with her in Aspen?

7 **A** Not at that point, no.

8 **Q** Do you recall where she was living in
9 Aspen when you would go there?

10 **A** Off of Snow Bunny Lane.

11 **Q** So you never went to the house?

12 **A** I did later after my father was murdered.

13 **Q** Let's stay before that date. We're going
14 to designate that as the November 1st date, okay?

15 **A** Okay.

16 **Q** Prior to November the 1st of 1996 you were
17 actually living for a short time in Aspen?

18 **A** Yes.

19 **Q** And you would see Pamela Phillips and
20 would you have contact with Trevor and Lois?

21 **A** I did.

22 **Q** On a regular basis?

23 **A** Not so regular because she said she didn't
24 want me around her kids.

25 MS. HIGGINS: Objection, relevance

1 and violation of pretrial ruling.

2 THE COURT: Why don't counsel
3 approach?

4 (Whereupon the following bench
5 conference was had.)

6 MR. PALSER: First of all, it's
7 hearsay.

8 THE COURT: What are you looking at,
9 February 1?

10 MS. HIGGINS: Yeah, it's Number 10.

11 MR. MCCOLLUM: I apologize. I don't
12 recall that. All right. I'll withdraw the
13 question then.

14 THE COURT: Okay. Thank you.

15 MR. PALSER: So the rule also states
16 that eliciting hearsay in addition to that --

17 THE COURT: Also what?

18 MR. PALSER: The eliciting of hearsay
19 is inappropriate.

20 THE COURT: I agree. It was hearsay.
21 That's on the record. So, Mr. McCollum, let's try
22 not to elicit hearsay.

23 MR. MCCOLLUM: Yes, Your Honor.

24 (Whereupon the bench conference
25 concluded.)

1 MR. MCCOLLUM: Your Honor, may I have
2 a moment to talk with counsel?

3 THE COURT: Certainly.

4 MR. MCCOLLUM: Thank you, Your Honor.

5 THE COURT: Yes, sir. Go ahead,
6 Mr. McCollum.

7 BY MR. MCCOLLUM:

8 Q What did you do when you were in Aspen?

9 A What didn't I do? I had five jobs. I
10 worked a bunch of different places. I worked on
11 the mountain. I worked in the restaurant, I
12 worked in a clothing store. I worked at the gym
13 and another restaurant.

14 Q By the time November 1 of 1996 came along
15 were you back in Tucson?

16 A Yes.

17 Q With your mom or were you living
18 independent by then?

19 A I was living independently, yes.

20 Q All right. Let's talk about November the
21 1st. How did you find out about your dad's death?

22 A I was at work and I was late, as usual, to
23 go --

24 MS. HIGGINS: Objection, relevance.

25 THE COURT: Overruled.

1 BY MR. MCCOLLUM:

2 **A** To go to my father's birthday, it was his
3 surprise birthday party that night, and I stayed
4 late to type up our poem, If, and I was leaving
5 and I worked at a car dealership and there was a
6 TV on and I said, well, dad is going to be bummed
7 if something happened at La Paloma, I guess I'll
8 find out what happened tonight.

9 So I drove home, for some reason, I'm not
10 sure why I drove home actually because I was so
11 late, and a friend was there and said you need to
12 come back in and listen to this message on the
13 machine, don't leave. So I went and listened to
14 it. It was my mother saying call me immediately.

15 MS. HIGGINS: Objection, hearsay.

16 THE COURT: Overruled. It's not
17 offered for the truth.

18 BY MR. MCCOLLUM:

19 **A** So I called my mother and she told me what
20 had happened -- oh, no, she said come home
21 immediately.

22 **Q** Let me get you off that topic for a
23 moment. You mentioned that there was going to be
24 a birthday party?

25 **A** Yes, surprise birthday party.

1 **Q** Suprise party for who?

2 **A** My father.

3 **Q** You were writing a poem for the party?

4 **A** Yeah, If by Kipling, I just retyped it.

5 **Q** Where was the party to be?

6 **A** At his home.

7 **Q** On Airway?

8 **A** Yes.

9 **Q** We talked about that a moment ago and you
10 identified that on the map. That's State's
11 Exhibit 33.

12 MR. MCCOLLUM: And, Your Honor, I
13 believe all the addresses have been identified.
14 The State would move 33 into evidence at this
15 time.

16 MS. HIGGINS: No objection.

17 THE COURT: Thank you. 33 is
18 admitted.

19 BY MR. MCCOLLUM:

20 **Q** I'm going to show you some -- Jarrod, will
21 you help me with the easel? I want to show you
22 some photos here. I don't think there's an issue
23 but we'll go through them. First of all, we'll do
24 3-B, and is that a photo of the house on Airway
25 here in Tucson?

1 **A** Yes, it is.

2 **Q** This is a more recent photo but do you see
3 any difference between the house as it looks there
4 and as it existed back in 1996?

5 **A** Not that I believe.

6 **Q** A moment ago you talked about your dad
7 being bummed about what happened at La Paloma, was
8 he still a regular in October of 1996?

9 **A** Yes.

10 **Q** I'm going to show you 3-C, basically the
11 address and the mailbox was 5410, correct?

12 **A** I believe so, yes.

13 **Q** 3-C, 3-D inside the garage, pretty much
14 unchanged?

15 **A** Yes.

16 **Q** 3-E, back of the house?

17 **A** Yeah.

18 **Q** Okay.

19 **A** Yes.

20 **Q** 3-F, is that pretty much the interior of
21 your dad's house, pretty regular back at the time?

22 **A** Yes.

23 **Q** All right. 3-G, just another version of
24 inside the house?

25 **A** Yes.

1 **Q** 3-H, now that photo actually shows the
2 preparation for the party, correct?

3 **A** Yes, it looks like it.

4 **Q** 3-I, now, this photo shows a room with
5 some -- it shows into a kid's bedroom, right?

6 **A** Yes.

7 **Q** Who are the kids that would stay in that
8 room?

9 **A** Trevor and Lois.

10 **Q** How often do you know at the time, say,
11 October 1996, were the children Trevor and Lois
12 visiting your dad?

13 **A** You know, I'm not sure, but I know that
14 there were -- he would go to Aspen to see them and
15 they would come to see him here.

16 **Q** Okay.

17 **A** But I don't know, it wasn't very often
18 because Pamela wouldn't let them that often.

19 MS. HIGGINS: Objection, violation of
20 pretrial rulings.

21 THE COURT: Sustained.

22 BY MR. MCCOLLUM:

23 **Q** We're going to minimize any remarks at
24 this point of what Ms. Phillips told you regarding
25 that period of time, okay?

1 **A** Okay.

2 **Q** Okay. All right. 3-J, close-up of the
3 kids' room?

4 **A** Yes.

5 **Q** And 3-K, your dad's bedroom?

6 **A** Yes.

7 **Q** That was all at the time of approximately
8 October of 1996?

9 **A** Yes.

10 **Q** Now, I want to show you some other folks
11 here and see if you can identify who these people
12 are. Do you recognize 3-Q?

13 **A** Yes.

14 **Q** Who is that?

15 **A** I believe it's Taylor.

16 **Q** Taylor O'Connor?

17 **A** Yeah, I can't really recall her last name,
18 but --

19 **Q** Who was she to your dad?

20 **A** They dated.

21 **Q** They dated?

22 **A** Yes.

23 **Q** When you say they dated was that in 1996?

24 **A** I believe so, yes.

25 **Q** And the next photo is 3-R.

1 **A** My cousin Melissa.

2 **Q** That's your cousin?

3 **A** Yes.

4 **Q** And the next photo, 3-S?

5 **A** Don Redmond, one of my dad's friends.

6 **Q** And who is Don Redmond?

7 **A** One of my father's best friends, that's
8 who he lived with actually.

9 **Q** Was that before the Airway address?

10 **A** Yes, that's when they first got divorced
11 or separated, he moved in with them in their guest
12 house.

13 **Q** And how long do you think your dad lived
14 with Don Redmond and his wife?

15 **A** I'm not really sure how long.

16 **Q** Okay. Was it a move -- when he moved out
17 with the Redmonds did he move directly into
18 Airway?

19 **A** I don't believe there was any houses in
20 between. I believe he went straight to Airway.

21 **Q** All right. And the final person here, do
22 you know who that person is?

23 **A** Jimmy Madison, Jim Madison.

24 **Q** He was a business partner of your dad's?

25 **A** Yes.

1 **Q** Do you know any relationship between the
2 four people I just showed you?

3 **A** No.

4 **Q** All right.

5 MR. MCCOLLUM: The State would
6 introduce, Your Honor, 3-Q, R, S and T.

7 MS. HIGGINS: No objection.

8 THE COURT: Thank you. The exhibits
9 are admitted.

10 MR. MCCOLLUM: Maddam clerk -- if I
11 may, Your Honor, we have the photos that were
12 earlier shown, which would be 3-B through 3-K, we
13 would move those into evidence.

14 MR. PALSER: No objection.

15 THE COURT: Thank you. They're
16 admitted.

17 BY MR. MCCOLLUM:

18 **Q** Now, at the time that your dad was living
19 on Airway -- I believe we can shut the machines
20 off now and get back to normal. What kind of car
21 was your dad driving?

22 **A** When he lived on Airway?

23 **Q** Yes.

24 **A** He drove a Lincoln.

25 **Q** Do you know who owned that vehicle, was it

1 your dad or someone else?

2 **A** You know, I'm not sure. I sort of think
3 that maybe -- I don't know, maybe a friend of his,
4 but I'm not -- maybe -- I don't remember actually.

5 **Q** Do you know the name Richard Hickey?

6 **A** Yes, that's who I think owned it.

7 **Q** Richard Hickey also lived with your dad at
8 the Airway address, right?

9 **A** Yes.

10 **Q** Let's talk about a couple other names. In
11 1996 did you know the name Ronald Young?

12 **A** No.

13 **Q** You just identified some of your dad's
14 friends?

15 **A** Yes.

16 **Q** You never at that time would have known or
17 did know the name Ronald Young?

18 **A** No.

19 **Q** In the last week or so you've seen
20 Mr. Young in the courtroom. Do you recognize him
21 as being somebody that your dad did business with?

22 **A** No.

23 **Q** Or associated with your dad?

24 **A** No.

25 **Q** Even today do you recognize him as any

1 person who would have had connection with your dad
2 or your dad's business?

3 **A** No.

4 **Q** After your dad was killed what role did
5 you play in his estate?

6 **A** What role did I?

7 **Q** In the processing of his estate.

8 **A** Oh, I was the personal representative.

9 **Q** What did you do as the personal
10 representative?

11 **A** I don't even know what I did. I honestly
12 don't remember.

13 **Q** Let me ask you some specific questions
14 then.

15 **A** Okay.

16 **Q** Were you aware of the proceeds of your
17 dad's estate?

18 **A** Yes.

19 **Q** Were you aware of the people that
20 benefited and the debts that had been accrued that
21 had to be dealt with in the process of the estate?

22 **A** Yes.

23 **Q** Were you aware of the insurance policy
24 that was on the life of your dad?

25 **A** Yes.

1 **Q** How many insurance policies do you recall
2 were on the life of your dad at the time he died?

3 **A** Just one.

4 **Q** Just one? And who was the beneficiary of
5 that policy?

6 **A** Pamela Phillips.

7 **Q** Do you know if anybody else benefited from
8 that policy?

9 **A** No, no one else did.

10 **Q** All right. Do you know if anybody
11 benefited from the other assets that had
12 belonged -- that were part of your dad's estate?

13 **A** There were a lot of creditors, I guess.

14 **Q** Creditors?

15 **A** But at the time he didn't really have any
16 money, so I don't really recall. We used an
17 attorney as well, who did most of the stuff.

18 **Q** You were aware that your dad had filed
19 bankruptcy, correct?

20 **A** Yes.

21 **Q** And that was earlier in 1994 or '95?

22 **A** I'm not sure of the date but that sounds
23 right.

24 **Q** Okay. So to your knowledge no one
25 benefited from your dad's death except for the

1 person that benefited from your dad's insurance
2 policy?

3 **A** Yes.

4 **Q** Pamela Phillips?

5 **A** Yes.

6 **Q** What, if any, contact did you have with
7 Pamela Phillips shortly after your dad's death?

8 **A** Shortly after?

9 **Q** Yeah.

10 **A** I believe she came to Tucson at one point.
11 I don't believe she came to the funeral. I
12 don't -- I honestly don't remember but it was
13 right around -- it was right afterwards, and I
14 don't remember -- contact as far as?

15 **Q** For example, after your dad was killed did
16 she call you?

17 **A** No.

18 **Q** Did you call her?

19 **A** No, I don't think so.

20 **Q** Did she send you a card?

21 **A** No, I don't think so.

22 **Q** Did she send flower to the funeral?

23 **A** I don't believe so. I'm not sure of that.

24 **Q** All right. Did you continue to live in
25 Tucson after that?

1 **A** I was in Tucson for a while after that,
2 and then I packed up and moved.

3 **Q** Where did you move to?

4 **A** New York City.

5 **Q** All right. How long did you stay in New
6 York?

7 **A** I think around seven years.

8 **Q** Okay.

9 **A** Six, seven.

10 **Q** Did there come a time that you returned to
11 Aspen, Colorado?

12 **A** I did, actually, I moved back to Aspen and
13 lived with Pamela and my brother and sister.

14 **Q** All right. When you say your brother and
15 sister --

16 **A** Trevor and Lois.

17 **Q** Tell us why you moved back to Aspen.

18 **A** Pamela would visit me on occasion in New
19 York when she was there and basically kept asking
20 me, come, move to Aspen, help me with Star Babies,
21 which is the business my father had purchased for
22 her when they were married, I want to get it
23 on-line, and I would love for you to be partners
24 with me in that. It was after 911, so I was sort
25 of ready to leave New York anyway. So she moved

1 me there and I lived with them and helped with the
2 business.

3 Q Now, you saw some photographs yesterday of
4 the house on Meadow Wood?

5 A Yes.

6 Q Do you recall that house?

7 A Yes, that's where I lived.

8 Q Was that photo of Meadow Wood accurate?

9 A Yes.

10 Q How big was that house?

11 A It was very big. You walked in, there was
12 a big office and then a large master, and then
13 downstairs there were three bedrooms, and then on
14 the same level as you walk in there was another
15 bedroom suite. That's where I lived, in the back.

16 Q Now, let's talk about the office for a
17 moment. You said she had an office in the house?

18 A Yes.

19 Q What did you do out of that office?

20 A Pay bills and -- the office for Star
21 Babies was really back where I was staying.

22 Q So there were two offices?

23 A Yes, sort of like a living room area.

24 Q The office, not the Star Babies office,
25 the other one, did you have access to that office?

1 **A** Yes, I mean, it was part of her bedroom.
2 I didn't really go in there because my office was
3 in the back. I used my computer.

4 **Q** Now, during that time did you work closely
5 with Pamela Phillips in the processing of the
6 business?

7 **A** Yes.

8 **Q** And if I ask you whether or not you could
9 recognize her voice would you be able to recognize
10 her voice?

11 **A** Of course.

12 **Q** Now, earlier in preparation for today's
13 trial you had an opportunity to listen to some
14 recordings, did you not?

15 **A** Yes.

16 **Q** We're not going to play those just yet
17 today, but --

18 MR. MCCOLLUM: May I have a moment,
19 Your Honor?

20 THE COURT: Yes, sir.

21 MR. MCCOLLUM: My apology, Your
22 Honor, too many notes.

23 BY MR. MCCOLLUM:

24 **Q** I gave you an opportunity to listen to the
25 recordings that are in State's Exhibit 4, did I

1 not?

2 **A** Yes.

3 **Q** And specifically we listened -- you
4 listened to Disk 4-A, which was a recording or a
5 conversation. Did you recognize her voice?

6 **A** Yes.

7 **Q** Are you confident that was the voice of
8 Pamela Phillips?

9 **A** Yes, in all of them it was.

10 **Q** You didn't recognize the male's voice, did
11 you?

12 **A** Well, now I have, but I didn't then.

13 **Q** Okay. And when you say now you have
14 that's because you had an opportunity to hear the
15 other voice?

16 **A** Exactly.

17 **Q** Who was the other voice in that recording?

18 **A** Ronald Young.

19 **Q** All right. You also had an opportunity to
20 listen to 4-B, correct?

21 **A** Yes.

22 **Q** Did you make the same determination when
23 you listened to that recording?

24 **A** Yes.

25 **Q** Between Ronald Young and Pamela Phillips?

1 **A** Yes.

2 **Q** You had an opportunity to listen to the
3 recording of 4-C?

4 **A** Yes.

5 **Q** And you made the same determination?

6 **A** Yes.

7 **Q** The voice of Pamela Phillips?

8 **A** Yes.

9 **Q** Was there any reservation at all about
10 that being the voice of Pamela Phillips?

11 **A** No.

12 **Q** What was there about the voice that you
13 heard on 4-A, 4-B and 4-C that you could
14 recognize?

15 **A** Well, she was -- she was my step-mother.
16 I've known her since I was 14. I know her voice.

17 **Q** Was it more just the tone, the way she
18 spoke?

19 **A** I guess she has a certain way of saying
20 hello.

21 **Q** And you heard that when you were
22 listening?

23 **A** Yes.

24 **Q** When she would call Mr. Young she would
25 say hello.

1 **A** Yes.

2 **Q** However it was.

3 **A** Yes.

4 **Q** We'll hear that.

5 **A** Yes.

6 **Q** State's Exhibit 4-D, did you have an
7 opportunity to make that same determination?

8 **A** Yes.

9 MR. MCCOLLUM: As I indicated, Your
10 Honor, there's no need to play them now.

11 THE COURT: That's fine.

12 BY MR. MCCOLLUM:

13 **Q** 4-D, you made the same determination?

14 **A** Yes.

15 **Q** And 4-F?

16 **A** Yes.

17 **Q** Now, there was another chapter in this
18 recording book, which is State's Exhibit 40, 4-G
19 and 4-H, you listened to those recordings also,
20 did you not?

21 **A** Yes.

22 **Q** Did you make the same determination about
23 it being Pamela Phillips and Ronald Young?

24 **A** Yes, I did.

25 **Q** But in one particular call that you

1 listened to, 4-G, there was a reference to the
2 house guest. Do you recall that?

3 **A** Yes, they were talking about me.

4 **Q** In the context of that call the person
5 they were referring to was you?

6 **A** Yes.

7 **Q** All right. During that call there was a
8 discussion of your living at the house. At any
9 time did you feel that you were having your access
10 to items in the house restricted by Pamela
11 Phillips?

12 **A** I'm sorry?

13 **Q** At any time did you feel that you had
14 access limitations to her computer or her office
15 during that period of time?

16 **A** Well, she had a password on her computer
17 that I didn't know her computer password.

18 **Q** Okay. So did she ever share her password
19 with you?

20 **A** No.

21 **Q** When you were living with her during that
22 period did she ever talk to you about being
23 threatened?

24 **A** No.

25 **Q** Or being attacked by anybody?

1 **A** No.

2 **Q** Or being blackmailed by anybody?

3 **A** No.

4 **Q** Did you ever sense that she was going
5 through some troubled times while you lived there
6 with her or in Aspen?

7 **A** No.

8 **Q** In Meadow Wood?

9 **A** No.

10 **Q** All right. What was -- what were the
11 finances like when you lived there? How long did
12 you live with her? How long did you participate
13 in this business relationship with her?

14 **A** I believe I moved there in the end of
15 April, May, and I probably lived actually in the
16 house with her until December, I think, but I
17 just -- I moved in with my boyfriend at that
18 point.

19 **Q** So less than a year?

20 **A** Yes.

21 **Q** All right. Let's go on. In addition to
22 having the opportunity to review 4-A through 4-H,
23 we also played for you a number of voice mails,
24 correct?

25 **A** Yes.

1 **Q** That were included in State's Exhibit 4-I.
2 We listened to all the voice mails on that tape,
3 correct?

4 **A** Yes, we did.

5 **Q** Those were voice mails left and recorded
6 of the voice of Pamela Phillips?

7 **A** Yes.

8 MR. MCCOLLUM: Your Honor, the State
9 would introduce 4-A through 4-I.

10 THE COURT: Ms. Higgins?

11 MS. HIGGINS: No objection.

12 THE COURT: Thank you. The exhibits
13 are admitted.

14 MR. MCCOLLUM: Madam Clerk, are these
15 done?

16 THE CLERK: Yes.

17 BY MR. MCCOLLUM:

18 **Q** When you worked with her did you have an
19 opportunity to see from time to time her
20 handwriting?

21 **A** Of course, yes.

22 **Q** And how would you have an opportunity or
23 why were you privileged to see her handwriting?

24 **A** Well, she would write things down all the
25 time.

1 **Q** So would she write you notes on a daily
2 basis?

3 **A** Yes, things to do.

4 **Q** Memos that she would write for you?

5 **A** Yes.

6 **Q** So you could recognize her signature as
7 well as her handwriting?

8 **A** Definitely, yes.

9 **Q** All right. I'm going to show you a page
10 out of State's Exhibit 10. This actually is 10-P,
11 thank you, Madam Clerk. This is a document dated
12 April the 5th, 1996?

13 **A** Yes.

14 **Q** Do you recognize that?

15 **A** Yes.

16 **Q** Do you recognize her signature?

17 **A** Yes.

18 MR. MCCOLLUM: Your Honor, the State
19 would move 10-P into evidence.

20 MS. HIGGINS: Your Honor, can I see
21 that?

22 MR. MCCOLLUM: I'm sorry. I
23 apologize. It will take a moment. I think she
24 wants to review it.

25 THE COURT: Thank you.

1 MR. MCCOLLUM: Well, while -- we'll
2 take a moment.

3 MS. HIGGINS: May we approach?

4 THE COURT: Certainly.

5 (Whereupon the following bench
6 conference was had.)

7 MS. HIGGINS: Your Honor, technically
8 we object as a prior bad act so in violation --

9 THE COURT: Okay. I'm going to read
10 it because I don't know what it says.

11 MS. HIGGINS: Okay.

12 MR. MCCOLLUM: My apology.

13 THE COURT: Okay. Mr. McCollum, your
14 response?

15 MR. MCCOLLUM: Well, the response is,
16 Your Honor, number one, the defense, as I
17 understand it from the opening statement, is that
18 Ronald Young was blackmailing Pamela Phillips, and
19 so their business dealings and the extent of their
20 business dealings become relevant.

21 In addition, Your Honor, yesterday during
22 the cross-examination of Mr. Mims, this deal, this
23 bad check event that had occurred in Aspen between
24 Pamela Phillips and Ronald Young, in addition,
25 Your Honor, if you look at the next document,

1 which is marked as R -- should have been R.

2 THE COURT: It's not marked.

3 MR. MCCOLLUM: It should be on the
4 last page.

5 THE COURT: Yes, R.

6 MR. MCCOLLUM: She talks about
7 getting her money and how she needs to reduce the
8 contact between them.

9 THE COURT: Let me take a moment to
10 look at R.

11 MR. MCCOLLUM: Yes, Your Honor.

12 MR. PALSER: Is R the blog?

13 MR. MCCOLLUM: R is the blog. My
14 apology.

15 MR. PALSER: I was confused but that
16 happens a lot.

17 MR. MCCOLLUM: I thought they were
18 both blown up -- or increased in size.

19 MR. PALSER: It's a lot easier to
20 read because it was blown up.

21 THE COURT: Okay. I've now read R.
22 So let's go back to the objection. I had to read
23 R to put Q in context.

24 MR. MCCOLLUM: Yes, Your Honor.

25 MS. HIGGINS: It's right here.

1 THE COURT: Thank you.

2 MS. HIGGINS: You're welcome.

3 THE COURT: Ms. Higgins, your
4 response?

5 MS. HIGGINS: Prior bad act, we
6 have -- it's just -- that's our objection.

7 THE COURT: Okay. I'm going to
8 overrule the objection. I think that it does fit
9 within the State's theory and I'm not sure that it
10 really would qualify as a prior bad act. I think
11 the probative value outweighs the prejudicial
12 effect. So I'll overrule the objection.

13 And, counsel, while you're up here are you
14 going to offer R next?

15 MR. MCCOLLUM: Yes.

16 THE COURT: Is there an objection to
17 R? You've seen it?

18 MS. HIGGINS: We've seen it. No
19 objection.

20 MR. PALSER: The same objection.

21 THE COURT: I'll overrule the
22 objection to R on the same grounds, but that's the
23 only objection you have to R?

24 MS. HIGGINS: Yes.

25 THE COURT: Thank you.

1 (Whereupon the bench conference
2 concluded.)

3 BY MR. MCCOLLUM:

4 **Q** So what I started to say was, you have --
5 you identified this handwriting as Ms. Phillips
6 and you've identified the signature on this
7 document dated April the 5th of 1996?

8 **A** Yes.

9 **Q** Okay.

10 MR. MCCOLLUM: Your Honor, the State
11 would move 10-P into evidence.

12 THE COURT: Thank you. Other than
13 the objection you stated at the bench --

14 MS. HIGGINS: No other objection.

15 THE COURT: Thank you. The exhibit
16 is admitted.

17 BY MR. MCCOLLUM:

18 **Q** Now, back in April of 1996 before the
19 death of your dad did you have a lot of contact in
20 April with Pamela Phillips?

21 **A** No, I don't think so.

22 **Q** Okay. And I'm going to show this document
23 to you that's been identified, and if you would,
24 since you know her handwriting, would you read
25 that to us?

1 THE COURT: And for the record, this
2 is?

3 MR. MCCOLLUM: This is 10-P, Your
4 Honor.

5 THE COURT: Thank you.

6 THE WITNESS: It says Ron, you have
7 no idea how betrayed and angry I am. The Bank
8 Norwest is waiting on copies of the forged checks
9 you frauded through my account. To think the
10 night before you were having dinner with my family
11 and preaching about truth and integrity.

12 I will expect my money that you stole back
13 by April 12 in the form of a cashier's check.
14 Discontinue any work on Joy Bancroft's credit and
15 return the \$700 she gave you by April 12 as well.
16 I want all my letters, files, etcetera, back by
17 Monday, April 8, on disks and marked as to which
18 category they apply, i.e., Wineberg, Domestic,
19 Star Babies, financial statement, and I want them
20 all

21 I feel very strongly about what you have
22 done and your asking for consideration, I think,
23 has a very short time fuse. If I have to proceed
24 to prosecute you I will. Pamela.

25 **Q** Okay. Now, I'm going to show you what's

1 been marked -- and Maddam Clerk, I have a tab on
2 it for your marking later. Let me first bring it
3 up to you. It's State's Exhibit 10-R. First,
4 I'll show it to you at the table. Do you have
5 enough lighting?

6 **A** Yes.

7 **Q** Do you recognize this handwriting as well?

8 **A** Yes.

9 **Q** The first one was a document dated April 5
10 of '96. Now, this document is dated, can you
11 tell, April 25?

12 **A** Yes.

13 **Q** April 25 of '96, 1, 2, would you turn to
14 page 3 and see if you can recognize her signature?

15 **A** Yes.

16 **Q** Let's take it back to the board so the
17 jury can see it.

18 **MR. MCCOLLUM:** Your Honor, the State
19 would move 10-R into evidence.

20 **MS. HIGGINS:** No other objection.

21 **THE COURT:** Thank you. 10-R is
22 admitted.

23 **BY MR. MCCOLLUM:**

24 **Q** Now, can you read that okay?

25 **A** Yes.

1 **Q** Would you read that to us?

2 **A** Dear Ron, I'm going to hear -- sorry.
3 Dear Ron, am I going to hear from you today? Did
4 you send the money you owe me or part of it? I'm
5 getting calls from a Detective Crawley, and though
6 I don't claim to be communicating with you I would
7 like to say I have gotten at least some of my
8 money back. I would call your landlord, maybe
9 what's his name could have a mover take your stuff
10 and store it. I think the apartment connection
11 between us is best kept at a minimum.

12 **Q** Now, is that apartment or apparent?

13 **A** Oh, sorry, I think the apparent connection
14 between us is best kept at a minimum. I don't
15 want to appear as to moosh, oh, sorry, I don't
16 want to appear as too much of a helper though you
17 know I am.

18 **Q** Go ahead.

19 **A** I want to arm you with all the info you
20 need to really problem solve, then not think about
21 it anymore and trust everything will be all right
22 on your front as well. I'm feeling pretty
23 helpless and not real healthy. I think I have
24 been through such an emotional drain on so many
25 levels. I want so much to trust, but everybody

1 and everything feels like quicksand lately. You
2 no doubt are feeling -- oh, wait, I missed a word
3 I think.

4 **Q** No doubt feeling?

5 **A** Sad and bound, maybe? I can't really --

6 **Q** Could that be burned?

7 **A** Burned, yes. You can't hurt the ones you
8 love, rather do what you can to protect them.
9 Brody -- Brady and Kelly can call me, they will be
10 all right. Aspen may never feel like home again
11 to you but there are lots of fantastic places to
12 be if you have the freedom and the resources to
13 go. Please call, I love you and count on you.
14 Pamela.

15 **Q** Did she have a tendency to say I love you
16 to a lot of people?

17 **A** No.

18 MR. MCCOLLUM: State would move 10-R,
19 Your Honor, if I haven't done so.

20 THE COURT: I believe you have. Yes,
21 it's been admitted.

22 MR. MCCOLLUM: Yes, Your Honor. May
23 I take a moment to give this to the clerk?

24 THE COURT: Yes, sir.

25 BY MR. MCCOLLUM:

1 **Q** When you lived with Pamela Phillips in
2 Aspen -- or when you lived in Aspen, for that
3 matter, did you know the Town Basalt?

4 **A** Yes, it's outside of Aspen.

5 **Q** How far outside of Aspen?

6 **A** It's about 45 minutes away, 35, 45.

7 **Q** Forty-five minutes outside of Aspen?

8 **A** Yeah, about that.

9 **Q** How big is the town of Aspen?

10 **A** Very tiny.

11 **Q** Grocery stores?

12 **A** There's actually two grocery stores, which
13 they don't need. I believe two lights.

14 **Q** When you lived in Aspen did you find
15 yourself going to Basalt at all?

16 **A** Not often.

17 **Q** Was there anything in Basalt for you to
18 do, or for people to do, for people to travel
19 outside of Aspen to conduct business or whatever?

20 **A** Not really, no. I mean, you might go
21 there if you want to take a drive but it's a drive
22 and in the snow it's not really a nice drive, very
23 windy roads.

24 MR. MCCOLLUM: May I have a moment,
25 Your Honor?

1 THE COURT: Yes, sir.

2 BY MR. MCCOLLUM:

3 Q Do you know the name Phillip Desmond?

4 A No.

5 Q Do you know the name Ruben Lopez?

6 A Yes.

7 Q You saw Mr. Lopez testify when you were in
8 the courtroom?

9 A Yes.

10 Q Was he a friend of your dads?

11 A Yes, he was.

12 Q Close friend?

13 A Yes.

14 Q How much contact did you have with your
15 dad before five months prior to his death?

16 A I talked to him sometimes twice a day, all
17 the time.

18 Q Did he ever talk to you about any threats
19 on his life? And that just requires a yes or no
20 answer.

21 A No.

22 Q He never did?

23 A No.

24 Q Did you ever see your dad during those
25 months prior to his death carrying a bag from

1 Wal-Mart?

2 **A** No. My dad -- he didn't shop at Wal-Mart,
3 my dad.

4 **Q** Okay. Your dad liked to have good things?

5 **A** Yes.

6 **Q** Shop at great places?

7 **A** He did.

8 **Q** Spend lots of money?

9 **A** He did, yes.

10 **Q** Hence the credit you spoke of earlier?

11 **A** Yes.

12 MR. MCCOLLUM: May I have another
13 moment, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. MCCOLLUM:

16 **Q** When you would do business with Pamela
17 Phillips at the Meadow Wood address would FedEx
18 ever do pick-ups there at the house?

19 **A** Yes.

20 **Q** And so you had ready access to FedEx on
21 Meadow Wood?

22 **A** Yes, you just had to call and they would
23 come and pick it up.

24 **Q** Do you know of any reason during the
25 period that you were there that you had to deliver

1 your FedEx packages to Basalt, miles away?

2 **A** No, there's a FedEx office in Aspen. If
3 we missed the pick-up we would just go there.

4 **Q** So no reason to deliver FedEx in Basault?

5 **A** No.

6 MR. MCCOLLUM: Your Honor, I have no
7 further questions.

8 THE COURT: Thank you. Ms. Higgins,
9 cross-examination, ma'am?

10 MS. HIGGINS: One moment, Your Honor.
11 Thank you.

12 CROSS EXAMINATION

13 BY MS. HIGGINS:

14 **Q** I just have a couple of questions. You
15 were the executor to your father's estate; is that
16 correct?

17 **A** Yes.

18 **Q** And there were a lot of debts that were
19 owed on that estate, correct?

20 **A** Well, he filed bankruptcy, so.

21 **Q** Right.

22 **A** I'm not sure. There weren't really debts
23 on there, I don't think.

24 **Q** Okay. As to the bankruptcy there was a
25 lot of claims made against that bankruptcy,

1 correct?

2 **A** I believe -- I'm not sure of the amount,
3 but there were claims, yes.

4 **Q** Okay.

5 MS. HIGGINS: That's all. No further
6 questions.

7 THE COURT: Thank you, Ms. Higgins.
8 Mr. McCollum, redirect, sir?

9 MR. MCCOLLUM: Based on that I have
10 no redirect.

11 THE COURT: Thank you. Ladies and
12 gentlemen of the jury, do you have any questions?
13 All right. Counsel, please approach.

14 (Whereupon the following bench
15 conference was had.)

16 MR. MCCOLLUM: I hate --

17 THE COURT: Well, could we start with
18 is Melissa Triano here?

19 MR. MCCOLLUM: We could, that will
20 take about an hour and a half, and Mr. Reber is
21 traveling.

22 THE COURT: If he's not coming until
23 1:30, we've got 20 minutes to kill.

24 MR. MCCOLLUM: I hate to put her on
25 just to kill time. I don't often ask for that

1 buffer.

2 THE COURT: Well, I hate to bring the
3 jury here at 10:30, give them an hour and tell
4 them they have a two hour lunch?

5 MR. MCCOLLUM: I understand.

6 THE COURT: That's my concern.

7 MR. MCCOLLUM: All right.

8 THE COURT: We can interrupt and take
9 her off to put on the other witness.

10 MR. MCCOLLUM: That's what I don't
11 want to do.

12 THE COURT: Okay. I'll leave that up
13 to you.

14 MR. MCCOLLUM: You want me to start?
15 I will. If you tell me to do so I will.

16 THE COURT: We've got 20 minutes.

17 MR. MCCOLLUM: I can live with it.

18 THE COURT: It's a better use of the
19 jury's time.

20 MR. MCCOLLUM: I expected more cross
21 on that case. I apologize.

22 THE COURT: That's okay.

23 MR. MCCOLLUM: May I see that, Your
24 Honor?

25 THE COURT: Hang on one second.

1 Let's go one at a time. Let's start with one.

2 Any objection to one?

3 MR. MCCOLLUM: No.

4 THE COURT: Okay. Number 2?

5 MR. MCCOLLUM: No objection.

6 THE COURT: Do you have an objection?

7 MS. HIGGINS: Yes, number one and
8 number two are violations of the pretrial order.
9 They go to the character.

10 THE COURT: Why do they go to her
11 character?

12 MS. HIGGINS: It's talking about her
13 ability to access the children and control issues
14 there. It's character evidence.

15 THE COURT: Boy, I don't -- I don't
16 look at it like that. This is really just a fact.
17 Why don't I rephrase the question and say did the
18 children attend the funeral? How about that?
19 Would that solve your concern? That has nothing
20 to do with Ms. Phillips.

21 MR. PALSER: That's fine.

22 MS. HIGGINS: That's okay.

23 THE COURT: And this really -- Mr.
24 Triano visited the children. I don't think that
25 has anything to do with Ms. Phillips, whether he

1 chose to visit with them in Aspen or Tucson. He
2 had whatever visitation he had in the dissolution
3 awarded to him and I assume it was up to him to
4 exercise visitation in either location as he
5 chose.

6 MS. HIGGINS: I mean, it implies that
7 she kept them in Aspen and he had to go out of his
8 way to go access them, and for that reason --

9 THE COURT: I would disagree. She
10 moved to Aspen. That's in the record. Obviously
11 he's got to go pick them up in Aspen or have them
12 brought in. That's very common in any domestic
13 situation.

14 Number three, now I think the question
15 refers to the two exhibits you just showed.

16 MR. MCCOLLUM: Oh, okay.

17 THE COURT: That's my assumption.
18 Let's first, do we all agree this question is
19 referring to the two letters that you showed on
20 the Elmo?

21 MS. HIGGINS: Yes.

22 MR. MCCOLLUM: No, Your Honor.

23 THE COURT: What do you think it's
24 referring to?

25 MR. MCCOLLUM: I believe it's

1 referring to notes that will be shared between
2 them when she worked at the office -- in the
3 office with Pamela.

4 THE COURT: Okay. Jarrod, I'm going
5 to have to ask the juror to clarify. Would you
6 ask Juror Number Three is he referring to the
7 notes the two notes that were shown on the Elmo,
8 or was he referring to the notes between Ms.
9 Phillips and Ms. Triano Klindworth when they
10 worked together?

11 THE BAILIFF: Okay.

12 MS. HIGGINS: And, Your Honor, as to
13 number two, that's a lack of personal knowledge
14 issue as well.

15 THE COURT: Well, I'm not sure when
16 she said she talked to her father twice a day, I
17 would assume that she knew when he was going to
18 visit his kids and so I'll ask her if she knows.

19 MS. HIGGINS: Okay. That's great.
20 Thank you.

21 THE BAILIFF: They're talking about
22 the ones on the projector.

23 MR. MCCOLLUM: I apologize.

24 THE COURT: That's okay. So do we
25 have postmarks and things?

1 MR. MCCOLLUM: No. There are
2 computer faxes.

3 THE COURT: Those are what?

4 MR. MCCOLLUM: They were computer
5 faxes.

6 THE COURT: Okay.

7 MR. MCCOLLUM: And they'll be
8 testified to.

9 THE COURT: Okay. So they were just
10 handwritten by her and faxed to him? Can we
11 stipulate to that? Should I tell the jury that or
12 is that in dispute?

13 MR. PALSER: I think you ought to ask
14 the question.

15 THE COURT: Well --

16 MR. PALSER: She may not know.

17 THE COURT: Yeah, I don't think she
18 will know, but -- all right, I'll just ask her.

19 MS. HIGGINS: Okay.

20 (Whereupon the bench conference
21 concluded.)

22 THE COURT: All right, ma'am. We
23 have some questions from our jury. When did you
24 become familiar with Ron Young's voice?

25 THE WITNESS: After seeing it on the

1 news, you know, they would play tapes or things on
2 the news here.

3 THE COURT: Did Trevor and Lois
4 attend your father's funeral?

5 THE WITNESS: No.

6 THE COURT: Okay. This next question
7 I want you to answer if you know, if you don't
8 know tell us that, all right? Did your father
9 visit Trevor and Lois more often in Aspen or more
10 often in Tucson?

11 THE WITNESS: He had to go there to
12 Aspen to see them mostly.

13 THE COURT: Do you know where he
14 stayed while he was visiting in Aspen?

15 THE WITNESS: Usually he'd stay at a
16 hotel right out of town, I don't recall the name,
17 but just a tiny little Inn.

18 THE COURT: All right. The two notes
19 you were shown on the board and that you read --

20 THE WITNESS: Yes.

21 THE COURT: Okay. Were those notes
22 just notes or were they postmarked letters to an
23 address or a PO box, or do you know? Again, if
24 you don't know tell us that, if you do know, tell
25 us.

1 THE WITNESS: I don't know.

2 THE COURT: All right. Thank you.

3 May this witness be excused, counsel?

4 MR. MCCOLLUM: Yes, Your Honor.

5 MS. HIGGINS: Yes, Your Honor.

6 THE COURT: Thank you. Mr. McCollum,
7 the State may call its next witness, please.

8 MR. MCCOLLUM: Sir, Melissa Triano
9 Walsh.

10 THE COURT: Thank you.

11 MELISSA TRIANO WALSH,
12 having been first duly sworn to state the truth,
13 the whole truth and nothing but the truth, was
14 placed under oath and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCCOLLUM:

17 Q Would you state your name and spell your
18 last name?

19 A Melissa Triano Walsh, T-R-I-A-N-O
20 W-A-L-S-H.

21 Q Walsh is your married name?

22 A It is.

23 Q And how did you acquire the name Triano?

24 A My father is Gary Triano's brother.

25 Q Okay. And Triano is a Spanish name, is it

1 not?

2 **A** It is.

3 **Q** Not an Italian name?

4 **A** No, not at all.

5 **Q** So did you ever live in Tucson?

6 **A** I've lived in Tucson almost my entire
7 life.

8 **Q** Your dad no longer lives here though,
9 however, does he?

10 **A** No, my father moved to Jackson Hole,
11 Wyoming when I was 16 or 17.

12 **Q** All right. We mentioned the name Gary
13 Triano as being related to your dad. Did you have
14 a lot of contact with Gary Triano when he was
15 alive?

16 **A** Yes, he was my uncle.

17 **Q** Okay. And there was a time when you
18 worked for your uncle, correct?

19 **A** Yes.

20 **Q** Give us an estimate about when that was.

21 **A** I can't really remember when I started
22 working for Uncle Gary, but I know that he
23 encouraged me to get my real estate license and I
24 started working with him shortly thereafter. I
25 know that I worked with him actually a little bit

1 before then but during the time I was in school, I
2 was in school for real estate. I believe it was
3 at the end of 1995 through 1996.

4 **Q** And when did you get your real estate
5 license?

6 **A** In April of 1996.

7 **Q** Okay. Did he help you study for your real
8 estate test?

9 **A** No, he didn't help me study for it. He
10 just encouraged me to get it and then after I got
11 my license I would go to the office everyday and
12 watch him work, or he'd answer questions that I
13 had in regards to commercial real estate.

14 **Q** Where was his office located?

15 **A** It was located on 4th Street, which is
16 just east of Craycroft and just north of 5th.

17 **Q** Now, prior to April of '96 when you got
18 your license, what did you do in the office for
19 Gary Triano?

20 **A** I would help him file things, answer the
21 phones, just basically be a part of what Donello
22 Lopez was doing or some other people that they
23 kind of shared an office. So there were several
24 people in there that were in commercial real
25 estate.

1 **Q** You mentioned the name Donello Lopez?

2 **A** Yes.

3 **Q** How well did you know Donello Lopez?

4 **A** Very well.

5 **Q** And you worked with him on a daily basis
6 prior to April of '96?

7 **A** Yes, I believe so, again, I'm not quite
8 sure of the dates.

9 **Q** You were here for the testimony of Ruben
10 Lopez, correct?

11 **A** I was.

12 **Q** What's the relationship between Donello
13 and Ruben Lopez?

14 **A** Ruben and Donello are brothers.

15 **Q** Would you see Ruben Lopez around the
16 office?

17 **A** I honestly don't recall, I know Donello
18 was always there but I don't recall if --

19 **Q** Did you have any other job during that
20 time period or would you just work for your uncle?

21 **A** I believe I just worked at my uncle's
22 office but I can't be certain. Actually, I did
23 work for Prudential Aegis Realty starting sometime
24 in the summer so I would go there and go back to
25 Uncle Gary's office.

1 **Q** While you were there both before and after
2 April, did he ever change his office, was it at
3 the same location?

4 **A** Yes.

5 **Q** There's another name I want to ask you
6 about, the name is Jim Madison -- or James
7 Madison.

8 **A** Jimmy.

9 **Q** Jimmy? Is that how you knew him?

10 THE COURT: You have to say yes or
11 no.

12 THE WITNESS: Yes.

13 BY MR. MCCOLLUM:

14 **Q** What was his relationship with Gary
15 Triano?

16 **A** I honestly don't know -- well, I know
17 Jimmy had an office in the building so they had
18 camaraderie in commercial real estate but I don't
19 know what Jimmy actually did there.

20 **Q** Was that his picture that I showed
21 earlier?

22 **A** Yes.

23 **Q** That was identified by Heather?

24 **A** Yes.

25 **Q** She's your cousin, correct?

1 **A** Yes.

2 **Q** And I also showed her a photograph of
3 Taylor O'Connor, now Taylor Showberg (ph). What
4 was your relationship with her back then?

5 **A** I met her briefly a couple times with my
6 uncle, but I didn't know her very well.

7 **Q** Did you ever have any personal dealings
8 with Jim Madison and business dealings, or
9 personal dealings, or anything like that?

10 **A** No.

11 **Q** What about with Taylor Showberg or Taylor
12 O'Connor, any dealings yourself, going out to
13 dinner, anything like that?

14 **A** No, if I recall I think that I just met
15 her once or twice at a restaurant called Encore
16 Med, which is now McMahon's steakhouse. And she
17 was there. I don't think we went with her.

18 **Q** Other than working with your uncle at the
19 office did you ever go out with him?

20 **A** All the time.

21 **Q** Was there a regular event that you and him
22 would attend?

23 **A** We'd usually go to happy hour on Friday
24 nights at Encore Med, which is now McMahons.

25 **Q** And when you would go to happy hour, was

1 it just you and him or did you go with friends?

2 **A** Just he and I would go but everyone there
3 we knew.

4 **Q** All right. The other photograph I showed
5 earlier today was the photograph of Don Redmond.
6 Did you know that man?

7 **A** No.

8 **Q** You want to look at his photograph again?

9 **A** Yeah. The name sounds familiar but I
10 don't recognize who that is I don't think.

11 **MR. MCCOLLUM:** Madam clerk, do you
12 have those photos? Did you put them back?

13 **THE CLERK:** I think you took them
14 back.

15 **MR. MCCOLLUM:** I have them. My
16 apologies.

17 **BY MR. MCCOLLUM:**

18 **Q** So 3-Q, I mentioned a moment ago is a
19 photograph of Taylor O'Connor, would you agree?

20 **A** Yes, but I think her hair is different.

21 **Q** Her hair is different?

22 **A** Are these driver's license photos?

23 **Q** Is it?

24 **A** I don't know, but that's not good.

25 **Q** Is that you?

1 **A** Yes, it is.

2 **Q** You're going to deny that?

3 **A** No, that's me.

4 **Q** That's you. Jim Madison, that's 3-T?

5 **A** Yeah.

6 **Q** And Don Redmond, did you recognize that
7 photo or do you recognize or remember a person
8 named Don Redmond?

9 **A** I know the name but I don't recognize that
10 person.

11 **Q** So based on the photograph and based on
12 the name, you never had dealings yourself with Don
13 Redmond?

14 **A** No.

15 **Q** What kind of business was your uncle in?

16 **A** He was a commercial real estate developer.

17 **Q** Did he share that business with anybody
18 other than Donello Lopez?

19 **A** Did he share?

20 **Q** In other words, did he have another
21 business partner that you know of when you were
22 working with him?

23 **A** He had lots of business partners, or
24 dealings with different people. I don't know that
25 I would say he had a partner, per se. I don't

1 know that he and Donello were necessarily
2 partners. They worked together on stuff.

3 Q During that time did your uncle use a
4 vehicle or a car?

5 A Yes.

6 Q And was it the maroon Lincoln we've talked
7 about here?

8 A It was a burgundy wine colored Lincoln
9 Towncar.

10 Q Did he have any other car that he would
11 use?

12 A Not that I know of. That's the only car
13 that he would use. He drove my car a couple
14 times.

15 Q He did drive your car a couple times?

16 A Yes.

17 Q All right. What kind of car were you
18 driving at the time?

19 A Which time?

20 Q In 1996, say in April of '96 when you got
21 your real estate license.

22 A I was driving a convertible black
23 Corvette.

24 Q Okay. And the license plate?

25 A Yes.

1 **Q** What was it?

2 **A** Missy.

3 **Q** And people knew you back then as Missy,
4 correct?

5 **A** Right.

6 **Q** How often would you -- people call you
7 Melissa as I called you here today?

8 **A** Not very often. When my father was mad at
9 me he might call me that but everybody knew me as
10 Missy.

11 **Q** So you were known by your friends and the
12 people in the office as Missy?

13 **A** Yes.

14 **Q** Would your uncle have known your name
15 Melissa?

16 **A** Yes.

17 **Q** Let me step back a second. When was your
18 first contact with Pamela Phillips?

19 **A** I very distinctly remember meeting her on
20 my father's 40th birthday party at my uncle's
21 house when he lived in El Dorado Coutry Club.

22 **Q** Okay.

23 **A** I don't remember meeting her before then,
24 so I think it was that day.

25 **Q** And did you -- now, that was at the El

1 Dorado Coutry Club. When your uncle lived on
2 Airway, did you ever visit him -- not on Airway,
3 on Woodland Road, did you ever visit him there?

4 **A** Yes.

5 **Q** That was the house he shared with Pamela
6 Phillips?

7 **A** Yes.

8 **Q** How often would you go to that house?

9 **A** I don't know. I don't remember. I went
10 there often with Heather to go see the kids, or if
11 they had a party or something. I know they moved
12 there so they could have animals for the kids.
13 They had a little pygmy goat, no, I think it was a
14 pot belly pig, and they wanted animals for the
15 kids.

16 MR. PALSER: Judge, can we approach?

17 THE WITNESS: At the Skyline house --

18 THE COURT: Just a moment, ma'am.

19 Yes, come on up, counsel.

20 (Whereupon the following bench
21 conference was had.)

22 MR. PALSER: Any mention of this is
23 an attempt to elicit --

24 MR. MCCOLLUM: No, it's not. My
25 apology.

1 THE COURT: I don't see it as an
2 attempt to elicit something necessarily, but I do
3 want the relevance of it. Obviously, the Court
4 gave both counsel a little leeway in breaking the
5 ice and getting the witness in the question and
6 answer mode, but Mr. McCollum, what is the
7 specific relevance of this line of questioning?

8 MR. MCCOLLUM: First, I'd like to
9 say, Your Honor, I did make an extreme effort to
10 keep both Heather and Melissa Triano from crying,
11 that's why I've been cautious. I did forewarn
12 Mr. Palser about that, but, more importantly,
13 needing to establish a relationship between
14 Melissa Triano and Pamela Phillips and the fact
15 that he would have known her name was Melissa
16 despite the fact everyone knew her as Missy.

17 MR. PALSER: That's already in
18 evidence, Judge. She already testified to that
19 fact. So the question is irrelevant.

20 THE COURT: I think it does tend to
21 be irrelevant, and Mr. McCollum, I understand your
22 motives for not wanting to have a witness break
23 down, and I appreciate that, but nevertheless, if
24 Mr. Palser wants to interject an objection to
25 relevance we'll have to suffer the consequences if

1 they are. So I'll sustain the objection.

2 MR. MCCOLLUM: One more thought to
3 add.

4 THE COURT: Yes, sir.

5 MR. MCCOLLUM: And the reason why the
6 name Melissa is important is because one of the
7 information found -- one of the notes found is the
8 name Melissa Triano.

9 THE COURT: That's fine, but we've
10 already established, number one, that her name was
11 Melissa, and that her nickname was Missy. So,
12 Mr. McCollum, we've got two minutes, just ask a
13 couple questions and you can respond and we'll
14 break for lunch. Thank you.

15 (Whereupon the bench conference
16 concluded.)

17 BY MR. MCCOLLUM:

18 Q Let's go back to April of 1996. During
19 the year of 1996 did you have any contact with
20 Pamela Phillips?

21 A No.

22 Q And you heard testimony during the course
23 of this trial about her living in Aspen. Did you
24 ever go to Aspen?

25 A No.

1 MR. MCCOLLUM: Your Honor, you had
2 indicated --

3 THE COURT: This would be an
4 appropriate place to stop?

5 MR. MCCOLLUM: Yes, Your Honor.

6 THE COURT: Thank you. We'll
7 reconvene at 1:30. Please remember the Court's
8 admonitions. Have a nice lunch.

9 (Whereupon the jury left the
10 courtroom.)

11 THE COURT: Thank you. Counsel,
12 nothing we need to do?

13 MR. MCCOLLUM: No Your Honor.

14 THE COURT: Mr. Palser?

15 MR. PALSER: No, sir.

16 THE COURT: Thank you, sir.

17 MR. PALSER: Thank you.

18 (Whereupon the Court recesses.)

19 THE COURT: Are you ready for the
20 jury, counsel?

21 MR. MCCOLLUM: Yes. I want to advise
22 the Court, I did so before lunch, Mr. Reberg from
23 Phoenix asked us to keep a tight schedule because
24 he has an event this evening. So I apologize to
25 the Court, but with the Court's permission I'll

1 stop the testimony of Melissa Triano Walsh.

2 THE COURT: That's fine.

3 MR. MCCOLLUM: As long as you're okay
4 with that.

5 THE COURT: I'm fine with that.
6 Thank you. And I'll explain that to the jury.

7 All right. Bring them in, Jarrod.

8 MR. MCCOLLUM: And he is in the
9 courtroom.

10 THE COURT: Okay. Thank you.

11 MR. MCCOLLUM: And I apologize again
12 for all the confusion.

13 THE COURT: It's not a problem at
14 all.

15 (Whereupon the jury entered the
16 courtroom.)

17 THE COURT: Please be seated, ladies
18 and gentlemen. Let the record reflect the
19 presence of all members of the jury, counsel,
20 Mr. Young.

21 Ladies and gentlemen, as you will recall
22 when we broke for lunch Ms. Walsh was on the
23 stand. We're going to take her off the stand and
24 put another witness on who is from Phoenix and has
25 to get back to Phoenix, and then we'll put Ms.

1 Walsh back on the stand. So if you have questions
2 for her you can ask it. That said, Mr. McCollum,
3 the State may call its next witness.

4 MR. MCCOLLUM: Yes, sir, Marv Reber.

5 THE COURT: Sir, if you would step
6 right up here and be sworn, please.

7 MARVIN REBER,
8 having been first duly sworn to state the truth,
9 the whole truth and nothing but the truth, was
10 placed under oath and testified as follows:

11 MR. MCCOLLUM: Would you move the
12 easel out of the way? We won't need it for this
13 witness. Thank you.

14 THE COURT: Mr. McCollum?

15 DIRECT EXAMINATION

16 BY MR. MCCOLLUM:

17 Q Would you please state your name and spell
18 your last name for us, please?

19 A Yes, Marvin, Reber, R-E-B-E-R.

20 Q I apologize for using the short name Marv
21 earlier.

22 A That's fine. That's what everyone calls
23 me.

24 Q Okay. What do you do, Mr. Reber?

25 A I'm the director of underwriting and new

1 business at Industrial Alliance Pacific Life
2 Insurance Company.

3 **Q** And what does that mean?

4 **A** I'm responsible for the underwriting
5 department and new business, and also some of the
6 claims functions.

7 **Q** What does your company do?

8 **A** We are an individual life insurance
9 company.

10 **Q** How long have you been in this business?

11 **A** Twenty-five years.

12 **Q** And were you working for the entire time
13 with the company you presently work for?

14 **A** No.

15 **Q** Who did you work for before?

16 **A** I've worked with several companies in
17 Milwaukee, Wisconsin prior to moving to Phoenix
18 two and a half years ago.

19 **Q** Are you familiar with the name Seaboard
20 Life?

21 **A** Yes, I am.

22 **Q** And why are you familiar with that name?

23 **A** Seaboard is a former name where some
24 company mergers took place and now results in
25 Industrial Alliance Pacific.

1 **Q** And in your position with Industrial
2 Alliance Pacific, IAP, do you come across
3 documents that originated with the company
4 Seaboard Life?

5 **A** Yes.

6 **Q** And how does that happen? I mean, do --
7 let me go back and ask another question. What
8 kind of policies are issued by IAP?

9 **A** Mostly individual life.

10 **Q** Are there different types of individual
11 life policies?

12 **A** Yes, there's a number of different types
13 of life insurance, permanent life, term life.

14 **Q** What is the difference between the two?

15 **A** Permanent life is, as it states, it's for
16 the long term, it's usually to age 100. It's a
17 whole life policy that has a cash value, has a
18 level premium. Whereas term life insurance is for
19 a temporary period, usually 5, 10, 20 years, or
20 renewable term, which is a one year term which
21 renews with a premium increase each year.

22 **Q** And is the term -- how is the term
23 selected? Is it selected by your company or is it
24 selected by the customer?

25 **A** The company would offer different product

1 types that would be of one of these types of term
2 insurance, and based on their offerings the
3 customer would choose which policy type to take.

4 **Q** What does it mean beneficiary of a policy?

5 **A** The beneficiary is the one who, upon the
6 death of the insured, has the right to the
7 proceeds.

8 **Q** And what does it mean to be the owner of
9 the policy?

10 **A** The owner of the policy is the one who
11 basically controls the policy, has the rights of
12 ownership, most importantly the ability to name
13 the beneficiary, take a loan if there was a cash
14 value, sell the policy, et cetera.

15 **Q** In referencing the cash value is that in
16 particular to permanent life policies or is it
17 also particular to term life policies?

18 **A** Cash values appear just with permanent
19 life insurance policies.

20 **Q** Is the permanent policy the type of policy
21 that has an equity basically?

22 **A** Essentially, that's correct.

23 **Q** Now, is there any difference in terms of
24 the payment of the premium for a permanent policy
25 and a term life policy?

1 **A** The payments in general on a permanent
2 policy are more expensive, they're for the full
3 length of the policy. In other words, it's a
4 level premium, whereas a term policy --

5 **Q** Let me stop you there. When you say a
6 level premium, a premium is calculated, correct?

7 **A** That's correct.

8 **Q** For a permanent policy. What is it based
9 upon, a permanent policy?

10 **A** The premium is based on the original age
11 of the person. So it's a mortality factor.
12 There's an expense factor and an interest factor.

13 **Q** And with regard to the permanent policy
14 what are the ways in which it can be nullified or
15 canceled?

16 **A** Somebody can surrender a policy for its
17 cash value, they can lapse the policy which
18 essentially means just stop paying it, in which it
19 can go into a different structure. These are
20 basically the two ways.

21 **Q** And obviously, collection on the policy?

22 **A** A death claim, yes.

23 **Q** Death claim. When you say lapse you're
24 talking about failure to make payment?

25 **A** That's correct.

1 **Q** If one fails to make a payment on a
2 permanent policy, does the equity disappear?

3 **A** No.

4 **Q** Okay.

5 **A** It can go into -- they can surrender it
6 still, they can have what's called reduced paid up
7 or extended term insurance, two options to use
8 that cash value, it's their right to it.

9 **Q** And while we're talking about a lapsed
10 policy, what are the general market rules with
11 regard to an allowance for payment? In other
12 words, a payment is late, I forget to make my
13 payment on the 1st of July.

14 **A** There's a grace period in policies that
15 allow usually a 30 or 31 day period to make the
16 payment with really no loss of coverage.

17 **Q** Or no loss of equity?

18 **A** That's correct.

19 **Q** We're going to get to that in a minute.
20 Let's talk about the term policy. How are the
21 premiums calculated in a term policy?

22 **A** The term premiums are calculated based
23 upon the period of coverage. In other words, what
24 the term is, if it's a ten year term, the premium
25 would be based on the policy lasting for ten

1 years, that would be, for example, a lower premium
2 than somebody who has had a permanent plan, which
3 the premiums would be based on, say, age 100.

4 **Q** You mentioned earlier that with some
5 policies the premiums can increase over the length
6 of the policy?

7 **A** That's correct.

8 **Q** And in terms of the calculation you helped
9 us with a moment ago, how does the company
10 calculate this progression of payments and how
11 they may enlarge during the course of that term
12 policy?

13 **A** In what's called a renewable term, the
14 term period, if it's one year or five years or ten
15 years, at the end of that period the premium is
16 recalculated based upon the new retained age of
17 the insured.

18 **Q** I see. So he or she doesn't have the
19 advantage of his or her age at the time the policy
20 is issued?

21 **A** That's correct.

22 **Q** Are there any health or any other factors
23 that may be calculated in beyond the scope of the
24 original agreement?

25 **A** The underwriting takes place at the outset

1 of the policy and once the policy is issued
2 there's no more health factors that would be taken
3 into account but they would be at the outset.

4 **Q** I started to ask you a question earlier,
5 what you've told us today so far applies to IAP,
6 correct?

7 **A** It really applies to any life insurance
8 company.

9 **Q** And based upon your experience with the
10 records at IAP and those records that had
11 transitions from Seaboard Life do you have any
12 reason to believe that those rules didn't apply to
13 policies that were issued under Seaboard Life?

14 **A** No.

15 **Q** Do you know how long Seaboard Life was in
16 existence prior to the takeover -- or the merger?

17 **A** No, I don't.

18 **Q** Okay. Now, you've been asked to testify
19 here today about a particular policy, correct?

20 **A** Yes.

21 **Q** And that would be a policy that had been
22 issued under Seaboard Life?

23 **A** Correct.

24 **Q** When you were asked to be involved in this
25 case were you able to collect the paperwork from

1 your company as to the policy that was issued on
2 the life of Gary Triano?

3 **A** Yes.

4 **Q** How did that happen? Was there -- where
5 were these files maintained prior to your interest
6 and your investigation?

7 **A** The home office of Industrial Alliance
8 Pacific is in Vancouver, British Columbia, and
9 they had the claim file and made it available to
10 me in Scottsdale, Arizona.

11 **Q** When that file was transitioned to you did
12 you have reason to believe that the contents of
13 the file were either manipulated or any part of it
14 was lost or misplaced?

15 **A** No.

16 **Q** What was the package that you received,
17 was it a file folder, how was it contained?

18 **A** Essentially a file folder.

19 **Q** Did you have an opportunity to look
20 through the entire folder?

21 **A** Yes.

22 **Q** Okay. And are you familiar with the type
23 of policy that was issued on the life of Gary
24 Triano?

25 **A** Yes, I am.

1 **Q** Would you tell the ladies and gentlemen of
2 the jury when that policy was issued?

3 **A** The policy was issued in November of 1992.

4 **Q** All right. Now, when it was issued was it
5 a permanent policy or was it a term life policy?

6 **A** It was a term life policy.

7 **Q** Would you tell us about the details of
8 that particular term life policy on the life of
9 Gary Triano?

10 **A** It was an annual renewable term policy.

11 **Q** What does that mean?

12 **A** It means that once it's issued it carries
13 a premium structure that increases each year as
14 the policy renews. So it's a term coverage at
15 initial age and then the second year you're at a
16 new age so the premium is higher, and so on. It's
17 an increasing type premium.

18 **Q** Now, despite the fact that it was an
19 annually renewable policy, what were the periods
20 of premium that were required to be paid, how
21 often?

22 **A** I believe the policy had an annual premium
23 on it.

24 **Q** Okay. Were there monthly payments
25 associated with that annual premium? If you need

1 to look at your notes you may.

2 **A** There -- it was my understanding that it
3 was an annual premium from the outset, but I was
4 unable to ascertain whether it was an annual
5 premium or changed in premium mode to, say, a
6 monthly premium or semi-annual or a quarterly.

7 **Q** So tell us more about the policy. It was
8 on the life of Gary Triano. When it was taken out
9 what was the value of the policy?

10 **A** The face amount was \$2,000,000.

11 **Q** Is there anything that would cause that
12 face amount to change during the life of the
13 policies based upon what you were able to
14 determine from the folder?

15 **A** No, there was no change on the face amount
16 during the life of the policy.

17 **Q** And what was the first year annual payment
18 on that policy?

19 **A** I'd have to check my notes.

20 MR. MCCOLLUM: Your Honor?

21 THE COURT: That's fine.

22 BY MR. MCCOLLUM:

23 **Q** You may.

24 **A** The first year premium was \$2510.

25 MR. MCCOLLUM: May I approach, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. MCCOLLUM:

4 Q And this was 1992, correct?

5 A That's correct.

6 Q That was 2510?

7 A Correct.

8 Q Annual. Okay. Do you know whether or not
9 from your folder whether that payment was, in
10 fact, paid to Seaboard Life?

11 A I assume it was because the policy
12 continued to be in force.

13 Q Before we go on to the other annual
14 payments let's talk a little bit about who
15 benefited from that policy. Who was the named
16 beneficiary in the policy that was taken out on
17 his life in 1992?

18 A The beneficiary was Pamela A. Triano.

19 Q And is there any reflection in the file
20 what the relationship was to Mr. Triano at the
21 time the policy was taken out?

22 A Yes, it's his wife.

23 Q Is there any indication in those original
24 documents about children?

25 A Yes.

1 **Q** And does it name those children?

2 **A** It just says children equally to share and
3 share alike under the contingent beneficiary.

4 **Q** What is a contingent beneficiary?

5 **A** A contingent beneficiary is an individual,
6 or in this case, multiple individuals, who would
7 become the beneficiary if the primary beneficiary
8 were deceased.

9 **Q** And in this case the primary beneficiary
10 was the wife, Pamela Phillips?

11 **A** Correct.

12 **Q** So she gets all the money unless she's
13 deceased?

14 **A** That's correct.

15 **Q** When you read out to us a moment ago the
16 benefit that would go to the kids shared equally,
17 who makes that determination, the children or
18 would it be Seaboard Life at the time?

19 **A** Do you mean if they had become the
20 beneficiaries?

21 **Q** Yes. If Pamela Phillips died in 1992 and
22 the policy came due who would decide how much
23 money to go to the children?

24 **A** Well, as it stated, it would have been
25 shared equally, so it would have been divided.

1 **Q** So Seaboard Life would cut two checks,
2 boom, boom, \$1,000,000 each?

3 **A** If they were minors we would probably look
4 for guardianship.

5 **Q** That's what I want to ask you. You say
6 guardianship, or another term is trustee, correct?

7 **A** Correct.

8 **Q** Was there any notation in that policy
9 about trustee for the children?

10 **A** Not that I see.

11 **Q** Okay. So let's go back to our chart here.
12 We talked about the annual premium payment in
13 1992. Would it have been unusual for that payment
14 to come in monthly installments at the request of
15 either the owner or the beneficiary?

16 **A** We have an option for monthly payments so
17 it would not have been unusual.

18 **Q** Okay. Now, let's go to 1993. You
19 mentioned that this premium payment would increase
20 as the years went by?

21 **A** Correct.

22 **Q** As each year went by. Before we go to
23 that, when you say annually renewable, do the
24 parties have to appear before Seaboard Life and
25 sign a document that says we want to renew or the

1 mere payment of a premium renewal?

2 **A** The payment of the premium constitutes
3 renewal.

4 **Q** If the beneficiary objected -- could they
5 object and cancel the policy?

6 **A** No, the owner is the one who is
7 responsible for canceling the policy, not the
8 beneficiary.

9 **Q** In this case who was the owner of the
10 policy?

11 **A** Pamela Triano.

12 **Q** Now, in this case could the deceased have
13 objected and asked that the policy be canceled?

14 **A** At the time the insured? Not really
15 because the owner really controls the policy.

16 **Q** And in this case it was the beneficiary,
17 Pamela Phillips?

18 **A** That's correct.

19 **Q** So in 1993 what was the annual premium
20 total?

21 **A** The 1993 premium was \$3570.

22 **Q** An increase of almost \$1000?

23 **A** Correct.

24 **Q** Okay. Was that an unusual increase?

25 **A** That's right out of the premium schedule.

1 **Q** Let's talk about that premium schedule.
2 This policy wasn't designed specifically for Gary
3 Triano, it was based upon standard issuing policy
4 of Seaboard Life?

5 **A** Well, it would be the premium that
6 Seaboard Life had established for somebody of that
7 age and it's essentially the same as any type of
8 annual renewable term policy would be.

9 **Q** Okay. So let's go to 1994. Can you tell
10 me what the annual premium payment in 1994 was?

11 **A** \$4550.

12 **Q** Another increase of \$1000?

13 **A** Correct.

14 **Q** Was there any indication as of 1994 that
15 either party wanted the policy canceled?

16 **A** Not to my knowledge.

17 **Q** And you mentioned earlier that Mr. Triano
18 couldn't cancel anyway, but was there any attempt
19 by him to cancel that policy?

20 **A** Not that I'm aware of.

21 **Q** Was there any change in beneficiary
22 status?

23 **A** No.

24 **Q** Or in the, I want to say secondary
25 beneficiary, you used another term.

1 **A** Contingent beneficiary.

2 **Q** Contingent beneficiary, there was no
3 change in the contingent beneficiary clause of
4 that policy as of 1994?

5 **A** No.

6 **Q** Okay. 1995, can you tell me what the
7 annual --

8 **A** No, I didn't.

9 **Q** You cannot?

10 **A** The premium structure that is on the
11 policy schedule indicates that the first three
12 years are guaranteed at those rates, and then
13 beyond that it has what's called an indeterminate
14 premium, where it cites an absolute maximum that
15 the company would charge. But traditionally the
16 companies do not charge that maximum, instead I
17 would guess the structure would follow in a
18 similar pattern, about \$1000 extra per year.

19 **Q** Okay. And that wouldn't be unusual for it
20 to increase by \$1000?

21 **A** No, it would not.

22 **Q** So 1995 we're going to put, plus, minus
23 \$1000.

24 **A** Probably.

25 **Q** In 1996, plus \$1000, correct?

1 **A** Correct.

2 **Q** So that would be 5550 and 6550. Okay.

3 Now, was there a notation in your file that there
4 came a time that Mr. Triano was deceased and there
5 was a collection?

6 **A** That's correct.

7 **Q** Before we talk about the collection
8 process, do you know from your file what the
9 previous payments would have been during the final
10 months prior to death?

11 **A** No, I do not.

12 **Q** Why do you not know?

13 **A** For the same reason, the policy schedule
14 shows the maximum premium allowed, and I don't
15 have the actual premium, I tried to ascertain that
16 and was unable to.

17 **Q** All right. Let's go back to the board for
18 a second. You know from your file that Mr. Triano
19 was deceased in November of 1996, correct?

20 **A** Correct.

21 **Q** If he had not died, in 1997 we would have
22 talked again about an additional \$1000, correct?

23 **A** Perhaps.

24 **Q** Perhaps? What would be an influencing
25 factor?

1 **A** Well, I can't tell for sure because as the
2 policy gets older it could be more than a thousand
3 or it could have been less than a thousand. It's
4 based on the mortality for that specific age
5 group.

6 **Q** I see. So depending on how old he was at
7 the time, it may have been even more than a \$1000?

8 **A** That's correct.

9 **Q** Let's keep it at the \$1000 for now, okay?

10 **A** Okay.

11 **Q** For 1998, if we don't take into account
12 his age and the mortality rate, you would be
13 referring to another approximate \$1000?

14 **A** Yes.

15 **Q** And we're going to put over here plus age.
16 Do you agree with that?

17 **A** Yes.

18 **Q** All right. Now, in the months prior to --
19 in the months prior to -- well, let me go back in
20 time. When the premiums were paid, is there any
21 way to note in your file who was making the
22 payments on that policy?

23 **A** No.

24 **Q** Did there ever come a time when the policy
25 payor changed from Pamela Philliops to Joy

1 Bancroft?

2 **A** We have a request for ownership change
3 that really transferred Pamela Triano's name to
4 Pamela Phillips.

5 **Q** What was that?

6 **A** This is a document from October 13, 1995,
7 that indicated the owner's name had changed and
8 gave an address in Aspen, Colorado and stated in
9 care of Joy Bancroft.

10 **Q** All right. Let's talk about that. What
11 was the date on that document again?

12 **A** October 23, 1995.

13 **Q** 10/23/95, change of name, and you had a
14 note there in care of?

15 **A** Correct.

16 **Q** What does that mean? Does that transfer
17 ownership of the policy?

18 **A** No.

19 **Q** Did it transfer where the documents would
20 be mailed?

21 **A** Well, it gave an address, a PO box, so I'm
22 unaware if that would Pamela Phillips or Joy
23 Bancroft's PO box, but it listed in care of Joy
24 Bancroft at that PO box.

25 **Q** Okay. So let's talk a little bit about

1 Joy Bancroft. Is there any reason to believe from
2 your documentation that Joy Bancroft became the
3 owner of the policy?

4 **A** No, she did not become the owner.

5 **Q** Is there reason to believe that she became
6 the beneficiary on the policy?

7 **A** No.

8 **Q** Or the contingent beneficiary?

9 **A** No.

10 **Q** Now, we talked a moment ago about November
11 the 1st of 1996. What was the first notice that
12 you can tell from your file when the company was
13 notified about the death of Gary Triano?

14 **A** There was a note from November 7, 1996,
15 that says, yesterday we received a call from
16 Pamela Triano Phillips, owner and beneficiary of
17 the above \$2,000,000 policy insuring her
18 ex-husband, Gary Triano. Mr. Triano was killed in
19 a car bombing in Tucson, Arizona, on November 1,
20 1996.

21 **Q** And that was on November the 7th?

22 **A** Yes.

23 **Q** Who was the person who she contacted at
24 Seaboard Life? If you know.

25 **A** The note is from a Colby Duton (ph). I'm

1 not sure if that person spoke with her directly or
2 if it was somebody else in the company.

3 **Q** Okay. Now, was a claim paid on November 7
4 of 1996 to Pamela Phillips?

5 **A** No.

6 **Q** What was the usual process for processing
7 a claim on a life insurance policy, a term life
8 insurance policy on the death of the insured?

9 **A** On this particular insured or any insured?

10 **Q** Well, let's talk about any insured first.

11 **A** We usually get a death claim notice
12 completed by the beneficiaries. We would look for
13 a death certificate, depending on the nature of
14 the claim, do any investigation on our part and
15 once we're satisfied that everything is in order
16 we would pay the claim.

17 **Q** Now, in this particular case when the
18 phone call came in, is there any record of a claim
19 notice?

20 **A** Yes, we did receive a claim notice.

21 **Q** When was a claim notice received?

22 **A** The claim notice was received on November
23 15.

24 **Q** And who signed the claim notice?

25 **A** Signature of claimant was Pamela Phillips.

1 **Q** Before we get too much more into your
2 documentation, I had -- you had an opportunity
3 this afternoon prior to coming into the court to
4 review State's Exhibit 24, correct?

5 **A** That's correct.

6 **Q** And there were a series of documents in
7 this folder, marked A through H. Did you have a
8 chance to go through each of those sections?

9 **A** Yes.

10 **Q** And when you reviewed the sections in this
11 folder, can you tell us whether or not the
12 documents in this folder match the documents that
13 you brought with you?

14 **A** Yes, they do match.

15 **Q** Involving the same policy where insured is
16 Gary Triano and the beneficiary was Pamela
17 Phillips?

18 **A** Yes.

19 **Q** Rather than talking about a document that
20 can't be seen -- could you help me with the ELMO?
21 I'll have to do it in sections here, sir, okay?
22 This is the application, correct, for the life
23 insurance policy you spoke of earlier?

24 **A** That's correct.

25 **Q** Now, the insured is at the top, Gary

1 Triano, and there's an address here, where they
2 were living at the time, 8449 Woodland Road,
3 Tucson, Arizona?

4 **A** Correct.

5 **Q** Was that policy actually issued here in
6 Tucson?

7 **A** I'm not sure what you mean when you say
8 issued in Tucson.

9 **Q** In other words, an insurance person
10 working for Seaboard Life in an office here in
11 Tucson?

12 **A** I don't know where the agent was but I
13 assume it was delivered to the insured when they
14 were at this address.

15 **Q** And further down is the page showing that
16 Pamela Phillips was the beneficiary as the wife,
17 and then the shared beneficiary or the contingent
18 beneficiary, being the children, correct?

19 **A** Correct.

20 **Q** Do you have any reason to believe from
21 your file that the signature at the bottom showing
22 Gary Triano and Pamela Phillips are not correct?

23 **A** I have no reason to believe they are
24 incorrect.

25 **Q** Is this a standard document that's used by

1 Seaboard Life?

2 **A** Yes.

3 **Q** Now, page two of this document, what does
4 this represent?

5 **A** Some of the medical questions associated
6 with the application.

7 **Q** Now, you said this was a term life policy?

8 **A** Correct.

9 **Q** Is it standard to ask medical questions?

10 **A** Absolutely.

11 **Q** That would be of the insured, correct?

12 **A** Yes.

13 **Q** Gary Triano?

14 **A** Yes.

15 **Q** Based upon a review of these medical
16 questions, could the policy have been canceled or
17 not issued?

18 **A** Well, the underwriting process determines
19 if it is to be issued, and the policy was issued.

20 **Q** This third page showing the plan and the
21 amount of \$2,000,000?

22 **A** Yes.

23 **Q** Is that consistent with what you know
24 about this policy?

25 **A** Yes.

1 **Q** This other number, the annual premium
2 payment, 2610.40, earlier we talked about the
3 premium in 1992 being 2510. What's the difference
4 between those two figures? Was that an estimate
5 originally?

6 **A** I don't know. The agent would have put
7 that on there so they may have done an
8 illustration or something to that effect.

9 **Q** Or an estimate for the client?

10 **A** Yes.

11 **Q** Going back to page 1, there's a reference
12 on page 1 to General American Life, \$1,000,000,
13 that was an existing policy, correct?

14 **A** Correct.

15 **Q** Issued on 10/90. Do we know anything else
16 about that existing policy?

17 **A** There was indication in the application
18 that that policy was being replaced and this one
19 was taking -- being taken out instead.

20 **Q** Do you know whether or not there was any
21 relationship between American General Life and
22 Seaboard Life at the time?

23 **A** There is no relationship.

24 **Q** But there were notations that that policy
25 was going to be dropped?

1 **A** Correct.

2 **Q** Do you know anything about that policy
3 based on the file and the information that had
4 been transmitted to you?

5 **A** The General American Life policy?

6 **Q** Yes.

7 **A** No.

8 **Q** Okay. So on this page, we talked already
9 about the \$2,000,000, and it says here renewable
10 to 1995.

11 **A** Actually, it's to age 95.

12 **Q** Oh, so it was up to -- that would be the
13 age of the insured?

14 **A** Correct.

15 **Q** Not the beneficiary?

16 **A** Correct.

17 **Q** Okay. This next page, which is part of
18 the application process, what is this page? Is
19 this merely duplicate? Let me double check. No.

20 **A** That may be the medical questions that
21 were additional medical questions asked by an
22 examiner.

23 **Q** I see. Anything about this document would
24 nullify what we already know about the policy that
25 it was \$2,000,000 on the life of Gary Triano?

1 **A** No.

2 **Q** And the beneficiary was Pamela Phillips?

3 **A** No, it would not change anything.

4 **Q** And what about this document?

5 **A** That's an aviation questionnaire so it
6 would not change anything.

7 **Q** Okay. Now, this questionnaire is filled
8 out for someone who happens to be a pilot?

9 **A** Correct. It was disclosed that Mr. Triano
10 was a pilot. So the questionnaire was part of the
11 application, he needed to tell us how often he
12 flew, et cetera, for evaluating the risk.

13 **Q** And this final copy document that was
14 attached, and let me blow that up, for you here.

15 **A** I believe it's his private pilot license.

16 MR. MCCOLLUM: With that said, Your
17 Honor, we would introduce 24-A.

18 MR. FEINMAN: Your Honor, may I have
19 a moment?

20 THE COURT: Sure.

21 MR. FEINMAN: Your Honor, if I can
22 voir dire the witness, please.

23 THE COURT: You may.

24 BY MR. FEINMAN:

25 **Q** Good afternoon. How are you?

1 **A** Just fine.

2 **Q** Good. Thank you. Mr. Reber, I'm showing
3 you State's Exhibit 24-A. Do you notice the
4 highlighted portions of the document?

5 **A** Yes.

6 **Q** To your knowledge did an agent of Seaboard
7 Life highlight the portions of this document on
8 this first page?

9 **A** No, I'm not aware of that.

10 **Q** Do you know who did?

11 **A** No, I don't.

12 **Q** Turning your attention to the third page,
13 directing your attention to the highlighted
14 position, of the third page. Do you know who
15 highlighted the portions of this page?

16 **A** No, I do not.

17 **Q** Mr. Reber, this document has been altered
18 by the highlighting from the state it was in when
19 it came out of the Seaboard Life system, correct?

20 **A** I don't know that.

21 **Q** It was altered by the highlighting?

22 **A** I don't know when the highlighting was
23 done though.

24 MR. FEINMAN: Okay. Your Honor, if
25 we could approach?

1 THE COURT: You may.

2 (Whereupon the following bench
3 conference was had.)

4 MR. FEINMAN: It's been highlighted.
5 Mr. Reber testified he doesn't know who did it.
6 He doesn't know if it was an agent of Seaboard
7 Life. Based on that I don't believe he can
8 provide the required foundation for its admission.

9 MR. MCCOLLUM: Your Honor, the
10 highlighted doesn't change the language that's in
11 the document, but I can also ask him other than
12 the highlighting, is it consistent?

13 THE COURT: That's fine. The
14 highlighting to insurance and I'm assuming the
15 highlighted was done by you.

16 MR. MCCOLLUM: It was. I wasn't
17 about about it.

18 THE COURT: Do you have an objection
19 to introducing a nonhighlighted copy?

20 MR. FEINMAN: No.

21 THE COURT: I think that would be
22 appropriate.

23 MR. MCCOLLUM: I didn't want to waste
24 time.

25 THE COURT: That's fine. Mr. Feinman

1 does have a legitimate objection and I'll sustain
2 it. Understanding that he may substitute a
3 nonhighlighted copy and you have no objection to
4 that?

5 MR. PALSER: No objection to that,
6 Your Honor.

7 THE COURT: Thank you.

8 (Whereupon the bench conference
9 concluded.)

10 MR. MCCOLLUM: So, Your Honor, I
11 renew my motion to admit State's Exhibit 24-A, but
12 at the time of its admission to the jury the State
13 will provide a nonhighlighted copy of the
14 document.

15 THE COURT: Well, why don't we
16 withhold offering it until we have an appropriate
17 copy that can be offered, and at that point you
18 can offer it. Mr. Feinman indicated he doesn't
19 have an objection at that point.

20 MR. MCCOLLUM: Yes, Your Honor, we'll
21 have that done after the day's proceedings.

22 BY MR. MCCOLLUM:

23 Q I want to show you on the board State's
24 Exhibit Number 24-B, and, again, with the same
25 proviso you'll see this highlighted. We'll also

1 provide a nonhighlighted copy for the Court
2 record. Do you see this document?

3 **A** Yes.

4 **Q** Tell us what this document is.

5 **A** This is a policy schedule. It's part of
6 the policy.

7 **Q** Now, you mentioned earlier the amounts of
8 \$2510, \$3570, and \$4550, and this is where you got
9 those numbers, off of this document?

10 **A** Yes.

11 **Q** Now, this was a document -- is it sent to
12 somebody or merely just a notation for the folder
13 for Seaboard Life?

14 **A** No, it should be attached to the policy.

15 **Q** I see. So that the insured, at least the
16 owner of the policy, understood their obligation?

17 **A** Correct.

18 **Q** And we're looking at page 2 of this
19 Exhibit 2-B without highlighting. What is this
20 schedule?

21 **A** These are what I call the indeterminate
22 premium. Where it says maximum annual premium for
23 the policy are shown, so that would be the maximum
24 the company would have the legal right to raise
25 the premium to.

1 **Q** Now, let's take year four, \$31,270 that's
2 nowhere near the premium for the third year,
3 \$4550.

4 **A** That's correct.

5 **Q** Why such a grand discrepancy?

6 **A** Well, again, the first three years are
7 more or less a guaranteed premium that you might
8 call it lower premium, and then in the subsequent
9 years should the company have, say, financial
10 problems they would have the right to raise the
11 premium to that maximum level, but usually they
12 would not.

13 **Q** Do you have any reason to believe that the
14 company gave notice to Pamela Phillips as the
15 owner that it would be increasing the premium to
16 the maximum indicated on this second schedule?

17 **A** No, they did not.

18 **Q** Let's take a look, back up to our board.
19 1992 would have been the first year, correct, '93,
20 2; '94, 3; '95, 4; and 1996, the year of his death
21 would be the fifth year. You agree?

22 **A** Yes.

23 **Q** Now, in this case the maximum payable
24 premium by the owner would have been \$32,570?

25 **A** Yes.

1 **Q** With no reason to believe that that notice
2 was sent to Pamela Phillips to Joy Bancroft or to
3 anybody else?

4 **A** No.

5 **Q** All right. Let's look at the next
6 document, and this, Your Honor, would be proposed
7 24-C. What is that document?

8 **A** This is the request for change in
9 ownership that we discussed earlier.

10 **Q** Okay. And still the company was Seaboard
11 Life, correct?

12 **A** That's correct.

13 **Q** Let me telephoto in. Seaboard Life
14 document, and Pamela Phillips life insured, what's
15 the word after life insured?

16 **A** Annuitant, the company also sells annuity
17 policies and annuitants have similar rights to
18 policy owners, so it would just be a form that
19 could be used for an annuity also. In this case
20 it does not have any meaning.

21 **Q** Okay. Now, you mentioned earlier in your
22 testimony about the policy in care of Joy
23 Bancroft. This is the document, correct?

24 **A** Correct.

25 **Q** And the address is in Aspen, Colorado?

1 **A** Correct.

2 **Q** Okay. Now, below that appointment of
3 contingent owner. Talk to us about that. It says
4 here contingent owner name, Trevor and Lois
5 Triano. That's not a change from the original
6 policy, is it?

7 **A** No, it's not.

8 **Q** But after that it says Joy Bancroft as
9 trustee if the children are 18 years?

10 **A** Correct.

11 **Q** Does that mean that Joy Bancroft would get
12 the policy for the children or only upon the death
13 of Pamela Phillips?

14 **A** It says I direct that if I die during the
15 lifetime of the life insured the ownership of this
16 policy be changed to, so, again, that's stating
17 that the children would become the owner only if
18 Pamela Phillips was deceased.

19 **Q** Okay. And the signature there, any reason
20 to believe that's not the signature of Pamela
21 Phillips?

22 **A** No.

23 **Q** When somebody makes a substantive change
24 -- let me ask you this, would you consider that a
25 substantive change in this policy in terms of mail

1 being sent to Joy Bancroft or in care of Joy
2 Bancroft and her being appointed as a trustee?

3 **A** The term substantive I question.

4 **Q** All right. Let me take that word away and
5 ask you to define what kind of change you would
6 classify that as.

7 **A** I'd classify this as she's changing her
8 name and she's changing where the premiums are
9 being sent, and stipulating a trustee on behalf of
10 the children should she predecease the insured.

11 **Q** Would you require anything else from the
12 owner of the policy in order to designate a
13 trustee, or is that sufficient?

14 **A** I would think this would be sufficient.

15 **Q** Okay. Let's go to 24-D. I'm used to the
16 overhead projectors from high school where you had
17 to lay it down. Not that that was yesterday or
18 anything.

19 What is this document?

20 **A** I believe that's a worksheet that was used
21 to calculate information about the claim.

22 **Q** And I'm going to continue on with
23 Mr. Feinman's voir dire, you have no reason to
24 believe that anybody from Seaboard Life did the
25 highlighting?

1 **A** No.

2 **Q** I will tell the Court, I've already told
3 the Court, it was our office that did the
4 highlighting for the purpose of this presentation.

5 As to the worksheet, can you tell us when
6 the worksheet was prepared? And if you need to
7 look at the document closer I'd be glad to provide
8 it to you.

9 **A** It has a close date on January 16, 1997,
10 so it was sometime during January where this was
11 worked.

12 **Q** Would this have been a document prepared
13 after the insured died?

14 **A** Yes.

15 **Q** Or begun and processed before the insured
16 died?

17 **A** No, this is a claims worksheet. It has a
18 claim number on it. It probably would not have
19 existed if there had not been a death.

20 **Q** So at this time there had been a claim
21 placed upon the policy based on the death of Gary
22 Triano?

23 **A** Yes.

24 **Q** Is there anyone else or any indication
25 here someone other than Pamela Phillips made a

1 claim on that policy?

2 **A** Not that I'm aware of.

3 **Q** All right. And the information we have on
4 this document, does it show when the victim died?

5 **A** Yes, there's expiree, 1 November 1996.

6 **Q** And since this document has a little
7 smaller writing what I'd like to have you do is
8 point out where it shows when he expired.

9 **A** November 1, 1996.

10 **Q** Now, next to that on the right-hand side
11 it says reported. You indicated that original
12 contact came from Ms. Phillips on November the
13 7th?

14 **A** Correct.

15 **Q** What's the difference between the reported
16 date and that date in which she called the
17 company?

18 **A** Well, there was three different
19 correspondence that I saw in the file. One was
20 the initial telephone report. There was a claim
21 statement that came later. And then finally the
22 death certificate was delivered in early December.
23 So that may just have been a chosen date or it may
24 have been significant to one of those documents.

25 **Q** Now, on this document is also the date

1 January 16 as being closed. What's the
2 significance of that date?

3 **A** Following the claims investigation and the
4 agreement with our reinsured, the decision was
5 made to pay the claim.

6 **Q** Now, there are numbers below that claim,
7 correct?

8 **A** Yes.

9 **Q** What do those numbers stand for?

10 **A** The --

11 **Q** And as you talk about the numbers point to
12 them for us, please?

13 **A** Well, the \$2,000,000 was the face amount
14 of the policy, and the \$35,000 was interest paid
15 on the death claim.

16 **Q** Now, where does the interest come in?

17 **A** Different states have interest rates that
18 we are required to pay from the date of death
19 until the payment. So, in other words, that
20 person was entitled to that money on the date of
21 death, and since there is a period of time to
22 investigate the claim we would pay interest on
23 that death claim amount.

24 **Q** So the final number there, \$2,035,506.84,
25 was what Seaboard Life paid to Pamela Phillips?

1 **A** That or one other documents showed it was
2 37,000 additional, the longer we held the payment
3 the more interest it continued to accrue. So I
4 believe at this point on the 16th, but it wasn't
5 paid until near the end of January.

6 **Q** So this, in fact, is a payment statement,
7 merely a worksheet when calculations were being
8 done?

9 **A** Correct.

10 **Q** Okay. And that, again, is State's Exhibit
11 24-D.

12 The next document, 24-E, can you talk to
13 us about that? I need to widen it a little bit.
14 If you need to look at the document I'll --

15 MR. FEINMAN: Your Honor, I object.
16 Can we approach?

17 THE COURT: Yes.

18 (Whereupon the following bench
19 conference was had.)

20 MR. FEINMAN: This document contains
21 statements made by Ms. Phillips. They do not
22 establish that she was the owner of the policy,
23 they do not establish anything relevant to whether
24 or not the policy was paid to her. I object based
25 on the Court's previous ruling and the rules of

1 hearsay that all these statements of Ms. Phillips
2 should not come in.

3 THE COURT: Let me read it first.

4 MR. FEINMAN: Sure.

5 MR. PALSER: And I have a further
6 objection.

7 MR. MCCOLLUM: Under 803.6, I
8 believe, Your Honor, the rule sets out documents
9 that are collected by just such an agency and it's
10 not a business record exception, if I can recall.

11 THE COURT: It's not a business
12 record because this is not a record ordinarily
13 kept.

14 MR. MCCOLLUM: But these are
15 documents kept by the businesses part of the
16 process, not as a business record. I apologize to
17 the Court. I didn't anticipate the objection but
18 I do recall the rule.

19 THE COURT: Conducting the activity
20 of a business?

21 MR. MCCOLLUM: Yes.

22 THE COURT: I'm paraphrasing, made
23 and kept entirely in the course of that business
24 activity. This isn't made and kept. It's not
25 made by the business.

1 MR. MCCOLLUM: Can I see it? I
2 apologize, Your Honor. Absentee of --

3 THE COURT: No need to apologize.

4 MR. MCCOLLUM: The only question I'll
5 have of him is whether this is considered the
6 claim request of their claim document. I won't
7 show it to him further but I will hand it to him
8 personally.

9 MR. FEINMAN: I'm sorry. What was
10 the question?

11 THE COURT: He's going to ask is this
12 the claim document.

13 MR. MCCOLLUM: Yes.

14 THE COURT: Clearly, Mr. McCollum,
15 this is not their form that document created
16 entirely by this office. It's not like she filled
17 out a claim and returned it to him, but you can
18 ask him, that's fine.

19 MR. MCCOLLUM: The other thing I
20 think the Court has to be, and that we have to
21 consider before we step away from this document,
22 that it is a statement for the purpose of checking
23 on the policy and I think it should be considered
24 a statement in furtherance of the conspiracy.

25 THE COURT: Well, Mr. Feinman?

1 MR. FEINMAN: Well, Your Honor, first
2 of all, we don't know when this document was sent.
3 We don't know when it was made.

4 THE COURT: It's updated.

5 MR. FEINMAN: If I can turn to the
6 relevant rule. During the course and in
7 furtherance of the conspiracy, I believe Mr.
8 McCollum has a burden to show that request to keep
9 this confidential was somehow in furtherance or in
10 the course of this conspiracy with Mr. Young, not
11 just of Mr. McCollum's alleged conspiracy
12 regarding Ms. Phillips' actions, but Ms. Phillips'
13 actions included Mr. Young in that conspiracy.
14 Now, if this was simply an action taken by Ms.
15 Phillips by herself with no link to Mr. Young at
16 all, it doesn't follow that exception.

17 THE COURT: I agree.

18 MR. MCCOLLUM: What I'll do is ask
19 him to identify the document. I won't introduce
20 it any further but get back to other evidence. So
21 I don't intend --

22 THE COURT: You can't offer it at any
23 time under any circumstance.

24 MR. MCCOLLUM: That's fine.

25 THE COURT: Mr. Feinman can object or

1 not object as he sees fit. So you're going to let
2 him look at it. Just answer yes or no that
3 whatever they agreed -- you won't publish it or
4 read the jury the contents?

5 MR. MCCOLLUM: No, Your Honor.

6 MR. FEINMAN: That's fine.

7 THE COURT: No objection to that?

8 MR. FEINMAN: No.

9 (Whereupon the bench conference
10 concluded.)

11 BY MR. MCCOLLUM:

12 Q I have a few questions.

13 THE COURT: Mr. McCollum -- are you
14 ready?

15 THE COURT REPORTER: Yes.

16 THE COURT: Go ahead.

17 BY MR. MCCOLLUM:

18 Q With regard to 24 I was showing you a
19 moment ago, I'm going to show this to you. I
20 don't want you to read out loud any of the
21 contents, is that document consistent with the
22 file folder that you had available to you in
23 preparation for this trial?

24 A Yes.

25 Q Okay. And is it an exact copy of what you

1 had in your possession?

2 **A** Yes.

3 **Q** Any reason to believe that it's not with
4 regard to this policy?

5 **A** No.

6 **Q** Any reason to believe that the signature
7 on there, the Pamela Phillips, was not, in fact,
8 her signature?

9 **A** No.

10 **Q** Okay.

11 MR. MCCOLLUM: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. McCollum.

13 Are you ready for the lights?

14 MR. MCCOLLUM: Not yet.

15 BY MR. MCCOLLUM:

16 **Q** You talked earlier about making a claim on
17 the policy, filing a claim for?

18 **A** Yes.

19 **Q** Is this document, 24-E, that claim form?

20 **A** The --

21 **Q** I can hand it back to you if you like.

22 **A** No, that's not a claim form.

23 **Q** Okay. I'm going to show you what has been
24 marked as 24-F, this document here. What is that
25 document?

1 **A** This is a correspondence from Seaboard
2 Life to Pamela Triano Phillips.

3 **Q** Okay. Now, there's an indication in here
4 about giving her forms to make the claim, correct,
5 is that standard policy?

6 **A** Yes, when you're notified of a claim you
7 would send appropriate forms to the person to
8 complete.

9 MR. MCCOLLUM: May I have a moment to
10 talk to counsel, Your Honor?

11 THE COURT: You may.

12 BY MR. MCCOLLUM:

13 **Q** We're going to ask you to take a look at
14 this package, and rather than go through every
15 page I'll highlight a few for you. In looking at
16 this document will you take a look and tell us if
17 it's consistent with what your file generally
18 contains? Okay? You've had a chance to look at
19 24-F?

20 **A** Yes.

21 **Q** Is the contents of this entire package
22 consistent with your folder?

23 **A** There's a few pieces that I did not have.

24 **Q** Those few pieces, we'll go through, tell
25 us which pieces you did not have, but in looking

1 at those items that were part of package of 24-F
2 is there any reason to believe they were not part
3 of this policy and -- well, this policy?

4 **A** No.

5 **Q** Okay. We talked about the first page, and
6 I'm going to move along to the fourth, sixth page,
7 are we looking now at the actual beginning of the
8 policy itself?

9 **A** Yes, the original page says duplicate copy
10 of the policy is provided and this is the policy.

11 **Q** Is there anything remarkable about the
12 page beyond what you've already explained to us
13 during your initial description of the policy?

14 **A** Well, this is a specific page from the
15 policy citing the definitions of owner and
16 beneficiary.

17 **Q** Okay. But those definitions on the
18 document are the same as you gave us earlier
19 during your review?

20 **A** Correct.

21 **Q** Of this particular issue?

22 **A** Correct.

23 **Q** Okay. Let's go to rights of the owner,
24 that's pretty much the same as we talked about
25 earlier, correct?

1 **A** Correct.

2 **Q** Payment of the benefits, correct?

3 **A** Correct.

4 **Q** Grace period, the 31 day grace period, and
5 that's similar to what you described earlier,
6 correct?

7 **A** Yes.

8 **Q** What is conversion?

9 **A** Conversion is privilege in a policy where
10 a term policy can be turned into a whole life or
11 permanent policy.

12 **Q** Any reason to believe that ever happened
13 in this case?

14 **A** No.

15 **Q** Could that be done by the owner in the
16 case without agreement by the beneficiary?

17 **A** Yes.

18 **Q** Okay. Let me ask you about term life
19 policies, this particular one, would there be any
20 equity if the owner of the policy quit making the
21 appropriate payments?

22 **A** No.

23 **Q** Everything previously paid would just
24 disappear?

25 **A** Correct.

1 **Q** Income payment option condition. Anything
2 relevant there that applies to this factual
3 scenario?

4 **A** No.

5 **Q** Okay. There's one other item that I
6 wanted to point out in this document.

7 MR. MCCOLLUM: If I may have a
8 moment, Your Honor.

9 BY MR. MCCOLLUM:

10 **Q** Going back to page one, you indicated page
11 one was basically a letter and everything
12 therefore was attached by the benefit collection
13 process?

14 **A** Correct.

15 **Q** And the address there, 1270 Snow Bunny
16 Lane, Aspen, Colorado?

17 **A** Yes.

18 **Q** Okay. Does that appear anywhere else in
19 your file that you can recall?

20 **A** I don't believe so.

21 **Q** All right. I'll show you a document
22 that's been marked as 24-G, what is this document?
23 If you can recall. If you need me to hand it to
24 you --

25 **A** This is a document I had not seen before.

1 **Q** Okay. Is there any reason to believe the
2 fact you did not see it was not connected to this
3 policy?

4 **A** No.

5 **Q** Is it consistent with everything you know
6 about the file?

7 **A** Yes.

8 **Q** Now, this document also had attachments,
9 and this would have been the original filing or
10 application, correct?

11 **A** It is a copy of it, yes.

12 **Q** A copy of it. Are you satisfied -- and
13 you may take a look for a moment, that 24-G
14 represents a consistent paper process that you
15 brought with you that you reviewed for the purpose
16 of your testimony today?

17 **A** Yes, these are the same documents.

18 **Q** I'll take it back. The last section is
19 fairly large but you had an opportunity to see
20 this last section, which would be 24-H prior to
21 your testimony here today, correct?

22 **A** Yes.

23 **Q** But I'll give you a second opportunity to
24 take a look at it and see whether or not it's
25 consistent with your file. Okay. We haven't

1 shown the actual claim form that was submitted.

2 Do you have a copy of that claim form?

3 **A** Yes, I do.

4 **Q** Would you get it out for me, please? Do
5 you have it with you?

6 **A** Yes.

7 **Q** All right. And that claim form was
8 submitted to Seaboard Life on what date?

9 **A** It was signed on November 10, 1996.

10 **Q** And who was it signed by?

11 **A** Pamela Phillips.

12 **Q** Okay. May I have your document, please?
13 Is this the form -- a type of form that was used
14 by Seaboard Life at the time? Are you able to
15 tell us that?

16 **A** Yes.

17 **Q** And this was on the policy that we spoke
18 of earlier on the life of Gary Triano?

19 **A** Correct.

20 **Q** Did there come a time -- we talked earlier
21 about the worksheet and the amount of money that
22 was estimated on the worksheet, but did there come
23 a time when payment was actually made to Pam
24 Phillips?

25 **A** Yes.

1 **Q** When was that?

2 **A** In late January of 1997.

3 **Q** And you mentioned the figure earlier
4 during your testimony of how much was paid and how
5 it was different from the amount that was on the
6 worksheet?

7 **A** Correct.

8 **Q** How much was actually paid to Pam
9 Phillips? And if you can tell us on what day.

10 **A** Approximately January 28, 1997.

11 **Q** Let me write that down January 28, 1997.
12 Was that payment made by check?

13 **A** I don't know for sure.

14 **Q** What was the amount of payment to Pamela
15 Phillips?

16 **A** Well, again, the amount shows 2,000,000
17 plus 35,506 plus 1753.

18 **Q** I'm writing slower than you're talking.

19 **A** Two million and then there was two
20 interest amounts, 35,506.

21 **Q** Hang on.

22 **A** 35,506.84.

23 **Q** That was one payment?

24 **A** And then there was 1753.42. And I assume
25 this was all lumped together.

1 **Q** Any reason to believe that that was not
2 paid to Pamela Phillips?

3 **A** No.

4 **Q** Now, part of this package you handed to me
5 earlier?

6 MR. MCCOLLUM: And if I may, Your
7 Honor, we'll call this 24-I.

8 BY MR. MCCOLLUM:

9 **Q** What was part of that package, 24-I, that
10 included the claim? I'll hand it to you in a
11 minute.

12 **A** It's the claim form, a divorce decree and
13 some newspaper articles.

14 **Q** Were the newspaper articles provided by
15 Seaboard Life or provided to you by somebody else?

16 **A** They were provided by an attorney, Douglas
17 Clark.

18 **Q** I'd have to separate the claim form from
19 that document. And, Madam clerk, we'll give it
20 back to you so you can label the claim form as
21 24-I.

22 And earlier you were referring to a
23 document that showed the payoff to Pamela
24 Phillips?

25 **A** Yes, and I do see it has a total on it

1 now.

2 Q What was the document?

3 A This is a claim payment history, it would
4 have been an interim worksheet of the company.

5 Q Was that document prepared in the ordinary
6 course of business?

7 A Yes.

8 Q Have you seen that type of document in the
9 records of Seaboard Life as well as IAP in the
10 past?

11 A Yes.

12 Q And I believe -- I'd request that to be
13 marked with your permission 24-J. May I have
14 that? Is there anything else in your folder other
15 than that to off the payoff to Pamela Phillips?

16 A There's a number of worksheets and
17 discussions as the claim was being processed, but
18 that's the final piece that says the case was
19 closed and paid.

20 Q That document that we marked as 24-J?

21 A Yes.

22 MR. MCCOLLUM: May we approach, Your
23 Honor?

24 THE COURT: Yes, sir.

25 (Whereupon the following bench

1 conference was had.)

2 MR. MCCOLLUM: I just wanted to be
3 certain that the only objection we're hearing so
4 far is to the one document, and I agree, I'll
5 withhold that, and the highlights. I wouldn't
6 want to lose my opportunity to lay foundation.

7 THE COURT: I understand. So you're
8 offering each document?

9 MR. MCCOLLUM: Yes.

10 THE COURT: And any highlighted
11 document you've agreed to redact the highlights?

12 MR. MCCOLLUM: Yes, sir.

13 THE COURT: And offer them the same?

14 MR. MCCOLLUM: Yes.

15 THE COURT: Do you know those exhibit
16 numbers?

17 MR. MCCOLLUM: I do.

18 THE COURT: Can you get them?

19 MR. MCCOLLUM: Can I use your bench?

20 THE COURT: Absolutely.

21 MR. MCCOLLUM: So far we have 24-A,
22 24-B, 24-C, 24-D, 24-E will be withheld.

23 THE COURT: Offered for the record
24 but not for --

25 MR. MCCOLLUM: But not for evidence.

1 THE COURT: That's fine.

2 MR. MCCOLLUM: And possibly offer to
3 get it later. 24-F, 24-G, 24-H, 24-I.

4 MR. FEINMAN: Can I see it?

5 MR. MCCOLLUM: Yes, my apology.

6 MR. FEINMAN: That's fine.

7 MR. MCCOLLUM: And 24-A the clerk
8 has.

9 MR. FEINMAN: Subject to being
10 provided with copies that are not highlighted we
11 have no objection to them being admitted.

12 THE COURT: All of those?

13 MR. FEINMAN: Yes, sir.

14 THE COURT: All documents are
15 admitted however they may not be published until
16 you provide redacted copies without the
17 highlights.

18 MR. MCCOLLUM: Yes, Your Honor.

19 MR. FEINMAN: And in no way do I mean
20 to question Mr. McCollum's integrity.

21 THE COURT: I didn't feel you were.

22 MR. FEINMAN: I would like to see
23 them before they're published just to double
24 check.

25 THE COURT: That's fine.

1 MR. FEINMAN: Thank you.

2 THE COURT: He's going to substitute
3 unhighlighted copies that will be actual copies
4 admitted.

5 MR. MCCOLLUM: I'm going to show
6 these briefly. I wanted to make sure Mr. Feinman
7 has a chance to see them. I want to put them on
8 the board and then I'll be done.

9 THE COURT: Okay.

10 (Whereupon the bench conference
11 concluded.)

12 MR. MCCOLLUM: Thank you for your
13 patience.

14 THE COURT: Yes, sir.

15 MR. FEINMAN: No objection.

16 THE COURT: You said no objection to
17 publication or the admittance?

18 MR. FEINMAN: Either.

19 BY MR. MCCOLLUM:

20 Q I want to show you two more documents that
21 we've discussed. The first one was the claimant
22 statement, we talked about that briefly, and
23 there's an address, there's a signature here of
24 Pamela Phillips, and I said to you, you have no
25 reason to believe that that was not the signature

1 of Pamela Phillips?

2 **A** Correct.

3 **Q** The owner of the policy. There's an
4 address, 1270 Snow Bunny Lane, Aspen, Colorado?

5 **A** Yes.

6 **Q** And the social security number there is
7 consistent with everything that you know about the
8 file and the original policy that had been issued
9 for the insured Gary Triano?

10 **A** Correct.

11 **Q** Okay. The final document is the document
12 you referred to as the final page reflecting
13 payment of the policy, correct?

14 **A** Correct.

15 **Q** I'm going to get this enlarged a little
16 bit. Just walk us through this document with the
17 pointer so when the jury has an opportunity to see
18 it later they'll know what you were referring to.

19 **A** Okay. It lists the claim number and
20 policy number, insured, the status of the claim,
21 that it was closed being completed, the total
22 amount paid, and the face amount with the two
23 interest amounts I related to.

24 **Q** Okay. It says something over here on the
25 left-hand side.

1 **A** That's the insured.

2 **Q** The insured is Gary Triano?

3 **A** Correct.

4 **Q** There's a claim number on that, U-036880?

5 **A** That's the policy number.

6 **Q** That's consistent with everything we've
7 talked about here today?

8 **A** Yes.

9 MR. MCCOLLUM: The only other thing I
10 would ask -- this is 24-J. As to 24-K, I would
11 move the writing board that I did along with the
12 testimony when we outlined the premium payments.

13 THE COURT: Has it been marked?

14 MR. MCCOLLUM: It has not.

15 THE COURT: It will be what?

16 THE CLERK: 24-K.

17 THE COURT: Any objection?

18 MR. FEINMAN: I do object to 24-K,
19 Your Honor. That is an exhibit that was created
20 by Mr. McCollum, not the witness. It is an
21 incomplete summary of the testimony given here
22 today.

23 THE COURT: I think 24-K is
24 cumulative and therefore I'll sustain the
25 objection. As long as you're handy why don't we

1 have you, or Mr. Jensvold, label it so we can keep
2 the record straight. Thank you.

3 MR. MCCOLLUM: Then I have no further
4 questions.

5 THE COURT: All right. Thank you.
6 Ladies and gentlemen, we'll take our afternoon
7 recess at this time for about 15 minutes. Thank
8 you.

9 (Whereupon the jury left the
10 courtroom.)

11 THE COURT: Approach the bench. Do
12 you anticipate cross? I want to tell the
13 witness -- apparently he wants to get back to
14 Phoenix.

15 MR. FEINMAN: Twenty minutes.

16 THE COURT: Okay.

17 (Whereupon the Court recesses.)

18 THE COURT: Ready for the jury,
19 counsel?

20 MR. MCCOLLUM: Yes, Your Honor.

21 THE COURT: Bring them in, please.

22 (Whereupon the jury entered the
23 courtroom.)

24 THE COURT: Let the record reflect
25 all members of our jury, counsel, and Mr. Young.

1 Mr. Reber remains on the stand. Mr. Feinman,
2 cross-examination, sir?

3 MR. FEINMAN: Yes, Your Honor.

4 CROSS EXAMINATION

5 BY MR. FEINMAN:

6 Q Just a few more questions about the
7 insurance policy, shouldn't take too long.

8 A Sure.

9 Q Now, the insurance policy at issue, the
10 one that insured the life of Gary Triano, your
11 company had a reinsurance policy on this policy,
12 correct?

13 A Correct.

14 Q Now, could you describe briefly what that
15 reinsurance policy on Mr. Triano's life insurance
16 policy was?

17 A Reinsurance is used when there's large
18 policies that you would give part of the risk to
19 another company, it's a sharing of the risk, it's
20 a sort of behind the scenes matter. It's through
21 a reinsurance treaty that the direct writer, if
22 you will, which would have been Seaboard, gives a
23 portion of the risk to another company.

24 Q And what company was the risk given to in
25 Mr. Triano's insurance policy?

1 **A** It was Transamerica Reinsurance.

2 **Q** What portion of the policy, or what
3 portion of the risk did Transamerica have?

4 **A** 1.6 million.

5 **Q** Please correct me if I'm wrong, so upon
6 Mr. Triano's death Transamerica is responsible for
7 paying 1.6 million of the two million?

8 **A** That's correct, they did.

9 **Q** And your company is responsible for paying
10 the other, approximately \$400,000?

11 **A** Correct.

12 **Q** Okay. I believe that you stated on direct
13 examination that Pamela Phillips was always the
14 owner of this insurance policy?

15 **A** Yes.

16 **Q** Mr. Triano was the subject of the policy?

17 **A** He was the insured.

18 **Q** The insured, and as the insured he did not
19 have the right or the ability to change the
20 policy?

21 **A** Correct.

22 **Q** He did not have the right or ability to
23 cancel the policy?

24 **A** Correct.

25 **Q** Only the owner, Ms. Phillips, could do

1 that?

2 **A** Correct.

3 **Q** You testified, I believe, that this was an
4 annual, that the policy payments were due
5 annually?

6 **A** Annual renewable term.

7 **Q** But that the annual payments could have
8 been made in monthly installments?

9 **A** That's correct.

10 **Q** Do you know when those monthly
11 installments were due, were they due the first of
12 every month, the fifth of every month?

13 **A** If they were on a monthly installment they
14 would have been due on the policy date, which I
15 believe was the fifth of the month.

16 **Q** And they were -- and payments were due one
17 month prior to the date -- one month prior to the
18 month at issue?

19 **A** It would be due on the date of issue if it
20 was an annual, and if it would be due monthly if
21 it was on a monthly mode.

22 **Q** So, for example, would a February payment
23 be due January 5?

24 **A** No, it would be due February 5.

25 **Q** Okay. So there was a payment in this

1 policy due October 5, 1996, correct?

2 **A** I saw that and there is some confusion
3 with that. I was unable to determine if there was
4 a November 5 payment due or if it was October 5.
5 There was correspondence to the fact that a
6 payment was being made, however, I was never able
7 to ascertain if it was due to the fact that the
8 policy had gone to a monthly payment mode, or if
9 there was an error in the thinking by the people
10 who submitted the money, thinking they had not
11 made the payment on time.

12 **Q** Do you know if the payment that was due in
13 October 1996 was made in October of 1996?

14 **A** There was correspondence to the fact that
15 a payment was made in early November that was
16 related to an October payment.

17 **Q** So that payment that was made in early
18 November would have been a late payment on what
19 was due in October?

20 **A** Correct.

21 **Q** However, as I believe you stated on
22 direct, life insurance policies of this sort and
23 including this one, had a 30 or 31 day grace
24 period?

25 **A** That's correct, so the policy was still in

1 force.

2 **Q** So even though Mr. Triano died on November
3 1, the policy would still be enforced despite the
4 fact that the November payment had not been made
5 on November 1?

6 **A** Despite the fact that November, or the
7 October payment for that matter.

8 **Q** So even if the policy -- even if payment
9 on the policy were two months behind the policy
10 could still be paid out to the owner?

11 **A** No, if they were two months behind that
12 would be outside the grace period.

13 **Q** You said the grace period was 30 or 31
14 days?

15 **A** Thirty-one days it stated.

16 **Q** Okay. Now, when an insured person dies it
17 is your company's responsibility to make sure that
18 the person who benefits, the beneficiary, did not
19 murder the insured person, correct?

20 **A** That's correct.

21 **Q** Which you did in this case?

22 **A** Correct.

23 **Q** In fact, your company hired a firm called
24 David Morris and Associates?

25 **A** That's correct.

1 **Q** And you tasked David Morris and Associates
2 to investigate Ms. Phillips' claim?

3 **A** Correct.

4 **Q** Part of the reason that you wanted them to
5 investigate was due to the size of the insurance
6 policy?

7 **A** Correct, our reinsurer asked us to
8 investigate.

9 **Q** And your reinsurer, as you said earlier,
10 was Transamerica, correct?

11 **A** Transamerica Reinsurance.

12 **Q** And you also wanted to investigate because
13 of the fact that Mr. Triano died the way he did,
14 under those circumstances?

15 **A** Correct.

16 **Q** Now, part of your company's responsibility
17 in this situation was to make sure that, as you
18 said, the beneficiary did not murder the insured
19 party?

20 **A** Correct.

21 **Q** David Morris and Associates contacted the
22 Pima County Sheriff's Department as part of this
23 investigation?

24 **A** Yes.

25 **Q** And they contacted Detective Keith

1 St. John?

2 **A** Correct.

3 **Q** To your knowledge, Detective St. John
4 assured David Morris and Associates that Ms.
5 Triano, at that time in the fall and winter of
6 1996, was not a suspect in Gary Triano's death?

7 **A** That's correct.

8 **Q** Now, based on David Morris' investigation,
9 and based on the input of Detective St. John, your
10 reinsurer, Transamerica, decided to pay Ms.
11 Phillips' claim?

12 **A** That's correct. Actually, we have the
13 ultimate decision but they agreed to pay their
14 portion of it.

15 **Q** They agreed to pay their portion of it and
16 you agreed to pay your portion?

17 **A** Correct.

18 **Q** So both the insurance company and the
19 reinsurance company decided to pay the claim based
20 in part on the assurances of the Pima County
21 Sheriff's Department?

22 **A** That's correct.

23 **Q** And those assurances were that Pamela
24 Phillips at that time was not a suspect in the
25 death of Gary Triano?

1 **A** Correct.

2 MR. FEINMAN: May I have a moment,
3 Your Honor?

4 THE COURT: Yes, sir.

5 MR. FEINMAN: Nothing further. Thank
6 you.

7 THE COURT: Thank you, Mr. Feinman.
8 Mr. McCollum, redirect, sir?

9 MR. MCCOLLUM: Yes, briefly. Thank
10 you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. MCCOLLUM:

13 **Q** Mr. Feinman asked you about Transamerica
14 and their part of liability with regard to this
15 policy. Is there any record that Transamerica had
16 an obligation to deal directly with Pamela
17 Phillips?

18 **A** No, it's behind the scenes agreement
19 between the direct company, which would be
20 Seaboard, and Transamerica.

21 **Q** As you indicated it was your final
22 decision although they agreed to make payment on
23 the policy?

24 **A** Correct.

25 **Q** Now, you also mentioned that David Morris

1 and Associates was hired to conduct an
2 investigation?

3 **A** Correct.

4 **Q** Did they conduct a full investigation or
5 did they merely make contact with the detectives
6 of the Pima County Sheriff's Department? Do you
7 know?

8 **A** Well, they contacted the Sheriff's
9 Department and they researched newspaper
10 clippings. I don't know exactly what all they did
11 but they did give a summary report which gave
12 their opinion.

13 **Q** What is your standard for determining
14 whether or not there should be payment under
15 circumstances that the owner or the beneficiary
16 may have been involved? Do you have a standard?

17 **A** If there is proof that the owner was
18 involved or the beneficiary was involved most
19 likely the legal proceedings in the insurance
20 industry have shown that the payment would not be
21 made to that person, but to a contingent
22 beneficiary.

23 **Q** So if no proof could be produced as early
24 as January 28, I believe you said, payment had to
25 be made?

1 **A** Correct.

2 **Q** Is it a factor, the accumulation of
3 interest?

4 **A** The accumulation of interest was based on
5 Colorado state law, which cited we needed to pay 8
6 percent interest.

7 **Q** My point is, could David Morris have taken
8 a two or three or four or 15 year time period to
9 investigate the death of Gary Triano?

10 **A** We hired them to do that. I don't think
11 we would have waited that long to make a decision.

12 **Q** Why not?

13 **A** It's in the best interest of a company to
14 pay claims.

15 **Q** Okay. That's all the questions I have.

16 THE COURT: Ladies and gentlemen, any
17 questions for this witness?

18 (Whereupon the following bench
19 conference was had.)

20 THE COURT: This question has nothing
21 to do with this witness so I'm going to excuse
22 him. Is that all right?

23 MR. MCCOLLUM: Yes.

24 THE COURT: I'll tell you about this
25 question in a second. May the witness be excused?

1 MR. MCCOLLUM: Yes, Your Honor.

2 THE COURT: Thank you very much. You
3 may be excused.

4 THE WITNESS: Thank you.

5 THE COURT: This question -- one of
6 the jurors asked Jarrod if there was any way they
7 could ask a question of the lawyers and I told
8 Jarrod probably not, but whatever question they
9 have they can pose it and we'll see if we can
10 respond to it.

11 So this juror wants to know what -- this
12 is question one, it relates to Juror 4, although
13 they're not supposed to put their number, so I
14 don't know why they did that. Be that as it may,
15 do you -- will there be evidence of that later in
16 the case, will there not be? Do you all want to
17 stipulate, tell them, not want to tell them? How
18 do you want to handle it?

19 MR. FEINMAN: I believe I should
20 defer to Mr. Palser. If I can ask him to come up.

21 THE COURT: Yes, summons him. This
22 is a juror question that has nothing to do with
23 any of these witnesses. They just want to know
24 this information, and might I suggest, I don't
25 know if there will be evidence from either side

1 that might address it, if you want to stipulate,
2 if you don't that's fine, I'm not ordering you to,
3 I'm just throwing out options. What do you want
4 me to tell the juror?

5 MR. PALSER: My opinion, it says
6 1966, which I'm going to assume is a typo.

7 THE COURT: I'm assuming it's 1996 as
8 well.

9 MR. PALSER: So I'm assuming that,
10 but certainly you can tell the juror that it's not
11 a question that the witness could answer and we'll
12 go from there.

13 THE COURT: Well, I guess I want to
14 tell them if -- if it's anticipated that it will
15 be answered by some witness at some time I'd like
16 to tell them that. If it's not, that's fine.

17 MR. PALSER: Do you have anybody
18 that's going to testify to that?

19 MR. MCCOLLUM: We have at least some
20 physical evidence that will give the weight, yes,
21 Your Honor.

22 THE COURT: In 1996?

23 MR. MCCOLLUM: I don't recall right
24 now. It's hard to remember everything.

25 MR. PALSER: Okay.

1 MR. MCCOLLUM: But we have a driver's
2 license from that period as well as a passport.

3 THE COURT: Okay. And you think --
4 you guys think those documents may come in?

5 MR. PALSER: I think you can safely
6 say through another source.

7 THE COURT: That's fine.

8 MR. PALSER: I would let them know
9 though that this witness was not qualified to
10 answer that question.

11 THE COURT: Oh, yeah. I think I
12 will.

13 (Whereupon the bench conference
14 concluded.)

15 THE COURT: All right, ladies and
16 gentlemen, we have a question from our jury and it
17 obviously was not directed to this last witness as
18 he would be in no position to answer it. But what
19 I can tell you, the question is, can you tell me
20 how much Mr. Young weighed in -- what's written is
21 1966, I'm assuming it is intended to mean 1996.

22 The lawyers tell me that there should be
23 evidence at some point in the case later in the
24 case that will address that question. So we
25 should be able to get an answer to that question.

1 We're not prepared to give you that piece of
2 evidence right now -- or the lawyers are not, but
3 they anticipate that piece of evidence will be
4 forthcoming at a later time. All right? Thank
5 you.

6 Mr. -- who is -- Mr. Jensvold, do I
7 understand the State wishes to call Dr. Parks at
8 this time?

9 MR. JENSVOLD: Yes, Your Honor.

10 THE COURT: Ladies and gentlemen, I
11 promise you we will get back to Ms. Walsh Triano.
12 We have another witness that counsel have agreed
13 we can take out of order. He's the medical
14 examiner here in Pima County. So we'll do Dr.
15 Parks. That will probably conclude today, but Ms.
16 Walsh Triano will be back. She will complete her
17 testimony and any questions you all have for you,
18 you'll have an opportunity to ask them of her.

19 With that you would call Dr. Parks at this
20 time?

21 MR. JENSVOLD: Yes.

22 MR. MCCOLLUM: Your Honor, may I step
23 out for a few minutes?

24 THE COURT: You may.

25 DR. BRUCE PARKS,

1 having been first duly sworn to state the truth,
2 the whole truth and nothing but the truth, was
3 placed under oath and testified as follows:

4 THE COURT: Mr. Jensvold.

5 MR. JENSVOLD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. JENSVOLD:

8 Q Dr. Parks, would you please introduce
9 yourself to the jury?

10 A Sure. My name is Dr. Bruce Parks.

11 Q And who do you work for?

12 A I work for Pima County.

13 Q What do you do?

14 A I'm the chief medical examiner.

15 Q As a chief medical examiner, does that
16 differ from just a medical examiner?

17 A You might use the same -- you might use
18 the terms to mean the same thing. The chief
19 medical examiner is the head of the office,
20 basically. In some places there may be only one
21 medical examiner, who is also the chief.

22 Q But in your office you have several other
23 medical examiners besides yourself?

24 A Several other pathologists besides myself
25 work in the office.

1 **Q** And you have some administrative
2 responsibilities in addition to being a forensic
3 pathologist to go with your title of chief medical
4 examiner?

5 **A** That's right.

6 **Q** So your title before you became chief
7 medical examiner was forensic pathologist?

8 **A** Yes.

9 **Q** Okay. What does a forensic pathologist
10 do, in general?

11 **A** A forensic pathologist is a pathologist
12 who specializes in death investigation, primarily
13 performing examinations on people that die under
14 certain conditions, and those conditions require
15 involvement by the office according to state law.

16 **Q** Now, is this -- are you duties limited
17 solely to people who die under potential criminal
18 circumstances, or does it include all matters of
19 death?

20 **A** There are ten different categories in the
21 State of Arizona which are supposed to be made
22 notice to law enforcement, who then contact the
23 medical examiner, and then the medical examiner
24 decides what kind of investigation to perform.

25 So it's any death due to violence, any

1 unusual death, any unnatural death, any death of
2 prisoners, death that might be related to
3 someone's employment, death that might be related
4 to a therapeutic procedure, an operation, something
5 like that. So that's a lot of it right there.

6 **Q** Is there a difference in your field
7 between the cause of death and the manner of
8 death?

9 **A** Yes.

10 **Q** What's that difference?

11 **A** Well, the cause of death is the disease
12 process or the injury that led to a person's
13 death, like a heart attack is a cause of death.
14 That's kind of a lay term. A gunshot wound to the
15 head would be a cause of death.

16 The manner of death is different. The
17 manner of death is how did the death occur, was it
18 by a person's own hand and it was intentional,
19 then that would be suicide, did another person
20 cause the death, that would be a homicide. Was it
21 an accident, nobody's fault, be an accident.
22 Natural causes is another manner.

23 **Q** And is that part of your responsibilities
24 when you sign the death certificate to include
25 that manner of death as well as cause of death?

1 **A** Yes.

2 **Q** How long have you been a forensic
3 pathologist?

4 **A** I've been practicing since 1987.

5 **Q** And just give the jurors a brief history
6 of your education.

7 **A** Okay. Well, it's all been at the
8 University of Arizona. I received my bachelor's
9 of science degree in chemical engineering in 1978,
10 and then went through the medical school here from
11 1978 to 1982.

12 And then from 1982 to 1986 after
13 graduation I completed a four year pathology
14 residency also here at the University of Arizona.
15 And then from 1986 to 1987 I completed a one year,
16 it's called fellowship, it's like an
17 apprenticeship, working with the Medical
18 Examiner's Office, and that fellowship was in
19 forensic pathology. And then since 1987 I've been
20 working fulltime in one capacity as a forensic
21 pathologist working for Pima County.

22 I'm board certified in anatomic clinical
23 and forensic pathology.

24 **Q** We'll get to this later because of the
25 circumstances of this particular case, but do you

1 have any training as being a forensic pathologist
2 in combat situations?

3 **A** No.

4 **Q** Do you have any specific training in
5 diagnosing victims of potential bombings?

6 **A** No specific training like a workshop or
7 anything like that. It's something that is
8 included in the textbooks on forensic pathology
9 but I haven't had any separate focused training in
10 that area.

11 **Q** Not all that many bombings in Pima County?

12 **A** Correct.

13 **Q** Okay. Take the jurors through the process
14 from mainly start to finish, when you're doing an
15 autopsy. Let's start before the actual autopsy.
16 Are sometimes you called out to a potential murder
17 scene or death scene to go out and see what's
18 happening with the scene itself before the
19 autopsy?

20 **A** Yes.

21 **Q** Okay. How do you get those calls? How
22 does that happen?

23 **A** We have people that work for the office
24 who are investigators, and the investigators are
25 on duty 24 hours a day. They receive calls from

1 law enforcement, and law enforcement will let our
2 investigator know that a doctor is needed at a
3 scene. The investigator will then notify the
4 doctor on duty. We have the doctors available 24
5 hours a day. Then the doctor will respond to the
6 scene.

7 **Q** Did you do that in this case?

8 **A** Yes, I did.

9 **Q** And we'll get to that in a second. Let's
10 start, take the jurors through your typical
11 procedure you would follow as a forensic
12 pathologist once the deceased is brought to the
13 medical examiner's office for you to perform an
14 autopsy.

15 **A** Okay. The person is inside a refrigerated
16 storage area in a pouch, a plastic pouch or body
17 bag. The person is removed from the storage area,
18 called storage area, and brought into the
19 examination room, and the bag may be sealed, the
20 zipper might be sealed to preserve evidence.
21 Photographs are taken of the seal. The zipper is
22 opened and the person is exposed and photographs
23 are often taken of the body at that time to
24 document the appearance of the body before we do
25 anything.

1 After that's done we basically go over the
2 person looking in some cases for evidence, any
3 trace evidence, material that might be important
4 evidence. It depends on the type of examination
5 we're doing.

6 Eventually the clothing is removed after
7 having been documented. Any medical treatment is
8 identified and removed. The person might be
9 cleaned up because the body is often soiled and
10 then more photographs are taken showing, any
11 injuries that might be on the person.

12 Then the pathologist will examine the
13 person from head to toe, basically, and describe
14 the general appearance of the body, for example,
15 the hair color and length, and the eye color and
16 the state of the teeth, and just work your way
17 down, examining the surfaces of the body.

18 After all that is done then the internal
19 examination begins, and that's when the person is
20 opened to look at the inside of the body, looking
21 at the organs and looking for injuries, disease
22 processes. Photographs may be taken of the inside
23 of the body depending upon the examination.

24 During that part of the exam we often
25 remove samples from the body, like urine from the

1 bladder, blood from the blood vessels, and we may
2 send that off to have toxicology testing done,
3 which is looking for drugs and poisons. Sometimes
4 we take little pieces of organs and put them in
5 little containers and send that off to the lab to
6 have slides made. They take thin sections of the
7 organ and mount that on the glass, a piece of
8 glass and send that back to us and we can look at
9 the organs under a microscope.

10 After we've looked at all the organs and
11 examined them and taken the collections that we
12 take, that part of the exam is complete.

13 Then we wait for the other results to come
14 back, like the toxicology studies, the glass
15 slides to look at, and once we've completed all
16 that analysis we incorporate all findings into a
17 report that's completed and usually available
18 about four weeks or so after the exam.

19 **Q** Are there occasions when you also have to
20 make arrangements to have the body identified?

21 **A** In some cases, yes.

22 **Q** Okay. Did you do that in this case as
23 well?

24 **A** Yes.

25 **Q** And we've been talking about this case.

1 Did you perform the autopsy in this case on Gary
2 Triano?

3 **A** Yes, I did.

4 **Q** And you have, I believe, a copy of your
5 autopsy report that's been marked as State's
6 Exhibit 120-A in front of you?

7 **A** There is a document here with 120-A, and
8 at least the cover looks like my report. I'll
9 just look through it real quick to make sure that
10 all the pages are there.

11 This is a complete copy of my report with
12 some additional pages with some drawings that I
13 made, and some other objects, like fingerprint
14 strips that really aren't part of my report.

15 **Q** Okay. And, Dr. Parks, I just want to show
16 you what's been identified as State's Exhibit 42.
17 Is that an indication of at least one page or
18 pages of your report?

19 **A** Well, these are blown-up diagrams that I
20 made at the time I performed the examination,
21 which are not really part of my report. It's in
22 our file, but not an actual part of my report, but
23 I generally make diagrams like this.

24 **Q** Did you prepare these diagrams as are
25 shown and blown up on State's Exhibit 42 from

1 copies that you prepared?

2 **A** Yes.

3 **Q** Okay. So these -- the markings on these
4 outlines of the human body are your markings?

5 **A** That's right.

6 **Q** In relation to what you observed on
7 Mr. Triano?

8 **A** Correct.

9 **Q** Okay. I want to show you some photographs
10 for identification first, and we'll show these to
11 the jurors as well. These have already been
12 admitted as State's Exhibit 3-LL, MM, NN, OO and
13 PP. Look through those and see if you recognize
14 those photographs.

15 **A** Yes.

16 **Q** Okay. And do those appear to be
17 photographs of the scene that represent how it was
18 when you went out there to look at the scene with
19 Mr. Triano in his car?

20 **A** Yes.

21 **Q** Okay. I've got a few others. These will
22 be State's 3-DDD through KKK. Why don't you take
23 a look at those and see if you recognize what
24 those are.

25 **A** The exhibits you mentioned are photographs

1 of x-rays that were taken at the time of the
2 examination.

3 **Q** And Mr. Triano's examination?

4 **A** Yes.

5 **Q** And then finally State's Exhibit 3-LLL, do
6 you recognize that photograph?

7 **A** Yes, I do.

8 **Q** And that's a close-up of Mr. Triano's
9 watch?

10 **A** That's right.

11 **Q** Okay.

12 **MR. PALSER:** I want to see the
13 photos.

14 **THE COURT:** You can approach if you
15 like, Mr. Palser.

16 **MR. PALSER:** I know, Judge.

17 **BY MR. JENSVOLD:**

18 **Q** Dr. Parks, explain to the jury how it was
19 that you went out -- you got called out to the
20 scene in this particular case and when was it that
21 you were called.

22 **A** Well, I was called by my investigator who
23 was on duty as per our usual routine, and was told
24 that I was to respond to the La Paloma Country
25 Club off of Sunrise, and this was late on the

1 evening of November 1, 1996. I reached the scene
2 around 40 minutes after midnight, and I was
3 eventually led close to the vehicle by the
4 homicide sergeant for the sheriff's department,
5 which was Sergeant Keith St. John.

6 **Q** What did he do? How did he escort you to
7 the car?

8 **A** Yes, he did, he escorted me to the car but
9 I remained about five feet away from the vehicle.
10 It was still being processed by individuals and I
11 didn't get any closer than that.

12 **Q** What was your purpose, just to look at the
13 injuries from that perspective, five feet away?

14 **A** Well, it's good to respond to the scene
15 for both the law enforcement agency and also the
16 pathologist, because you can assist the law
17 enforcement officer sometimes in helping them
18 understand what happened to a person, and it's
19 good for the pathologist to go out and see the
20 person in their soundings and you may be able to
21 match injuries with something that you saw in the
22 surrounding. It also helps determine with the
23 time of death determination which was not
24 important in this case, but in other cases it is.

25 **Q** How long do you think you were at the

1 scene?

2 **A** Well, I indicate in my report that I left
3 about an hour after I got there.

4 **Q** And what injuries did you note when you got
5 to the scene on Mr. Triano?

6 **A** I didn't notice too much according to my
7 notes and my report. He was slumped over, and the
8 main thing I noticed as I documented in my report
9 was that he had a wound on his knee, a rather
10 large wound.

11 **Q** And did you reflect that injury to his
12 knee on State's Exhibit 42, those two diagrams
13 that you prepared later?

14 **A** Yes, I did.

15 MR JENSVOLD: Your Honor, the State
16 would move for the admission of State's Exhibit
17 42.

18 MR. PALSER: No objection to 42,
19 Judge.

20 THE COURT: Thank you. 42 is
21 admitted.

22 BY MR. JENSVOLD:

23 **Q** Dr. Parks, why don't you go ahead and show
24 the jurors where it is that you reflected, and
25 describe it in more detail, if you can, to the

1 injury of the knee?

2 **A** The injury I mentioned is this -- this
3 mark here on Mr. Triano's right knee, and all of
4 these enclosed marks that I drew are tears in the
5 skin. So there's a large tear in his right knee,
6 and the structures underneath the skin is muscle
7 and fat, et cetera, was visible in that wound.

8 **Q** Okay. And there's some markings that
9 appears on Mr. Triano's right hand as well?

10 **A** Well --

11 THE COURT: Jarrod, would you get the
12 pointer for Dr. Parks, please? Thanks. Thank
13 you, sir.

14 BY MR. JENSVOLD:

15 **A** Most of his right hand was missing, it had
16 been severed and only the small finger of his
17 right hand was in tact, but the way the diagram is
18 here that the hands are palm forward, and as I
19 indicated, most of his right hand was not there
20 anymore.

21 **Q** Dr. Parks, did you notice a difference
22 between the external injuries to his right side
23 versus his left?

24 **A** Yes.

25 **Q** Can you describe that?

1 **A** Well, the injuries were concentrated on
2 the right side as you can see from the diagram.
3 Again, those opened areas are tears in the skin or
4 lacerations, and then these dark lines and filled
5 in areas are scrapes. So he had a lot of scraping
6 and tears primarily on the right side of his body.

7 **Q** And -- okay. Then let's go back then to
8 the autopsy itself. Since you were five feet away
9 you couldn't see all the injuries from your
10 perspective at that point; is that correct?

11 **A** That's correct.

12 **Q** Okay. What injuries did you notice
13 externally once Mr. Triano's body was sent to your
14 autopsy room?

15 **A** He had tears in the skin in multiple
16 locations and the forehead region, his right
17 cheek. He had multiple tears in his skin on the
18 right side of his chest. Much of the right hand
19 was missing. There was a large tear on the side
20 of his right arm, and the arm is the region
21 between the elbow and the shoulder, and the bone
22 was broken, the upper arm bone, called the
23 humerus, was fractured and that was visible in
24 here. He had a large wound around the right knee
25 and other smaller wounds on the right thigh. And

1 also multiple openings, or lacerations, which are
2 the tears I mentioned, on the outside of his right
3 leg, and also on the inside of his left leg,
4 basically the right side of his left leg, if you
5 want to call it that.

6 **Q** And so based on your review of all these
7 external injuries would it have been consistent
8 with your findings that the bomb had been placed
9 in the passenger seat with Mr. Triano reaching
10 over from the driver's seat?

11 **A** That would be a logical explanation for
12 how he got all those wounds if he was on the
13 driver's side and the blast is coming from his
14 right.

15 **Q** Okay. Dr. Parks, have a seat for a
16 second. When Mr. Triano's body was brought to
17 your examination room did you notice anything
18 besides Mr. Triano and his clothing and other
19 personal items?

20 **A** There was a lot of debris on him including
21 foam rubber, some glass fragments, and a lot of
22 his body was covered with soot of like charcoal
23 dust, a dark material covered a lot of his body,
24 especially where the wounds were.

25 **Q** Were there metal fragments also?

1 **A** There were metal fragments that were
2 primarily on the inside. There were probably a
3 few -- there was a lot of debris there. There
4 were probably some metal fragments on the outside
5 of various sizes, but on the inside of the body I
6 found metal fragments.

7 **Q** And what color was Mr. Triano's shirt that
8 he had on when he was brought to you in the
9 autopsy room?

10 **A** I have it in my report. I want to say
11 blue, but let me make sure.

12 **Q** Please.

13 **A** Yes, it was a blue shirt.

14 **Q** At some point during your autopsy did you
15 notice another blue fabric contained within the
16 autopsy, or along Mr. Triano's body that was
17 different from his shirt?

18 **A** Yes.

19 **Q** Okay. Describe the differences, if you
20 can, to the jurors between the two fabrics?

21 **A** Well, I found some fragments of this blue
22 material that had a coarse weave, it had layers.
23 There was a coarse weave on one layer and then a
24 more fine weave on an attached layer, and then
25 there was some plastic, I think black plastic

1 lining of the finer weave, and I found that
2 material inside some wounds, and I think some
3 fragments of it also outside the body.

4 **Q** Would that material be consistent with a
5 duffel bag?

6 **A** It could be.

7 **Q** What was the time of death that you
8 ultimately concluded in this case?

9 **A** I did not determine the time of death. It
10 was given to me through the law enforcement
11 agency, the sheriff's office, based upon the
12 response, I suppose, to emergency medical
13 personnel. And the time that I was given for the
14 time of death was 5:40 in the afternoon.

15 **Q** And did you look at the hands on, we'll
16 show a photo, Mr. Triano's watch at the time his
17 body was brought to you at the autopsy room?

18 **A** Yes, I looked at his watch as I went
19 through his possessions and I described his watch,
20 the type of watch it was, and that the crystal of
21 the watch was broken and the hands on the watch
22 were frozen in place.

23 **Q** And what time was it on the watch?

24 **A** 5:38.

25 **Q** Now, do you have an opinion in this case

1 based upon your review and your autopsy of
2 Mr. Triano as to whether he died suddenly or over
3 a longer period of time?

4 **A** I believe he died suddenly.

5 **Q** What do you base that opinion on?

6 **A** Well, the extensive nature of the wounds
7 and the rather small amount of bleeding that was
8 associated with the wounds on the inside of the
9 body.

10 **Q** And were -- was there just one wound that
11 you think was responsible for Mr. Triano's death
12 or an accumulation of several wounds?

13 **A** Well, there was certainly wounds by
14 themselves that would be fatal, and the group of
15 wounds together would be added to -- they could
16 add them to each other, but any number of the
17 wounds by themselves could have been fatal.

18 **Q** And what about just the impact of the
19 blast itself, did you take that into consideration
20 in your findings?

21 **A** Well, I did. The blast itself can cause
22 damage primarily to the lungs, and I didn't
23 appreciate that a whole lot although some of that
24 might have been there. It would manifest itself
25 primarily in bleeding in the lungs, but he also

1 had bleeding from projectiles going through his
2 body and creating tears in his lungs. So it would
3 be hard to separate that out.

4 To my mind the most severe parts of the
5 injuries were the fragments of metal that had
6 passed through his body.

7 **Q** What areas did those fragments pass
8 through?

9 **A** They passed through his skull and through
10 his brain, and they passed through his right lung,
11 and they passed through his liver.

12 **Q** Would any one of those areas have caused
13 Mr. Triano's death in your opinion?

14 **A** Well, they could have. The liver would
15 probably be the most -- the least severe injury,
16 but the lungs would tend to bleed pretty quickly,
17 and of course the -- having fragments go through
18 the brain would be a very, very severe injury.

19 **Q** And were there fragments in Mr. Triano's
20 brain when you performed the autopsy?

21 **A** Yes.

22 **Q** What type of materials were those
23 fragments, if you remember?

24 **A** They were fragments of gray metal.

25 **Q** Were there law enforcement officers also

1 present at the scene of the autopsy?

2 **A** Yes.

3 **Q** And do you remember who was there?

4 **A** Yes, I do, Detective Jim Gamber and
5 Detective Patty Amado were there.

6 **Q** Were there also some ATF agents there?

7 **A** Yes.

8 **Q** Who were they?

9 **A** There were three of them on the first day
10 of my examination, I actually examined Mr. Triano
11 two consecutive days because I couldn't complete
12 the examination on the first day. So there were
13 three ATF people the first day and two the second
14 day, and I don't have their names memorized and I
15 don't -- I've not encountered them so I'll refer
16 to my report if I might. There were investigators
17 William Dietz (ph), Sig Celaya (ph), and Lee
18 Glovitz (ph) on the first day, which was the 2nd,
19 and then on the 3rd Mr. Celaya was not present.

20 **Q** Did Mr. Dietz take some swabs at the time
21 that you were there doing the autopsy?

22 **A** Yes.

23 **Q** And did you watch him do that?

24 **A** Yes.

25 **Q** Were all these fragments that you saw

1 consistent with the blast that was told to you at
2 the scene in Mr. Triano's car?

3 **A** Yes.

4 **Q** Were any of Mr. -- I mean, you mentioned
5 part of the missing right hand, were any of the --
6 did the blast cause any of Mr. Triano's bones to
7 break or fracture?

8 **A** There were certainly -- there's bones in
9 the right hand and so there's a lot of fracturing
10 of his right hand, and then the right humerus, the
11 upper right arm bone. There were rib fractures in
12 the chest, of course, as well. I think that's
13 about it, in addition to skull fractures.

14 **Q** Okay.

15 MR. JENSVOLD: Your Honor, with
16 counsel's permission, the State would move to
17 admit State's 3-DDD through KKK, as well as LLL.

18 MR. PALSER: We have no objection to
19 those, Judge.

20 THE COURT: Thank you, Mr. Palser.
21 Those exhibits are admitted.

22 BY MR. JENSVOLD:

23 **Q** You still have the pointer, Dr. Parks?

24 **A** It's up there on the easel.

25 **Q** If you're okay sitting down that's fine.

1 I'll put the pictures up and if you could just
2 point to them.

3 **A** Okay.

4 **Q** And these have already been admitted so
5 the jury has seen these once. This is State's
6 Exhibit 3-LL. Do you see Mr. Triano in that
7 photograph?

8 **A** Yes, he's right here, I'm indicating with
9 the pointer.

10 **Q** Did he have the white cloth on his head
11 when you saw him?

12 **A** I don't recall.

13 **Q** And then State's 3-MM, is Mr. Triano in
14 the car as well there?

15 **A** Yes.

16 **Q** Can you point him out for us, please?

17 **A** He's right here.

18 **Q** And in the time that you were there at the
19 scene for however -- what did you say, about an
20 hour?

21 **A** Yes.

22 **Q** Did anybody move Mr. Triano? Did they
23 reposition him at all?

24 **A** I don't recall that happening. I don't
25 believe so.

1 **Q** This is 3-NN. Is that just a different
2 view of where Mr. Triano was in the car?

3 **A** Yes.

4 **Q** And then 3-00, again, that's Mr. Triano?

5 **A** Correct.

6 **Q** And were those the same clothes that you
7 saw on his body at the time it was delivered to
8 the autopsy?

9 **A** Yes.

10 **Q** Do you see the -- can you see the injuries
11 to the right knee in that photograph?

12 **A** Yes, I can.

13 **Q** Can you just point them out?

14 **A** That injury is right here, I'm indicating
15 with the pointer.

16 **Q** Does this photograph show any of the black
17 soot that you described earlier?

18 **A** It's a bit hard for me to tell what is
19 shadow and what is the soot, but the side of his
20 right thigh is very dark, which could be that
21 soot.

22 **Q** I don't know if focusing this in -- does
23 that help at all?

24 **A** Again, the darkening of the outside of the
25 right thigh looks pretty good for soot.

1 **Q** Were those some of the areas that Bill
2 Dietz from the ATF swabbed when he was in the
3 autopsy room with you?

4 **A** I don't recall exactly what he did, but
5 there are some sheets of transfer of property
6 which we use when we transfer evidence out of the
7 office, and I believe one of those items indicated
8 as a swab from the thigh.

9 **Q** There were a couple other photographs I
10 forgot to mention, State's Exhibit 3-AA, BB and
11 CC.

12 MR. JENSVOLD: Your Honor, the State
13 would move for the admission of 3-AA through
14 CCC -- I'm sorry, AAA through CCC.

15 MR. PALSER: No objection.

16 THE COURT: Thank you, Mr. Palser.
17 They're admitted.

18 BY MR. JENSVOLD:

19 **Q** And this is State's Exhibit 3-AAA. Does
20 that appear to be how Mr. Triano's watch appeared
21 at the time?

22 **A** Yes. The detail is lost a bit, but the
23 crystal was broken and the hands were at 5:38.

24 **Q** And this is just a closer up view, State's
25 3-BBB?

1 **A** That is also Mr. Triano's left wrist and
2 hand and the watch that was broken.

3 **Q** And then did you also take the contents of
4 Mr. Triano pants' pockets during the autopsy?

5 **A** Yes.

6 **Q** And does this photograph, I should show
7 this to you first, but this is Exhibit 3-CCC, does
8 that reflect what you took out of his pockets?

9 **A** Yeah, looks like what I dictated in my
10 report, yes.

11 **Q** And you've documented in your report which
12 items were taken out of Mr. Triano's pockets?

13 **A** Yes.

14 **Q** Dr. Parks, I want to show you the first of
15 several photographs that indicate the x-rays of
16 Mr. Triano. This is State's Exhibit 3-DDD.

17 **A** This exhibit is a photograph of the x-ray
18 film that was developed in my office, and it shows
19 Mr. Triano's head, which is the rounded shape
20 structure, and then the spine, the neck area, and
21 we're looking at the head in the front to back
22 view, the nose would be in this area here. You
23 can see this kind of curved white area, which is
24 the upper mouth. So anything that's white is
25 dense. So the white objects -- the whiter the

1 object is the more dense it is. And there are
2 some white irregular fragments, I'm pointing with
3 the pointer here, that were pieces of metal that
4 were removed from inside of his head.

5 **Q** Does metal appear differently than plastic
6 or wood, for example, on the x-rays?

7 **A** Yes, the metal is dense. Aluminum is not
8 as dense as iron, but iron is one of the most
9 dense metals, those will be very white. Aluminum
10 would be more gray. Plastic generally wouldn't
11 show up at all. Wood probably you wouldn't see,
12 depending on perhaps the density of the wood.

13 **Q** So those fragments would be consistent
14 with galvanize pipe fragments?

15 **A** Yes.

16 **Q** And this is 3-FFF. Do you see similar
17 fragments there? I assume this is Mr. Triano's
18 chest area?

19 **A** Yes, it is. It's on the side now so the
20 spine would be horizontal here, and you can see
21 these curved structures here, which are ribs, and
22 then scattered throughout the right chest area are
23 these white objects, which are fragments of the
24 metal.

25 **Q** Okay. Thank you. And then this is 3-III,

1 what bones are those, if you can tell from that
2 limited photograph?

3 **A** We're looking at the knee joint, and this
4 is the femur, the thigh bone, and there are
5 actually two bones down here of the lower leg, and
6 then a bunch of the fragments that are in the soft
7 tissues of the leg.

8 **Q** Again, those are consistent with metal
9 fragments?

10 **A** Yes.

11 **Q** Mainly to show the difference between the
12 fragments and something else, this is State's
13 Exhibit 3-JJJ. You see some other metal that
14 shows up there?

15 **A** Yes, this is a radiograph, or x-ray, of
16 Mr. Triano's pelvis area. This is the right side
17 of the pelvis and the left side of the pelvis.
18 You've got a somewhat rectangular white object,
19 which is a belt buckle, and you can see the tongue
20 of the belt buckle, and then perhaps the metal end
21 of the belt there. And there's also some other
22 objects that may be snaps or rivets or something
23 of pants. It's a little hard for me the tell.

24 **Q** What about down towards the bottom there?

25 **A** Towards the bottom in the -- would be the

1 left thigh area are a few white metal fragments.

2 **Q** And, finally, this is State's Exhibit
3 3-KKK, those -- are those basically shoe nails
4 that you see at the bottom?

5 **A** Correct. We're looking at one of the
6 feet, and then there's a white line object, which
7 is a metal plate that's built into the shoe, and
8 then you've got perpendicular to that metal plate
9 a bunch of lines that are nails holding the heel
10 to the shoe.

11 **Q** I think this gives a better view of the
12 watch, this is State's 3-LLL. Is that a closer up
13 view of Mr. Triano's watch at the time you saw it?

14 **A** Yes.

15 **Q** And is that consistent with your 5:38
16 documentation in your report?

17 **A** Yes.

18 **Q** Dr. Parks, so what was your ultimate
19 conclusion as to the cause of death in this case?

20 **A** That Mr. Triano died from multiple
21 injuries due to an explosion.

22 **Q** What is the manner of death?

23 **A** The manner of death is homicide.

24 MR. JENSVOLD: That's all I have.

25 THE COURT: Thank you, Mr. Jensvold.

1 Mr. Palser, cross-examination?

2 MR. PALSER: Thank you, Judge.

3 CROSS EXAMINATION

4 BY MR. PALSER:

5 Q Dr. Parks, you were talking about some of
6 the damage that was done to the body, and maybe I
7 can move this easel back for you.

8 A Okay.

9 Q That's already in evidence as State's 42.
10 On the picture closest to you, you indicated there
11 was significant damage to the right knee, correct?

12 A Yes.

13 Q There was significant damage to the right
14 hand?

15 A Yes.

16 Q There was also, I believe, significant
17 damage up in the, what I would call the right
18 armpit area?

19 A I don't think I mentioned much about that
20 but he did have a rather large tear in his skin in
21 that region.

22 Q Right. I don't think you talked about it
23 on direct but during your actual autopsy you noted
24 significant damage to the right armpit area?

25 A The side of the chest there, yes.

1 **Q** And Mr. Jensvold asked you if this is
2 consistent, I want to write it down to make sure I
3 got it right, consistent with reaching over from
4 the driver's seat?

5 **A** That's what he asked, yes.

6 **Q** You agreed that it was?

7 **A** Yes.

8 **Q** All right. And you actually had some, I
9 guess in essence, verification of that, that you
10 looked at all of the pieces that you recovered
11 from the body, right?

12 **A** Yes.

13 **Q** And you did a, I may use the wrong term,
14 forgive me or correct me if I do, but you did an
15 analysis of the pathway of those pieces?

16 **A** Yes.

17 **Q** And that pathway was, you described it as
18 towards the left and towards the rear?

19 **A** That's correct.

20 **Q** So that the object entering the body was
21 coming from the right from the front?

22 **A** Correct.

23 **Q** So like -- I'm not very good at the angles
24 but a quasi-semidiagonal angle from right to front
25 moving to the left and rear?

1 **A** Right, with respect to Mr. Triano's right
2 and left, the objects are coming from his right
3 and moving towards his back.

4 **Q** Okay. And Mr. Jensvold asked you some
5 questions about cause of death. In this case, the
6 cause of death was very quick?

7 **A** The cause of death were the multiple
8 injuries and his survival time I think was pretty
9 short.

10 **Q** Okay. And Mr. Jensvold asked you some
11 questions about manner of death?

12 **A** Yes.

13 **Q** Okay. Now, as far as your investigation
14 into manner of death, you go out to the scene if
15 you at all possibly can, and look at the body?

16 **A** Correct.

17 **Q** And, I mean, there are -- I mean,
18 obviously there's cases where bodies come into you
19 and you don't get an opportunity to go to the
20 scene?

21 **A** That's right.

22 **Q** But in this case you had an opportunity to
23 go to the scene, view the body, what's the doctor
24 term, in situ, in place?

25 **A** In situ.

1 **Q** Okay. And then you perform your autopsy,
2 correct?

3 **A** That's right.

4 **Q** You don't go out and talk to witnesses?

5 **A** Usually not, correct.

6 **Q** Okay. You didn't go out and talk to
7 witnesses in this case?

8 **A** Correct.

9 **Q** You don't do any, I'm going to date
10 myself, you don't do any Columbo type
11 investigation and act like a private investigator
12 and go out and investigate on your own, right?

13 **A** Usually not.

14 **Q** Usually not?

15 **A** Well, sometimes I'll talk to family
16 members about their loved ones and try to get an
17 idea --

18 **Q** Habits?

19 **A** I usually don't interview eyewitnesses
20 personally but I do some background work.

21 **Q** Okay. And you didn't do any background
22 work in this case, right?

23 **A** Not personally, no.

24 **Q** Okay. And as far as manner of death goes,
25 from what you can determine it's based mostly upon

1 your autopsy?

2 **A** Well, the manner of death is based on, not
3 only autopsy, but also the scene investigation,
4 the information we get from law enforcement and
5 others, because the manner is really dependent
6 upon the scene investigation and historical
7 information.

8 **Q** And one of the things you mentioned to the
9 jury that the medical examiner looks at is
10 anything that is either a homicide or a suspected
11 homicide?

12 **A** As far as the kinds of deaths that are
13 supposed to be reported, yes.

14 **Q** Sure. And if you have a situation where
15 an 87-year-old who has been diagnosed with a
16 terminal illness, who is under a doctor's care,
17 dies in the hospital with the attending physician
18 there watching, there's probably not a need for an
19 autopsy, we know the cause of death, right?

20 **A** Well, it depends on how they died. If the
21 death followed a logical sequence of events and it
22 was predictable, yes, but we also have cases where
23 somebody was improving and all of a sudden they
24 died and questions come up. It depends on the
25 sequence of events.

1 **Q** Sure. And sometimes those questions are,
2 I guess, in essence unanswerable?

3 **A** Sometimes even after performing a complete
4 autopsy and gathering information, yes, there's
5 sometimes when you can't answer all the questions.

6 **Q** Just to give you an example that if the
7 police were called out to my house tonight and
8 there I am dead, and I'm laying on the living room
9 floor and next to me is a glass that you test and
10 you determine it contained poison that would kill
11 me.

12 **A** Okay.

13 **Q** Fair enough so far?

14 **A** Yep, I follow you.

15 **Q** Now, it's possible that somebody gave me
16 that poison, right?

17 **A** It is, yes.

18 **Q** It's possible I took it myself?

19 **A** That's correct.

20 **Q** Okay.

21 MR. PALSER: Thank you. I have no
22 further questions.

23 THE COURT: Thank you, Mr. Palser.
24 Mr. Jenvold, redirect, sir?

25 MR. JENSVOLD: Just briefly, Your

1 Honor.

2 REDIRECT EXAMINATION

3 BY MR. JENSVOLD:

4 Q Going back to the picture and the injures
5 that you noted on Mr. Triano's right hand, we've
6 had other witnesses already testify about how they
7 believe this bomb had been constructed and that it
8 was a pipe bomb placed inside of a blue duffel
9 bag. If that were the case, assuming for your
10 purposes, do you have any way of telling whether
11 Mr. Triano's hand was inside the bag or outside
12 the bag or a foot above the bag at the time of
13 explosion?

14 A No.

15 Q And I want to show you State's exhibit
16 3-QQQ, you've seen that before?

17 A Yes.

18 Q That's a picture of Mr. Triano's face as
19 you saw it at that time?

20 A That's correct.

21 Q If Mr. Triano had been, at the time of the
22 explosion, had been looking directly at the bag
23 would you expect those types of injuries and the
24 black soot that you saw to be in a different
25 placement, so the speak, than if you saw it to the

1 side?

2 **A** Well, the injuries are more right sided,
3 and so if he was looking right at the bag I'd
4 expect the injuries to be more uniformly dispersed
5 over the face area.

6 **Q** And one of the manners of death that you
7 have a choice of putting on a death certificate is
8 accident; is that correct?

9 **A** Yes.

10 **Q** And you did not choose that in this case?

11 **A** Correct.

12 **Q** That's all I have. Thank you.

13 THE COURT: Thank you, Mr. Jensvold.

14 Ladies and gentlemen of the jury, any
15 questions for this witness? All right. Thank you
16 very much. May the witness be excused?

17 MR. JENSVOLD: Yes, Your Honor.

18 MR. PALSER: Yes, sir.

19 THE COURT: Thank you. All right,
20 ladies and gentlemen, we will take our evening
21 recess at this time. Remember we are not in
22 session tomorrow and Friday. We'll reconvene
23 Tuesday morning at 10:00 a.m. Please enjoy your
24 weekend and please remain mindful of the Court's
25 admonition, don't read anything, talk to anyone

1 about the case, watch anything that might be
2 broadcast about the case. Don't do any research.
3 Don't go to the internet. Don't go visit the
4 scene, anything like that. Have a nice weekend
5 and see you Tuesday morning. Thank you for your
6 patience.

7 (Whereupon the jury left the
8 courtroom.)

9 THE COURT: Counsel, anything we need
10 to do for the record?

11 MR. MCCOLLUM: Hope you have a nice
12 trip.

13 MR. PALSER: No, sir.

14 THE COURT: Mr. Palser, Mr. McCollum
15 wants to take the notebooks, 24 and 28, out to do
16 the redactions that were talked about. I assume
17 you have no objection?

18 MR. PALSER: No, sir.

19 THE COURT: Thank you, sir.

20 MR. MCCOLLUM: Do I need to sign them
21 out?

22 THE CLERK: No.

23 THE COURT: Thank you.

24

25

