

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SANTA BARBARA

3
4 ALAN H. FENTON, AS TRUSTEE FOR)
5 WILLIAM HARVILLE IRREVOCABLE)
6 LIFE INSURANCE TRUST, ET AL.,)

7 Plaintiffs,)

8 vs.) Case No. 1340238

9 PHOENIX LIFE INSURANCE COMPANY,)
10 ET AL.,)

11 Defendants.)

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VIDEOTAPED DEPOSITION OF JAMES MICHAEL (MAX) LABAR
Taken in behalf of the Plaintiffs
March 29, 2010

1 business that they were looking for?

2 MR. MCDOWELL: Objection; mischaracterizes
3 testimony.

4 BY-MR. KROLL: (Continuing)

5 Q. Let me rephrase the question for you.

6 Did Mr. Koch familiarize you with the
7 policies and procedures of Phoenix when you became a
8 life insurance producer in September, October 2006?

9 A. Yes. And I would say he did it two
10 different ways.

11 Q. Okay. Why don't you tell us both ways.

12 A. Publicly, if we're at a conference or a
13 group of people, he would go with the standard normal
14 policy that Donna Young would talk about when she was
15 up on a platform. "We're not doing any, you know, this
16 type of business, X, Y, Z," but privately it was a
17 different story.

18 Q. All right. Well, let me find out what
19 you're talking about.

20 When you say he did it two ways and one way
21 was publicly, tell us what you're referring to was
22 communicated publicly.

23 A. Publicly it was, "We are an advisory firm.
24 We sit down with brokers and we give them guidance on
25 what type of product is the best for their client. And

1 specifically we sit down with State Farm and we give
2 them guidance on what types of products to use" because
3 the State Farm people typically didn't know.

4 But privately it was kind of like, "If you
5 really want to make money, here's what you have to do.
6 You have to go out with the broker dealers that are
7 doing investor-owned life insurance and crank it out,
8 and that's where you're going to make the money."

9 Q. Tell us what you mean by "investor-owned
10 life insurance."

11 A. Life insurance that -- the typical life
12 insurance is where, say, you have a couple that comes
13 in, say, they're 60 years old or 70 years old, they
14 want to do estate planning and they realize the
15 benefits of life insurance, that if they die, they get
16 tax-free benefits and they can set up trusts and so
17 forth for their kids and it's more tax efficient. They
18 fund the life insurance through their own money. They
19 maintain the policy until their death and everything
20 works out perfectly.

21 The investor-owned life insurance was where,
22 A, an investor goes in, talking to the broker dealers,
23 and basically the broker dealer goes and solicits
24 elderly, typically elderly clients, many times wealthy,
25 many times not that healthy, and try to get life

1 insurance, to get it in place, and then they pay
2 typically the person money, say, whatever, 30, 50
3 grand, whatever. That's some of the things that I've
4 heard, is okay. The client gets money, so everyone
5 wins. The client gets money even though they're not
6 getting the life insurance benefit, but they get money
7 from it.

8 And then down the road, typically two years
9 down the road they'll change the beneficiary or the
10 ownership or however -- whichever way they want to do
11 it at the time to where the beneficiaries of it are not
12 the little old couple but some investors that are
13 behind the scenes funding this. That's investor-owned
14 life insurance.

15 Q. Was -- and the conversation that you had
16 privately, you said it was with Mr. Koch?

17 A. Correct, I've had conversations with
18 Mr. Koch privately.

19 Q. So did Mr. Koch encourage you to go after
20 investor-owned life insurance?

21 A. Well, "encourage" is pretty subjective.
22 What I would say is he would size up people that he
23 thinks -- it was almost like he'd be looking for
24 willing participants. Because some people would not go
25 along with it, but eventually they would fail or they

1 would leave or be fired or whatever, but everyone
2 pretty much knew the way to the -- to make the big
3 bucks was his way, which was doing investor-owned life
4 insurance.

5 Q. Were you encouraged by Mr. Koch, the
6 regional manager at Phoenix, to target elderly people?

7 A. Well, I wasn't encouraged directly to target
8 elderly people because I wasn't out talking to the
9 individual clients. I would if I was -- if a broker
10 called me up and said, "We need you to talk to a
11 client," then I would actually talk to individual
12 clients, but I would never go out and, you know,
13 solicit any type of client. That wasn't my role.

14 But what he would do is, if you identify
15 individual brokers, producers that are in the
16 investor-owned life insurance business, that are doing
17 that type of business, then focus on them, and that's
18 where you make your money.

19 Q. Did Mr. Koch tell you that that was sort of
20 the internal policy at Phoenix?

21 A. Well, I don't know if he technically said
22 that's the internal policy, but definitely the public
23 policy at Phoenix was "you don't do this," but behind
24 the scenes everyone knew that's what was going on with
25 the big producers.

1 And then you had the regional managers. I
2 can't speak for other regional managers. But, I mean,
3 you've got to take the logical conclusion that if it
4 was happening nationwide, that maybe it may have been
5 other regional managers involved, but Mr. Koch
6 definitely encouraged that type of business privately.

7 Q. And you knew that from your conversations
8 with Mr. Koch?

9 A. Correct.

10 Q. And you understood that that was a policy
11 that was approved by Phoenix?

12 A. Well, restate -- I don't understand your
13 question.

14 Q. In other words, as I understand what you're
15 saying is, is public policy that's communicated to the
16 outside world, saying, "We don't want this
17 investor-owned life insurance," but privately you're
18 being told by Mr. Koch that the company actually wants
19 this kind of business; is that right?

20 MR. MCDOWELL: Object; mischaracterizes the
21 testimony.

22 BY-MR. KROLL: (Continuing)

23 Q. Is that a correct statement?

24 A. I would say that's a correct statement.

25 I've always used the expression -- it's kind of like,

1 you know, this kind of stuff. You know, stop, but
2 bring it to me. That was -- that was basically it.

3 Q. And when we're talking about that type of
4 business, meaning the investor-owned life insurance
5 business, did you have some understanding about the age
6 group of people that would normally be the insureds
7 under those policies?

8 A. Well, the age group was typically elderly,
9 and it seemed like the people that were focused on were
10 typically elderly, typically that did not have very
11 good underwriting. They were -- you know, they were
12 smokers, bad heart, but miraculously Phoenix
13 underwriters always seemed to give them a pretty good
14 rating.

15 Like sometimes you'd talk to a broker -- and
16 I never did investor-owned life insurance or anything
17 like that, but I know in some elderly cases I was kind
18 of amazed that we would have someone smoking, hacking,
19 with a bad heart and maybe another other two insurance
20 companies would give them ratings way up there and we'd
21 be -- we would be pretty good.

22 And it was funny because I always felt
23 like -- I have no clear evidence of this, but I always
24 felt like the underwriters had pressure put on them.
25 That's why I would love to talk to some of the

1 underwriters. Because sometimes the underwriting would
2 come in right at equivalent with everyone else, like a
3 John Hancock or everyone else. It would be very
4 similar. And then all of a sudden, you know, Doug
5 would catch wind of you're working on a good case or
6 something and the underwriting came into us, and he'd
7 say, "Let me make a few phone calls," and he'd make a
8 few phone calls and, by golly, that rating would be
9 well and above. And you'd call the producer and say,
10 "Well, look what we did."

11 Q. When applications came in from individuals,
12 elderly individuals, was there -- did you have any
13 understanding there was a policy at Phoenix that
14 Phoenix wasn't concerned about the veracity of the
15 dollar amounts that were set forth for net worth and
16 income?

17 A. What was told me to privately is it
18 doesn't -- you just need the form signed by someone
19 like an accountant. I don't even know if it had to be
20 a CPA. It just had to be signed by someone at the
21 broker dealer or whatever just saying that this is
22 their net worth, just something Phoenix can hold up and
23 say, "Look, we did our due diligence."

24 Q. Well, did you have any understanding whether
25 or not Phoenix had any -- cared whether or not those

1 figures were accurate?

2 A. They never verified it. They never
3 questioned it, not that I ever saw from anyone, from
4 talking to other, you know, WMCs from business that I
5 saw.

6 Q. And did you have some understanding that
7 there was a policy at Phoenix that there was no
8 verification of these figures because many times the
9 object was to get as much insurance on the books as
10 possible and as much premium on the books as possible?

11 MR. MCDOWELL: Object to form.

12 A. Well, I mean, most companies I would assume
13 in America are trying to make as much money as
14 possible, so I would assume that they would do that.
15 BY-MR. KROLL: (Continuing)

16 Q. We don't want you to guess, though. When
17 you say you assume, you're guessing. We only want to
18 know what you know.

19 A. But I really didn't see any hard evidence of
20 that. I don't know. Rephrase your question.

21 Q. What I'm trying to ask you is this: Your
22 understanding from working at Phoenix as a WMC is there
23 really was not much verification of anything except a
24 signature?

25 A. I never heard of it or saw it and there was

1 never a process that was put in place that said that
2 they verify all that.

3 Q. And was that -- was it your understanding as
4 a WMC at Phoenix that Phoenix was thinking that down
5 the road if they wanted to challenge it, they could
6 come in later and try to challenge those numbers?

7 A. Say that one more time.

8 Q. Sure. I'll be happy to restate it.

9 Since you said there was no real
10 verification process up front, was it your
11 understanding that the Phoenix policy was if they
12 wanted to challenge the policies, they would just come
13 in down the road, a year, two years later and challenge
14 the policy?

15 MR. MCDOWELL: Objection; leading.

16 A. I just know what happened with me when I was
17 at Phoenix. I can't say what they were thinking a
18 couple years down the road. That's how I'd answer
19 that.

20 BY-MR. KROLL: (Continuing)

21 Q. So in other words, at the point that you
22 were involved, all you saw was that -- you were told by
23 Mr. Koch that the policy of Phoenix was just to get the
24 signature and don't worry about the rest?

25 A. Correct.

1 MR. MCDOWELL: Mischaracterizes the
2 testimony.

3 BY-MR. KROLL: (Continuing)

4 Q. And when I say "don't worry about the rest,"
5 don't worry about whether or not these numbers are
6 accurate, don't worry about whether the net worth
7 figure is accurate, don't worry about whether or not
8 the income figure is accurate, correct?

9 MR. MCDOWELL: Leading.

10 MR. KROLL: I'll rephrase it.

11 BY-MR. KROLL: (Continuing)

12 Q. Did you have some understanding about
13 whether or not the policy at Phoenix was that they
14 didn't care about whether the net worth figure was
15 accurate?

16 MR. MCDOWELL: Same objection.

17 A. I would say that it -- so --

18 BY-MR. KROLL: (Continuing)

19 Q. I'll rephrase it.

20 Did Phoenix care if their net worth figure
21 was accurate?

22 A. In my opinion, no.

23 Q. And is that based upon your personal
24 knowledge of the procedures at Phoenix?

25 A. Yes.

1 Q. And as a WMC at Phoenix and the procedures
2 that you knew about at Phoenix, did Phoenix care about
3 the accuracy of the income figures in the applications?

4 A. In my opinion, no.

5 Q. When you say your opinion, that's your
6 understanding based upon the policies and procedures at
7 Phoenix?

8 A. Correct. I would also add it was just --
9 you had to be there. It was Doug Koch's demeanor. It
10 wasn't -- it was, "You just got to get this form
11 signed" and that's it. "Once that's signed, then
12 you're covered"; that type of thing.

13 Q. What do we say in the industry, "CYA"?

14 A. Yeah.

15 Q. Just to get the signature, that was the key,
16 was to get the signature?

17 A. Correct. But I never dealt in that. That
18 was basically brokers that would deal in that. That
19 was their deal.

20 Q. Right.

21 But the brokers would deal in that, and it's
22 your understanding that -- the understanding you just
23 communicated is based upon your working at Phoenix and
24 understanding the policies and procedures of Phoenix,
25 correct?

1 A. Correct.

2 Q. Did you ever have a conversation with anyone
3 at Phoenix about investor-owned life insurance and its
4 impact upon the Phoenix business?

5 A. I know I had one with Doug Koch. There were
6 so many conversations with different producers that I
7 couldn't say exactly who, when, or where, but I know
8 that I have had that conversation with other WMCs.

9 Q. Did you ever talk to anybody at Phoenix
10 where you had a conversation about, for example, that
11 investor-owned life insurance impacts the profitability
12 of business, impacts the pricing and rating of
13 policies; anything like that?

14 A. Well, I did have a conversation with, I
15 know, Doug Koch about that several times. I sent
16 several e-mails regarding that to various people. So,
17 I mean, they could probably look at my e-mail records
18 or whatever.

19 Some of the e-mails might have been sent
20 from my personal e-mail, because when things started
21 hitting the fan, so to speak, they locked up my work
22 computer. So there were some personal e-mails sent
23 from my account to Phoenix regarding some of my
24 objections from what was going on.

25 I also had a conversation with Mr. Flores.

1 I can't remember his full name. It's like Ruben
2 something Flores. He came out to Portland, Oregon, and
3 talked to me, and I talked to him about how, you know,
4 everyone's -- you know, the WMCs are making money off
5 this, the regional guys are, the brokers are.
6 Everyone's making money off this. But down the road, I
7 mean, is it going to bankrupt Phoenix.

8 Q. When you say "everybody's making money off
9 this," what do you mean by "this"?

10 A. The investor-owned life insurance.

11 Q. And when you say "everybody's making money
12 off this," what are you referring to?

13 A. I'm saying that the brokers, the WMCs, the
14 upper management of Phoenix, because they're basically
15 putting these short-term numbers up that are basically
16 false, they're fraud. They're not real numbers.
17 They're inflated because it was bogus.

18 Q. What was bogus?

19 A. It wasn't true life insurance business.
20 Because to me life insurance, you have actuaries that
21 have to look at actuary tables, and they base all this
22 life insurance on underwriting, true underwriting,
23 honest underwriting and how many people they're
24 underwriting and how many lapses they're going to have,
25 and that's how you run an insurance business. And over

1 time if you have false things in there, like fake
2 underwriting that's inflated or too many of these
3 policies that are coming to fruition that were not
4 calculated that way, eventually it's going to bankrupt
5 the company.

6 That was one of my biggest complaints, is,
7 you know, just because some people didn't have any
8 ethics. I mean, I could have made millions of dollars.
9 I mean, I had some non-recourse things lined up, could
10 have made a million bucks easily. But I just looked at
11 myself in the mirror and said I ain't doing it.

12 Q. What is "non-recourse"?

13 A. Non-recourse is just basically where a
14 policy goes out to an investor-owned life insurance
15 policy and --

16 Q. Is it another variation, in your
17 understanding, of investor-owned life insurance?

18 A. Correct.

19 Q. And did Phoenix, as far as you understood,
20 was there a policy at Phoenix about whether you could
21 or couldn't engage in investor-owned -- strike that.

22 When you worked at Phoenix, do you
23 understand there was a policy about whether you could
24 or couldn't engage in non-recourse financing?

25 A. Well, there was a public policy. But like

1 I've said, privately it was different.

2 Q. How was it different?

3 A. Well, you'd go to a conference and Donna

4 Young would stand up there in front of hundreds of

5 people and all the news or press might be there and

6 we're -- you know, they'd polish it up, like, "We do

7 this or that. We don't do investor-owned life

8 insurance anymore." But then behind the scenes -- you

9 know, for example, Doug Koch was running around telling

10 me, and you have other WMCs who are blatantly doing it.

11 Q. Doug Koch was telling you what?

12 A. Telling us -- you know, encouraging us to do

13 investor-owned life insurance; that type of thing.

14 Q. And Donna Young is who?

15 A. She was the CEO of Phoenix. I think she's

16 not there any longer. I don't know. I haven't really

17 kept track of Phoenix in the last few years or the

18 insurance business so --

19 Q. Did you at some point in time -- I

20 understand that from your testimony that as of

21 September, October 2007 you were no longer with

22 Phoenix?

23 A. Correct.

24 Q. And how was it that you were no longer at

25 Phoenix?

1 A. Because it would leave probably a trail for
2 him that down the road would probably, if something
3 like this ever came about, it would probably use him
4 up, so to speak.

5 Q. Because did you get the sense that he was
6 trying to hide his involvement from others?

7 A. Well, as conversations went on, I realized
8 it was kind of on the hush-hush. "Well, I'll tell you
9 how it really works"; that kind of stuff. It's not
10 something -- it was something that he was willing to
11 tell me as a fellow employee but not something that he
12 wanted as public knowledge.

13 Q. Did you get the sense it was hush-hush by
14 him from others at the company?

15 A. I have no idea. If you really want my gut
16 feeling, it's as I've always said, is back in
17 Hartfordland, it's "Here's our policy," but then the
18 guys that are really doing the performance and bringing
19 the money, you know, the regional guys that are really
20 doing it, they're like, "Here. Here's how we do it.
21 If you really want to make the money, if you want to
22 make a hundred grand a year, but if you really want to
23 make the money." And to me back in Hartford it was
24 blatant. I mean, it was everyone in the sales
25 community knew who was doing investor-owned life

1 insurance, who wasn't, and to me it was just blatant.
2 You'd have to be -- you'd have to have a learning
3 disability to be in upper management at Phoenix and not
4 know what's going on.

5 Q. So who in Hartford knew what was going on?

6 A. I have no idea. But I would think that Gary
7 Beagin, Donna Young, who have been in the insurance
8 business for 20, 30 years, and they know more
9 insurance -- they know more about insurance in their
10 fingernail than I know entirely all put together. And
11 if Max LaBar can figure this out, I would think that
12 someone with all these law degrees and 30 years
13 experience in running an insurance company would know
14 what's going on within their own company. And if they
15 don't, they're really either dumb or they're --

16 Q. But you can't identify anybody in Hartford
17 that knew, as you put it, what was going on?

18 A. I never had a conversation like -- or
19 whatever his name was, that they point blank said,
20 "Yeah, do this" because they never would.

21 Q. Thank you.

22 Let me hand you Exhibit No. 7.

23 Can you identify Exhibit No. 7 for me.

24 A. It looks like a letter from the Oregon
25 insurance commissioner to me.