

**APL Hearing follow up from the Reproduced Record
filed with the Superior Court of Pennsylvania August 23, 2021**

210628 **Plaintiff/Husband's brief** re aborted APL hearing DRpage 1849a

210628 Defendant/Wife's brief re aborted APL hearing DRpage 1944a

210727 **Rescheduling order APL** aborted hearing DRpage 1950a

210813 **Motion to Vacate** Order re APL aborted hearing delay DRpage 1952a

210818 Motion of Inquiry Re Judicial Relationship DRpage 2039a

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**ORDER RE COMPLETION OF THE HEARING OF JUNE 7, 2021
AND REINSTATEMENT OF ALIMONY PENDITE LITE**

AND NOW, this _____ day of _____, 2021, upon consideration of the Plaintiff's **MEMORANDUM OF LAW RE COMPLETION OF THE HEARING OF JUNE 7, 2021**, and the **RELIEF** requested therein, it is hereby **ORDERED** that said **RELIEF** is **GRANTED**. Accordingly, it is further **ORDERED** that:

(a) a continuation of the *de novo* support hearing of June 7, 2021 will be held on _____ day of _____, 2021, as a special listing from the times of _____ to _____; and

(b) this Court's orders of March 21 and 24, 2021, which collectively terminated the then existing *alimony pendite lite* order, are hereby **VACATED**, and the *alimony pendite lite* order of December 26, 2017, is hereby **REINSTATED** effective March 22, 2021.

BY THE COURT

J.

Distribution:

1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com

2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

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DOCUMENT FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

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Case Records of the Appellate and Trial Courts
204 Pa. Code § 213.81
www.pacourts.us/public-records*

Robert P. Bauchwitz

01336-DR-17

(Party name as displayed in case caption)

Docket/Case No.

Vs.

Ann M Rogers

CCP DAUPHIN COUNTY

(Party name as displayed in case caption)

Court

This form is associated with the pleading titled MEMORANDUM OF LAW, dated June 27, 2021.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Document Form shall accompany a filing where a confidential document is required by law, ordered by the court, or is otherwise necessary to effect the disposition of a matter. This form shall be accessible to the public, however the documents attached will not be publicly accessible, except as ordered by a court. The documents attached will be available to the parties, counsel of record, the court, and the custodian. **Please only attach documents necessary for the purposes of this case.** Complete the entire form and check all that apply. This form and any additional pages must be served on all unrepresented parties and counsel of record.

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<input type="checkbox"/> Tax Returns and schedules	
<input type="checkbox"/> W-2 forms and schedules including 1099 forms or similar documents	
<input type="checkbox"/> Wage stubs, earning statements, or other similar documents	
<input type="checkbox"/> Credit card statements	
<input type="checkbox"/> Financial institution statements (e.g., investment/bank statements)	
<input type="checkbox"/> Check registers	
<input type="checkbox"/> Checks or equivalent	
<input type="checkbox"/> Loan application documents	
<input type="checkbox"/> Minors' educational records	
<input checked="" type="checkbox"/> Medical/Psychological records	Exhibit I
<input type="checkbox"/> Children and Youth Services' records	
<input type="checkbox"/> Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33	
<input checked="" type="checkbox"/> Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)	Exhibit F and Exhibit G
<input type="checkbox"/> Agreements between the parties as used in 23 Pa.C.S. §3105	

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Robert Bauchwitz
Signature of Attorney or Unrepresented Party

6/27/21

Date

Robert Bauchwitz
Name: _____
23 Harlech Drive
Address: _____
Wilmington, DE 19807

Attorney Number: (if applicable) _____
717-395-6313
Telephone: _____
dir_amr@luxsci.net
Email: _____

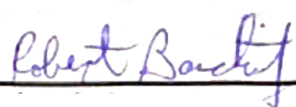
IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN DIVORCE

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 6/27/21



Robert P. Bauchwitz
 Plaintiff
 23 Harlech Drive
 Wilmington, DE 19807
 dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

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v.)	
)	
ANN M. ROGERS,)	CIVIL ACTION – LAW
Defendant)	IN SUPPORT

**MEMORANDUM OF LAW RE COMPLETION OF
 APL TERMINATION HEARING OF JUNE 7, 2021**

AND NOW comes Plaintiff, Robert P. Bauchwitz, *pro se*, who hereby submits the following Memorandum of Law to the trial court in the above captioned case regarding the hearing of June 7, 2021 and its continuance.

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I. PROCEDURAL HISTORY

1. A decree in divorce was entered in the above captioned case on October 28, 2020.
2. A notice of appeal was filed by Husband concerning economic and other matters on November 25, 2020.
3. On December 8, 2020, Wife filed a Petition to Terminate or Suspend Alimony Pendite Lite (APL).
4. On January 4, 2021, Husband filed a Response and Declaration to Wife's Petition (*Ibid.*)
5. On February 25, 2021, the trial court issued an order denying Wife's December 8, 2020 Motion to Terminate or Suspend APL.
6. On March 17, 2021, Wife filed a Motion for Reconsideration (MFR) of her prior Motion to Terminate or Suspend APL of December 8, 2020. In her MFR, Wife repeated, verbatim, the same baseless claims against which specific, written testimony had been filed by Husband on January 4, 2021. (See Husband's point-by-point rebuttal at Section B, pages 2 – 7 in his Response and Second Declaration of March 30, 2021, incorporated by reference here as if reproduced in full.)
7. In her MFR of March 17, Wife also added a new claim, namely that Husband was "not incurring counsel fees to pursue his appeal to the Superior Court." This claim was presented without citation to a single verifiable source of information. In fact, Wife's claim was entirely fictitious.
8. Upon receiving Wife's MFR by mail on March 25, 2021, Husband immediately wrote a response in which he laid out his legal expenses since the start of his appeal, as well as his specific concerns about Wife's pattern of repeatedly filing baseless and vexatious claims in the support case and in the companion one captioned above.
9. Specifically, in his Response of March 30, 2021, Husband noted that Wife had repeated numerous false and baseless claims in her MFR and that:

[14]. In their first novel statement in the Motion to Reconsider, Wife through her counsel asserted at point 28 that: "Plaintiff is capable of meeting his own reasonable needs without APL, since Plaintiff has an earning capacity, has

very few monthly living expenses and is **not incurring counsel fees to pursue his appeal** to the Superior Court”. [Bold emphasis added.]

[15]. This compounds the wrongdoing by Wife and her counsel as it yet again makes **completely baseless and false assertions**. No evidence whatsoever was presented on the record.

[16]. It is also important to note that the Superior Court of Pennsylvania has been consistent in noting that APL is not only meant to cover living expenses, but also litigation costs:

“APL is based on the need of one party to have equal financial resources to pursue a divorce proceeding when, in theory, the other party has major assets which are the financial sinews of domestic warfare.” *DeMasi v. DeMasi*, 408 Pa. Super. 414, 420 (Pa. Super. Ct. 1991).

[17]. Furthermore, *DeMasi* also emphasizes, as Husband and his counsel have noted several times in the court record at significant financial cost to Husband, that APL continues through the end of appeals:

“if an appeal is pending on matters of equitable distribution, despite the entry of the decree, APL will continue throughout the appeal process *and any remand* until a final Order has been entered.” *DeMasi v. DeMasi*, 408 Pa. Super. 414, 421 (Pa. Super. Ct. 1991)

10. On March 24, 2021, just 7 days (5 business days) after Wife’s MFR filing, and before Husband could file his response (as quoted in the preceding), the trial court entered an order terminating APL. Thus, APL payments received by Husband were terminated before any response had been heard from Husband, contrary to the requirements of law. (Dauphin County, PA Local “RULE 208.3(b)).

11. As noted above, on April 1, 2021, Husband filed his Response to Wife’s MFR with substantial, detailed evidentiary support and legal analysis, including a Second Declaration 24 pages in length. This filing was made 13 days after Wife’s MFR had been filed.

12. With respect to legal requirement that Husband be given an opportunity to respond to a contested motion prior to an order by the trial court in favor of the

movant, Wife, Husband noted in his Response and Second Declaration of March 30, 2021:

“Of particular note, without ever issuing a show cause rule or any other deadline to respond, and within five [business] days of the March 17, 2021 filing of Wife’s Motion to Reconsider, this trial court apparently acted in Wife’s favor by suspending APL. ... Husband only received written notice of the Motion to Reconsider in the mail on March 25, 2021. Husband further notes that it is his belief that he should have been given up to 20 days to respond to a contested filing such as Wife’s Motion to Reconsider, absent a Show Cause Rule or similar order that would alter the deadline:

Dauphin County, PA Local “RULE 208.3(b) -- CONTESTED MOTIONS

(1) In accordance with Dauphin County Local Rule 208.2(d), if a moving party certifies that concurrence has been denied by a party or if a party fails to respond to the inquiry regarding concurrence within a reasonable time, said motion shall be deemed contested.

(2) Any party who fails to concur to the motion and/or the proposed order shall file an original and one copy of a response and a proposed alternative order within twenty (20) days after service of the motion, unless the time for filing the response is modified by written agreement of counsel, court order, or enlarged by another local or state rule of court. ...”.

13. On April 28, 2021, without motion from either party, equitable distribution transfers were resumed by order of the trial court, despite agreement of the parties to suspend such until after completion of Husband’s appeals.

14. On April 9, 2021, Husband filed his own motion for reconsideration of the order terminating APL of March 24, 2021. (Husband’s April 9 MFR).

15. As part of his April 9, 2021 MFR, Husband noted that he would be prejudiced without APL. Husband stated that he had in fact been spending substantial APL funds for legal counsel in his appeal. Specifically, Husband wrote in his filing that he had spent \$15,407 between November 1, 2020, and February 28, 2021, in legal fees pursuant to his appeal effort.

16. Furthermore, Husband wrote that in making responses to Wife’s repetitive and vexatious APL claims, as well as to related matters in the case, he had spent a further \$10,578.25 in legal fees during the same period. Husband also noted that these were not the total of his expenses on legal counsel for the preceding efforts as, for example, they did not include costs for March 2021, or thereafter.

17. Of particular import, Husband has repeatedly stated in filings, and at hearing in August 2021, that there has been no change in his living expenses since he moved to Wilmington, Delaware in November 2019.

18. In Husband's April 1, 2021 Response to Wife's March 17, 2021 Motion to Reconsider, Husband's former counsel noted:

"Assuming, *arguendo*, Husband had received the assets awarded to him in equitable distribution, there would remain a need for APL inasmuch as the vast majority of the assets awarded to Husband are retirement assets."

19. Former counsel's statement comports with the master's note in her report of March 13, 2020 that:

"Husband's income until retirement should be focused on first meeting his needs so that he does not have to raid his retirement accounts until retirement." (Master's Report of March 13, 2020, p. 31)"¹

20. A hearing was initially scheduled for March 24, 2021, by order of April 22, 2021. However, this date was chosen before Husband could reply that he could not attend on that date due to an anticipated transfer of his mother from a healthcare facility. The hearing was then rescheduled by order of April 26, 2021, to the alternate date which had originally been offered: June 7, 2021.

21. In the court scheduling order of April 22, 2021, and the rescheduling order of April 26, 2021, the following materials were required to be brought to the hearing of June 7, 2021:

1. A true copy of your **most recent Federal Income Tax Return, including W-2s, as filed;**
2. Your **pay stubs** for the preceding six (6) months;
3. The **Income Statement** and the appropriate **Expense Statement**, if required, attached to this order, completed as required by Rule 1910.11 (c);
4. Net income from business or dealings in property;
5. All business tax returns with all schedules and attachments, if applicable;
6. Verification of child care expenses;

¹ Calculations which more precisely show that Husband does not have sufficient funds to pay for counsel without APL are shown in the Arguments section, below. Indeed, use of support guidelines, also shown below, demonstrates that Husband should be receiving more APL, not less.

7. **Proof of medical coverage** which you may have, or may have available to you;

8. If a physician has determined that a medical condition affects your ability to earn income you must obtain a **Physician Verification Form** from the domestic relations section, sign it, have it completed by your doctor, and bring it with you to the conference.

If you intend to offer the Physician Verification Form as evidence at any record proceeding, **you must comply with the timeframes established by PA Rule of Civil Procedure 1910.29(b)(2)**;

9. Information relating to professional licenses; and,

10. Other:” [Nothing specified.]

22. The documents requested by the trial court for the June 7, 2021 hearing clearly requested income and expense information, as well as medical information.

II. STATEMENT OF FACTS

23. On April 20, 2021, at 12:58 PM ET, Husband’s former counsel, Darren J. Holst, informed Husband by email that:

“We filed a demand for hearing de novo from the administrative order terminating the APL. A hearing de novo is heard by court. There is no conference. There isn’t any new order; the hearing will be on the issue of APL continuing and whether there has been any change in circumstances to justify the other side’s request to terminate APL. **As need will be addressed, the issues of earning capacity, expenses, etc. will be addressed.** I will advise that June 7th works.” (With bold and underline emphasis added.) (See Exhibit A – DHolst, Esq., Communications.)

24. The validity of Attorney Holst’s claims to Husband according to law will be discussed in the Argument section below.

Termination of counsel upon APL termination

25. On April 20, 2021, at 1:07 PM ET, Husband informed his divorce counsel, Darren J. Holst, that due to the termination of APL, he would no longer be able to pay for his services and therefore would proceed pro se:

“As I have long made clear, without APL I can no longer afford to compensate you to prepare for further litigation. Therefore, please also enter today my appearance in your place and ship my files to my home.” (See Exhibit A – DHolst, Esq., Communications.)

Facts relevant to incomes and determination of earning capacity

26. For the following narrative statement of facts, abbreviations are used to reference location of cited evidence in the record:

- a. MRep: Master's Report of March 13, 2020;
- b. T: Transcript of the master's hearing of October 17, 2019;
- c. DivOp: Opinion of the trial court of October 9, 2020;
- d. SuppOrd: Support Order of December 26, 2017;
- e. Decl Jan 4: Declaration of January 4, 2021 attached to Plaintiff's Response to Defendant's Petition to Terminate or Suspend Alimony Pendite Lite of December 8, 2020.

27. A divorce decree was filed on October 28, 2020, ending the marriage of Husband Robert P. Bauchwitz and Wife Ann M. Rogers of Hershey, PA. (Order of Oct. 28, 2020). Husband was born May 3, 1960 (currently 61 years of age) and Wife was born August 18, 1960 (currently 60 years of age). The marriage lasted twenty-seven years and four months until separation. (MRep. p.5). Before the marriage, Wife had obtained a medical degree and postgraduate clinical training. Throughout the marriage she worked as a surgeon (MRep at p.5), and testified that she intended to continue doing so until at least the age of 67 (T. pp.49-50). Wife's income, after a one year fellowship ending in 2007, increased from \$309,393 in 2008 (Exhibit P-1) to \$468,416 in 2019, which was Wife's last income disclosed in the record. (MRep p.6). Wife's net income was calculated at that time to be \$25,374 per month (MRep p.6 at point 32).

28. Prior to the marriage, Husband was trained as a medical scientist, but Husband was never licensed to practice medicine. (MRep at p.7). Husband became involved in a federal *qui tam* research misconduct lawsuit in 2004, about which the master noted: "Husband did agree to move to Hershey, Pennsylvania in 2007 for Wife's career. However, at that time, because of his whistleblower lawsuit, his career in government research was over." (MRep. p.46). Instead, "[a]fter Husband relocated to Hershey, he began his own business first known as Bauchwitz Laboratory but later changed to Amerandus Research." (MRep p.7 citing T. pp. 119-123). These businesses were started by "joint decision" with Wife. (Wife's testimony at T. p.70). Husband further noted in testimony that he had been specifically harmed

in moving forward with his career by a former employer's removing his academic title in 2004 without explanation, shortly after he began working with an agency of the federal government on the *qui tam* case (T. p.117). Furthermore, Husband testified that even as late as 2017, he and his counsel were concerned about evidence indicating that the same former employer was involved in tortuously interfering with his licensing of genetically modified mice produced by his business. (T. pp. 123-124; Decl Jan 4 attachment pp.29-31). Ultimately, Husband made no income from the *qui tam* suit (T. p.115) or the licensing of strains of genetically modified mice he had produced in his business (MRep p.7).

29. Early in the marriage Husband was employed in a scientific research fellowship from which he received stipends that had no Medicare earnings. (MRep p.7). The income history of Husband and Wife are found in Social Security statements filed with Master's Report of March 13, 2020 (MRep) as exhibits P-3 for Wife and D-22 for Husband. Husband's peak, full year W-2 wage earnings as a biomedical scientist were from 2001 through 2006 (MRep Exhibit D-22). During this time, his average income was \$67,664. Husband's last employed W-2 income before separation occurred in 2010 as a part-time, adjunct lecturer for \$7,240 (for one semester). (T. p.68). Husband had no further wage income after 2010 through to separation in the fall of 2017 since he did not draw any wage from his self-employment.

30. Husband testified about the financial harm to his business from the unexpected separation by Wife in 2017, and to his extensive post-separation efforts to obtain employment, including through the use of recruiting firms (T. pp. 124-128). Husband has not obtained high-income employment to the present, not only in his career field ("Wife admitted that because Husband brought a "whistleblower" lawsuit against his former employer, he most likely would not be able to obtain employment in the research area" (MRep p.15)), but in several others as well. More specifically, Husband testified to various factors that he had come to believe might have been affecting his employability beyond the involvement in a *qui tam* suit against a former employer, including the decade without earnings history, his lack of

employment experience for high-paying jobs outside of his field, his advanced age, and his need for accommodations for medical limitations on work. (T. p.130-132)

31. Regarding medical issues, the master noted that: “Husband’s health has deteriorated since separation in 2017 and he has lifting restrictions”. (MRep p.8 point 50). More specifically, she also stated that Husband had been diagnosed with osteoporosis, osteoarthritis, and degenerative disc disease, had been treated for head and neck cancer in 2018, and was being followed for a mediastinal mass. (MRep p. 4). With respect to the osteoporosis, Husband testified to fractures of his spinal column, including with multiple fractures at T-12 in 2015. (T. p.97). Husband further testified that he was not physically capable of working in a laboratory due to his osteoporosis with history of back fractures and osteoarthritis. (T. p.130). Wife, a physician who had followed Husband’s medical course in detail during the marriage, did not challenge any of the medical claims of Husband. With respect to post-separation employment obtained, the master’s report of March 2020 stated, “Husband is employed on a part-time basis as a substitute teacher earning \$52 gross income per day.” (MRep p.25 citing exhibit D – 17).

32. On November 29, 2017, a Support Conference was held by Dauphin County Domestic Relations. (SuppOrd p.2). The purpose of the conference was to make a determination about *alimony pendite lite* based on net incomes of the spouses. More specifically, the Support Order of December 26, 2017 stated in relevant part at pp. 2-3:

“The plaintiff & his attorney appeared for the conference on 11/29/17. The defendant did not appear, but was represented by her attorney. The case was taken under advisement *in order to consider the earnings of the plaintiff*. ... [Guideline calculation and payment discussion omitted.]

The plaintiff [Husband] worked a regular income job back in 2007 at \$35,476.00/year gross. In 2006, the parties moved to PA from NY for defendant's job. The parties agreed in 2007 that the plaintiff would stay at home with the children, who graduated in 2001 & 2013. In 2011, he established a business in which the defendant was the main investor in. He is seeking a full time job & has experience as a Fraud Examiner in which he states the starting salary is \$44,000/year gross. Since the parties separated he has been living off his own's savings money. The defendant's counsel argues the plaintiff has been working on a Qui-Tam Fraud case, but plaintiff stated he is "not" a Certified Fraud Examiner. He does have a lot of consulting

experience similar to Certified Fraud Examiners. Thus, why the plaintiff was held to an average of the \$44,000.00/yearly gross & \$100,000.00/yearly means of a Certified Fraud Examiner per PA job research.”

33. The record quoted in the preceding indicates that no document other than one concerning the average starting income (\$44,000/year) of a person holding a fraud examiner certification (C.F.E.) was presented by Husband to the Conference Officer concerning his earning capacity. Husband also clarified in records submitted to Wife’s vocational expert that he had stated that he was not a “C.P.A”, which the Conference Officer apparently misheard as “C.F.E.” (Decl Jan 4 attachment pp. 48-50). Testimony of Husband’s specified, and testimony of Wife supported, that Husband had obtained his C.F.E. in 2016, the year before the 2017 Support Conference. (T. p.39 and p.199) The importance of not having had a C.P.A. was also discussed in the vocational documents presented to Wife’s expert; namely, that the \$100,000/year income for those with C.F.E.’s cited by the Support Officer was for individuals with C.P.A.s at their peak career, not for those with Ph.D.’s who were within 1-3 years of having been certified. (Decl Jan 4 pp. 48-50). The record also shows no indication of testimony at the Support Conference about medical limitations or other issues which could affect earning capacity.

34. On January 23, 2018, Husband filed for a *de novo* hearing concerning the earning capacity ascribed by the Support Officer. On May 30, 2018, Husband’s attorney handling the support matter filed a “Motion to Withdraw Demand for De Novo Hearing” in which she cited Petitioner’s recent cancer diagnosis. (The motion was verified by the attorney “due to the unavailability of my client”.) On June 1, 2018, the court ordered Wife to file a response to the motion by Husband’s counsel to withdraw his request for a *de novo* hearing; Wife did not concur with the request to withdraw the demand for hearing. On June 14, 2018, the motion to withdraw the demand for a support hearing was denied by order of the court.

35. During substantial times in June and July, 2018, Husband was hospitalized, and thereafter was undergoing rehabilitation for the effects of cancer treatment. (T. pp. 97-98). On July 6, 2018, the court issued an order rescheduling the *de novo* hearing due. On August 29, 2018, Husband’s support counsel petitioned the court to

withdraw as counsel. Husband did not agree to counsel's withdrawal, despite a disagreement having arisen concerning counsel's change in strategy. (Declaration as Exhibit to Response of Jan. 14, 2021 p.14). The original strategy, to which Husband had agreed, relied upon Husband's expert witness and making a full record of factors affecting Husband's earning capacity. (Ibid.) During Husband's hospitalization, however, his support counsel had changed her strategy to a novel insistence on focusing on cancer and its effects, which she believed rendered Husband to have a "zero" earning capacity, as the court purportedly would not be able to determine when his recovery would be sufficiently complete for employment. (Ibid.) Husband's divorce counsel declined to take the *de novo* hearing scheduled for September 15, 2018, citing lack of time to prepare. (Ibid.) Husband then retained an employment attorney who was willing to take the *de novo* support (and divorce) case if he could get a continuance, which was granted by order dated September 12, 2018. Wife's counsel wrote on November 20, 2018, to Husband's counsel to state "I have told you several times that I did not request a *de novo* hearing in the support matter. Dr. Bauchwitz had already done so, meaning that I had no reason to request a hearing", a claim seemingly at variance with the court record as cited above, but nevertheless taken as a withdrawal of demand for hearing by Wife. Husband's counsel then chose to litigate the matter at the master's hearing rather than at the *de novo* hearing. The *de novo* hearing ultimately was not held.

36. A master's hearing was held on October 17, 2019. The master filed a report of her recommendations for equitable distribution of marital assets and alimony on March 13, 2020. In addition to the statements from the master's report noted above in which the effects of Husband's whistleblowing (*qui tam* relator) history and physical limitations on his employment were specified, she also noted with respect to his earning capacity that:

"When questioned as to whether he had provided any evidence of the job searches he had undertaken, Husband indicated that that documentary evidence had been presented to the domestic relations office in the support case. T. p. 195. In regard to any medical limitations, Husband likewise testified on cross-examination that he had provided documentation regarding his health situation to the domestic relations office in the support matter. T. p. 196. Given that the domestic relations office had this

documentation and considered it in its determination, whereas no such documentation was provided at the hearing, the earning capacity determined by the domestic relations office remains appropriate in this matter.” (MRep p.26). [Underlining emphasis added]

37. The answer cited by the master at T.195 states: “Q. You said you conducted job searches at least in 2017 and 2018. You haven't provided any evidence of those job searches, correct? A. I think a lot of evidence presented in the reports **to your party** before the support conference last year, so you should have.” Husband’s testimony does not mention providing documentation of job search efforts to Domestic Relations. However, with respect to medical restrictions, as cited by the master on T. p.126, there may be a basis for confusion:

“Q. You haven't provided any evidence of any medical restrictions that you have as far as your vocational ability, correct?

A. **Same answer.** I believe I've provided exhibits and the letters from all the doctors and the -- and the vocational expert was made -- same one from last year and the same doctors, all the same **as in the support conference.** I presented -- we represented all of that information and, you know, would have expected them to testify if need be. I presented all of that information.” [Font emphasis added.]

The “same answer” could reasonably be taken to mean the antecedent, “to your party”. However, the master may have relied in part on the subsequent statement, “as in the support conference”.

38. Given the materiality of several hard to comprehend, absent, or otherwise erroneous statements in the hearing transcript, such as the one preceding, Husband filed an Application for Correction of the Original Record with the Superior Court on February 26, 2021. The Superior Court remanded the record to the trial court on March 4, 2021. By order of March 22, 2021, the trial court ordered a listing of issues with the transcript claimed by Husband. Husband filed his list of transcript issues on April 1, 2021, at which time he attached a letter from a consulting expert he had retained who examined the transcript and noted numerous likely transcription errors that warranted review and correction. The court reporter identified sixteen errors in a filing of April 19, 2021, but those corrections did not include many of those questioned by Husband and his consulting his expert. The trial court quickly

took the court reporter's errata as a full and complete accounting and returned the docket filings to the Superior Court by order of April 28, 2021. During that same time, Husband had submitted a Demand for Hearing (filed May 3, 2021). The Demand for Hearing was taken as a Motion to Vacate by the trial court and denied on May 6, 2021. Despite the factual dispute, the trial court did not provide opportunity for further discovery and hearing. On May 26, 2021, Husband filed a notice of appeal on the transcript original record matter (647 MDA 2021).

39. Regardless of the difficulties with the transcript in this case, the actual support order of December 26, 2017, as quoted above, makes no claim at any point that any other documentation was presented, or factors taken into account, with respect to determination of Husband's earning capacity, including not the results of job searches or medical limitations. Furthermore, there were several other points in the master's hearing of October 17, 2019, in which Husband discussed such matters, and the master even cited those in her report (such as "lifting limitations"; see above). Therefore, Husband filed objections (as exceptions) to the preceding claims concerning assessment of earning capacity on April 29, 2020.

40. The trial court presented its *de novo* review of the master's report in its opinion of October 28, 2020. The master's findings were all upheld by the trial court with the exception of claim by Husband of a due process violation by the master, who Husband argued had violated his due process rights by failing to hold an evidentiary hearing before awarding fees to Wife. (DivOp p.16)

41. On November 25, 2020, Husband filed a notice of appeal to the Superior Court (1499 MDA 2020). On January 6, 2021, Husband filed a Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b), in which he specified not only his contention that the division of assets and/or lack of alimony recommended by the divorce master and sanctioned by the trial court would produce a significant economic injustice, but also that the *de novo* review process by the trial court was significantly impaired.

42. Despite the seeming finality of the divorce decree of October 28, 2020, and thereby the economic matters it dealt with as summarized above, litigation in the case has continued to the present (June 26, 2021) because of multiple filings by Wife

to terminate Husband's APL before the conclusion of the appeals process, as well as sua sponte reversal of equitable distribution by the trial court. (See Procedural History, above.)

43. A support hearing of June 7, 2021, was aborted while Husband was giving his opening statement and direct examination in order to require briefs as to whether the hearing was appropriate. (Order of June 7, 2021). This brief is in response.

Disclosures to opposing party

44. In preparation for the June 7, 2021 hearing, Husband had made several disclosures to the opposing party relevant to exhibits and witnesses he intended to present at the June 7, 2021 evidentiary, hearing of record. (The law on disclosure will be discussed in the Argument section of this brief.)

45. On May 17, 2021, over 21 days prior to the scheduled June 7, 2021, hearing, Husband made disclosure of the following by First Class Mail (with certificate of mailing) to opposing party counsel James Demmel Esq.:

“Please find my disclos[ure] of “EXHIBIT AND WITNESS LISTS OF PLAINTIFF HUSBAND FOR APL TERMINATION HEARING” along with associated documents ... “. (See Exhibit B - Certification of Mailing to JDemmel, and Exhibit C - Exhibit and Witness List Disclosed to Opposing Party.)

46. On May 18, 2021, more than 20 days before the June 7, 2021 hearing, the same documents as described in the preceding point were to Attorney Demmel by email. (See Exhibit D – JDemmel, Esq., Communications.)

47. On June 1, 2021, at 11:11 PM ET, 6 days prior to the June 7, 2021 hearing, Husband made additional disclosures to opposing counsel Demmel:

“Mr. Demmel,

If you did not get an email from me sent at 11:07 PM ET today with 8.8 MB of updated disclosed materials for the June 7, 2021 hearing, please respond by email to let me know. The attachments sent were as follows:

6 months of pay stubs.

An updated income statement.

An updated expense statement.

Excel files with present value (PV) of future earnings tables.

Please also note that in the original disclosure at point 11., the page numbers were referring to those of the exhibits to the First Declaration (which nonetheless was disclosed in its entirety). For the sake of clarity, each of the specified exhibits is now separately attached here as:

PL_Ex_11a. pp. 1-2
 PL_Ex_11b. pp. 3-7
 PL_Ex_11c. pp. 12-16
 PL_Ex_11d. pp. 19-28
 PL_Ex_11e. pp. 29-31
 PL_Ex_11f. pp. 47-50
 PL_Ex_11g. pp. 51-53

I also provide the following exhibits as individual pdf files:

PL_Ex_10a pp. 1-11
 PL_Ex_10b pp. 11-18

Robert Bauchwitz” (See Exhibit D – JDemmel, Esq., Communications.)

Notices to and Preparatory Information from the Court Administration

48. On May 21, 2021 at 10:17 AM ET, 17 days before the June 7, 2021 hearing, Husband provided to Cecelia A. Kone of the Dauphin Domestic Relations administration a Physician Verification Form. (“Thanks for all the help by phone just now, Ms. Kone. As you requested, please find attached the Physician Verification Form. Robert Bauchwitz”) (Exhibit E – Cecelia A. Kone, Dauphin County Court Administration, Communications.)

49. On May 27, 2021, at 10:17 AM ET, 11 days before the June 7, 2021 hearing, Husband wrote an email to the Dauphin County Domestic Relations administrator Cecelia A. Kone, with copy to his expert witness, to memorialize an earlier telephone conversation confirming the ability of his expert witness to attend the June 7, 2021 hearing after it had been rescheduled from 1:30 PM to 3:00 PM:

“Thanks, Ms. Kone. I will then memorialize here for my expert witness that he can in fact attend the hearing in person, as you've stated previously, so long as he enters properly masked. It is a long drive for him so I can understand his interest in certainty.” (Exhibit E – Cecelia A. Kone, Dauphin County Court Administration, Communications.)

III. LEGAL AND FACTUAL QUESTIONS

A. Did termination of Husband's APL comport with legal requirements?

(Suggested answer: No.)

B. Did Husband's appeal of his APL termination comport with law?

(Suggested answer: Yes.)

C. Did a de novo support hearing on APL termination involve matters of income, expenses, and earning capacity?

(Suggested answer: Yes.)

D. Has Husband demonstrated a need not only for restoration of APL, but for an increased APL according to net-income based modification guidelines, and through his disclosures that the expenses he bears, which are intended by law to be covered by APL, are greater than his income, earning capacity, and even the application of his non-retirement funds, were the latter to be made available?

(Suggested answer: Yes.)

E. Did Husband properly provide notice of exhibits and witnesses for the APL termination appeal hearing to opposing counsel, and did opposing counsel timely object?

(Suggested answer: Yes and No.)

F. Should the APL termination hearing be continued, and is demand that it be so prior to September 20, 2021 supported by law?

(Suggested answer: Yes.)

IV. ARGUMENT**A. Termination of Husband's APL did not comport with legal requirements.**

50. The June 7, 2021 hearing was requested as an appeal by Husband's former attorney upon the termination of alimony pendite lite (APL) to Husband by order of March 22, 2021. That order reversed a prior order of February 26, 2021, i.e. only three weeks earlier, which had denied an almost identical filing of December 8, 2020 by the opposing party, also seeking to terminate or suspend APL to Husband.

51. Title 231, Rule 1910.19 concerning “Support. Modification. Termination. Guidelines as Substantial Change in Circumstances. Overpayments”, deals with termination of support and states that:

(a) A petition for modification or termination of an existing support order **shall specifically aver the material and substantial change in circumstances upon which the petition is based.**” (231 Pa. Code § 1910.19)”

52. Husband and his prior counsel have on several occasions, including in their filings of January 4, 2021, March 30, 2021, and April 9, 2021, noted that there were **no material changes in Husband’s economic circumstances**. In doing so, we presented many actual numbers concerning Husband’s finances.

53. However, the opposing party has persisted in not presenting any numeric or other specific evidence in support of their claims.

54. Therefore, the order of February 26, 2021 was appropriate in denying their claims to terminate or suspend APL.

55. Husband further noted that the opposing party, in its Motion for Reconsideration (MFR) of the order of February 26, 2021 denying their petition to terminate or suspend APL, made only a single new fiscal claim, (see Procedural History, above), but they failed to “specifically aver the material and substantial change in circumstances upon which the petition is based”.

56. It is not sufficient to cite case law alone as a basis to meet the requirements of 231 Pa. Code § 1910.19. Actual evidence of material and substantial change in Husband’s financial circumstances is required.

57. Not only does Husband assert that there was there no basis for reversing the order of February 26, 2021 under 231 Pa. Code § 1910.19, but there also was no opportunity provided for Husband to be heard before the order was issued. Again, this suggests a due process problem.

58. In *Jayne v. Jayne*, 443 Pa. Super. 664 (Pa. Super. Ct. 1995), the purpose and duration of APL was summarized as follows:

“Alimony **pendente lite** means alimony or maintenance "**pending litigation**" and is payable during the pendency of a divorce proceeding **so as**

to enable a dependent spouse to proceed with or defend against the action. *Heilbron v. Heilbron*, 158 Pa. 297, 27 A. 967 (1893); *DeMasi v. DeMasi*, 366 Pa.Super. 19, [530 A.2d 871](#), *alloc. denied*, 517 Pa. 631, 539 A.2d 811 (1987). Alimony pendente lite is designed to be temporary and is available to those who demonstrate the need **for maintenance and professional services** during the pendency of *679 the proceedings. *DeWalt v. DeWalt*, 365 Pa.Super. 280, [529 A.2d 508](#) (1987); *Pollice v. Pollice*, 277 Pa.Super. 1, 419 A.2d 630 (1980).

The obligation to pay alimony pendente lite continues following the entry of the bifurcated divorce decree **until all economic issues have been resolved**.^[4] *Horn v. Horn*, 388 Pa.Super. 46, [564 A.2d 995](#) (1989). This court has held that this obligation continues **even after the entry of a final decree in equitable distribution** when an appeal remains pending and terminates only after all litigation has ended. *DeMasi v. DeMasi (II)*, 408 Pa.Super. 414, [597 A.2d 101](#) (1991). We have also held, however, that alimony pendente lite may be terminated before the litigation is concluded where the recipient has acquired assets or income which sufficiently equalizes the financial ability of the parties to pursue the action. *See, e.g., Nemoto, supra; Spink v. Spink*, 422 Pa.Super. 126, [619 A.2d 277](#) (1992).

In *Nemoto*, we had occasion to review a trial court's termination of an alimony pendente lite order. We recognized that the termination of litigation involving divorce and equitable distribution matters unquestionably results in the cessation of an alimony pendente lite order. *Nemoto*, 423 Pa.Super. at 280, 620 A.2d at 1221. We pointed out, however, that "[t]his rule does not mean . . . that *only* the termination of the litigation may mark the end of APL [alimony pendente lite]." *Id.* (emphasis in original). If the spouse who had been receiving alimony pendente lite has acquired assets or income **which sufficiently equalized the financial resources of the parties** to pursue the action, then alimony pendente lite may be discontinued. *Id.* (citing *Spink*, 422 Pa.Super. at 132, 619 A.2d at 279). The record in *Nemoto* showed that wife had adequate assets and income available to her through equitable distribution, alimony, and her own earning capacity so that she could litigate the case as she chose. *Nemoto*, 423 Pa.Super. at 280-81, 620 A.2d at 1221-22."

59. Given that any case-related legal expense, and not solely those expended on appeals would remain covered by APL, it is clear that there was no evidence which could reasonably have been expected to sustain Wife's claim made in her MFR of March 17 that Husband was without legal expenses relevant to Pennsylvania support laws (*Jayne, supra*).

60. Consequently, Husband noted in a Motion to Vacate Equitable Distribution Transfers of May 12, 2021:

“Wife’s novel claim in her MFR of March 17 that Husband was no longer paying legal fees, including for his appeal, was yet again completely without evidentiary support. This is a particularly remarkable claim in a financial sense since it was Wife’s filings concerning APL and ED transfer which were producing significant legal fees for Husband.

The argument that merely because Husband had filed *pro se* with the Superior Court he no longer had any legal fees was grossly unlikely to be true. Clearly Husband had counsel of record who was being paid to respond to the repetitive, obdurate, vexatious, bad faith claims by Wife in the APL matter. In fact, he has counsel assisting him in the appeal as well. Wife’s new assertion about Husband’s legal fees is another clear example of Wife and her counsel simply fabricating false claims.”

B. Husband’s appeal of his APL termination did comport with law.

61. Rule 1910.11. “Office Conference. Subsequent Proceedings. Order.” states:

“(f) ... **Each party shall be provided**, either in person at the time of the conference or by mail, **with a copy of the interim order** and written notice that any party may, **within twenty days after the date of receipt** or the date of the mailing of the interim order, whichever occurs first, **file a written demand with the domestic relations section for a hearing before the court.**

(g) A demand for a hearing before the court shall not stay the interim order entered under subdivision (f) unless the court so directs.

(h) If no party demands a hearing before the court within the twenty day period, the interim order shall constitute a final order.

(i) If a demand is filed, there shall be **a hearing de novo before the court.** The domestic relations section shall schedule the hearing and give notice to the parties. The court shall hear the case and enter a final order substantially in the form set forth in **Rule 1910.27(e) within sixty days from the date of the written demand for hearing.**”

62. The preceding rule was cited in *Asin v. Asin*, 456 Pa. Super. 515, 522 (Pa. Super. Ct. 1997):

“Under Pennsylvania Rule of Civil Procedure 1910.11, any party to a support action may file a written demand for a hearing before the trial court after the court has entered an interim support order based upon a domestic relation officer's recommendation. Pa.R.C.P. 1910.11(f). "If a demand is filed, there shall be a hearing de novo before the court." Pa.R.C.P. 1910.11(i). This Rule grants parties **an absolute right to a de novo hearing on the issues**

surrounding the support order. *Warner v. Pollock*, 434 Pa. Super. 551, 558, 644 A.2d 747, 751 (1994).” *Asin v. Asin*, 456 Pa. Super. 515, 522 (Pa. Super. Ct. 1997)

63. Consistent with the preceding, the Order of March 24, 2021 which terminated APL to Husband stated:

“NOTICE OF RIGHT TO REQUEST A HEARING: The parties are hereby advised that they have until April 13, 2021 to request a hearing de novo before the Court.”

64. On April 9, 2021, Husband timely filed a demand for de novo hearing pursuant to Rule 1910(f).

C. The de novo support hearing on APL termination properly involved matters of income, expenses, and earning capacity.

65. Earning capacity is a primary component of those APL spousal support calculations.

66. Earning capacity is also relevant to a determination of whether there has been any material change in economic circumstances that would warrant a termination of APL under Pa. R.C.P. **Rules 1910.19** - Support. Modification. Termination. Guidelines as Substantial Change in Circumstances, **Rule 1910.16-2** - Support Guidelines. Calculation of Monthly Net Income, and **Rule 1910.16-4** - Support Guidelines. Calculation of Support Obligation, Formula, 231 Pa. Code § 1910.16-4(2), and **Rule 1910.16-5**. Overall, note:

Rule 1910.11 - Office Conference. Subsequent Proceedings. Order 231 Pa. Code § 1910.11

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“an Income Statement and, if necessary, an Expense Statement on the forms provided in Pa.R.C.P. No. 1910.27(c) and completed as set forth in subdivisions (c)(1) and (2).

- (1)** The parties shall provide the conference officer with a completed:
 - (i)** Income Statement as set forth in Pa.R.C.P. No. 1910.27(c)(1) in all support cases, including high-income cases under Pa.R.C.P. No. 1910.16-3.1; and
 - (ii)** Expense Statement as set forth in Pa.R.C.P. No. 1910.27(c)(2)(A), if a party:
 - (A)** claims that unusual needs and unusual fixed expenses may warrant a deviation from the guideline support amount pursuant to Pa.R.C.P. No. 1910.16-5; or
 - (B)** seeks expense apportionment pursuant to Pa.R.C.P. No. 1910.16-6.

(2) For high-income support cases as set forth in **Pa.R.C.P. No. 1910.16-3.1**, the parties shall provide to the conference officer the **Expense Statement in Pa.R.C.P. No. 1910.27(c)(2)(B)**.
(231 Pa. Code § 1910.11)

67. Therefore, it is necessary here to know not only expenses with and without attorneys' fees, but also actual monthly income.

E. Husband has demonstrated a need not only for restoration of APL, but for an increased APL

68. As shown in the Income Statement provide to the trial court at the June 7, 2021 hearing by order, 88% of Husband's assets from equitable distribution would be in the form of retirement funds.

69. With respect to the retirement funds, the master wrote in her report:

"Husband's income until retirement should be focused on first meeting his needs so that he does not have to raid his retirement accounts until retirement." (Master's Report of March 13, 2020, p. 31)

70. Therefore, the question posed here, as Husband was in the process of presenting the same at the June 7 hearing before it was cut-off, is whether he would have **sufficient non-retirement assets**, even if equitable distribution were to proceed, to meet spousal maintenance needs ***and to cover legal costs***.

71. As the calculations provided below, and which were begun to be entered into the record of the June 7, 2021 hearing clearly show, the answer is ***no***.

72. This should not be surprising. Litigation costs have been greatly raised by Wife and her counsel's repeated and baseless filings to terminate APL, especially since the divorce decree was issued at the end of October 2020. (But it is noted that, remarkably, her counsel had already made such a filing shortly after the master's report was filed in March of 2020 when it was manifestly obvious that there was no divorce decree, nor change in economic circumstances of the obligee alleged.)

73. At the same time, as shown in Husband's Income and Expense filings, Husband's underlying non-legal expenses have not changed in net.

74. Finally, just as Husband showed in his Declaration of January 4, 2021, legal expenditures are so great that he has continued to spend his savings, ***even with APL***.

75. As will be shown below, previous APL levels would remain insufficient, by an examination of income and expenses, even assuming Husband used **all** his pre-retirement assets as income between the present and Husband's turning 67 years of age.

76. The insufficiency of funds from equitable distribution remains even if the 10% additional funds meant to cover Husband's needs according to the master's report is considered – **along with tax consequences** of using such funds. (See financial presentation, below).

77. Therefore, at a minimum, a need to restore APL back to the date of termination is necessary.

78. Finally, an economic analysis using the support guidelines will show that, given the increase in Wife's already extremely large annual income between 2017 and 2020, the APL level should be **INCREASED**.

Basis for Support Calculations

69. The basis of the support calculations that led to APL originally being granted were included in an order of December 26, 2017 by the Dauphin County Domestic Relations conference officer.

70. Title 231 Pa.R.C.P. Rule 1910.16-1 states that:

“there is a rebuttable presumption that the guideline-calculated support amount is the correct support amount.”

71. Title 231 Pa.R.C.P. Rule 1910.16-2 – “Support Guidelines. Calculation of Monthly Net Income” clearly deals with INCOME and states:

“Generally, the support amount awarded is based on the parties' monthly net income.”

72. Husband repeats here the presentation he began at the June 7, 2021 hearing in order to demonstrate that earning capacity is appropriately considered in determining realistic income for purposes of support, and that deviations in APL from the guideline calculated amount can involve expenses.

Income

73. Husband's current incomes were presented to the opposing party in his Income Statement 21 days and in updated form 6 days prior to the June 7, 2021 hearing. Final versions required by court order of April 26, 2021 were submitted to the trial court as Plaintiff's Exhibit 1 (Exhibit F - Income Statement Plaintiff Husband.)

74. Husband's net support guideline income from wages, interest, dividends, and one-time government payments and refunds were approximately \$1385/mo.

Assets

75. Husband's data showed that he had accessible from non-retirement investment accounts \$87,416. He further specified that if the opposing party would release the TD Ameritrade funds as it had been asked to do in 2020, then he would have access to \$103,808.² A Vanguard joint account was transferred to Husband, bringing his total accessible non-retirement account assets to \$266,085. This number does not include debts owed for outstanding attorney charges of approximately \$6000 for April and May. (It also does not include the TDAmeritrade or Bitcoin balances, to which he has no current access.)

76. Husband has retirement accounts totaling \$333,370. He also has a pension, which if still convertible, would had been valued in 2019 at \$89,247. Early access of these retirement accounts could also incur taxes, which would reduce the income to him. Regardless, as the master wrote in her report:

"Husband's income until retirement should be focused on first meeting his needs so that he does not have to raid his retirement accounts until retirement." (Master's Report of March 13, 2020, p. 31)

² Husband also noted that he had 1.22 Bitcoin, but as he reported to the opposing party a few weeks prior in his disclosures, he could not access those funds. He has not received a response from the company holding his Bitcoin account as to what the problem is, but he has received several mailings which seem to offer to provide funds similar in value to him for a fee. (10% of the peak value.) Therefore, Husband proposes here to issue a subpoena on the company holding his Bitcoin account to release all logs and other records which relate to that account at their institution.

Therefore, Husband will not further consider the accessible retirement funds here, as this is a matter on appeal.

77. A computation of net monthly income from non-retirement accounts now available to me can be made by amortizing my non-retirement savings from the present until I can reasonably begin accessing my retirement funds. Since I have 6 years until the age of 67 and I have between \$266,085 and \$320,600 of non-retirement assets, assuming no market losses, these assets should provide a net monthly income of $(6 \times 12 - 1 = 71 \text{ months})$ **\$3748 - \$4515/mo.**

78. Given a total net income per support guidelines of \$1385/mo in wages, interest, dividends, and one-time government payments and refunds, and the amortized non-retirement assets just mentioned, Husband therefore might be able to obtain net income of about **\$5133/mo**, (and up to \$5900/mo if he get access to all the funds mentioned).

79. However, under this sort of simplistic amortization scheme, Husband would have essentially **no reserve funds** as he approached the age of 67. It is therefore Husband's contention that a portion of his current assets should be set aside for unforeseen medical, home, auto and other costs, rather than completely spent down as income.

80. Therefore, as part of any alteration of the baseline APL calculations based on net income, Husband asks here under the deviation standards noted in Rule 1910.16-5 be employed to set aside funds intended for a reserve fund be established from my current assets that would not be expected to be used for income. Husband's understanding is that at least one year of expenses should be retained in reserve.

81. Husband also requests that deviation factors be used to account for the depletion of interest and dividend income due to capital drain, and also due to the highly unlikely continuation of coronavirus stimulus income.

Expenses

82. An Expense Statement pursuant to Rule 1910.27(c)(2)(B) was provided to the opposing counsel 21 days prior to the June 7, 2021 hearing, and an updated version was provided 6 days prior to that hearing. A further update was also

presented to the Court on June 7, 2021, which incorporates new charges from a law firm which were received in an invoice of May 5, 2021, as well as other revisions. Husband provided his Expense statement to the trial court. (Exhibit G - Expense Statement Plaintiff Husband.)

83. Husband believes that a significant issue underlying the claims by Wife is whether attorneys fees are intended to be covered by APL. Husband repeats the statements made in filings by my former counsel that attorneys fees are covered by APL under Pennsylvania law. (e.g. as we cited from *DeMasi v. DeMasi*, 408 Pa. Super. 414 (Pa. Super. Ct. 1991).

84. Husband's total expenses without legal costs were \$59,095/yr => \$4925/mo (Master's report stated at p. 8: "Husband has reasonable monthly expenses of \$4,881".)

85. Therefore, there was **no material change** in Husband's expenses, excluding legal fees and related costs. The reason was that even though home payment expenses went down, healthcare insurance and out of pocket medical expenses went up, as did costs to maintain a 15 year old car.

86. APL was originally awarded before legal fees were significant. The law, however, does permit APL use for legal fees, and it is this purpose that distinguishes APL from ordinary spousal support.

87. Husband's legal fees in this case have increased substantially to **\$6631/mo.**

88. Husband avers that it was not proper for the opposing party to claim in its filing of March 17, 2021, without evidence, that he had no legal fees related to his appeals solely because Husband appeared *pro se* in the Superior Court.

89. Even more troubling is that the opposing party must have known and could easily have checked with Husband's then counsel of record that he was being paid for representing Husband. This was also made clear in Husband's Response of January 4, 2021.

90. The failure to acknowledge legal fees by Wife and her counsel are especially problematic since at least 30% of the legal fees incurred since the appeal was taken late last year have been associated with opposing party's filings to terminate or suspend APL. (Response and Declaration of January 4, 2021.)

91. Husband's total current monthly costs with legal expenses was **\$11,556/mo.** (until the recent termination of his divorce counsel, Holst; see Expense Statement as submitted at the June 7, 2021 hearing, and attached). This is far greater than the amount of APL, which was **\$6735/mo.** This explains why Husband reported in his filings earlier this year (*Ibid.*) that much of the legal fees were already being funded by his savings.

92. Therefore, even if Husband did amortize all of his non-retirement assets to provide income of perhaps \$5100/mo, this would NOT cover his current legal expenses.

93. Amortization of these assets would also not cover his anticipated reasonable expenses in the future, as presented in bracketed numbers in the Expense Statement.

Support Guideline Calculations

94. Spousal Support Guidelines used to produce the APL cited in the December 26, 2017 order, for the case of no dependent children, can also be used again here. This is done to compare the APL expected based on the support guidelines under various earned incomes.

95. These guidelines are reflected in Rule 1910.16-4 - Support Guidelines. Calculation of Support Obligation, Formula, 231 Pa. Code § 1910.16-4(2) "The formula in Parts I through IV is for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite*" *PART IV. Without Dependent Children:*

Spousal Support Guideline Calculations without Dependent Children

Spousal Support Guideline Calculation without Dependent Children	Dec 26, 2017 Order	Mar 13, 2020 Master's Report	June 7, 2021 Act Husb Income	June 7 2021 w amortized assets
1. Obligor's Monthly Net Income	21,360	25,370	25,370 []	25,370 []
2. Less All Other Support	0			

3. Less Obligee's Monthly Net Income	4364,37	4423	1127	5133
4. Difference \$	16,995.69	20,947	26,497	20,237
5. Multiply by 40%	40%	40%	40%	40%
6. Amount of Basic Spousal Support	6798.28	8379	9697	8095
7. Adjustment for Other Expenses	-63.58			
8. Total Monthly Spousal Support	6735	No increase APL and no alimony		
Change	-	+1699	+2962	+1360

The preceding summary of Husband's calculations were submitted at the June 7, 2021 hearing as Plaintiff's Exhibit 3. (Exhibit H - Spousal Support Guideline Calculations Without Dependent Children.)

96. These calculations indicate that the increase in the opposing party's income from 2017 to 2020 could have led to an increase in APL payments of \$1360 to almost \$1700/month.

97. Therefore, it probably not of great significance how much Husband's income changes in terms of calculating APL when the opposing party's income is so large by comparison. If so, then it seems that instead of a termination of APL, it should be corrected upwards.

98. Doing so would be particularly fair in this case, because Husband believes that the actual costs of attorneys fees have been driven up by excessive and baseless litigation by the opposing party, as he presented in his First Declaration of January 4, 2021 and his Second Declaration of April 9, 2021.

99. As Husband stated in the record (*Ibid.*), not only did he not make any money from APL, but he has spent tens of thousands of dollars of his own savings to litigate the case.

100. As Husband also noted specifically in his Second Declaration of April 9, 2021

beginning at point 19, page 10:

k. ... Husband's total expenditures during the period Nov 1, 2020 – Feb 28, 2021, were \$35,338.47.

l. Of the preceding, the appeal specific costs came to about 45.3% of spending, the divorce costs about 30%, and the remaining 25% were other living expenses as detailed above.

m. Thus, while Wife asserts without evidence that Husband as spent ZERO on his appeal, the actual numbers he presents indicate that **more than 45% of his expenditures since November 1, 2020 were on the appeal.**

n. APL only restarted at the beginning of January 2021 at \$7409 per month. Thus, Husband has only received two months of payments to put towards the over \$35,000 in expenses incurred during the period examined here. Of note, **almost one-third of Husband's expenditures were covered by his bank balance, and 14% by the employment income** that Wife and her counsel assert again he does not have.

101. Therefore, as previously noted, legal costs are so high that Husband has had to continue to expend his own savings and income, despite receiving APL. Husband is losing, not making money. The level of APL is not sufficient to cover the costs of litigation.

102. Were it not for Husband's classroom training as a paralegal, he believes that he would already have been unjustly forced out of the case.³

103. Therefore, there has been no material change in total living expenses in this case. Husband has simply saved some money in one area, such as housing, while expending a similar amount on healthcare insurance, out of pocket medical costs, repairs of a 15 year old vehicle that will soon need to be replaced, and so on.

104. The legal expenses, however, have dramatically increased, as the APL and equitable distribution litigation is not only unwarranted, but is greatly raising costs at the same time that appeals are ongoing.

³ Husband also notes here for the record that his paralegal certification costs at Widener Law School, Delaware, of approximately \$11,000, were paid from his own bank account. Thus, any statement made by Wife in the master's hearing or elsewhere that she "paid" for Husband's "education" are, to the best of Husband's knowledge, false, except in the sense that marital funds are fungible.

Earning capacity

105. Husband has stated repeatedly that he did not think it had been properly established as described in the order of December 26, 2017. (See the Statement of Facts, above, for more detail.)

106. As was disclosed again to the opposing party before the June 7, 2021 hearing, as part of the documents upon which Husband's testifying vocational expert relied:

"Fraud investigation itself actually is performed by several different groups of people with differing focus and expertise.

First, are those who investigate financial matters in detail, e.g. for financial institutions. Those individuals have training (e.g. relevant BAs) in financial accounting, audit, or business; many I know of are also C.P.A.s. (I attempted to state during the support conference matter that I was not a CPA; the conference officer erroneously wrote that I was not a CFE.) In my experience, the highest salaries go to those with people with financial backgrounds, including CPAs. They might earn a premium for obtaining their CFEs, though I have learned from discussions with several investigative firms that this premium is NOT given at the entry-level positions (see file 2_).

Another large group of CFEs are those in law enforcement (LE). They tend to be police detectives or FBI agents. I am not qualified by age for to begin training for any LE positions (to my knowledge).

Other smaller groups exist who perform fraud investigation. I am in one of the smallest: those with Ph.D.s in the sciences. Full-time employed research misconduct fraud investigators in the U.S. are largely found in federal government agencies. (See the first position listed above, "**Research misconduct investigator - biomedical**".)

My wife's counsel was apparently of the misperception that the Fraud Examiner Certification (C.F.E.) represents an actual employment position. It is actually an add- on certification that demonstrates a broader expertise in fraud investigation.

An example of the secondary nature of the CFE to consideration for employment is seen in the federal government job (7>):

Inspector General Auditor for a U.S. government agency - Legal and Oversight (vs. one under finance and accounting)

“As an Inspector General Auditor with the [agency], you will conduct performance, financial statement, finance-related, and information system audits of CIA programs and activities.”

However, this government position repeats the experience I have had with many private firms while looking for fraud examiner jobs, i.e. the primary importance of an extensive educational background in a relevant area (which I do not have) and the relative **secondary importance of the CFE** (which I do have):

1. Minimum Qualifications: **BA in one of the following or related:**
Accounting Finance Information Systems Business Management

2. Desired Qualifications

Advanced degrees Professional certificates: CPA, **CFE**, CISA 2-5 years of experience in government auditing and accounting or IT systems

Most often, experience is required, but sometimes it is “desired”, as here. But since I do not have such employment experience at all, I think it makes my application for such positions much less competitive, i.e. were I even to qualify in terms of educational background, which I do not.” ...

“ACFE Salary Data follow up

I have been an associate member of the ACFE since late 2003 and a full, certified member since late 2016. I know the ACFE well. I spoke with the people there who oversee the salary data produced by my wife’s counsel. They do not yet have the ability to break out their data for 0-3 years or similar early working experience, nor to separate subsets of such examiners as explained above. The salary information we presented to the Conference Officer from Payscale for the first years of the average fraud investigator’s career (\$44,000) has proven surprisingly consistent as an average now that I have obtained so much more detailed job data. Most obviously, note the FDA (and other related QA) GS-9 salary level of \$43,215. Industrial is a little higher; non-Ph.D. is a little lower.”

(“Job search material to Wife’s Vocational Expert Terry Dailey 04/17/18 - introductory and CFE excerpts” as disclosed to opposing party 21 days and 6 days prior to the June 7, 2021 hearing as PL_Ex_11f; Declaration of January 4, 2021.)

107. Therefore, it should be clear that the C.F.E. is **not** itself sufficient training to obtain an employed position.

108. For those with appropriate backgrounds, primarily in accounting or law enforcement, the C.F.E. designation can raise the income of those in higher level

positions.

109. But as Husband was NEVER employed in any fraud examination position, at best he would be seen as an entry level job applicant, not appropriate for the average peak level of CPAs earning \$100,000/year. (If Husband were to even get an interview for such a position, which for other reasons, he has not.)

110. Therefore, Husband believes that it was erroneous to use the value of \$100,000/yr to elevate the actual starting employment salary of those with the C.F.E. designation.

111. In order to better establish what Husband's actual earning capacity is, he will further address the various impediments (negative factors) which affect him such as his advanced age, work and earnings history, and my medical limitations. (See the Statement of Facts for evidence of additional factors.)

112. First, Husband presented to the trial court a **Physician Verification Form**. (See attached as Exhibit I - Physician Verification Form.) This form was timely submitted and opposing counsel did not timely object to it, as detailed above in the Statement of Facts.

113. Of note, it states about the nature of patient's sickness or injury: "Multiple osteoporotic fractures, degenerative disc disease, degenerative bone disease, osteoarthritis, radiculopathy".

114. Furthermore, the Physician Verification Form noted as to limitations on work by Husband: "No repetitive lifting at any weight. No isolated lifting > 8 pounds. No prolonged sitting. Typing only while standing."

115. As Husband has previously stated and testified, these restrictions alone remove the possibility of returning to research laboratory work. (Additional negative factors are the time he has been out of the field, the advance of technology with which he has had no experience, and the broken history of publications and funding.)

E. Husband properly provided notice of exhibits and witnesses for the APL termination appeal hearing to opposing counsel; opposing counsel did not timely object.

116. Opposing counsel attempted to object to Husband's request to introduce the Physician Verification Form at the hearing on June 7, 2021.

117. However, Husband notes that the rescheduling order of April 26, 2021 specified that, "If you intend to offer the Physician Verification Form as evidence at any record proceeding, you must comply with the timeframes established by Pa. Rule of Civil Procedure 1910.29(b)(2)."

118. For record hearings, Rule 1910.29 states:

Rule 1910.29 - Evidence in Support Matters

231 Pa. Code § 1910.29

Current through Register Vol. 51, No. 15, April 10, 2021

(a) Record Hearing. Except as provided in this rule, the Pennsylvania Rules of Evidence shall be followed in all record hearings conducted in an action for support. A verified petition, affidavit or document, and any document incorporated by reference therein which would not be excluded under the hearsay rule if given in person shall be admitted into evidence if (1) **at least 20 days' written notice** of the intention to offer them into evidence was given to the adverse party accompanied by a copy of each document to be offered; (2) the other party does not object to their admission into evidence; and (3) the evidence is offered under oath by the party or witness. **An objection must be in writing and served on the proponent of the document within 10 days of the date of service of the notice** of intention to offer the evidence. When an objection is properly made, the Pennsylvania Rules of Evidence shall apply to determine the admissibility of the document into evidence.

231 Pa. Code § 1910.29

119. As opposing counsel made no objection to the evidence disclosed to him timely (21 days before hearing; see Statement of Facts) by Husband until the hearing was in progress, while Rule 1910.29(a) requires such objection be made in writing within 10 days of notice of such evidence, then Husband argues that Wife is now precluded from making such objection. (It is Husband's belief that he stated such objection at the hearing of June 7, 2021 as well, and cited the same law in so doing.)

120. **"Rule 1910.29 - Evidence in Support Matters**

(b) **Medical Evidence.** (2) *Record Proceeding.* If the matter proceeds to a record hearing and the party wishes to introduce the completed **Physician Verification**

Form into evidence, he or she must serve the form on the other party **not later than 20 days after the conference.**”

121. There was no conference held. Therefore, the timing provision of 1919.29(a) was applied; the opposing party was timely served.

122. Rule 1910.29(b)(2) then uses a similar 10 day period after service to allow for objections:

“The other party may file and serve an objection to the introduction of the form within 10 days of the date of service. If an objection is made **and the physician testifies**, the trier of fact shall have the discretion to allocate the costs of the physician's testimony between the parties. **If there is no objection, the form may be admitted into evidence without the testimony of the physician.** In the event that the record hearing is held sooner than 30 days after the conference, the trier of fact may provide appropriate relief, such as granting a continuance to the objecting party.” 231 Pa. Code § 1910.29.

123. Therefore, Husband timely disclosed his Exhibits and Witnesses, including the Physician Verification Form. In addition to attaching here the vocational expert witness' report, which was disclosed to the opposing party, Husband also summarizes as an Offer of Proof the expectation he had for the testimony he believed that witness would have given.

Earning capacity expert testimony as an offer of proof

124. As prepared for hearing of June 7, 2021, Husband made an Offer of Proof regarding the testimony of proposed expert witness Scott Severt as follows:

“I would like to make an offer of proof as to who this witness is, what I expect him to say, and why his testimony is important to my case.

Scott Severt is a Nationally Certified Rehabilitation Counselor, and a Diplomate member of the American Board of Vocational Experts, as well as a Certified Life Care Planner. He has over 22 years of experience as a Vocational Rehabilitation Counselor in helping injured and non-injured people look for jobs.

If this witness is called and put under oath, I think he will say that there are **several important factors** which make it unlikely that I will be able to find full-time, W-2 employment, including especially in my former professional field. He will testify that the two most significant of those factors is my whistleblowing history and my age.

He will note that actions I took as a result of my acting as a *qui tam* relator in a federal lawsuit involving my employers has led to over a decade in which I have not had significant W-2 employment, in or out of my field. He will also testify that my earnings history has been negatively impacted and

that “vocational experts note that past earnings are the best predictors of future earning capacity.”

He will further testify that the effects of ageism on employment in the United States is a well- known and well-researched phenomenon that also negatively impacts me.

In addition to my work and earning history and age, the witness will note that my medical history has produced physical limitations on the work I can reasonably perform, and that this, too, is a factor which will negatively impact my ability to obtain and maintain employment.

Finally, he will testify that he has examined my actual job search history since late 2017 through to the present and that the results of those searches supports the impact of the negative factors which appear to affect me. The only evidence that does exist after all these years is that temporary agencies will hire me and thereby allow me to be employed at relatively low wages as part of a group of workers, who are not specifically identified to end-employers.

Therefore, I believe that the witness will testify that the earning capacity of \$72,000/yr imputed to me is not at all likely to be obtained by me and therefore is substantially too high. Rather, he will testify that it is much more likely that any employment income I will obtain will be from continuing to get work as a substitute teacher, and or through temporary agencies.

I think this witness’s testimony is important to my case because spousal support calculations under Pa.R.C.P. No. 1910.16-4(2)(PartIV) were used to determine APL, as was first done in this case by order of December 26, 2017. I believe this formula is still relevant to spousal support calculations that must be made as a result of this hearing.

Earning capacity is a primary component of those APL spousal support calculations.

Earning capacity is also relevant to a determination of whether there has been any material change in my economic circumstances that would have warranted the termination of APL under **Rule 1910.19 - Support. Modification. Termination.** Guidelines as **Substantial Change in Circumstances.** It is essential to know not only expenses with and without attorneys’ fees, but also actual monthly income.

Finally, if a determination of my actual, current earning capacity is LOWER than was originally assumed in the Support Conference of December 26, 2017, as I believe this witness will testify is most likely given the clear factors which affect my employability and the supporting data from my job searches, then use of a more accurate earning capacity may lead to calculations showing that APL to me should be **INCREASED.**” (See Exhibit J - Report of Expert Vocational Witness, as disclosed)

125. For all the aforementioned reasons, Husband avers that the financial analysis and law presented indicates that an earning capacity of \$72,000/year is NOT appropriate.

126. Instead, an earning capacity of approximately \$14,000/year for actual part-time temp jobs that he has obtained should be used for his income, or at most the starting salary of a entry level research investigator with a C.F.E. of \$44,000/year, as he noted in the Support Conference of November 29, 2017.

127. As shown above in the “Spousal Support Guideline Calculations without Dependent Children” table, Husband should be given a new APL with **an additional distribution of \$1360 to \$2960/month**, depending on how his pre-retirement assets, if and when received in equitable distribution, are applied. (See above.)

After tax value of the 10% additional assets awarded to Husband if he were to get equitable distribution prior to the resolution of his appeal

128. On May 12, 2021, Husband filed a Motion to Vacate (MTV) an order of April 28, 2021 which had resumed equitable distribution of assets in this case.

129. The basis of Husband’s desire to suspend equitable distribution is to allow review of his appeal by the Superior Court, which could alter the distribution.

130. Nevertheless, as the master in her report noted, Husband was in need of additional marital financial assets (and even with such, he would have a significantly diminished standard of living compared to that from his marriage and as Wife will continue to enjoy.

131. The master presented two options for financial resolution of the divorce, one involving alimony of \$3000/month until Husband turned 67 years of age along with a reduced asset distribution (still over 50%).

132. The other option presented by the master in her report of March 13, 2020, and the one she chose, was to provide an additional 10% of marital assets in a one-time distribution to Husband.

133. Husband argues in his appeal that this one-time 10% distribution does not come close to providing economic justice given the master’s own admissions to the significant loss of standard of living Husband will face at the end of his life.

134. However, for the purposes of this analysis, it is also of note that the master failed to show any accounting of tax implications were Husband to actually access

the 10% of additional assets to assist him with expenses prior to the age of 67.⁴

Almost 88% of the additional assets the master proposed be distributed to Husband were in taxable retirement funds.

135. To account for taxes on the 10% of retirement funds which apparently were meant to help account for deficiencies in Husband's earning capacity, Husband first calculates the monthly gross supplement from the additional retirement funds ($\$154,345/86 = \$1795/\text{month}$). The tax on one year of such income ($\$21,537/\text{year}$) in Delaware (accounting for federal, state, Social Security, and Medicare) would be $\$3223$, leaving $\$18,314/\text{year}$ or $\$1526/\text{month}$. (Marginal tax rate of 23.6%; average tax rate of 15%).

136. This additional post-tax income would barely cover the additional funds now owed by Wife for APL (based on her last reported income), even if the highest earning capacity for Husband is used.

137. Most importantly, it would still not provide enough income to cover the actual costs of the litigation that continues in this case and as argued here is properly covered by APL.

138. Specifically, Husband's above discussed the income and expenses numbers presented to the trial court on June 7, 2021, which showed that his total current monthly costs with legal expenses since the filing of his notice of appeal has been **$\$11,556/\text{mo}$** . Even if APL is restored and back-paid at $\$6735/\text{mo}$., adding Husband's post-tax, supplemental asset distribution (amortized as income to the age of 67) of $\$1526/\text{month}$, would still leave Husband with $\$11,556 - \$8,261 =$ **$\$3,296/\text{month in debt}$** .

139. As noted above, these deficits would continue to be funded by Husband's savings, which in turn would undermine the asset amortization.

140. In other words, long before he turned 67 years of age and should reasonably be able to access his 50% of marital funds reserved for his retirement, if this legal

⁴ Husband shows in his appeal that taking the master's proposed alimony option, which is not taxable to Husband would actually present twice as much additional funding as the one-time distribution.

expenditure continued, then Husband would be at significantly elevated risk of **living in perpetual debt**. And that problem does not account for any unexpected emergency spending, nor does it allow for any discretionary spending.

141. Alternatively, as noted above, in the absence of APL, even if Husband did amortize *all* of his non-retirement assets to provide income of possibly \$5100/mo, he would not be able to cover his already frugal living costs and high legal expenses. (Hence, he has been forced to act increasingly pro se.)

142. Therefore, APL is appropriate and should be retroactively resumed at prior levels, pending required calculations by September 17, 2021 to increase it.

F. The APL termination hearing should be continued and demand is made that it be so by September 19, 2021.

143. Upon information and belief, Husband understood that the June 7, 2021 hearing would begin at 3:00 PM and continue until no later than 4:30 PM. Husband was of the understanding that no cases would follow his.

144. Husband did not believe that more than one and one-half hours would be necessary for the hearing of June 7, 2021, particularly since there were no apparent complex issues of law or fact, and especially since that the opposing party apparently wished to call no witnesses nor present any special exhibits. For his own case, Husband had only a single expert witness. Therefore, Husband believed the time allotted was sufficient.

145. At the June 7, 2021 hearing, opposing counsel objected to Husband's submission of his Physician Verification Form. Husband objected that the opposing party had failed to timely object and cited the pertinent law.

146. While Husband's was the last case of the day, and therefore he anticipated a timely conclusion, after opposing counsel objected to his entry of his Physician Verification Form into evidence, Husband was informed that the judge had some other activity arising which required the hearing adjourn (after about forty minutes).

147. Therefore, although Husband did not believe that the hearing of July 7, 2021 required a special listing as defined under 1910.11(j), since there are no complex

questions of law or fact, at the judge's suggestion that he request such a listing upon continuance, he does so here.

148. Alternatively, an **APL hearing is hereby demanded on or before September 19, 2021** under the following law:

“1910.16-5 deviation factors, as appropriate.

(e) *Guidelines Review*. The guidelines **must** be reviewed at least every four years to ensure that their application determines appropriate support amounts.” *In re Order Amending Rules 1910.11*, CIVIL PROCEDURAL RULES No. 687, at *9 (Pa. Dec. 28, 2018)”

V. STATEMENT OF RELIEF

149. In the preceding sections of this brief, Husband has argued that, consistent with his prior claims in responsive filings, there has been no material financial change that should have terminated APL in this case. In addition, no action should have occurred before an examination of specific data and by proper calculations.

150. Therefore, **reinstatement** and **back-payment** of all APL is requested at the prior rate, until such time as the de novo hearing of June 7, 2021 has been completed and the requirements of Rule 1910.19(a) have been met. (See Proposed Order, attached.)

151. Husband also requests a new calculation of a presumptive APL amount pursuant to the following laws:

a) Title 231 Pa.R.C.P. Rule 1910.16-1 states that “there is a rebuttable presumption that the guideline-calculated support amount is the correct support amount.” Husband has presented several possible calculations today.

b) Rule 1910.16-2 - Support Guidelines. Calculation of Monthly Net Income states that “Generally, the support amount awarded is based on the parties' monthly net income.”

c) Rule 1910.16-4 - Support Guidelines. Calculation of Support Obligation, Formula, 231 Pa. Code § 1910.16-4(2) “The formula in Parts I through IV is for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite*” *PART IV. Without Dependent Children*. Again, Husband has presented such numbers above.

152. As part of any alteration of the baseline APL calculations based on net income, Husband asks here that the deviation standards noted in Rule 1910.16-5 be employed to:

a) set aside pre-retirement assets intended for a **reserve fund** be established from his current assets that would not be expected to be used for income. Husband's understanding is that at least one year of expenses should be retained in reserve.

b) Husband also requests that deviation factors be used to account for the depletion of interest and dividend income due to capital drain if such capital has to be used for income;

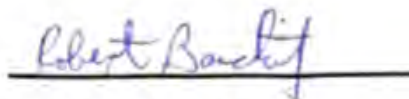
c) Husband asks that deviation of the last year's income be made to account for the highly unlikely continuation of coronavirus stimulus income.

d) Husband notes that his current monthly expenses (\$4925/mo., excluding legal charges) do not significantly deviate from those claimed by the master in her report of March 13, 2020 (\$4,881/mo.) However, as the opposing party has been substantially and more importantly, baselessly, increasing litigation fees, and since the cost of appeals which are properly paid for by APL funds, Husband's total monthly expenses have risen by \$6631/mo. to \$11,556/mo., Husband asks that APL be further **increased** to cover these substantial attorney, expert, and filing fees.

153. **Continuation** of de novo APL modification hearing begun June 7, 2021 is hereby requested for the reasons detailed above. Notice is made of the requirement under 1910.16-5(e) that an APL review hearing be held to assess need for modification within four years of the start date of APL (September 20, 2017). Hearing de novo, either as a continuance of the June 7, 2021 hearing, or by its own right, is demanded for a mandated four-year review by September 19, 2021. (See Proposed Order, attached).

154. In order to provide sufficient time for a continuation of the hearing of June 7, 2021, a **special listing** is requested to complete the matters under appeal. **One full afternoon** to complete the de novo hearing is requested, along with leave to again have witnesses attend in person, or by video link or telephone, at the discretion of the parties.

Date: 6/27/21



Robert P. Bauchwitz
 Plaintiff
 23 Harlech Drive
 Wilmington, DE 19807
dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

VI. Attachments and Exhibits

<u>Exhibit</u>	<u>title</u>	<u>page</u>
-	Proposed Order	
-	Confidential Document Form	
-	Certificate of Compliance	
A	Exhibit A – DHolst, Esq., Communications	001
B	Exhibit B - Certification of Mailing to JDemmel	002
C	Exhibit C - Exhibit and Witness List Disclosed to Opposing Party	003
D	Exhibit D – JDemmel, Esq., Communications	006
E	Exhibit E – Cecelia A. Kone, Dauphin County Court Administration, Communications	008
F	Exhibit F - Income Statement Plaintiff Husband	009
G	Exhibit G - Expense Statement Plaintiff Husband	013
H	Exhibit H - Spousal Support Guideline Calculations Without Dependent Children	018
I	Exhibit I - Physician Verification Form	020
J	Exhibit J - Report of Expert Vocational Witness	021
K	Exhibit K - Interview and discussion with Ann Rogers re COI and whether ORI education division is actually necessary at all by comparison to SCAHO and ACGME 030317 COMBO w addl notes 030417	028
-	-	041
L	Exhibit L - Declaration of June 26, 2021	079
-	Proof of Service	

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ROBERT P. BAUCHWITZ,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT


PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the **MEMORANDUM OF LAW RE COMPLETION OF APL TERMINATION HEARING OF JUNE 7, 2021** upon the persons and in the manner indicated below:

Service and Filing

By Hand Delivery to: Prothonotary DAUPHIN COUNTY COURTHOUSE 101 Market Street, Rm. 101 Harrisburg, PA 17101	By First Class Mail to: James R. Demmel, Esquire DEMMEL LAW OFFICE, LLC 1544 Bridge Street New Cumberland, PA 17070
By email to: James R. Demmel, Esquire DEMMEL LAW OFFICE, LLC jdemmel@demmellawoffice.com	

Date: 6/27/21



 Robert P. Bauchwitz
 Plaintiff
 23 Harlech Drive
 Wilmington, DE 19807
dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

Exhibit A – DHolst, Esq., Communications

From: Darren J. Holst <dholst@hkhlaw.net>	Date: April 20, 2021
To: dir_amr@luxsci.net	Time: 12:58 pm
Subject: RE: Scheduling the Appeal for Bauchwitz v. Rogers	Size: 28 KB

We filed a demand for hearing de novo from the administrative order terminating the APL. A hearing de novo is heard by court. There is no conference. There isn't any new order; the hearing will be on the issue of APL continuing and whether there has been any change in circumstances to justify the other side's request to terminate APL. As need will be addressed, the issues of earning capacity, expenses, etc. will be addressed. I will advise that June 7th works.

Darren

From: Dir <dir_amr@luxsci.net>	Date: April 20, 2021
To: dholst@hkhlaw.net	Time: 1:06 pm
Subject: Re: Scheduling the Appeal for Bauchwitz v. Rogers	Size: 15 KB

Darren,

As I have long made clear, without APL I can no longer afford to compensate you to prepare for further litigation.

Therefore, please also enter today my appearance in your place and ship my files to my home.

Thank you.

Robert

Exhibit B - Certification of Mailing to JDemmel

UNITED STATES POSTAL SERVICE Certificate of Mailing

This Certificate of Mailing provides evidence that mail has been presented to USPS.
This form may be used for domestic and international mail.

From: **AMNESTY INTERNATIONAL** Robert Bauchwitz
23 Harlech Dr
Wilmington, DE 19807

To: James R. Demmel, Esquire
DEMME LAW OFFICE, LLC
1544 Bridge Street
New Cumberland, PA 17070

PS Form 3817, April 2007 PSN 7530-02-000-9065

Tracking #: 9505 5150 0417 1137 5482 65

Cert of Mailing	\$1.55
Total	\$10.10

Grand Total:	\$10.10
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Credit Card Remitted	\$10.10
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Card Name: MasterCard
Account #: XXXXXXXXXXXXX1917
Approval #: 46920Z
Transaction #: 193
AID: A0000000041010
AL: MASTERCARD
PIN: Not Required

Exhibit + Witness List Relied to Demand

To make same postcard 1/2 to her?

USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

U.S. POSTAGE
PAID
WILMINGTON, DE
19807
MAY 17 21
AMOUNT
\$1.55
R2305M14809

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**EXHIBIT AND WITNESS LISTS
 OF PLAINTIFF HUSBAND
 FOR APL TERMINATION HEARING**

Exhibit List

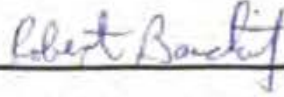
1. Income Statement.
2. Expense Statement.
3. 2020 tax returns including W-2's.
4. Pay stubs preceding 6 months. (n.a. 5/17/21 due to technical issue with new payroll provider; will be sent upon receipt.)
5. Proof of medical coverage.
6. Physician Verification Form.
7. Expert Report of Scott Severt.
8. Documents relied upon by Expert:
 - 8a. DOT_Home Health Aide.png
 - 8b. Whistleblowers Need Not Apply.pdf
 - 8c. Code of Federal Regulations_Social Security.pdf
 - 8d. No Foot in the Door Age Discrimination in Employment.pdf
 - 8e. Substitute Teachers_Short_Term_Wages.png
9. Sources utilized by Expert:
 - 9a. (First) Declaration of Robert P. Bauchwitz In Response to Claims Made in Defendant's Petition to Terminate APL of January 4, 2021. (As filed in the above captioned docket and served in paper format to opposing party; digital version here by email.)

- 9b. Employability and Earning Capacity Evaluation, Edmond Provder, 9/21/18. (Paper version previously provided to opposing party; digital version here by email.)
- 9c. Dr. Edward J. Fox, Professor, Musculoskeletal Oncology Service, Letter of 4/20/18.
- 9d. Bauchwitz, FCE, Occupational Assessment Services, Inc., Santo Steven Bifulco, MD, CLCP, 9/8/18.
- 9e. Copy of Application Data Job Employment, Updated 4/4/21.
- 9f. Job Application Update, 5/3/21.
- 9g. Whistleblower impact info, 5/3/21. (See exhibit 11, below.)
- 9h. CT chest (2), MRI.
- 9i. Bauchwitz CV, (3 versions).
- 9j. Discovery Documents, Historical Income Tables for Households (82 pages). (Attachments to the First Declaration, see 9a. and 11.)
- 9k. Catherine Offord, January 1, 2017, The Scientist, "Addressing biomedical science's PhD problem".
- 9l. Physician Verification Form, 4/30/21. (See 6.)
- 9m. Social Security Earnings Record.
- 9n. W-2, 2020, Bauchwitz.
- 9o. Leslie Vocational Consulting Report on Robert Bauchwitz, by Terry Dailey, May 29, 2018. (Already in possession of opposing party; digital version here by email.)
- 10. Second Declaration of Robert P. Bauchwitz of March 30, 2021 as a whole, (as filed in the above captioned docket and served in paper format to opposing party; digital version here by email), and as additional specified exhibits:
 - 10a. pp. 1-11
 - 10b. pp. 11-18
- 11. Additional specified exhibits from First Declaration of Robert P. Bauchwitz (as filed and served in full; see Exhibit 9a.):
 - 11a. pp. 1-2
 - 11b. pp. 3-7
 - 11c. pp. 12-16
 - 11d. pp. 19-28
 - 11e. pp. 29-31
 - 11f. pp. 47-50
 - 11g. pp. 51-53
- 12. Master's Recommendation for Equitable Distribution (table).

Witness List

- 1. Husband, as on direct
- 2. Scott Severt, vocational expert witness
- 3. Wife, Ann M. Rogers, as on cross

Date: 5/17/21



Robert P. Bauchwitz
Plaintiff
23 Harlech Drive
Wilmington, DE 19807
dir_amr@luxsci.net
Telephone: (717) 395-6313
pro se

Exhibit D – JDemmel, Esq., Communications

From: Robert Bauchwitz <dir_amr@luxsci.net>	Date: May 18, 2021
To: jdemmel@demmellawoffice.com	Time: 12:15 am
Bcc: scott@sevartvfs.com, rtt@t-klaw.com	Size: 4.8 KB
Subject: Disclosure EXHIBIT AND WITNESS LISTS June 7 APL hearing	

Mr. Demmel,

Please find my disclose of “**EXHIBIT AND WITNESS LISTS OF PLAINTIFF HUSBAND FOR APL TERMINATION HEARING**” along with associated documents at the link:

https://healthsci.org/APL_hearing

Other documents ordered by the Court for the hearing of June 7, 2021, can be found on that website as well.

Please let me know upon receipt by responding to this email that you have been able to retrieve and open the documents without issues.

Robert Bauchwitz

--

Robert Bauchwitz
dir_amr@luxsci.net

From: Robert Bauchwitz <dir_amr@luxsci.net>	Date: June 1, 2021
To: jdemmel@demmellawoffice.com	Time: 11:07 pm
Bcc: rtt@t-klaw.com	Size: 8.8 MB
Subject: Disclosure Update	

Mr. Demmel,

Please find attached some updated materials for the June 7, 2021 hearing.

6 months of pay stubs.

An updated income statement.

An updated expense statement.

Excel files with present value (PV) of future earnings tables.

Please also note that in the original disclosure at point 11., the page numbers were referring to those of the exhibits to the First Declaration (which nonetheless was disclosed in its entirety). For the sake of clarity, each of the specified exhibits is now separately attached here as:

PL_Ex_11a. pp. 1-2

PL_Ex_11b. pp. 3-7

PL_Ex_11c. pp. 12-16

PL_Ex_11d. pp. 19-28

PL_Ex_11e. pp. 29-31

PL_Ex_11f. pp. 47-50

PL_Ex_11g. pp. 51-53

I also provide the following exhibits as individual pdf files:

PL_Ex_10a pp. 1-11

PL_Ex_10b pp. 11-

Robert Bauchwitz

Exhibit E – CKone, Dauphin Court Administration, Communications

From: Robert Bauchwitz <dir_amr@luxsci.net> **Date:** May 21, 2021
To: ceceliakone@pacses.com **Time:** 10:17 am
Cc: codylentz@pacses.com **Size:** 959 KB
Subject: Re: June 7 APL hearing - remaining questions and documents

Thanks for all the help by phone just now, Ms. Kone. As you requested, please find attached the Physician Verification Form.

Robert Bauchwitz

From: Dir <dir_amr@luxsci.net> **Date:** May 27, 2021
To: CeceliaKone@pacses.com **Time:** 4:48 pm
Cc: scott@sevartvfs.com **Size:** 11 KB
Subject: Re: Appeal Court on 6/7/2021

Thanks, Ms. Kone. I will then memorialize here for my expert witness that he can in fact attend the hearing in person, as you've stated previously, so long as he enters properly masked.

It is a long drive for him so I can understand his interest in certainty.

Robert Bauchwitz

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**INCOME STATEMENT
 PLAINTIFF HUSBAND**

PLAINTIFF'S EXHIBIT 1

INCOME

Employer: Right At Home (Fanorte LLC)
 Address: 111 Carlton Place, Media, PA 19063
 Type of Work: Direct Care Staff/Home Health Aide
 Payroll Number:
 Pay Period (weekly, biweekly, etc); biweekly
 Gross Pay per Pay Period: (varies; \$6,784.96 starting ~July 13, 2020; 11 pay periods -> ~\$616.81)
 Itemized Payroll Deductions: \$965.45 [total; typographical errors in first, mailed version are shown here in blue type]
 Federal Withholding \$204.98
 FICA \$420.67 (Social Security tax) + \$98.38 (Medicare tax) = \$519.05
 Local Wage Tax \$84.83
 State Income Tax \$156.59
 Mandatory Retirement \$0
 Union Dues \$0
 Health Insurance \$0
 Other (specify)
 Net Pay per Pay Period: ~\$529.05 (biweekly) (~\$13,755/yr)

Other Income:

Interest	\$528.91 (Capital One bank 1099-INT)
Dividends	\$801.81 (Vanguard 1099-DIV) + \$324.20
(TDAmeritrade 1099-DIV) =	<u>\$1126.01</u>
Pension Distributions	\$0
Annuity	\$0
Social Security	\$0
Rents	\$0
Royalties	\$0
Unemployment Comp.	\$0
Workers Comp.	\$0
Employer Fringe Benefits	\$0
Other	[\$1200 (Economic Impact Payment 2020) + \$238.68 (tax penalty refund 2020) = \$1438.68]
Total	<u>\$1654.92</u> [\$3093.60]

TOTAL INCOME ~\$15,410 yr [assuming no net decrease in underlying assets] [\$16,848.60 with pandemic stimulus]

PROPERTY OWNED

Description	Value	Ownership*
Checking accounts	UPDATE 06/05/21: \$381.17+60.39 = \$441.56 (NWSB) + \$7,405.30 (CapOne) - (\$4557.00 + \$1425 = \$5982) attorney debts May 2021 = \$1865.	
Savings accounts	\$717.79 (NWSB) + \$171,909.00 (CapOne 6/1/21) = <u>\$172,627</u>	
Credit Union	\$0	
Stocks/bonds	\$62,064 (Savings Bonds) + [\$16,391.56 4/30/21 stmt; TDAmeritrade ownership not released by Rogers] + \$25,352.00 (Vanguard brokerage). Currently accessible non-retirement investment accounts = <u>\$87,416</u> . If the opposing party releases the TDAmeritrade funds, then I should have access to <u>\$103,808</u> .	
Real estate	\$0	
Other	[The Bitcoin valuation as of Saturday, May 5, 2021 at \$36,152 at 3:18 PM ET would be \$44,105: Voyager account empty on 5/16/21 – co. contacted but no response; subpoena will be issued.]	

Retirement (\$229,694.29 Vanguard) (\$81,368.09 TIAA Continuum 403b)
 (\$19,796.35 Vanguard Columbia retirement 5/14/21)
 (SLRHC pension valued at \$128,126; not included here in liquid sum)

Total accessible non-retirement assets **\$266,085**
 [\$3748/yr x 71 months] [Including payments not reflected in checking accounts.]
 [If Bitcoin and TDAmeritrade assets are recovered, and the attorney debts are paid, net assets would be:
 +\$60,497 -\$5982 = +\$54,515 for a total non-retirement asset amount of \$320,600 = \$4515/mo for 71 months.]

retirement assets (accessible) VG IRA \$231,707.62 + VG Columbia \$20,112.78 + TIAA 403(b) \$81,549.61 = **\$333,370** [in Husband's name, excluding pension, which if it can be converted at **\$89,247**, would produce a total accessible retirement balance of **\$422,617**, exclusive of any taxes and early access penalties. Updated 6/5/21.]

INSURANCE

	Policy Coverage <u>Husband Only</u>	
	Company	No.
Hospital		
Blue Cross		
Other		
Medical		
Blue Shield	Highmark BlueShield (COBRA)	MVR132282725001
Other		
Health/Accident		
Disability Income	n.a.	
Dental	United Concordia Dental PPO #132282725001	
Other		

SUPPLEMENTAL INCOME STATEMENT

- (a) This form is to be filled out by a person (check one):
 (1) [+] who operates a business or practices a profession, or
 (2) [n.a.] who is a member of a partnership or joint venture, or
 (3) [n.a.] who is a shareholder in and is salaried by a closed corporation or similar entity.
- (b) Attach to this statement a copy of the following documents relating to the partnership, joint venture, business, profession, corporation or similar entity:
 (1) the most recent Federal Income Tax Return [+], and
 (2) the most recent Profit and Loss Statement [+].
- (c) Name of business: Amerandus Research
 Address and Telephone Number: 23 Harlech Drive, Wilmington, DE 19807

717-207-7056

(d) Nature of business (check one)

- (1) partnership
- (2) joint venture
- (3) profession
- (4) closed corporation
- (5) [+] other sole proprietorship

(e) Name of accountant, controller or other person in charge of financial records:

Robert P. Bauchwitz

(f) Annual income from business: \$0

(1) How often is income received? n.a.

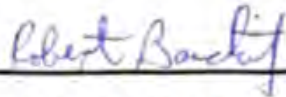
(2) Gross income per pay period:

(3) Net income per pay period:

(4) Specified deductions, if any:

I verify that the statements made in this Income Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. [This document may be revised, updated, and provided as ordered at the hearing.]

Date: 6/5/21



Robert P. Bauchwitz

Plaintiff

23 Harlech Drive

Wilmington, DE 19807

dir_amr@luxsci.net

Telephone: (717) 395-6313

pro se

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**EXPENSE STATEMENT
 PURSUANT TO 1910.27(c)(2)(B)
 PLAINTIFF HUSBAND**

PLAINTIFF'S EXHIBIT 2

(B) *Expense Statement for Cases Pursuant to Rule 1910.16-3.1 and Rule 1920.31.* No later than five business days prior to the conference, the parties shall exchange this form, along with receipts or other verification of the expenses set forth on this form.

HOME

Mortgage or Rent	[Rent whole house: \$3000/mo; Room rent in kind current: \$700/mo]
Maintenance	Range: \$1512.99 (GE Electric cooktop) Plumbing payments: \$40.00 Half of security system upgrade: \$1240 Payments to DebbieR for home admin coverage 2020: \$450.00 Payments to Teresa cleaning 2020: \$130.00 JJ household help (added here since lawn and maint related): \$875.48 Total home maintenance related ~1 year later 2019-2020: <u>\$4248.47</u> [~6000 2020-2021] [allowance per sq. ft: \$4000/yr]
Lawn Care	(See JJ, above) [~\$4300 2020; includes trees] [lawncare and snow: ~\$1000]
2nd Mortgage	\$0
Civic Association	[anticipated: \$250/yr]
Total	<u>\$4248/yr</u> [~\$5250-~\$8500; using \$6875 as average/est.]

UTILITIES

Electric	[anticipated: <u>\$355/mo</u> combined gas and electric; <u>\$4260/yr</u>]
Gas	[see electric]
Oil	n.a.
Telephone	<u>\$180/yr</u> (Skype)
Cell Phone	<u>\$20/mo</u> (<u>\$240/yr</u>)
Water	[anticipated: <u>\$100/mo</u> ; <u>\$1200/yr</u>]
Sewer	[anticipated: <u>\$565.77/yr</u> 2021]
Cable TV	[anticipated: <u>\$278.64/mo</u> ; <u>\$3348/yr</u>]
Internet	[see cable TV preceding]
Trash/Recycling	[anticipated: <u>\$91.00/3mo</u> = <u>\$30/mo</u> ; <u>\$364/yr</u>]
Security system	(See hardware under Home expenses) [anticipated: <u>\$74.85/mo</u> ; <u>\$898/yr</u>]
Total	<u>\$420/yr</u> [<u>\$6810/yr</u> without cable/internet/security; <u>\$10,233</u> cable/internet/security as exist]

TAXES

Real Estate	[anticipated: <u>\$5,982.50/yr</u> 2020]
Personal Property	\$0 [Delaware 2020]
Estimated Federal Tax	<u>\$14,600</u> (2020) + Delaware \$2565 = <u>\$17,165</u>
Total	<u>\$17,165</u> [<u>\$23,147.50</u>]

INSURANCE

Homeowners/ Renters	[anticipated: <u>\$1164/yr</u>]
Automobile	<u>\$738.74/yr</u>
Life	<u>\$1500/yr</u>
Accident/Disability	
Excess Coverage	<u>\$160.00/yr</u> (Umbrella)
Long-Term Care	\$0
Total	<u>\$2399/yr</u> [<u>\$3563/yr</u>]

AUTOMOBILE

Lease or Loan Payments	\$0 [15 yrs old car - anticipated replacement of same: Acura MDX <u>\$469/mo</u> ; <u>\$5628/yr</u>]
Fuel	<u>\$32.33/3wk</u> (<u>\$161.63</u> every three weeks 7/22/20-10/23/20) <u>\$43.10/mo</u> ; <u>\$517.22/yr</u> [allowance for non-pandemic:
Repairs	<u>\$1022.86</u> + <u>\$618.76</u> (in past 12 mo.s) = <u>\$1641.62</u> (still needs new tires, bu cam install, scratch and keying repairs)
Memberships	<u>\$89.00</u> (AAA)
Total	<u>\$2247.84/yr</u> [<u>\$7876/yr</u>]

MEDICAL

Medical Insurance	<u>\$834.97/mo</u> (COBRA begining Nov 2020); <u>\$10,020/yr</u>
Doctor	<u>\$8050.20</u> (out of pocket 2018); <u>\$3378.54</u> (out of pocket 2019); <u>\$2137.71</u> (out of pocket 2020); <u>\$1,195.03</u> (2021/4 months) -> average

\$4287.14/yr (\$357.26/mo)

Dentist	[included in doctor out of pocket for total.]
Hospital	[included in doctor out of pocket for total.]
Medication	\$ (Vit. D) + [and see those included in doctor out of pocket for total.]
Counseling/Therapy	\$0
Orthodontist	\$0
Special Needs (glasses, etc.)	[\$500 (anticipated glasses)] \$270/yr (hemorrhoid supplies)
Total	<u>\$14,577.14/yr</u> [\$15,077.14/yr]

EDUCATION

Tuition	\$0
Tutoring	\$0
Lessons	\$0
Other	\$0

PERSONAL

Cell Phone	\$549.99 (iPhone SE) + \$41.99 (case) = <u>\$592</u>
Debt Service	\$0
Clothing	<u>\$21 cleaning + \$37.95 VanHeusen short pants + \$31.40 pants, shirt = \$90.35 (but several charges still missing as of 060521)</u> (For pants, socks, shirts, shoes, and jackets. previously omitted in error). [<u>\$400/yr</u> by typical allowance]
Groceries	[<u>\$200/mo</u> in kind <u>current</u> ; <u>\$1400/yr</u>] + <u>\$385.79</u> beyond in kind <u>grocery in 2020</u> ; <u>\$1786/yr</u> ; allowance = U.S. Department of Agriculture's chart and food plans for single males 51-70 years old: Low-cost: \$52.60; Moderate: \$65.60/wk; <u>\$3411.20/yr</u>]
Haircare	\$ [allowance =
Memberships	\$ [DCC: \$219/mo + \$700 annual spending req = \$3328/yr] [allowance =
Total	<u>\$1668</u> [<u>\$7139/yr</u>]

MISCELLANEOUS

Child Care	\$0
Household Help	(Moved to Home maintenance costs)
Summer Camp	\$0
Papers/Books/Magazines	[<u>\$346.34</u> (2020); already in business]
Entertainment	\$ [allowance = <u>\$3589/yr</u> for median \$72,000/yr income household]
Pet Expenses	\$0 [to date] [allowance =
Vacations	<u>\$~300</u> [2020 to NYC] [<u>\$3000/yr</u> anticipated comparable to half share of marriage expenditure]
Gifts	<u>\$~100</u> [CDs etc.] [\$Gift limit comparable to 529's during marriage: \$15,000/yr – one child; \$1000 as low est. including charity]
Charitable Contributions	<u>\$350</u> (2020)

Children's Parties \$0
 Children's Allowances \$0
 Other Child Support \$0
 Alimony Payments \$0

Financial contributions/loans to Mother not specified in Home expenses:

\$1378 (late 2019 – 2020)

Professional fees [\$195 (ACFE 2020); in business expenses]

Total without business and IRA: \$2128 (current); [anticipated:

Business expenses \$8,242.16 (2020) \$4,719.06 (2019)

[during marriage: ~\$30,000/yr]

IRA \$6000/yr

Total \$16,370/yr [anticipated: \$26,615.51]

Legal and Expert Fees/Professional Fees **UPDATED 06/01/21**

Between November 1, 2020, and February 28, 2021:
\$15,407 in attorney's fees directly related to appeal to
 the Superior Court.

\$10,578.25 on the divorce aspects of the case, almost all
 of that induced by Wife's filings to halt APL.

\$610.41 in legal utilities and mailing fees.

Total legal fees November 1, 2020 – February 28, 2021:
\$26,620.66 (\$6655/mo)

March 1, 2021 – April 30, 2021 (The remainder of the
 APL period at issue:

Attyns: H: \$1837.50 + T:\$675+\$3175=\$3850 + L:

\$2500+677= \$3177 = \$8864.50

Experts: \$2100+\$700+\$590+\$100 = \$3490

Legal utilities: \$62.30x2= \$124.60 + \$39.95x2 = \$79.90

+ \$119.88 = \$324.38

Shipping/ mailing/ supplies: USPS:

\$21.65+10.10+9.25+10.10 = \$51.10 + UPS: \$10.71 +

15.70 + 10.71 = \$37.12 = \$88.22

Total new legal related expenses: \$12,767.10

Attorney fees owed for May 2021: \$2025.00 + \$2030.00
+ \$502.00 = \$4557.00

Expert fee paid for June 2021: \$1050.00

Total new May 2021: \$5607.00

Attorney invoice received June 5, 2021: \$1425

Total post-divorce/appeal legal expenses Nov 1, 2020 – MAY 31, 2021: \$46,420

TOTAL EXPENSES without legal \$59,095/yr => \$4925/mo
 (Master's report stated at p. 8: "Husband has reasonable
 monthly expenses of \$4,881".)
 + legal fees Nov 1, 2020 – Apr 30, 2021 \$6631/mo
 TOTAL MONTHLY EXPENSES **\$11,556** (current)
 [\$100,526.15/yr \$8377.18/mo (anticipated
 without legal)]

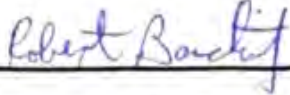
(d) The form used to obtain information relating to health insurance coverage from a party shall be in substantially the following form:

HEALTH INSURANCE COVERAGE INFORMATION REQUIRED BY THE COURT

Do you provide insurance coverage for the dependents named below? No.

I verify that the statements made in this Expense Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. [This document may be revised, updated, and provided again at the hearing as ordered.]

Date: 6/5/21



Robert P. Bauchwitz
 Defendant
 23 Harlech Drive
 Wilmington, DE 19807
dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

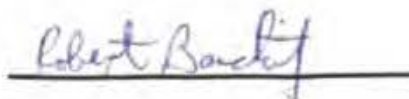
ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**SPOUSAL SUPPORT GUIDELINE CALCULATIONS
 WITHOUT DEPENDENT CHILDREN**

PLAINTIFF'S EXHIBIT 3

Spousal Support Guideline Calculation without Dependent Children	Dec 26, 2017 Order	Mar 13, 2020 Master's Report	June 7, 2021 Act Husb Income	June 7 2021 w amortized asset:
1. Obligor's Monthly Net Income	21,360	25,370	25,370 []	25,370 []
2. Less All Other Support	0			
3. Less Obligee's Monthly Net Income	4364,37	4423	1127	5133
4. Difference \$	16,995.69	20,947	26,497	20,237
5. Multiply by 40%	40%	40%	40%	40%
6. Amount of Basic Spousal Support	6798.28	8379	9697	8095
7. Adjustment for Other Expenses	-63.58			
8. Total Monthly Spousal Support	6735	No increase APL and no alimony		
Change	-	+1699	+2962	+1360

Date: 6/5/21

A handwritten signature in blue ink that reads "Robert Bauchwitz". The signature is written in a cursive style and is positioned above a solid horizontal line.

Robert P. Bauchwitz
Plaintiff
23 Harlech Drive
Wilmington, DE 19807
dir_amr@luxsci.net
Telephone: (717) 395-6313
pro se

Phone:

Fax:

Member Name:
Docket Number:
PACSES Case Number:
Other State ID Number:

Please note: All correspondence must include the PACSES Case Number.

PHYSICIAN VERIFICATION FORM

TO BE COMPLETED BY THE TREATING PHYSICIAN:

Physician's Name: James Lenhard MD

Physician's License Number: 1245218148

Nature of patient's sickness or injury:
Multiple osteoporotic fractures, degenerative disc disease, degenerative bone disease, osteoarthritis, radiculopathy

(a) Date of first treatment: 11/10/20

(b) Date of most recent treatment: 11/10/20

(c) Frequency of treatments: Every 6 - 12 months

(d) Medication: None

The patient has had a medical condition that affects his or her ability to earn income from:
August 2015 through Indefinite

If the patient is unable to work, when should the patient be able to return to work? Will there be limitations?
No repetitive lifting at any weight. No isolated lifting > 8 pounds. No prolonged sitting. Typing only while standing.

REMARKS: _____

Date: 30 Apr 2021

Signed: James Lenhard MD
Signature of Treating Physician

I authorize my physician to release the above information to the _____ County Domestic Relations Section.

Physician's Address

302-661-3070
Physician's Telephone Number

Patient's Signature

Date

Form EN-015 09/17
Worker ID

Service Type

Sevart Vocational and Forensic Services
 Scott D. Sevart, MA, MCRSP, CRP, CRC, ABVE/D, CLCP
 P.O. Box 154
 Merrifield, VA 22116
 (866) 670-0388
Scott@SevartVFS.com

May 14, 2021

Robert P. Bauchwitz, M.D., Ph.D.
 23 Harlech Drive
 Wilmington, DE 19807

Examinee:	Robert P. Bauchwitz
Case#:	01336-DR-17
PACES Case#:	640116732
Jurisdiction:	Court of Common Pleas of Dauphin County, Pennsylvania
Date of Interview:	May 4, 7 & 13, 2021
D.O.B:	5/3/1960:61-years-of-age

Vocational Rehabilitation Evaluation

Summary

On May 3, 2021, I was referred this case by Robert P. Bauchwitz, M.D., Ph.D., to determine his employability and earning capacity in the Wilmington, Delaware metro area. He is a 61-year-old Caucasian male, U.S. citizen, biomedical researcher, with an A.B. degree in biochemistry from Harvard, a Ph.D. in molecular biology from Cornell University, and a medical degree. He did his postdoctoral research at Columbia University and earned his designation as a Certified Fraud Examiner (CFE) to perform his subsequent self-employment duties. He has never had a physician's license. Mr. Bauchwitz completed training in Paralegal Studies and has been published 15 times in academic journals, the last of which was in 2008. He has been awarded one grant, last active in 2006, from the National Institutes of Health, and four private foundation grants, last active in 2007. From 2008 through 2018, he was the Director of Research and Development of Amerandus, a sole proprietorship he founded to assist whistleblowers. His last professional W-2 employment (except self-employment) was in 2007. Since December 2017, he has worked four part-time or temporary jobs, as a clerk, a substitute

Re: Robert P. Bauchwitz

May 14, 2021

teacher (in two states), and as a home health aide caring for his mother.¹ From 2017 to present, his wages range from \$1,334 to \$6,784/year².

Mr. Bauchwitz provided me with his job search efforts. In December 2017 through May 2, 2021, he documented that he applied for at least 82 jobs. He focused on such areas as research administration and editing; research lab worker; non-lab research; teaching, lecturer and secondary education; oversight investigation, inspection Q.A. and administration; investigator (non-research), clinically related, and; clerical/paralegal. He communicated with ten headhunter/recruiter firms and reached out to personal and professional contacts. Overall, he had six interviews and was hired by three temp firms, none of whom paid more than \$15 an hour. Mr. Bauchwitz indicated that he continues to apply for jobs.

It is more likely than not that Mr. Bauchwitz will be unable to find full-time W-2 employment in his professional field due to two factors. He is a whistleblower³ and; is 61-years-old (closely approaching retirement age)⁴ and is unlikely to be selected by employers due to his age⁵. Having a Ph.D. is no guarantee of employment in academia or a laboratory either.⁶ He also suffers from medical impairments and has physical restrictions⁷. The reader can view his whistleblower status in the federal False Claims Act *qui tam case, United States ex rel Bauchwitz v. Holloman et. al.*, No. 04-2892 (E.D. Pa). In my opinion, based on all the above factors, it is more likely than not that the best Mr. Bauchwitz can hope for work would be as a temporary,

¹ Mr. Bauchwitz does not meet the physical demands of a home health aide (lifting, carrying, pushing, pulling 20-50 lbs. occasionally, 10-25 lbs. frequently or up to 10 lbs. constantly) and therefore will not continue working in that capacity once his mother no longer requires his services.

² In 2020 he earned \$6,784 caring for his mother.

³ Eisenstadt, L.F. and Pacella, J.M. (2018), Whistleblowers Need Not Apply. *Am Bus Law J*, 55: 665-719. <https://doi.org/10.1111/ablj.12131>

⁴ According to the Code of Federal Regulations, Social Security Administration, a person under age 50 is classified as a younger person; age 50-54 is closely approaching advanced age; age 55-59 is of advanced age, and; at age 60 or older is closely approaching retirement age.

⁵ Marc Bendick Jr PhD, Lauren E. Brown MPP & Kennington Wall (1999) No Foot in the Door, *Journal of Aging & Social Policy*, 10:4, 5-23, DOI: [10.1300/J031v10n04_02](https://doi.org/10.1300/J031v10n04_02)

⁶ Catherine Offord, January 1, 2017, *The Scientist*, "Addressing Biomedical Science's PhD Problem".

⁷ Physician Verification Form, 4/30/21, James Lenhard, MD, "No repetitive lifting at any weight. No isolated lifting > 8 pounds. No prolonged sitting. Typing only while standing.

Re: Robert P. Bauchwitz

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part-time short-term substitute teacher earning a median wage of \$14.12/hour. At an average of 20 hours per week, he can expect to earn \$14,685 annually.⁸

I engage in labor market research activities weekly, have conducted hundreds of vocational assessments in my career, and have assisted hundreds of people to seek work. The method to perform a vocational assessment is well established (Weed and Field's, 2012 "Rehabilitation Consultant's Handbook"). I gather information through interviews, direct observation, consultation with healthcare providers if appropriate, and review records regarding an individual's age, health, limitations, training, employment and earnings history, marketable skills, and education. I then apply that information to the existing labor market through various data sources, including the U.S. Department of Labor, SkillTran, The Economic Research Institute, job search sites like Indeed.com and LinkedIn. From that, I am able, if possible, to identify appropriate occupations, job availability, and earning capacity. I gather data that helps me determine who might hire this person and what income they might make based on the above factors.

I hold an M.A. degree in Government, am a Nationally Certified Rehabilitation Counselor (CRC) with the Commission on Rehabilitation Counselor Certification, and am a member of the American Board of Vocational Experts, Diplomate, and a Certified Life Care Planner. I have over 22 years of experience as a Vocational Rehabilitation Counselor in the D.C. metro area helping injured and non-injured people look for jobs. My opinions expressed are within a reasonable degree of vocational certainty. Should any new information become available, I reserve the right to refine, expand, or amend them.

Respectfully submitted:

⁸ Occupational Outlook Handbook, Substitute Teachers, Short-Term, \$14.12 per hour x 1,040 hours = \$14,685 per year. These calculations are based on a work year of 2,080 hours.

Re: Robert P. Bauchwitz

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A handwritten signature in black ink, appearing to be 'S. Severt', with a horizontal line extending to the right from the end of the signature.

Scott Severt, MA, MCRSP, CRP, CRC, ABVE/D, CLCP
Bilingual Vocational Rehabilitation Consultant and Certified Life Care Planner

Re: Robert P. Bauchwitz

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Sources Utilized

- First Declaration of Robert P. Bauchwitz In Response to Claims Made in Defendant's Petition to Terminate APL.
- Employability and Earning Capacity Evaluation, Edmond Provder, 9/21/18
- Dr. Edward J. Fox, Professor, Musculoskeletal Oncology Service, 4/20/18
- Bauchwitz, FCE, Occupational Assessment Services, Inc., Santo Steven Bifulco, MD, CLCP, 9/8/18
- Copy of Application Data Job Employment, Updated 4/4/21
- Job Application Update, 5/3/21
- Whistleblower impact info, 5/3/21
- CT chest (2), MRI
- Bauchwitz CV, (3 versions)
- Discovery Documents, Historical Income Tables for Households (82 pages)
- Catherine Offord, January 1, 2017, The Scientist, "Addressing biomedical science's PhD problem"
- Physician Verification Form, 4/30/21
- Social Security Earnings Record
- W-2, 2020, Bauchwitz
- Leslie Vocational Consulting Report on Robert Bauchwitz, by Terry Dailey, May 29, 2018

Personal History

During our interview Mr. Bauchwitz indicated that he has a valid Delaware driver's license, a reliable vehicle (15-years-old), and no criminal record. He noted that he does not smoke cigarettes, or take illegal substances.

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Medical History

-7/2/15, status post compression fracture of his T11-12 (burst fracture), and also at T7.

-4/20/18, Dr. Fox letter, Mr. Bauchwitz has low bone density, and a family history of osteoporosis. He sporadically wears a TLSO (thoracic lumbar sacral orthosis) back brace, does not work seated, but instead stands and reclines when taking breaks.

-He was treated for throat cancer, including three surgeries, in 2018, and underwent one year of rehabilitation.

Educational and Certification History

- Harvard University, B.A. – Biochemistry (1982)
- Cornell University, Ph.D. – Molecular Biology (1990), M.D. (1991), he has never been licensed as a physician
- Columbia University – Postdoctoral Researcher, (1991 – 95)
- Widener School of Law, Paralegal Certificate, (2010)
- Certified Fraud Examiner, (2016)

Mr. Bauchwitz knows MS Word, PowerPoint, and Excel, and; Adobe Acrobat and Photoshop.

Professional Employment History**2011 – Present**

Amerandus Research (Bauchwitz Laboratories, 2008-11)

Hershey, PA

Evidentiary Auditor, Director of Research and Development, and Founder

2010

Lebanon Valley College, Department of Biology

Annville, PA

Adjunct Professor

2001 – 2007

St. Luke's – Roosevelt Institute for Health Sciences, Columbia University

Re: Robert P. Bauchwitz

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New York, NY
Director, Cognitive Neuroscience Laboratory

2001 – 2003

Fordham University, Department of Natural Sciences
Bronx, NY
Adjunct Assistant Professor

1999 – 2001

Department of Genetics and Development, Columbia University
New York, NY
Laboratory Head

1996 – 2000

Department of Genetics and Development, Columbia University
New York, NY
Associate Research Scientist

1992 – 1996

Department of Genetics and Development Columbia University
New York, NY
American Cancer Society, Postdoctoral Fellow

Discussion Interview of AMR re COI and whether ORI education division is actually necessary at all

BVI Scrub Island ferry to Beef Island's Trellis Bay, February 19, 2017

iPad rec (in part)

Journalism student at MIT wrote to me last week asking to interview me about my article in SEE. In particular, she mentioned COI's.

My view is that of the many COI examples discussed in the paper, the potentially "SOX-like" one between the education and investigative division is relatively minor compared to the institutional self-policing. That would be an important point and one that should be re-calibrated with emphasis in a following article. It is clear that internal auditors and other believe that they can work for the institutions they audit. This is the case for the OIGs, as well. However, another major point made in the article about the risks of COIs is that even the OIGs were capable of being compromised in terms of independence from such an internal position. The foundation for any real strength of the OIGs lies in their connection and support to the external power of the Congress.

Thus, when considering COIs and independence of investigation and audit, the facts support another of our major recommendations, which was for external, third party audits and reviews. The question raised with AMR is what sorts of examples of this existed in a field very related to biomedical research, namely hers - clinical medicine.

When asked this, she stated that she did not believe that the ORI education division needed to exist at all. She believed that they could be lobbied to negatively affect or undermine the audit functions. (That was what we proposed in theory, though in more general terms wrt HHS, it is obvious that the ability of institutions and scientists to lobby HHS probably led to the diminishment of ORI's investigative powers, as we detailed in our article.)

As one of her duties, AMR audits hospitals. Under what structure does this occur?

She gave some very important examples. The following are some additional notes on what she said, as well as some additional information taken from online sources.

It was AMR who questioned why the ORI had to have an educational division. "In fact, it seems pretty obvious they wouldn't need to be there", she said.

She provided the following two examples:

1. ACGME - Accreditation Council for Graduate Medical Education

https://en.wikipedia.org/wiki/Accreditation_Council_for_Graduate_Medical_Education and <http://www.acgme.org/>

“oversees all of the residency review committees for all the different kinds of residencies”

“the rules for how you are supposed to run your residency are all published and are available on their [ACGME’s] website”

“they come around every one to five years to review residency programs to determine that they are in compliance. And if they are not in compliance you get a certain number of citations, and if you get X citations you go on probation and if you get more citations you lose the accreditation entirely of your residency program.”

“So there is no friendliness, there is no sitting down to dinner to talk about the rules. The rules are there, they are published, you find them, and you have to find a way to comply.”

<http://www.acgme.org/>

<http://www.acgme.org/Meetings-and-Events/Annual-Educational-Conference>

“Welcome!

I’d like to invite you to join us for the 2017 ACGME Annual Educational Conference at the Rosen Shingle Creek Resort in Orlando, Florida from March 9-12, 2017. This year’s conference theme is *Igniting Innovation*, and this should be a truly exciting experience. The ACGME Annual Educational Conference is one of the largest gatherings of graduate medical educators in the world, and unites designated institutional officials, faculty members, program directors, program coordinators, residents and fellows, and others who are passionate about igniting the sparks of innovation in GME to serve our mission.

As in previous years, we will showcase many ACGME initiatives, such as physician well-being, the Milestones, the Clinical Learning Environment Review (CLER) Program, and the ACGME self-study. We will offer specialty-specific sessions (including our Town Halls and an update on Osteopathic Recognition), and sessions on the Accreditation Data System (ADS).

One new exciting development is that we are conducting our osteopathic pre-conference in collaboration with the Association of Osteopathic Directors and Medical Educators (AODME). Sessions will include topics on achieving Initial Accreditation, Osteopathic Recognition, scholarly activity, and a year in the life of a program director. The ACGME Review Committee Executive Directors will also be available to answer questions regarding the transition to ACGME accreditation. The Introductory Course for New Program Directors, the two-part Designated Institutional Official course, and the Coordinator Forum complete our pre-conference offerings on Thursday.

This year’s sessions, selected from submissions from the GME community across the world, will focus on topics that improve the quality of residency and fellowship programs and spark innovation in all facets of GME. Highlights include Milestones and assessment, feedback techniques, resident remediation, the continued incorporation of quality improvement into residency education, osteopathic topics, physician well-being, and many others.

This year’s Marvin R. Dunn Keynote speaker is Dr. Kelly Skeff, who is one of the most dynamic and innovative leaders in the areas of faculty development and well-being. This conference promotes opportunities to learn from the innovation and creativity occurring throughout the GME community,

inspiring the creation of the educational environment in which the next generation of physicians is trained to serve the public.”

https://en.wikipedia.org/wiki/Accreditation_Council_for_Graduate_Medical_Education

“The **Accreditation Council for Graduate Medical Education (ACGME)** is the body responsible for accrediting the majority of [graduate medical training programs](#) (i.e., internships, residencies, and fellowships, a.k.a. subspecialty residencies) for [physicians](#) in the [United States](#). It is a [non-profit](#) private council that evaluates and accredits [medical residency](#) and internship programs. The ACGME was founded in 1981 and was preceded by the [Liaison Committee for Graduate Medical Education](#), which was established in 1972.^[1] The ACGME currently oversees the post-graduate education and training for all [MD](#) and the majority of [DO](#) physicians in the United States.^[2] Plans call for the ACGME to oversee the Unified Accreditation System for all MDs and DOs in 2015.^[3]

The ACGME's member organizations are the [American Board of Medical Specialties](#), [American Hospital Association](#), [American Medical Association](#), [Association of American Medical Colleges](#), and the [Council of Medical Specialty Societies](#) each of whom appoints four members to the ACGME's board of directors.”

2. “Likewise, with [“Jayco”], the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), they set out what their expectations are for the proper running of hospitals and then they do site visits that are unannounced in which they just appear clipboard in hand to walk around for a week or more to check out your hospital.”

“Also, the department of health does that. They appear unbidden and they check to see that you are in compliance in all possible areas. Their rules are also published. they are not there to be your friend. They just want to make sure that you are following the rules and running your hospital properly.’

RPB in response:

“Those examples [suggest] that they are actually auditing seriously, in other words, showing up unannounced, saying here are the rules, we are not holding your hands, we are not going to get you trained; you can get yourself trained. You know where they [the rules] are, you know what you need to be doing, and our job is to audit you and see that you are doing what you should be doing. And if you are not, we are going to penalize you. We are not going to be expressing our joy in helping you learn to do it right.”

AMR: “It is not necessary.” ... “The police do not come to every citizen to teach you what all the laws are ...”

RPB:

“The FBI does not train the Mafia.”

AMR: “They [the FBI] just check to determine whether you are breaking the law.”

RPB: “We do not even know, which by itself is even worse, because we do not even know how bad things are running because they are not doing the audit whatsoever. JCAHO does. ACGME does.”

AMR: “OIG does not just waltz in unannounced and start inspecting your scientific facility, grabbing notebooks, things like that, which essentially is what JCAHO does.”

RPB: “Many scientists have suggested [doing] that [data audits].”

AMR: [continuing re OIG, by which she actually means ORI, or perhaps NSF OIG]:
“They rely on you telling them that

<https://www.jointcommission.org/>

“They say that their mission is: “To continuously improve health care for the public, *in collaboration with other stakeholders*, by *evaluating* health care organizations and *inspiring them* to excel in providing safe and effective care of the highest quality and value.” Unfortunately the **board of directors of JCAHO usually has been dominated by representatives of the American Medical Association and the American Hospital Association**, which raises concerns about *conflicts of interest* and the extent to which it can have a perspective that is objective and honest enough to do what must be done to improve safety and quality.

In fairness, where would they find executives with experience that didn't have a conflict of interest, like people with experience managing patient advocacy organizations? *We don't have appropriate career paths to produce those people yet since no one is in that business yet.*

[Our view on this professionalism v COI issue is that professional external auditors work with experts in the particular field.]

Their initials stand for The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), but generally they are referred to as The Joint Commission.

They **set standards for healthcare organizations and issue accreditation to organizations that meet those standards**. JCAHO conducts **periodic on-site surveys to verify that “an accredited organization substantially complies with Joint Commission standards** and continuously makes efforts to improve the care and services it provides.”

The Joint Commission evaluates and accredits more than 19,000 healthcare organizations and programs in the United States. Operating since 1951, **it is an independent, not-for-profit**

organization and is the nation's predominant standards-setting and accrediting body in healthcare.

However, according to The Massachusetts Nurses Association News at <http://www.massnurses.org/news/2004/10/JCAHOhtm.htm>, *critics say that it is more lapdog than watchdog*. In that article, Karen Higgins, RN says, "The **hospitals are given notice of pending surveys, and they spend months preparing to get ready**. Staffing always improves around the time of a JCAHO visit, and it goes right back to normal (usually bad) immediately after."

Based on a survey of 500 hospitals inspected by JCAHO between 2000 and 2002, the report found that **the organization failed to identify 167 of the 241 deficiencies state inspectors later found at the facilities, or 69 percent of the total.**

During the entire tenure of JCAHO there have been regular revelations about the amount of unnecessary death and injury in medicine with no overall improvement in those numbers and almost no changes in the way medicine is practiced.

Perhaps things would be worse without them, but when were such watchdogs ever able to do a better job of protecting people than the people could do for themselves when they they were able to get the right information to work with, which they cannot get from medicine. **Patients are going to have to establish the means to get it themselves."**

<http://patient-safety.com/jcaho.html>

https://en.wikipedia.org/wiki/Joint_Commission:

“ In 1965 the federal government decided that a hospital that met Joint Commission accreditation met the [Medicare](#) Conditions of Participation. Section 125 of the [Medicare Improvements for Patients and Providers Act of 2008](#) (MIPPA) removed The Joint Commission's statutorily-guaranteed accreditation authority for hospitals, effective July 15, 2010. At that time, The Joint Commission's hospital accreditation program would be subject to [Centers for Medicare and Medicaid Services](#) (CMS) requirements for organizations seeking accrediting authority. To avoid a lapse in accrediting authority, The Joint Commission would have to submit an application for hospital accrediting authority consistent with these requirements and within a time frame that would enable CMS to review and evaluate their submission.^[6] CMS would make the decision to grant deeming authority and determine the term.”

...

“The Joint Commission's predecessor organization was an outgrowth of the efforts of [Ernest Codman](#) to promote hospital reform based on outcomes management in patient care. Codman's efforts led to the founding of the [American College of Surgeons](#) Hospital Standardization Program. In 1951, a new entity, the **Joint Commission on Accreditation of Hospitals** was created by merging the Hospital Standardization Program with similar programs run by the [American College of Physicians](#), the [American Hospital Association](#), the [American Medical Association](#), and the [Canadian Medical Association](#). In 1987, the company was renamed the **Joint Commission on Accreditation of Healthcare Organizations** (JCAHO, pronounced "Jay-co").^[7] In 2007, the Joint Commission on Accreditation of Healthcare Organizations underwent a major rebranding and simplified its name to **The Joint Commission**. The

rebranding included the name, logo, and tag line change to "Helping Health Care Organizations Help Patients."

The name change was part of an overall effort to make the name easier to remember and to position the commission to continue to be responsive to the needs of organizations seeking fee-based accreditation. The Joint Commission advocates the use of patient safety measures, the spread of information, the measurement of performance, and the introduction of public policy recommendations.^[8]

"All member health care organizations are subject to a **three-year accreditation cycle**, while **laboratories are surveyed every two years**. With respect to hospital surveys, the organization does not make its findings public.^[11] However, it does provide the organization's accreditation decision, the date that accreditation was awarded, and any standards that were cited for improvement. Organizations deemed to be in compliance with all or most of the applicable standards are awarded the decision of Accreditation.

The **unannounced full survey is a key component** of The Joint Commission accreditation process. "Unannounced" means the organization does not receive an advance notice of its survey date. The Joint Commission *began conducting unannounced surveys on January 1, 2006*. Surveys will occur 18 to 39 months after the organization's previous unannounced survey.^[12]

There has been criticism in the past from within the U.S. of the way the Joint Commission operates. The Commission's practice had been to notify hospitals in advance of the timing of inspections.^[13] A 2007 article in the *Washington Post* noted that about 99% of inspected hospitals are accredited, and serious problems in the delivery of care are sometimes overlooked or missed.^[14] Similar concerns have been expressed by the *Boston Globe*, stating that "The Joint Commission, whose governing board has long been dominated by representatives of the industries it inspects, has been the target of criticism about the validity of its evaluations."^[11] The Joint Commission over time has responded to these criticisms. However, when it comes to the international dimension, surveys undertaken by JCI still take place at a time known in advance by the hospitals being surveyed, and often after considerable preparation by those hospitals."

"Preparing for a Joint Commission survey can be a challenging process for any healthcare provider. At a minimum, **a hospital must be completely familiar with the current standards**, examine current processes, policies and procedures relative to the standards, and prepare to improve any areas that are not currently in compliance. The hospital must be in compliance with the standards for at least four months prior to the initial survey. The hospital should also be in compliance with applicable standards during the entire period of accreditation, which means that surveyors will look for a full three years of implementation for several standards-related issues.^[15]

As for **the surveyors**, the Joint Commission and JCI employ salaried individuals, people who generally work or have worked within health care services but who may devote half or less of their time for the accrediting organization. The surveyors travel to health care organizations to evaluate their operational practices and facilities (i.e., structure/input and process metrics) against established Joint Commission standards and elements of performance."

Substantial time and resources are devoted by health care organizations ranging from medical equipment suppliers and staffing firms to tertiary care academic medical centers to prepare for and undergo Joint Commission surveys. There is **growing concern**, however, over the lack of verifiable progress towards meeting the organization's stated goals. Although the Joint Commission increasingly cites and demands "evidence-based medicine" in its regulatory requirements, there is a relative paucity of evidence demonstrating any significant quality improvement due to its efforts, while there is *a growing body of literature showing no improvement or actual deterioration in quality despite the increasingly stringent and expensive requirements.*^[citation needed] Indeed, **a facility requesting accreditation pays a substantial fee**

to the Joint Commission (the "accrediting" agency) and, **upon receiving a "passing" grade is able to purchase associated mementos of accomplishment to display to the public. No other entity certifies the Joint Commission.**"

"Some states have set up their own alternative assessment procedures; the Joint Commission is not recognized for state licensure in the states of Oklahoma (except for hospital-based outpatient mental health services), Pennsylvania [AMR disagrees], and Wisconsin. In California, The Joint Commission is part of a joint survey process with state authorities.^[16]"

"There are also other healthcare accreditation organizations in the U.S. unrelated to the Joint Commission.^[17] These include the [Accreditation Commission for Health Care](#), Inc. (ACHC),^[18] the [American Osteopathic Association](#) (AOA), the [Commission on Accreditation of Rehabilitation Facilities](#)(CARF),^[19] the [Community Health Accreditation Program](#) (CHAP),^[20] the "Exemplary Provider Program" of [The Compliance Team](#),^[21] [Healthcare Facilities Accreditation Program](#) (HFAP),^[22] HFAP is older than the Joint Commission, having been in operation since 1945.^[23] the [National Commission on Correctional Health Care](#),^[24] and the [Healthcare Quality Association on Accreditation](#) (HQAA), who are recognised in the state of Ohio.^[25] and [Utilization Review Accreditation Commission](#) (URAC).^[26] Due to increases in state insurance reform initiatives led by national nonprofit advocacy group, Autism Speaks, the need to develop quality benchmarks and recognize quality in behavioral health service providers include accrediting organizations such as [<http://www.bhcoe.org> The Behavioral Health Center of Excellence^[24] and the ^{[25][26]} and [Credentialing Of Ethical Behavioral Organizations](#).

On September 26, 2008 the Centers for Medicare and Medicaid Services (CMS) granted **deeming authority** for hospitals to [DNV Healthcare Inc.](#) (DNVHC), an operating company of [Det Norske Veritas](#) (DNV), a Norwegian international company that has been operating in the U.S. since 1898.^[27]

The Center for Improvement in Healthcare Quality (CIHQ), based in Round Rock, Texas, was granted **deeming authority** for hospitals by the CMS In July 2013.^[28]"

deeming authority

DEEMING AUTHORITY

The authority granted by CMS to accrediting organizations to determine, on CMS's behalf, whether a M+CO evaluated by the accrediting organization is in compliance with corresponding Medicare regulations.

https://www.aapc.com/medicalcodingglossary/deeming_authority.aspx

[POT VIMP]

"Nelson Sabatini, Maryland's then-secretary of health and mental hygiene, expostulated in 2004 that the federal government and many state governments have turned over their authority to private-sector organizations, which he believes to have "uncomfortably close ties to the industry they survey." (His comment was prompted by state surveyors' findings of significant errors on the part of a lab accredited by the College of American Pathologists.) In the latest of a series of reports, the Government Accountability Office (GAO) reaffirmed that CMS needs additional authority for adequate oversight of patient safety in hospitals."

http://www.nhpf.org/library/issue-briefs/IB802_Accreditation_05-06-05.pdf

https://en.wikipedia.org/wiki/Ernest_Amory_Codman

Ernest Amory Codman

“Codman graduated from [Harvard Medical School](#) in 1895 and interned at [Massachusetts General Hospital](#). He joined the surgical staff of Massachusetts General and became a member of the Harvard faculty. While there, he instituted the first [morbidity and mortality conferences](#). However, *in 1914, the hospital refused his plan for evaluating surgeon competence, and he lost his staff privileges there*. Dr. Codman *eventually established his own hospital* (which he called the "End Result Hospital") to pursue the performance measurement and improvement objectives he believed in so fervently. To support his "end results theory," Dr. Codman made public the end results of his own hospital in *a privately published book, A Study in Hospital Efficiency*. Of the 337 patients discharged between 1911 and 1916, Dr. Codman recorded and published 123 errors.”

[An “ancestor” of mine, apparently ...]

“With an interest in health care quality, Dr. Codman also helped lead the founding of the [American College of Surgeons](#) and its [Hospital Standardization Program](#). The latter entity eventually became the [Joint Commission on Accreditation of Healthcare Organizations](#). He also established the first bone tumor [registry](#) in the United States, an idea which had first been suggested by the British physician Sir [Thomas Percival](#) in 1803.”

“The objective of the Joint Commission’s survey is not only to evaluate the healthcare organization, but also to provide education and guidance that will help staff continue to improve the organization’s performance.”

https://www.successfactors.com/en_us/lp/articles/joint-commission-compliance.html

[These do not sound like education and consulting is very separate from audit - probably because the hospitals appear to pay for the accreditation.]

“ACHC has gained respect and recognition as an accrediting organization uniquely committed to health care providers. Since 1986, ACHC has become synonymous with providing excellent customer service, integrity, and value. Our Surveyors and Account Advisors are friendly and helpful, ensuring that you obtain the highest quality accreditation that helps you improve your business and provide excellent patient care.

ACHC has been listening to providers for years and we want you to know that we understand your challenges with accreditation. We have taken an innovative approach to accreditation, and we invite you to experience the ACHC difference that offers:

- Medicare Deeming Authority for [Home Health](#), [Hospice](#), and [DMEPOS](#)
- Service-specific standards that are realistic for use in daily operations, and are easy to understand

- Personal Account Advisors to assist with any questions and provide guidance throughout the accreditation process
- All-inclusive pricing with no annual or added fees such as Surveyor travel expenses; discounts are also available
- Friendly, experienced and consultative Surveyors who offer evidence-based practices to improve your business
- Accreditation Services for a variety of programs
- Recognition by major third party payors
- ISO 9001:2008 Certification”

<http://www.achc.org/about-achc/why-achc>

“Accreditation: The Standard of Quality

Accreditation is a process of review that healthcare organizations participate in to demonstrate the ability to meet predetermined criteria and standards of accreditation established by a professional accrediting agency. Accreditation represents agencies as credible and reputable organizations dedicated to ongoing and continuous compliance with the highest standard of quality. ACHC collaborates with industry experts to create standards to ensure that quality is maintained throughout all aspects of the organization.

On-site surveys are conducted every three years by industry experts. A comprehensive review is conducted of organizational structure, policies & procedures, compliance with federal/state/local laws, leadership, patients’ rights & responsibilities, fiscal operations, human resource management, provision of care, patient records, quality outcomes, performance improvement, infection control, and patient/employee safety. At the time of survey, organizations demonstrate how they have maintained continuous compliance with the ACHC Standards for Accreditation.

The Centers for Medicare and Medicaid Services (CMS) has established provider requirements for Home Health agencies; Hospices; and Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) agencies that participate in the Medicare program. For certain programs and services, Medicare requires organizations to become accredited by an approved accreditor like ACHC before they are able to participate with Medicare.”

<http://www.achc.org/getting-started/what-is-accreditation>

[From all of the preceding, I do not believe that the hospital accreditation system actually supports the absence of a major education component. It rather seems to embody much of the SOX-like violations about which we express concerns.]

[Q: Does ACGME or JCAHO look for/audit for allegations of misconduct? If so, do they follow any specific audit standards? Do they employ or contract with any professional auditors?]

Contact Us

ACGME

Accreditation Council for Graduate Medical Education
 401 North Michigan Avenue, Suite 2000
 Chicago, IL 60611
 Telephone: 312.755.5000

Address:

The Joint Commission
 One Renaissance Blvd.
 Oakbrook Terrace, IL 60181

Washington DC Office
 601 13th Street, NW
 Suite 560 South
 Washington, DC 20005

- **Customer Service:**
630-792-5800

Gail Weinberger	<ul style="list-style-type: none"> • Accreditation and Certification • Eligibility for Survey • Falsification of Survey Information 	Director	630-792-5766
Report a Patient Safety Event	<ul style="list-style-type: none"> • Report a Patient Safety Event 		800-994-6610
Sentinel Event Reporting	<ul style="list-style-type: none"> • Sentinel Event Reporting 	Office of Quality and Patient Safety	630-792-5642

Definition of Occurrences That Are Subject to Review by The Joint Commission Under the Sentinel Event Policy

The definition of a reviewable sentinel event takes into account a wide array of occurrences applicable to a wide variety of health care organizations.

Any or all occurrences may apply to a particular type of hospital.

Thus, not all of the following occurrences may apply to your particular hospital.

The subset of sentinel events that is subject to review by The Joint Commission includes **any occurrence** that meets *any of the following criteria*:

The event has resulted in an unanticipated death or major permanent loss of function not related to the natural course of the patient's illness or underlying condition§ ll

or

The event is one of the following (even if the outcome was not death or major permanent loss of function not related to the natural course of the patient's illness or underlying condition):

- o Suicide of any patient receiving care, treatment and services in a staffed around-the-clock care setting or within 72 hours of discharge
- o Unanticipated death of a full-term infant
- o Abduction of any patient receiving care, treatment, and services
- o Discharge of an infant to the wrong family
- o Rape, assault (leading to death or permanent loss of function), or homicide of any patient receiving care, treatment, and services [violent crimes only?]
- # o Rape, assault (leading to death or permanent loss of function), or homicide of a staff member, licensed independent practitioner, visitor, or vendor while on site at the health care organization.
- o Hemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities (ABO, Rh, other blood groups)
- o Invasive procedure, including surgery, on the wrong patient, wrong site, or wrong procedure **
- o Unintended retention of a foreign object in a patient after surgery or other invasive procedures
- o Severe neonatal hyperbilirubinemia (bilirubin >30 milligrams/deciliter)
- o Prolonged fluoroscopy with cumulative dose >1,500 rads to a single field or any delivery of radiotherapy to the wrong body region or >25% above the planned radiotherapy dose Examples of reviewable sentinel events are provided in Table 1 (page SE-7). Examples of sentinel events that are outside the scope of those sentinel events that are subject

to review by The Joint Commission under the Sentinel Event Policy are provided in Table 2 (page SE-8)

How The Joint Commission Becomes Aware of a Sentinel

Event Each hospital is encouraged, but not required, to report to The Joint Commission any sentinel event meeting the criteria for reviewable sentinel events. Alternatively, The Joint Commission may become aware of a sentinel event by some other means such as communication from a patient, a family member, an employee of the hospital, or a surveyor, or through the me

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AMR "I have never
heard anything about
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Hop. tells the employees what
studies they not know;
"And it states. The year
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"X" "

Never learned of any
complaint memo for
ACBMB.

□ Who oversees ACBMB - TIC
at PSM&MC? → There
are reg. people.

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

HUSBAND’S DECLARATION OF JUNE 26, 2021

Husband received a \$50,000/year base salary from the SLRHC Dept of Neurology

1. Husband notes that his income from 2001 through 2007 at the St. Luke’s-Roosevelt Hospital Center (SLRHC) involved a base income of \$50,000/year from the Department of Neurology. (He had moved to Hershey, PA with his family in 2006 and shut his lab at SLRHC at the end of September 2007.

II. Wife falsely testified explicitly and implicitly that she had ever fought with Husband about his being “gainfully” employed

2. Husband asserts that he and Wife did not ever argue or fight about finances nor his needing “gainful” employment.

3. Husband repeats his testimony that Wife dissuaded Husband from attempting to become a psychiatrist in his fifties, but adds that these discussions had no rancor to them at all.

4. In support of Husband’s preceding claims, and by way of further assessing the testimony provided by the parties on these points, Husband reviews the following transcript testimony (“A” is Wife answering):

“Q: So where did the money come from to fund the lawsuit and the business endeavor?

A. **Mostly** it came from me.

Q. Did you support this lawsuit?

A. How shall I respond?

...

THE WITNESS: It was our intention *to stay married*. I was supportive of him *in the sense* that this was something he wanted to pursue and he wanted to right this wrong. And I **did** provide emotional and monetary support when this was happening.” (T. p. 37)

5. Note that Wife is admitting that she did support the qui tam lawsuit, but now she implies it was only in a qualified way that appears to suggest she was not *truly* supportive. Was she coerced? What other “sense” was there to her support? As the documentary record shows, Wife was openly and actively supportive in words and deeds. (See Declaration of January 4, 2021 and its attachments; see also Exhibit K - Interview and discussion with Ann Rogers, attached in these exhibits.) There was no sign of reticence or disagreement.

6. Husband notes that in the following, Wife is admitting that she, too, based on the experiences of others she knew, felt that Husband’s science career was over. This much the master conceded in her report.

Wife: “It’s not something I would have independently chosen to do, and we talked about other people who had been in similar situations in his lab who just decided to chuck it in and give up on a science career and go do something else.” (T. p. 38).

7. With respect to the continual claims by Wife and her counsel that Husband had not been “gainfully” employed, it is nevertheless acknowledged by Wife in her testimony, above, that she knew and supported Husband in his attempts to run businesses, i.e. to be self-employed. Nevertheless, Wife would also testify:

“There was only so far I could go with that kind of argument because it would lead to pretty intense fighting between us. And so I did not -- I did not push it.” (T. 38)

8. Husband completely denies Wife claim about any such argument, and in the interests of discourse analysis, reviews the entire claim again:

Wife: “It’s [being in a whistleblower situation is] not something I would have independently chosen to do, and we talked about other people who had been in similar situations in his lab who just decided to chuck it in and give up on a science career and go do something else. There was only so far I could go with that kind of argument because it would lead to pretty intense fighting between us. And so I did not -- I did not push it.” (T. p. 38).

9. Husband notes that Wife’s statement is **illogical**. Husband, of course, agreed with her and indeed the record shows that he did “chuck” the science career – to a point. Husband continued doing his scientific research as part of his own business

enterprise. The reason was simple: Husband was in his forties, and scientific research was something he knew how to do.

10. Therefore, Husband questions under what circumstances would such agreement and support by Wife lead to “arguments”?¹
11. More generally, Husband notes that when witnesses spontaneously dissemble, they are much more likely to make illogical and inconsistent statements under the increased cognitive load that is required to keep various lies in working memory.
12. Therefore, Husband believes that a close reading of Wife’s testimony will show it to be unreliable.
13. By comparison, Husband provided very detailed and expansive testimony related to his career and businesses. As part of his testimony, he asserted that there were never any such arguments as Wife seems to claim in her testimony.
14. Furthermore, Husband has produced years of corroborating documentary evidence which has been presented in the record. (See Declaration of January 4, 2021, and the attachments thereto.)
15. All the above testimony by Wife seemed to be designed to attack Husband’s work ethic, which in turn was cited by the master as a basis for **not** providing Husband with alimony.
16. Importantly, when pressed, Wife never presented any **detail** about arguments or fights. Instead, her actual words indicated that she thought Husband should “chuck” his research career, and furthermore, that she dissuaded him from entering a potentially lucrative and related clinical career.
17. Wife and her counsel continued at the master’s hearing of October 17, 2021:

Q. When was your husband last **gainfully** employed to your knowledge during your marriage at least? We’ll narrow it down to that.

¹ Husband states unequivocally there were no such arguments or “fights” over what happened to his career. They simply did not happen. Until the sudden departure of Wife from the marriage, Husband and Wife were in agreement on matters of money (easy to do when it is not in short supply), bringing up the children (easy to be happy when the children are successful), and careers. With respect to the latter, Wife testified, and Husband agrees, that his career had been badly injured. But that is like “agreeing” that Husband had lost a leg in an accident. Not many fights tend to erupt about disability. Couples usually try to find ways to get around obstacles, and we were no different.

A. So he was continuing to work in his research lab in New York during the 2006-2007 academic year. He was going back two days a week to keep that lab running and was, I believe, continuing to get paid during that time. He then stopped that work in 2007. And as far as I know, the only *gainful* employment he had was during a brief period when he was working as an adjunct professor at Lebanon Valley College where he was getting paid something along the lines of \$10,000 per course to teach. And ultimately *the* decision was that that was such a small amount of money that it wasn't worth continuing to pursue that.

Q. When you say that was *the* decision, was it your his decision?

A. It was *probably* both of our decisions." (T. pp.34-35.)

18. It was *definitely* both of our decisions. Use of the word "probably" is another sign of dissembling. What was "probable" about it? Did Wife agree or not?

19. If Wife had expressed any reservations during the marriage about gainful employment, as in this mutually acknowledged incident, she could have, and likely would have, done so at this point in court against her opponent. Especially if all these discussions were actually leading to bad "fights".

20. Putting it the other way, why wouldn't Wife have argued for Husband to continue such gainful employment, if she was so interested in monetary gain?

21. Continuing with Wife's testimony:

Q. Did you encourage your husband to find employment after 2007?

A. Absolutely.

Q: And what steps did you take to encourage that?

A. So we had a number of discussions about this over the years. For one thing, *we* would sometimes say, "What if I die and you need to be able to support the household and the kids?" (T. p.35).

22. Wife's use of the word "we" here is problematic, since it suggests it was not *she* who raised any such issue. She could have said, "I would sometimes ask him".²

23. Wife then continues her testimony:

² For his part, Husband refutes Wife's claims. The last time Husband and Wife updated their Last Wills and Testaments was in the 1990's or early 2000's. Husband further states that the *ONLY* time Wife raised the issue of dying, to his recollection, was in June of 2017, which she brought up in the context of both needing to have joint gravesites prepared. This led to visits to the Hershey Cemetery (at which time the last of the arguments about discontinuing her father's medications occurred.)

“And one of the things **we** had discussed was his going back to do a residency to be trained to be a **psychiatrist** or a neuroscience doctor. And that was -- **that idea was abandoned.**” (T. p.35)

24. True, it was abandoned. But note that her testimony is very incomplete. **Why** was it abandoned? Compare Husband’s testimony on these discussions, in which he specifies the year (2011), the number of such discussions (three), and the reasons given by each party for their positions. (T. pp. 132-133).

25. Wife’s testimony on cross-examination continues to lack any support for the initial claim that it was Husband who had a problem getting “gainful”, employed work:

“BY ATTORNEY HOLST (T. p. 79):

Q. And this discussion that you had with him about perhaps going back and pursuing the psychiatry field, that occurred roughly 2009?

A. It occurred more than once.

Q. And, in fact, isn't it true that Robert actually broached the subject with you about him going back and doing that?

A. We discussed it **together**.

Q. And, in fact, isn't it correct that **you dissuaded him** from doing, so citing that it would take significant amount of time to go through fellowship and that he won't be able to practice until he was around 60?

A. **I wouldn't say I dissuaded him. We discussed all of these considerations --**

Q. Right.

A. -- his age, his ability to wake up in the morning, and a number of other things. (T. pp. 79-80).

26. Wife clearly did not claim that she had tried to push Husband to get “gainful” employment as a psychiatrist. Rather, she admitted just the opposite.

27. The reason was that Husband wanted a paid position was that he had just failed to obtain a large amount of expected income (over \$1 million) from the qui tam case, which had ended in April 2010. Furthermore, he could see that preparing the genetically modified mouse strains for sale (hoping for up to \$150,000 in licensing fees) was going to continue to take some time. (Husband had only the assistance of his two sons in this endeavor.)

28. Therefore, it was Husband who applied to W-2 income generating positions while he was becoming certified as a paralegal in the summer of 2010³. Consistent

³ Husband had initially only inquired about taking a legal research course from the wife of a high school classmate of his who was a dean at the Widener Law School, Delaware. The

with testimony from both parties, Husband obtained his paralegal certification to support his involvement in research misconduct qui tam case, and not to actually attempt to employ himself as a paralegal (or a lawyer), which he never had wanted to do. Wife never would have pushed Husband to become a lawyer any more than he would have done to her. Husband and Wife had some shared attitudes about the U.S. legal profession. Wife's testimony implying she had ever tried to get Husband to consider entering the law is yet another false claim.

29. Nevertheless, Husband had clearly wanted to have employment income, which is why he applied for lecturerships after the end of the qui tam case in 2010. Wife never claimed that she had to persuade or pressure Husband to obtain the adjunct lecturer position. She only acknowledged on cross examination that she had *dissuaded* Husband from pursuing much more lucrative ("gainful") employment.

30. Even if Wife's reasons were sound at the time, she cannot know fabricate a claim that Husband was resisting consideration of gainful employment when she admits it had been she who dissuaded him in the last such set of discussions to which each testified.

31. Husband had a motive to want to obtain much better wages and with much better job status and security than he had experienced as an adjunct lecturer. (T. p. 133). This is why it was logical for Husband to have been the one to propose to Wife that he try to complete an internship and residency to become a psychiatrist. These are not the signs of an unmotivated person who does not want the security of status and wage income.

Q. Now, you heard some testimony from Dr. Rogers earlier today of some discussions she had with you about perhaps becoming a psychiatrist during the marriage.

A. Correct.

Q. Can you tell me about what those discussions were?

A. Yeah. So she stated correctly, except I was paid less than she said. But I was at Lebanon Valley College as an adjunct professor teaching two courses, about 3700 or \$4,000 apiece. (T. p. 132) And they then wanted me in 2011, [to] create a new textbook, ... there was a lot of hassle, cutting the income at the same time, asking for a lot more [doing the work of a technician to clean the lab] and all sorts of trouble [reducing free parking].

And so I had these discussions with my wife and, [] we thought: This is not worth it; this is a lot of effort for very little money and not much advancement. What else can you be doing?

dean then suggested he might as well take the entire summer program and become fully certified. Husband never had any intention of becoming a paralegal or an attorney. He simply wanted to be able to interact with the qui tam attorneys more professionally.

My -- at that point it was I, I believe, who **three times** raised the issue, why not just become a **clinical** [end T. p.132] **psychiatrist**. [], that's a more stable situation. You don't have to worry about grants; you don't have to worry about, you know, any of these issues that are ongoing; become a clinical psychiatrist.

And so that was discussed **three times in early 2011**. And at that time -- do you want me to continue?

Q. Yeah, keep going. Absolutely.

A. At the time my wife said some of what she said, and she said in addition [] **what she said I'll repeat**.

'You know, that you're getting older, there is -- you know, **it's going to be very, very arduous for a person [in his] fifties**. You would be completing this by the time you're 57. You would just be starting as an attending', ...

It turned out that those concerns were proven prescient. I had medical issues beginning at the age of 53, every year since, including this year. As I said, I [] - **broke my back. I was in a TLSO brace** -- that's a thoracolumbosacral orthotic brace, I believe. [] For four months. So there were a number of issues, medical issues that arose. [] And I can't say how arduous otherwise it would have been. **I don't know that she was forecasting medical issues, but just** [that to do a residency in one's fifties would be] **physically arduous**.

So -- and **she said also that we don't need another clinical income. That's been sort of her statement all** (end T. p.133) **along** ... we were living well.

We didn't need -- we didn't have financial needs. We didn't need the additional income. ... she dissuaded me and through discussions from being a clinical psychiatrist. (T. p. 134).

32. Thus, it is notable that Wife does not specify that **she** wanted Husband to become a psychiatrist or why the idea was abandoned.

33. Husband would go on to take heed of Wife's cautions and not attempt to become a clinician. Wife had done a residency and knew Husband's health status. Her concerns were indeed proven prescient in Husband's case. But almost a decade later, when it is expedient for Wife, she tries to imply that Husband did not want to become a clinician. Has Husband's health improved since 2011? No. The record shows how significantly it has declined.

34. Finally, shortly after the psychiatrist discussions in early 2011, Husband proposed the next obvious move if he were to try to remain self-employed and yet solely rely on the slow production of genetically modified mice: set up a consulting and advocacy enterprise to try to leverage his experience of scientific research misconduct. As Wife testified, she agreed. The sole proprietorship Bauchwitz Laboratories was then registered with a new dba, Amerandus Research.

35. The record is clear that Wife did for years assist with Husband's business, i.e. more actively than merely by emotional and financial support. As she acknowledged during testimony, she provided assistance with Husband's business website. She also reviewed his publications, such as the one published in Science and Engineering Ethics in 2016. (See also text messages in the Declaration of January 4, 2021.)

36. Finally, Husband here adds further documentary evidence of Wife's ongoing involvement in Husband's businesses. In early 2017, Husband interviewed Wife about the practices of the Joint Commission on Hospital Accreditation (JCAHO) and the (ACGME) as these might relate to what was occurring in the scientific research field. (See Exhibit K - Interview and discussion with Ann Rogers re COI and whether ORI education division is actually necessary at all by comparison to SCAHO and ACGME 030317 COMBO w addl notes 030417).

37. Therefore, Wife's claims and insinuations that she had tried to get Husband "gainfully" employed are completely false. There were no "fights", intense or otherwise on this topic, or any other financial one.

III. Wife did not pay for Husband's "education", nor did her parents contribute significantly, if at all, to college 529 funds for their sons

38. The trial court claimed: "factors that weighed in favor of Wife, such as her contributions to Husband's education throughout the marriage." (DivOp. p.6)

39. Wife's testimony on this point was ("A"):

"Q. And did your husband undertake any other education or training during your marriage?

A. Yeah. He got at least one CompTIA certificate in cyber security. There may have been two. I don't remember what the other one was. And he also had been involved in an organization called the Association of Certified Fraud Examiners. And he went through an educational program and paid to take a test to become a certified fraud examiner." (T. p.38)

40. These "educational" costs, which Husband described as "professional development" (T. p.199) were paid directly by Husband from his own bank accounts. Husband testified that he paid for many expenses over the years from money (over \$200,000; T. p. 200) that he had saved from his employment since he had been a student through his fellowships and professorship.

41. Therefore, Husband may have spent on the order of \$20,000 on professional development/education expenses during the marriage. This can be compared to his testifying that he had paid outright \$30,000 for one of his Wife's car.⁴

⁴ Couples that are wealthy enough that either spouse can simply pull out \$30,000 in cash to buy things they desire are clearly well enough off that they are very unlikely to be fighting

42. Wife's testimony was also not accurate in terms of where funds came from for the college funds of the sons:

BY ATTORNEY HOLST:

Q. So your testimony was that your kids' colleges were paid by you and your income?

A. You asked if their college was paid for.

Q. Mm-hmm.

A. Yes, it was paid for.

Q. Was it paid for by you? On your direct you said that you were responsible for --

A. It was paid by a number of individuals. And I heard you talking about his mother having paid into 529 accounts. My parents also paid small amounts. Yes.

Q. And his mother contributed a hundred thousand dollars?

A. I don't know how much she contributed.

Q. So if it was \$96,000, you would have no reason to doubt that?

A. I don't think so.

Q. Okay.

MASTER CONLEY: "I don't think" you doubt it or you don't think it was that much?

THE WITNESS: I -- it may have been that much.

MASTER CONLEY: Okay. Thank you.

ATTORNEY HOLST: No further questions." (T. pp. 84-85)

43. Once again, Wife's testimony was not forthright, but she instead was trying to obscure facts she knew quite well: Husband's mother had paid \$96,000 into 529 funds for each of their sons. This is substantial money.

44. Nevertheless, Wife would continue to distort the record on educational payments by claiming that her parents had also paid into 529 funds. Husband followed the children's 529 funds and actually knows of no direct funding to any 529 set up by Wife's parents. These did not exist, to the best of Husband's knowledge.

45. By contrast, Husband's mother set up accounts under her authority to which she paid directly over a number of years, at a rate of several thousands of dollars per year. Therefore, it is very unreasonable by Wife to attempt to create an image of equality in education payments by pretending that nearly \$200,000 from Husband's sources was comparable to small gift checks from Wife's parents, directly to Wife.

about money. Husband states again that he and Wife *never* fought about money. Ever. Husband had cash reserves of his own, plus some notable support from his mother. Wife came to the marriage with neither cash nor financial resources from her parents.

46. Given claims the master made in her report of March 13, 2020 about embellished testimony, is notable that the master chose to not pursue Wife for “embellishing” the record.

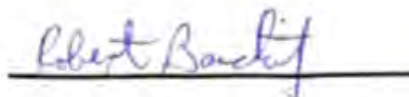
47. Husband’s many efforts over the years to assist Wife in getting better contracts and promotions (T. pp. 138-140), represented a substantial investment in their future joint economic security. Husband’s is now in serious jeopardy.

48. In contrast, there is no evidentiary basis to support Wife’s claim that she paid for Husband’s graduate education: medical scientist training programs (MSTP) in the U.S. are almost always supported by fellowships, as was Husband’s, so that the student does not emerge with debt; this is an important distinction from those who enter the clinical fields, as they may have substantial medical school debts.

49. If Wife’s claim of paying for Husband’s professional development education was the basis for the master and judge to ascribe a “factor” in her favor, then Husband notes that upon remand, he will deliver bank records showing that his certifications were paid by funds from his own, separate bank statements.

50. It is clear that Husband testified that the opposite situation existed: he was involved in helping to manage paying down Wife’s various educational loans in the 1990’s. Even if that effort is considered to have involved marital funds from joint incomes, then the same should be considered the case for the much later, and less expensive, professional development certifications Husband obtained.

Date: 5/18/21



Robert P. Bauchwitz
Plaintiff
23 Harlech Drive
Wilmington, DE 19807
dir_amr@luxsci.net
Telephone: (717) 395-6313
pro se

DEMME LAW OFFICE, LLC
 James R. Demmel, Esquire ID #90918
 1544 Bridge Street
 New Cumberland, PA 17070
 (717) 695-0705
 jdemmel@demmellawoffice.com
 Attorney for Defendant

2021 JUN 26 A 10:09
 DAUPHIN COUNTY
 DOMESTIC RELATIONS

ROBERT P. BAUCHWITZ, : IN THE COURT OF COMMON PLEAS
 PLAINTIFF : DAUPHIN COUNTY, PENNSYLVANIA
 v. :
 : Docket No. 01336-DR-17
 ANN M. ROGERS, :
 DEFENDANT : PACSES Case No. 640116732

DEFENDANT'S BRIEF REGARDING DE NOVO SUPPORT HEARING

AND NOW, comes Defendant, Ann M. Rogers, by and through her counsel, James R. Demmel, Esquire, who hereby files this Brief Regarding De Novo Support Hearing and in support thereof avers as follows:

I. **Question Presented.**

Should the court dismiss Plaintiff's request for a de novo support hearing, since the court entered the order directly instead of from a domestic relations support conference recommendation?

Suggested Answer: Yes.

II. **Procedural History & Background.**

The Domestic Relations Office entered an APL order on December 26, 2017, with an effective date of September 20, 2017, requiring Defendant to pay \$6,735 monthly for APL and \$674 monthly for arrears, making the total monthly support order \$7,409. On October 28, 2020, the court issued a divorce decree. On November 25, 2020, Plaintiff filed a Notice of Appeal from the divorce decree to the Superior Court.

On December 8, 2020, Defendant filed a Petition to Terminate or Suspend Alimony Pendente Lite, arguing that Plaintiff should not continue to benefit from APL payments while pursuing his appeal of the court's denial of his alimony claim. On January 4, 2021, Plaintiff filed his response to Defendant's Petition to Terminate or Suspend Alimony Pendente Lite. On February 26, 2021, the court issued an order denying Defendant's Petition to Terminate or Suspend Alimony Pendente Lite.

On March 17, 2021, Defendant filed a Motion for Reconsideration of Petition to Terminate or Suspend Alimony Pendente Lite, in which Defendant cited authoritative case law supporting her argument that the trial court has the authority to suspend or terminate APL pending an appeal to the Superior Court. On March 22, 2021, the court issued an order suspending the APL order. On March 30, 2021, Plaintiff filed a Response to Defendant's Motion for Reconsideration. On April 9, 2021, Plaintiff filed a Demand for Hearing De Novo and a Motion for Reconsideration of Orders Terminating Alimony Pendente Lite. On April 28, 2021, in response to Plaintiff's Motion for Reconsideration, the court issued an order vacating the court order dated January 7, 2021, which had suspended equitable distribution transfers, and allowing the parties to proceed with equitable distribution.

The Domestic Relations Office scheduled a de novo support hearing for May 24, 2021, which was then rescheduled to June 7, 2021. At the June 7, 2021 hearing, Defendant's counsel raised the issue of whether the APL action was properly before the court, as a result of which the court stayed the proceeding and ordered both parties to file briefs on that issue.

III. Argument.

Plaintiff's request for a de novo hearing should be dismissed because de novo hearings are available only as a result of orders recommended by Domestic Relations conference officers. Pa. R.C.P. 1910.11 provides that where the court enters an interim support order, after a conference, either party can request a de novo hearing.

In the present case, the court entered an order suspending the APL order after review by the court, not by a conference officer. Plaintiff's alternatives after entry of that order were to seek reconsideration of the court's decision and/or to file an appeal to the Superior Court.

Plaintiff sought reconsideration of the court's decision, as a result of which the court vacated its previous order suspending equitable distribution transfers. Although the court did not explain its rationale for entering that order, it appears logical that the court was providing an alternative means for Plaintiff to meet his reasonable expenses and have additional income, if necessary, in a manner consistent with the court's divorce decision. In the divorce action, the court awarded Plaintiff approximately \$1.9 million of assets in equitable distribution and denied Plaintiff's alimony claim. The rationale behind the denial of Plaintiff's alimony claim was, at least to some extent, that the assets Plaintiff was retaining and the income those assets could produce would eliminate his need for additional financial support from Defendant.

Plaintiff chose not to appeal the court's order suspending APL. That decision should not entitle Plaintiff to additional hearing opportunities outside what the rules already provide. Although the domestic relations office included a notice of

opportunity to request a de novo hearing with the court's order suspending APL, the PA Rules of Civil Procedure do not provide for such a hearing.

If the court conducts a de novo hearing in this matter, the scope of the hearing should be limited based on the court's reasoning for suspending the APL order. A de novo hearing at this stage of the proceedings should not be an open invitation for Plaintiff to challenge decisions regarding his reasonable expenses and earning capacity, which have already been established in the support and divorce actions. Neither party has filed a request to modify the APL order based on a change in income, expenses or earning capacity.

Plaintiff seeks to indirectly challenge the court's findings regarding his earning capacity and reasonable expenses, which supported the denial of his alimony claim in the divorce action. The court should not give him the opportunity to re-litigate issues that were settled in the divorce action.

IV. **Conclusion.**

The court should dismiss Plaintiff's request for de novo hearing. In the alternative, if the court conducts a hearing in this matter, it should focus solely on the court's reasoning for suspending the APL order.

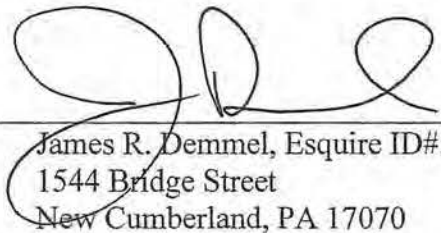
CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

DEMME LAW OFFICE, LLC

June 28, 2021

By: _____

A handwritten signature in black ink, appearing to read 'James R. Demmel', written over a horizontal line.

James R. Demmel, Esquire ID#: 90918
1544 Bridge Street
New Cumberland, PA 17070
(717) 695-0705
jdemmel@demmellawoffice.com
Attorney for Defendant

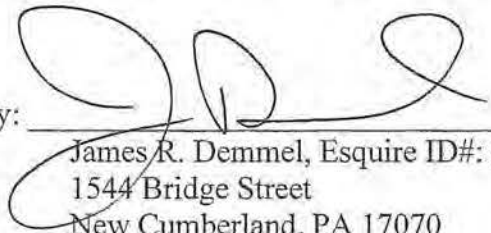
ROBERT P. BAUCHWITZ,	:	IN THE COURT OF COMMON PLEAS
PLAINTIFF	:	DAUPHIN COUNTY, PENNSYLVANIA
v.	:	
	:	Docket No. 01336-DR-17
ANN M. ROGERS,	:	
DEFENDANT	:	PACSES Case No. 640116732

CERTIFICATE OF SERVICE

I, James R. Demmel, Esquire, attorney for Defendant in the above-captioned matter, do hereby certify that I served a true and correct copy of Defendant’s Regarding De Novo Support Hearing on Plaintiff by first class mail, postage prepaid on the 28th day of June, 2021, addressed as follows:

ROBERT P. BAUCHWITZ
23 HARLECH DRIVE
WILMINGTON, DE 19807

DEMME LAW OFFICE, LLC

By: 

James R. Demmel, Esquire ID#: 90918
1544 Bridge Street
New Cumberland, PA 17070
(717) 695-0705
jdemmel@demmellawoffice.com
Attorney for Defendant

K3

ROBERT P. BAUCHWITZ,
Plaintiff

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA

vs.

: NO. 01336 DR 2017

ANN M. ROGERS,
Defendant

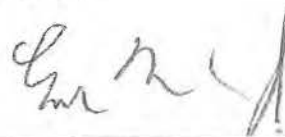
: PACSES. NO. 640116732

2021 JUL 23 A 11:00
DAUPHIN COUNTY
PROBATE & DOMESTIC RELATIONS

ORDER

AND NOW, this 27th day of July, 2021, upon consideration of Plaintiff and Defendant's memoranda of law regarding whether a de novo hearing shall be conducted regarding the termination of *alimony pendente lite*, it is hereby **ORDERED** that a de novo hearing in this matter is warranted. However, because, at the request of Plaintiff, the original domestic relations docket has been forwarded to the Superior Court of Pennsylvania to address the pending appeal in this matter, a de novo hearing will be scheduled once the Superior Court has disposed of the matter on appeal and the domestic relations docket has been returned to this court.

BY THE COURT:



EDWARD M. MARSICO, JR., J.

DISTRIBUTION:

James R. Demmel, Esq. – 1544 Bridge Street, New Cumberland, PA 17070
Robert Bauchwitz – 23 Harlech Drive, Wilmington, DE 19807
Court Administration

July 28, 2021
I hereby certify that the foregoing is a true and correct copy of the original filed. 1336 DR 2017
Matthew R. Krupp
Prothonotary

DOMESTIC RELATIONS SECTION
PO BOX 1295
HARRISBURG PA 17108

7/30/21



ROBERT PALMEIRA BAUCHWITZ
23 HARLECH DR
WILMINGTON DE 19807-2507

The Pennsylvania Child Support Program website provides a fast and easy way to access child support information, view case details and submit court documents to your county Domestic Relations Section. Please register at www.childsupport.state.pa.us where you can:

- Add or update your personal contact information (i.e. address, home and/or mobile telephone number, email, etc.)
- Change your password
- Update your communication preferences to either opt-in or opt-out of receiving correspondence by mobile telephone/text messaging and/or email (Note: to ensure email messages are delivered to your inbox, please add ra-pacs@pa.gov to your address book)
- Submit employment information and/or other new information regarding your support case
- Electronically submit court documents such as the Complaint for Support or Petition for Modification directly to your county Domestic Relations Section
- View specific child support case information including payment information, scheduled events (i.e. conferences, hearings, etc.) and docket information

Registered Child Support Program website users can update their information by selecting the link "I Would Like To Provide New Information" on their Child Support website profile. Additional information available on the website allows you to:

- Contact your county DRS
- Estimate your child support amount
- Access child support forms
- View frequently asked questions
- Learn how to establish paternity

You may be eligible for the Earned Income Tax Credit or EITC. The EITC is a special tax benefit for people who work full-time or part-time. For more information, look at the website www.irs.gov/eitc or call 1-800-829-1040.

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER

AND NOW, this _____ day of _____, 2021, upon consideration of the Plaintiff's "MOTION TO VACATE ORDER OF JULY 27, 2021 DELAYING APL DECISION", this Court's ORDER of July 27, 2021 is hereby **VACATED**.

BY THE COURT

 J.

Distribution:

- 1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmelawoffice.com
- 2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER REINSTATING ALIMONY PENDITE LITE

AND NOW, this _____ day of _____, 2021, upon consideration of the Plaintiff's MOTION TO VACATE ORDER OF JULY 27, 2021 DELAYING APL DECISION, this Court's orders of March 21 and 24, 2021, which collectively terminated the then existing *alimony pendite lite* order, are hereby **VACATED**, and the *alimony pendite lite* order of December 26, 2017, is hereby **REINSTATED** effective March 22, 2021.

BY THE COURT

 J.

Distribution:

- 1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com
- 2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

Robert Bauchwitz
23 Harlech Drive
Wilmington, DE 19807
telephone: 717-395-6313
pro se

2021 JUL 13 AM: 47
DAUPHIN COUNTY PA
COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

**MOTION TO VACATE ORDER OF JULY 27, 2021
DELAYING APL DECISION**

Procedural history

1. On June 7, 2021, the trial court aborted a hearing in the above captioned case which had been underway concerning termination of *alimony pendite lite* (APL).
2. The court had already terminated APL to Plaintiff (Husband) on March 24, 2021 without receipt of any evidence from Defendant (Wife) of a material economic change, despite the following requirement of law:

“(a) A petition for modification or termination of an existing support order **shall specifically aver the material and substantial change in circumstances upon which the petition is based.**” (231 Pa. Code § 1910.19).
3. Husband had also not been afforded an opportunity for hearing before APL was terminated. (See summary of procedural history, following.)
4. Husband here repeats the procedural history, facts, arguments, and other contents in his “Memorandum of Law Re Completion of APL Hearing of June 7,

2021” (APL Brief) as if set forth in full. In summary, Husband make the following procedural summary quoted from the APL Brief:

- “1. A decree in divorce was entered in the above captioned case on October 28, 2020.
2. A notice of appeal was filed by Husband concerning economic and other matters on November 25, 2020.
3. On December 8, 2020, Wife filed a Petition to Terminate or Suspend Alimony Pendite Lite (APL).
4. On January 4, 2021, Husband filed a Response and [First] Declaration to Wife’s Petition.
5. On February 25, 2021, the trial court issued an order denying Wife’s December 8, 2020 Motion to Terminate or Suspend APL.
6. On March 17, 2021, Wife filed a Motion for Reconsideration (MFR) of her prior Motion to Terminate or Suspend APL of December 8, 2020. ...
10. On March 24, 2021, just 7 days (5 business days) after Wife’s MFR filing, and before Husband could file his response (as quoted in the preceding), the trial court entered an order terminating APL. Thus, APL payments received by Husband were terminated before any response had been heard from Husband, contrary to the requirements of law. (Dauphin County, PA Local “RULE 208.3(b)). ...
13. On April 28, 2021, without motion from either party, equitable distribution transfers were resumed by order of the trial court
14. On April 9, 2021, Husband filed his own motion for reconsideration of the order terminating APL of March 24, 2021. (Husband’s April 9, 2021 MFR).
15. As part of his April 9, 2021 MFR, Husband noted that he would be prejudiced without APL. Husband stated that he had in fact been spending substantial APL funds for legal counsel in his appeal. ...
17. Of particular import, Husband has repeatedly stated in filings, and at hearing in August 2021, that there has been no change in his [income or] living expenses since he moved to Wilmington, Delaware in November 2019. ...

20. A hearing was initially scheduled for March 24, 2021, by order of April 22, 2021. [It was then] rescheduled by order of April 26, 2021, to the alternate date which had originally been offered: June 7, 2021. ...

143. Upon information and belief, Husband understood that the June 7, 2021 hearing would begin at 3:00 PM and continue until no later than 4:30 PM. Husband was of the understanding that no cases would follow his. ...

145. At the June 7, 2021 hearing, opposing counsel objected to Husband's submission of his Physician Verification Form. Husband objected that the opposing party had failed to timely object and cited the pertinent law.

146. While Husband's was the last case of the day, and therefore he anticipated a timely conclusion, after opposing counsel objected to his entry of his Physician Verification Form into evidence, Husband was informed that the judge had some other activity arising which required the hearing adjourn (after about forty minutes). "

Evidentiary matters arising with respect to expert reports and job search data relevant to earning capacity

5. As noted above, a *de novo* hearing on the topic of APL and its termination had begun as ordered on June 7, 2021, based on appeal by Husband. During his combined opening statement and self-direct examination, Husband introduced a Physician Verification Form, which had been ordered to be produced at the hearing. (APL Brief, Exhibit I.)

6. Plaintiff further introduced a vocational expert who was present at the hearing and whose materials he had fully and timely disclosed to Defendant and her counsel. (APL Brief, Offer of Proof point 124, pp. 34 - 35, and report therein at Exhibit J.)

7. It is of note that in his appellee's brief to the Superior Court of August 2, 2021, (1499 MDA 2020), Wife's counsel continued to argue that earlier vocational and health documentation had been received and properly considered in the Support Conference of November 29, 2017.

8. However, the first documents dealing with Husband's job searches and medical issues were actually only created after that conference, in 2018. Initial job search results were presented to opposing party's vocational expert on April 17, 2018 (First Declaration, Exhibit 6a). Husband's first medical and expert reports were presented to opposing counsel on November 20, 2018. (Exhibit A, attached.)

9. Therefore, contrary to implications made in a transcript of the master's hearing of October 17, 2019, it is clear that Husband could not have submitted such vocational and medical documents at the Support Conference of 2017, as all of the dates cited within the actual documents occurred after the date of the Support Conference. (See exhibits cited, *Ibid.*)

10. Furthermore, the preceding exhibits show that, contrary to the repeated claims of the opposing counsel, he had received disclosure of the original, complete expert vocational and medical documents, but those were also based on examinations occurring in 2018 and not 2017.

11. Although opposing counsel claims that it has been Husband who has not presented his job search data and expert reports, it was opposing counsel who acted to block the submission of updated versions of such documents at the June 7, 2021 hearing by his objection, even though he had received full and timely disclosure that such reports and experts would be presented by Husband. (APL Brief pp. 15 – 16.)

12. Thus, it is clear that when left to his own devices, Husband was quite willing to repeatedly retain vocational and medical experts and to present their reports to opposing counsel and to the court.

13. Husband provides here further evidence that he had every intention to provide such medical and expert testimony at the master's hearing of October 17, 2019, even though his counsel explained in detail why it would not be necessary in this case. (See Exhibit B, attached.)

14. As noted above, Husband, acting *pro se* at the June 7, 2021 hearing, objected to Defense counsel's objections to the presentation of his expert reports as untimely under law.

15. It was such vocational, medical, and job search documents which opposing counsel falsely continues to claim in his briefs (Def APL Brief of June 28, 2021 and appellee's advance brief of August 2, 2021) were properly submitted by Husband at the November 29, 2017 Support conference.

16. The Support conference's intent, as stated written in the resulting order of December 26, 2017, was to determine APL. APL was determined in December 2017 using exactly the same formulas cited in law as used by Husband in the June 7, 2021 hearing. (APL Brief pp. 21 – 22). Yet at the June 7, 2021 hearing, when expedient, opposing counsel claimed that such documents were not relevant to a determination of APL. (See also Def APL Brief.)

17. Shortly after and on the same day as the June 7, 2021 APL termination hearing, an order was issued requiring filing of memoranda of law by the parties "*as to whether this case is properly before the court and should go forward.*" (The result was the APL Brief of Plaintiff Husband and the Defendant's APL Brief, both of June 28, 2021).

Argument

18. The opposing party has repeatedly failed to present evidence of material change required by law (231 Pa. Code § 1910.19), including again not in the Defendant's APL Brief of June 28, 2021.

19. In the Defendant's APL Brief, opposing counsel again repeats his claims that by merely citing legal argument, he has sufficiently pled under Rule 1910.19: "On March 17, 2021, Defendant filed a Motion for Reconsideration of Petition to Terminate or Suspend Alimony Pendite Lite, in which Defendant cited authoritative case law supporting her argument that the trial court has the authority to suspend or terminate APL pending an appeal to the Superior Court."

20. However, the case law cited does not support the arguments of the opposing party. In *Nemoto v. Nemoto* (423 Pa. Super. 269, 277-78 (Pa. Super. Ct. 1993), Wife was awarded 75% of the marital assets. The Court in *Nemoto* specified that "[i]f, **after careful review**, the trial judge determines that the spouse who has been receiving APL has acquired assets or income which sufficiently equalizes the

financial resources of the parties to pursue the action, APL may be discontinued. *See Spink v. Spink*, 422 Pa. Super. 126, ___, 619 A.2d 277, 279 (1992). The Superior Court will uphold the trial court's action in this regard **where the factual findings are supported in the certified record.** *Id.*”

21. In *Spink v. Spink*, (422 Pa. Super. 126, 130-31, Pa. Super. Ct. 1992), the Court stated: “[Alimony pendente lite] focuses on the ability of the individual who receives the [alimony pendente lite] during the course of the litigation to defend her/himself, and the only issue is whether the amount is reasonable for that purpose, which turns on the economic resources available to the spouse.” (Internal citations omitted.)

22. As Husband has argued several times in his filings, none of the conditions of *Nemoto* or *Spink* have been met. The only financial numbers in evidence presented for review by the trial court were provided by Husband, who clearly argued that such do not provide sufficient equalization to permit loss of APL. (First Declaration of January 4, 2021, pp. 12 – 13, as attached to Husband’s Response to Defendant’s Petition to Terminate or Suspend *Alimony Pendite Lite*, and APL Brief Exhibits F and G.)

23. Indeed, the trial court initially produced an order of February 25, 2021 agreeing with Husband’s argument that APL should not be suspended or terminated.

24. Incredibly, no financial numbers relevant to this matter have ever been produced in evidence by Wife. She and her counsel merely argue that citation to case law, which itself confirms the need for review of evidence, is sufficient pleading.

25. Consequently, reversal of the February 25, 2021 order by the trial court, upon mere citation to case law by Wife in her Motion for Reconsideration of March 17, 2021 was based on no evidence from Wife and thereby provided no justification for reversal of an order only three weeks old.

26. In the financial evidence produced by Husband in his filings from January 4, 2021 through June 28, 2021, he has demonstrated that he does not have the earning capacity, or other financial resources, to sustain the level of post-appeal litigation

repeatedly initiated by Wife, without further jeopardizing his post-divorce standard of living by draining substantial portions of his assets.

27. Husband further notes that ***he has actually not received any transfer of retirement funds by Wife***, and that almost all of such retirement funds, nevertheless, should be reserved (not “raided”) prior to his retirement. (Master’s Report, p. 31; see also more on delays by opposing party, below.)

28. Finally, to the extent that disagreement on such laws remains after the arguments made in the briefs, then a hearing is required. Indeed, the order of July 27, 2021 suggests the trial court believes the same, as otherwise it would have ruled against Husband by denying hearing.

29. Thus, the existence of the July 27, 2021 order demonstrates that no controlling law was actually cited by the opposing party, as Husband and his former counsel have repeatedly asserted. (All at great cost that required APL.)

Due process issues

30. The key principle motivating the present motion to vacate, and the associated proposed orders, is based on due process. It is clear that Husband’s funds were taken without affording him necessary hearing, as now confirmed by the trial court’s order of July 27, 2021. If a dispute remains, as the trial court’s order now indicates it believes, then no action against Plaintiff should have been taken against his financial interests prior to hearing.

31. The Fourteenth Amendment of the United States Constitution, Section 1 states:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, ***without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws.”

32. Judge Henry J. Friendly of the United States Court of Appeals, Second Circuit, produced a list of basic due process rights which apply equally to civil and criminal proceedings:

1. “An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The **right to know opposing evidence**.
6. The **right to cross-examine** adverse witnesses.
7. A decision based **exclusively** on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. **Requirement that the tribunal prepare written findings of fact and reasons for its decision.**

(Henry J. Friendly, “Some Kind of Hearing”, Owen J. Roberts Lecture, University of Pennsylvania Law School, April 3, 1975.)

33. Clearly, Husband had, and still has, no knowledge of the opposing party’s evidence, nor has he had any opportunity to cross-examine it, even in a filing. The reason is simple: no financial evidence has been presented by Wife and her counsel since the very first challenge the filed to Husband’s APL immediately following release of the Master’s report of March 13, 2020. (Defendant’s Petition to Terminate or Suspend APL of May 18, 2020). No written basis for the termination of APL has been made.

34. Therefore, it follows that until such time as a hearing is completed, and a new decision is made on APL, it is manifest that, in addition to failing to demonstrate no material basis under Rule 1910.19 to terminate APL, there is also a more general due process violation in that Husband’s right to know the evidence against him has been denied.

35. Consequently, APL should be restored until such time as appropriate due process is afforded.

Equitable distribution has not been completed since the order to permit it was issued on April 28, 2021

36. On an more practical level, we also note that opposing party's counsel wrote in his APL brief of June 28, 2021 that:

"On April 28, 2021, in response to Plaintiffs Motion for Reconsideration, the court issued an order vacating the court order dated January 7, 2021, which had suspended equitable distribution transfers, and allowing the parties to proceed with equitable distribution." (p. 2). ...

"Although the court did not explain its rationale for entering that order, it appears logical that the court was providing an alternative means for Plaintiff to meet his reasonable expenses and have additional income, if necessary, in a manner consistent with the court's divorce decision." (p. 3).

37. However, more than three months later, no funds have been received, nor has any contact been made by Defendant and her counsel on transferring such funds to Plaintiff Husband.

38. Therefore, **a demand for a status check by the trial court of such transfer of equitable distribution is hereby made.**

Noncompliant behavior on financial matters by Wife and her counsel who then imply Husband is improperly delaying or trying to "re-litigate"

39. The failure to actually effectuate transfer has been consistent with the noncompliant behavior of the opposing party and her counsel throughout the case:

1) Repeated failures to produce financial records. For example, even after a letter from Husband's counsel of May 31, 2019, the date that discovery was to end, to Wife's counsel which noted discovery that had not been received from Wife by that deadline, the failures to comply with discovery continued throughout the summer: "Please note that my client has not been presented with all the discovery that has been requested of Dr. Rogers" (Letter of June 21, 2019 at Exhibit C); "Attached please find a copy of our letter to Attorney Demmel dated July 25, 2019 which indicated the retirement documents we

were requesting ... None of those requested documents has thus far been provided” (Letter of August 29, 2019 at Exhibit D);

2) No receipt of items as of August 10, 2021, from the settlement made between counsel on November 4, 2020 (Exhibit E) in lieu of the hearing, which had been scheduled for November 20, 2020; and

3) A seven month delay in turning over of forms needed to transfer a joint investment account for which forms were submitted to Wife on November 25, 2020, but only delivered to Husband on June 24, 2021 (Exhibit F).¹

40. Thus, the opposing party seems to want to have it both ways. She and her counsel want to hold Husband to use of funds they have yet again failed to release, despite order of the trial court to resume such transfers on April 28, 2021.

41. This behavioral pattern of the opposing party and her counsel has been very well documented in this case: they give nothing unless forced by a court, which naturally elevates the costs of litigation, as well as delaying it.

42. The opposing party further has continually alleged bad motive by Husband for purportedly delaying the proceedings without credible evidence, and indeed when evidence such as in the preceding exhibits shows the contrary. Notice of violations of Rule 3.4 of the Pennsylvania Professional Code of Conduct have been provided by Husband to Wife’s counsel:

“The need for evidentiary support in making allegations to a tribunal

I also bring to your attention **Rule 3.4 (c) of the Code of Professional Conduct** for Pennsylvania attorneys which deals with **“Fairness to Opposing Party and Counsel”**. It is implied there that any judgments you present to the tribunal, such as my purportedly improperly delaying my appeal, be supported by analysis of the evidence.

I presented well over one hundred concerns about the testimony presented in the transcript at issue. I then presented the opinion of a person expert in

¹ That is also how the costs of litigation are elevated, to the financial benefit of counsel.

court reporting who examined the errors and recommended that the original notes be reviewed.

In your answer, however, there was no reasonable basis to conclude that you had made any analysis of the evidence other than to affirm that the person whom I presented as having expertise in court reporting was acting appropriately in identifying errors. You presented no analysis of evidence that the transcript was reasonably accurate and that therefore it was I who acted improperly.

Thank you for your attention to these matters.”

(Exhibit G. For additional evidence of false allegations, see also First Declaration of January 4, 2021, point 44, pp. 18 – 20, as well as Husband’s June 27, 2019 Response to Wife’s Pretrial Statement.)

43. In Defendant Wife’s memorandum of law (Def’s APL Brief) of June 28, 2021, it was further argued that Husband was trying to “re-litigate” financial matters already “settled” during the case.

“Plaintiff seeks to indirectly challenge the court's findings regarding his earning capacity and reasonable expenses, which supported the denial of his alimony claim in the divorce action. The court should not give him the opportunity to re-litigate issues that were **settled** in the divorce action.”

44. However, the entire point of allowing *de novo* hearings with a trial court, and then appellate review, is that the litigation is **not** settled until those levels of oversight have been concluded.

45. By way of example that what the master claimed should not and cannot be considered the final word, and therefore, should be subject to checks and reviews, Husband notes that she claimed in her report of March 13, 2020, that there were no material effects of taxation on her failure to recommend alimony. However, Husband believes that calculations actually do not support such a claim. (See Exhibit G, attached.)

Summary

46. Failure to vacate the orders of March 21 and 24, 2021, which collectively terminated the then existing *alimony pendite lite* order, remains a fatal error of law, as no adequate evidentiary basis exists in the record to have terminated APL. On the contrary, detailed financial, vocational, and other evidence is present in the record demonstrating that APL need remains. (APL Brief).

47. Husband has further asserted in his APL Brief that the record now shows that, based on Defendant Wife's last disclosed income shown in the record, he should receive **more** APL under Pennsylvania law.

48. To delay restoration of APL would subvert the intention of Pennsylvania law on APL, which notes that it differs from support in that it is meant to also provide for legal counsel. (APL Brief pp. 18 - 19.)

49. The costs of legal counsel in this case have been extremely high (First Declaration pp. 12 - 13 and APL Brief Exhibit G) ², and have grown due to the opposing party's being permitted to repeatedly filed baseless claims to terminate APL without ever providing the material evidence of change in circumstances required by law. (Husband's Motion to Vacate Order Resuming Equitable Distribution Transfers of May 11, 2020, pp. 7 - 11.)

50. Husband also believes that there may be a logical error in asserting that the prospect of marital asset receipt after a divorce decree would be sufficient basis for stopping APL. If this were the case, then all of APL could be seen as a loan, were it evident that assets after divorce would be received by the party given APL.

51. Thus, Husband asserts that marital assets are what one recovers in divorce AFTER litigation, and are not intended to be transferred to attorneys based on "work" done during litigation. If that were not the case, then family law could permit contingency representation as well, which it does not. (Rules of Professional Conduct 1.5(d)(1)).

² In one single billing in July by counsel assisting Husband with his appellate filings, Husband was charged 4% of the total savings he has in his possession. That is not a reasonable situation and demonstrates why APL is essential and should continue until the end of the divorce legal action, not only so far as opposing party and her counsel would like it to go.

52. Most importantly, if APL were to fully stop after a divorce decree, it would be **a disincentive to appeals**, which are a critical part of oversight of the trial court system in the United States.³

53. From the preceding perspective, a final decree by a trial court in a divorce case is not the same as a final decree by the legal system. Plaintiff argues that the appeals process must be seen as fully integral to the legal process.

54. Therefore, the only argument that could be made to stop APL is to provide evidence comports with law, namely, that a material change in income, expenses, or novel liquid assets had arisen. Defendant Wife and her counsel have failed to do this, and on the contrary, Husband has spent more than half a year and many tens of thousands of dollars presenting evidence against such claims.

55. For all the preceding reasons, Husband has been manifestly prejudiced by loss of APL. (See also Motion to Vacate Order Resuming Equitable Distribution Transfer at pp. 10 - 11.)

Relief Sought

56. Husband motions the trial court to vacate its order of July 27, 2021 in the above captioned case. (See proposed order of vacature, attached.) This is not meant to be a motion for reconsideration. It is intended to obtain a final, appealable order of the trial court.

57. Husband again asserts that the law requires an APL hearing be completed within four years of the initiation of APL, (Pa.R.C.P. 1910.16-5(e)) which he believes was intended to be by September 19, 2021. (See Support Order of December 26, 2017).

58. Along with ordering vacature of the July 27, 2021 order, Husband motions the trial court to immediately restore APL payments back to the time that they were terminated without having afforded him due process required by Pennsylvania law

³ On the contrary, this litigant, who has training in and written about government oversight mechanisms, argues that there should be far more easily available and independent oversight **during** the trial court phase of litigation in the United States.

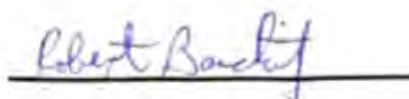
and by Constitutional rights, as cited above. (See proposed "ORDER REINSTATING ALIMONY PENDITE LITE", attached.)

59. Husband notes that the proposed orders are not meant to be a request in the alternative: he requests *both* vacature of the motion of July 27, 2021 and retroactive restoration of APL.

60. Thus, upon the vacature requested, prejudice against Husband may be avoided by restoring to him APL, intended by law to permit his retention of legal counsel until after the completion of appeals (*DeMasi v. DeMasi*, 408 Pa. Super. 414, 420 (Pa. Super. Ct. 1991), or until after a hearing to properly consider changes to APL according to the due process requirements specified in law (231 Pa. Code § 1910.19).

61. Husband requests a response from the trial court by August 25, 2021 in order to afford time to file appropriate actions with appeals courts. Delay in response by the trial court could impose material and potentially wasted costs to Plaintiff by inducing him to file unnecessary actions with appellate courts, as well as by the associated waste of judicial resources by those courts.

Date: 8/11/21



Robert P. Bauchwitz
Plaintiff
23 Harlech Drive
Wilmington, DE 19807
dir_amr@luxsci.net
Telephone: (717) 395-6313
pro se

Attachments

no.	title	page
1	Proposed ORDER vacating Order of July 27 2021	pre-(1)
2	Proposed ORDER reinstating alimony pendite lite	pre-(1)
3	Certification Of Compliance	pre-(1)
4	Exhibit A – Plaintiff’s Expert Reports Disclosure to Defendant	(29)
5	Exhibit B – Darren Holst Esq explaining why expert witnesses nor required for master’s hearing of Oct 17, 2019	(1)
6	Exhibit C - Letter to master re discovery of June 21 2019	(16)
7	Exhibit D - Opposing party repeatedly not compliant with discovery	(5)
8	Exhibit E - settlement letters with requirements from opposing party November 2020	(3)
9	Exhibit F - Seven month delay by opposing party ED transfer forms	(2)
10	Exhibit G - Notice re Professional Code of Conduct	(2)
11	Exhibit H - Tax calculations on asset use versus alimony from corrected advance appeal brief	(10)
12	Proof of Service	post-(1)

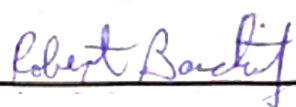
IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN DIVORCE

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/11/21



Robert P. Bauchwitz
 Defendant/Appellant
 23 Harlech Drive
 Wilmington, DE 19807
 dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

**Plaintiff's Expert Reports Disclosure to Defendant
November 20, 2018
01336-DR-17**

From: Ira H. Weinstock
Sent: Tuesday, November 20, 2018 9:08 AM
To: 'Jim Demmel'
Cc: Ira H. Weinstock
Subject: RE: Rogers v Bauchwitz letter

Attached please find my client's vocational evaluation expert's report.

Would you please forward to me your appeal with regard to the support matter? We checked and it does not appear that one was filed. If you did file one, please forward it to me as soon as possible.

Thank you.

Ira H. Weinstock, Esquire
IRA H. WEINSTOCK, P.C.
800 North Second Street
Harrisburg, PA 17102
Phone: 717-238-1657
Fax: 717-238-6691

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EMPLOYABILITY AND EARNING CAPACITY EVALUATION

on

Robert Bauchwitz

SS# XXX-XX-0490

Robert Bauchwitz was referred for the purpose of a comprehensive vocational evaluation, findings of employability, an assessment of his transferable skills learned from past occupations, and an evaluation of his earning capacity. An evaluation was conducted by telephone for two and a half hours on 8/14/18.

PURPOSE OF REFERRAL

Mr. Bauchwitz was referred to Occupational Assessment Services for a comprehensive vocational evaluation.

The Vocational Evaluation consisted of conducting a review of the records to assess his vocational capacity, a standardized vocational interview to assess his employability, and earning capacity, and research of the labor market.

REFERRAL QUESTIONS

The Vocational Evaluation focused on answering the following questions:

1. What is Mr. Bauchwitz's vocational capacity?
2. What is Mr. Bauchwitz's employability as a Research Scientist?
3. What is his earning capacity given his physical capacity?
4. What are the available job openings to Mr. Bauchwitz in the local Hershey (Dauphin County), Pennsylvania labor market?

VOCATIONAL EVALUATION PROCESS

The Vocational Evaluation consists of a four-part process. The initial section involves reviewing all the medical and financial records. The second step involved conducting a standardized vocational interview. The next step in the evaluation process is to review all of the material and reach an opinion as to employability and earning capacity. Lastly, I conducted research as to the availability of jobs he could perform given his vocational capacity in the Hershey (Dauphin County), Pennsylvania area.

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FORMULATION OF OPINIONS

The vocational opinions expressed in this report are given within a reasonable degree of certainty or probability as a Rehabilitation Counselor and Vocational Expert.

Since *Kerner v. Flemming*, 283 F.2d 916 (2d Cir. 1960), Vocational Experts, who are professionals educated, trained, and skilled in job placement and knowledgeable about labor market conditions, have been asked to formulate vocational opinions about specific job opportunities of a person based on their age, education, background, work experience, and medical condition.

The vocational opinions in this report are based on my education, training, experience, and the information contained in various traditional vocational sources, ^(App. B) including federal and state government publications. In addition, the opinions are based on the information available to me at the time of my evaluation, including medical and other records, the evaluatee's history as obtained from the records provided, my professional clinical judgment, labor market research, and the conclusions made.

The opinions reached in this report rely on the quality, accuracy, and honesty of the documented history.

If any of the oral or documentary information provided is false, fictitious, fraudulent, incomplete, or misleading, it may change the conclusions and opinions reached in this employability evaluation. The opinions expressed are ***case specific*** to this evaluatee. Should there be ***additional*** information that becomes available at a later time for my review that significantly changes my vocational opinions, I reserve the right to modify my opinions and issue a supplemental report.

RECORDS REVIEWED

Vocational Information Form completed by Robert Bauchwitz (8/9/18).

The following physician records were reviewed:

Dr. Weinstein - Operative Note (6/22/18) states "Glossectomy less than half, resection of pharyngeal wall requiring flap closure, radical resection of tonsil, tonsillar pillars, and/or retromolar trigone and closure with other flap, graft island pedicle, pharyngoplasty."

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Dr. Bahajak (3/20/18-4/6/18) states “He does suffer from color blindness, confirmed using Ishihara color testing. He has compound myopic astigmatism which requires Robert to wear glasses full-time in order to see clearly at all distances.”

Dr. Puleo (5/3/18) states “Mr. Bauchwitz required a second surgery as he continued to have issues with hemorrhoidal disease...While traveling he was unable to take his Sitz baths which are helpful to decrease pain and help with prolapsing tissue. As given that the patient had issues with his travel history, I think traveling does impact his hemorrhoidal disease as he isn’t able to go to the bathroom/use Sitz baths as he should.”

Dr. Fox (4/20/18) states “Biomedical researcher who is status post July 2, 2015 compression fracture of his spine after carrying a box which he lost grip of and caught while lunging forward...Mr. Bauchwitz’s ability to sit in a car for 4-16 hours without getting out, I doubt that he would be able to do this without incurring some significant pain during or after the car ride.”

Pathology reports from 6/22/18 surgery noting “Carcinoma present...male with p16 positive squamous cell cancer of the right neck.”

Dr. Bifulco (9/8/18) states “Sit ½ day, Stand 1/3 day, walk 2/3 day; lift and carry 10 pounds frequently, work four hours out of an 8-hour day with breaks every 1.5 hours for 45 minutes...due to surgery has ligation of vessels to tongue resulting in fatigue when swallowing and speaking.”

The following employment and financial records were reviewed:

Stanford University - job duties for Life Science Research Professional I.

Mr. Bauchwitz’s job search records.

Mr. Bauchwitz’s Social Security Earnings Statement: 2009 (\$0); 2010 (\$7,240); 2011 (\$0); 2012 (\$0); 2013 (\$0); 2014 (\$0); 2015 (\$0); 2016 (\$0); 2017 (\$1,473).

Mr. Bauchwitz’s joint income tax returns: 2014 (\$303,616, \$-15,528 business income); 2015 (\$349,994, \$-13,732); 2016 (\$376,244, \$-29,930) ***Business income: Amerandus Research.***

The following legal records were reviewed:

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Ms. Dailey - Vocational Evaluation (5/29/18) states "Mr. Bauchwitz has the earning capacity from \$91,593 to \$117,901 per annum."

BACKGROUND INFORMATION

Mr. Bauchwitz is 58 years of age, born 5/3/60 in Louisville, Kentucky.

Mr. Bauchwitz resides in a home (324 Candlewyck Lane, Hershey (Dauphin County), Pennsylvania 17033; Telephone 717-298-7578). He reports being married for about 28 years and separated for about one year. He has two grown children, ages 23 and 25 who are independent.

EDUCATIONAL AND TRAINING BACKGROUND

Mr. Bauchwitz graduated from Mt. Pleasant High School in 1978

From 1978 to 1982, he attended and received a Bachelor of Arts Degree with a major in Biochemistry from Harvard University.

From 1982 to 1991, he attended Cornell University where he received a Ph.D. (1990) in Molecular Biology, as well as an M.D. (1991).

From 1991 to 1995, he was a postdoctoral researcher at Columbia University.

In the summer 2010, he attended Widener School of Law, receiving a Paralegal Certificate.

He was certified in CompTIA Security +. However, this certification was not renewed after 2015. He became a Certified Fraud Examiner (CFE) in 11/16.

Mr. Bauchwitz was never licensed as a Physician.

WORK HISTORY

Employment from 3/18 to Present has been as a Substitute Teacher for Source4Teachers (ESS) in Hershey, PA. This occupation involves teaching Biology, Health, Phys Ed, and Special Education. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")^(App. B1) on page 75 as follows:

TEACHER, SCHOOL (education)

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Teaches elementary school students academic, social, and motor skills in public or private schools: Prepares course objectives and outline for course of study following curriculum guidelines or requirements of state and school. Lectures, demonstrates, and uses audiovisual teaching aids to present subject matter to class. Prepares, administers, and corrects tests, and records results. Assigns lessons, corrects papers, and hears oral presentations. Teaches rules of conduct. Maintains order in classroom and on playground. Counsels pupils when adjustment and academic problems arise. Discusses pupils' academic and behavioral attitudes and achievements with parents. Keeps attendance and grade records as required by school. May coordinate class field trips. May teach combined grade classes. May specialize by subject taught, such as math, science, or social studies. May be required to hold state certification.

It is given the code number 092.227-010. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Light Work. It is classified as professional work. Due to his medical issues, he performs this work on a somewhat limited basis.

Mr. Bauchwitz reported earning \$100 per day at this job at \$12.31 per hour.

While sitting and standing on this job, he reports experiencing increased mid-back and neck pain.

Light Work is defined by the DOT, page 1013, as exerting up to 20 pounds of force occasionally (up to one-third of the time), and/or up to 10 pounds of force frequently (one-third to two-thirds of the time), and/or a negligible amount of force constantly (two-thirds or more of the time) to move objects. Physical demand requirements are in excess of those required for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job would be rated Light Work (1) when it requires walking or standing to a significant degree, (2) when it requires sitting most of the time but requires pushing and/or pulling of arm or leg controls, and/or (3) when the job requires working at a production rate pace entailing constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force is negligible.

OTHER PHYSICAL DEMANDS:

ST - Stooping - Occasional

RE - Reaching - Occasional

HA - Handling - Occasional

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FI - Fingering – Occasional
TA - Talking - Constant
HE - Hearing - Constant

VISION:

NE - Near Acuity - Frequent
FA - Far Acuity - Occasional
AC - Accommodation - Occasional
CV - Color Vision - Occasional
FV - Field of Vision - Occasional

Every job requires a worker to function, to some degree, in relation to Data, People, and Things. The DOT has identified and defined these "Worker Functions," and the fourth, fifth, and sixth digits of the occupational DOT code reflect these relationships to Data (D), People (P), and Things (T). This occupation has been assigned the following relationships:

- D2 - Analyzing: Examining and evaluating data. Presenting alternative actions in relation to the evaluation is frequently involved.
- P2 - Instructing: Teaching subject matter to others, or training others (including animals) through explanation, demonstration, and supervised practice; or making recommendations on the basis of technical disciplines.
- T7 - Handling: Using body members, handtools, and/or special devices to work, move, or carry objects. Involves little or no latitude for judgment with regard to attainment of standards or in selecting appropriate tool, object, or materials.

The Department of Labor classifies occupations by Specific Vocational Preparation (SVP),^(App. B1) which is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific work situation.

This occupation requires an SVP level of 7, which includes jobs that take over two years and up to four years to learn.

The General Educational Development (GED)^(App. B1) has been analyzed regarding those aspects of education (formal and informal) which are required of the worker for

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satisfactory job performance. The GED is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development.

Mr. Bauchwitz's occupation has the following GED classifications:

Reasoning Development Level 5, which means a person must at least be able to "apply principles of logical or scientific thinking to define problems, collect data, establish facts, and draw valid conclusions" and "interpret an extensive variety of technical instructions in mathematical or diagrammatic form" and "deal with several abstract and concrete variables."

Mathematical Development Level 4, which means a person, utilizing algebra, must at least be able to "deal with system of real numbers; linear, quadratic, rational, exponential, logarithmic, angle and circular functions, and inverse functions; related algebraic solution of equations and inequalities; limits and continuity, and probability and statistic inference." Utilizing geometry, her must at least be able to work with "deductive axiomatic geometry, plane and solid; and rectangular coordinates." Utilizing shop math, he must at least be familiar with the "practical application of fractions, percentages, ratio and proportion, mensuration, logarithms, slide rule, practical algebra, geometric construction, and essentials of trigonometry."

Language Development Level 5, which means a person, when reading, must at least be able to "read literature, book and play reviews, scientific and technical journals, abstracts, financial reports, and legal documents." When writing, he must at least be able to "write novels, plays, editorials, journals, speeches, manuals, critiques, poetry, and songs." When speaking, he must at least be "conversant in the theory, principles, and methods of effective and persuasive speaking, voice and diction, phonetics, and discussion and debate."

From 2017 to Present, Mr. Bauchwitz has been employed as an Independent Contractor for JFC Workforce in Harrisburg, Pa. This job involves being placed as a temporary worker in clerical or medical/professional positions (quality assurance, compliance, laboratory including technician). He has only been placed in one clerical job which lasted three weeks. He received no medical/professional jobs.

In the Fall 2010, he was an Adjunct Professor of Biology (DOT #090-227-010; O*NET code: 25-1122.00) at Lebanon Valley College in Annville, Pennsylvania. This job involved teaching molecular biology laboratory. He reportedly earned \$3,620 for each of the two classes he taught.

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Employment from 2011 to 2018 was as a Consultant and Writer for his sole proprietorship, Amerandus Research in Pennsylvania. This occupation was an entrepreneurial venture designed largely to assist other scientific whistleblowers, as well as to write articles and blog posts in the field of research fraud investigation and prevention. He has earned no money from this business.

Employment from 1/01 to 10/07 was the director of a research laboratory at St. Lukes-Roosevelt Institute for Health Sciences in New York. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")^(App. B1) as follows:

LABORATORY SUPERVISOR (profess. & kin.)

Supervises and coordinates activities of personnel engaged in performing chemical and physical tests required for quality control of processes and products: Directs and advises personnel in special test procedures to analyze components and physical properties of materials. Compiles and analyzes test information to determine operating efficiency of process or equipment and to diagnose malfunctions. Confers with scientists or engineers to conduct analyses, interpret test results, or develop nonstandard tests. Performs other duties as described under SUPERVISOR (any industry) Master Title. May adjust formulas and processes based on test results. May test and analyze sample products. May prepare test solutions, compounds, and reagents for use by laboratory personnel in conducting tests. May conduct research to develop custom products and investigate complaints on existing products.

It is given the code number 022.137-010. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Light Work as it involved the lifting of books and laptops weighing 10-20 pounds. It is classified as professional work. He reported earning \$50,000 which was supplemented by grant funding. His academic title as an Assistant Professor was removed due to a whistleblower situation which has significantly impacted his ability to obtain another position as a research scientist.

From 2001 to 2003, he was an Adjunct Assistant Professor of the Department of Natural Sciences at Fordham University in New York.

Employment from 9/95 to 1/01, was as an Associate Research Scientist in the Department of Genetics at Columbia University.

OTHER PHYSICAL DEMANDS:

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RE - Reaching - Frequent

HA - Handling - Frequent

FI - Fingering - Frequent

FE - Feeling - Occasional

VISION:

NE - Near Acuity - Frequent

DE - Depth Perception - Occasional

AC - Accommodation - Occasional

CV - Color Vision - Occasional

COMMON ENVIRONMENTAL WORKING CONDITIONS (to which the worker is exposed):

NO - Noise Intensity Level - Moderate

Every job requires a worker to function, to some degree, in relation to Data, People, and Things. The DOT has identified and defined these "Worker Functions," and the fourth, fifth, and sixth digits of the occupational DOT code reflect these relationships to Data (D), People (P), and Things (T). This occupation has been assigned the following relationships:

- D0 - Synthesizing: Integrating analyses of data to discover facts and/or develop knowledge concepts or interpretations.
- P6 - Speaking-Signaling: Talking with and/or signaling people to convey or exchange information. Includes giving assignments and/or directions to helpers or assistants.
- T1 - Precision Working: Using body members and/or tools or work aids to work, move, guide, or place objects or materials in situations where ultimate responsibility for the attainment of standards occurs and selection of appropriate tools, objects, or materials, and the adjustment of the tool to the task require exercise of considerable judgment.

The Department of Labor classifies occupations by Specific Vocational Preparation (SVP),^(App. B1) which is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific work situation.

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This occupation requires an SVP level of 7, which includes jobs that take over four years and up to ten years to learn.

The General Educational Development (GED)^(App. B1) has been analyzed regarding those aspects of education (formal and informal) which are required of the worker for satisfactory job performance. The GED is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development. Mr. Bauchwitz's occupation has the following GED classifications:

Reasoning Development Level 5, which means a person must at least be able to "apply principles of logical or scientific thinking to a wide range of intellectual and practical problems" and "deal with nonverbal symbolism (formulas, scientific equations, graphs, musical notes, etc.) in its most difficult phases" and "deal with a variety of abstract and concrete variables" and "apprehend the most abstruse classes of concepts."

Mathematical Development Level 5, which means a person, utilizing advanced calculus, must at least be able to "work with limits, continuity, real number systems, mean value theorems, and implicit functions theorems." Utilizing modern algebra, he must at least be able to "apply fundamental concepts of theories of groups, rings, and fields" and "work with differential equations, linear algebra, infinite series, advanced operations methods, and functions of real and complex variables." Utilizing statistics, he must at least be able to "work with mathematical statistics, mathematical probability and applications, experimental design, statistical inference, and econometrics."

Language Development Level 4, which means a person, when reading, must at least be able to "read literature, book and play reviews, scientific and technical journals, abstracts, financial reports, and legal documents." When writing, he must at least be able to "write novels, plays, editorials, journals, speeches, manuals, critiques, poetry, and songs." When speaking, he must at least be "conversant in the theory, principles, and methods of effective and persuasive speaking, voice and diction, phonetics, and discussion and debate."

This vocational information is consistent with the information contained in the standard occupational reference works listed in Appendix B.

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ANALYSIS OF PAST WORK EXPERIENCE

An analysis of Mr. Bauchwitz's past work history indicates that his main occupation was as a Research Scientist. Based on the job description in the DOT, this work required Light Physical capability.

Based on the job description given by Mr. Bauchwitz, on a scale of unskilled (Specific Vocational Preparation 1-3), semi-skilled (Specific Vocational Preparation 4-6), and skilled or professional (Specific Vocational Preparation 7-9), his occupation would be classified as professional.

The skills and competencies inherent in this occupation are the following:

Acquires and evaluates information. Addresses problems before asked to. Allocates human resources. Anticipates obstacles. Brainstorms, solicits input. Breaks problems apart systematically. Checks quality of work or information. Contacts many different sources. Creative thinker. Credits others. Decision maker. Discovers and meets underlying needs. Enjoys technical work; shares expertise. Exercises leadership. Expands and uses technical knowledge. Expresses confidence in own judgment. Gives presentations tailored to audience. Improves outcomes. Improves systems. Innovative. Interprets and communicates information. Keeps records. Makes connections and patterns. Makes logical conclusions. Measures performance. Monitors and corrects performance. Organizes and maintains information. Persists in problem solving. Reads journals, etc. Recognizes key actions, underlying problems. Seeks challenges and independence. Seeks clarity of roles and information. Sees consequences, implications. Selects technology. Serves clients/customers. Sets challenging goals. Shows concern with professional reputation. Understands attitude, interests, needs of others. Understands systems. Uses computers to process information. Uses direct persuasion, facts, and figures. Sensitive to diverse cultures.

Reading: Conducts research and studies environmental issues regarding, health, yield, and other conditions affecting various forms of biological and plant life. Studies healthy and disease-resistant living cells. Conducts surveys and investigations. Conducts research on available knowledge from related scientific fields. Studies test activities and interprets data. Reads memos and reports related to area of specialty. Reads scientific and technical journals, abstracts, financial reports and other documents. Locates, understands, and interprets written information in prose and documents, including manuals, graphs, and schedules. Learns from text by determining the main idea or essential message. Identifies relevant details, facts, and specifications. Infers or locates

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the meaning of unknown or technical vocabulary, judges the accuracy, appropriateness, style, and plausibility of reports, proposals, or theories of other writers.

Writing: Makes written recommendations for further studies of formal plant and animal studies. Prepares written reports of findings, environmental studies, and projects. Conducts scientific experiments. Documents report of results of scientific studies. Able to communicate thoughts, ideas, information, and messages in writing. Records information completely and accurately, composing and creating documents such as letters, directions, manuals, reports, proposals, graphs and flow charts, using language, style, organization, and format appropriate to the subject matter, purpose, and audience. Includes supporting documentation and attends to level of details, checking and editing information, using appropriate emphasis, form, grammar, spelling, and punctuation.

Arithmetic: Works with limits, continuity, real number systems, mean value theorems, and implicit function theorems. Applies fundamental concepts of theories of groups, rings, and fields. Works with differential equations, linear algebra, infinite series, advanced operations methods, and functions of real and complex variables. Works with statistics, mathematical probability and applications, experimental design, statistical inference, and econometrics.

WORK FIELD - 251 - RESEARCHING

Inquiring into fundamental knowledge areas, such as social, physical, and allied sciences, industry, and commerce, for the purpose of discovering facts and making interpretations, and revising and verifying recognized conclusions, theories, laws, and procedures in the light of newly discovered facts. Includes formulating and testing hypotheses on the basis of information obtained by using specialized apparatus and techniques, by making expeditions, and by reading or observing.

Analyzing, Classifying, Collecting, Defining, Dissecting, Documenting, Examining, Experimenting, Inoculating, Isolating, Locating, Measuring, Reporting, Synthesizing, Writing

DATA SOURCES: *Revised Handbook for Analyzing Jobs, 1991* by the U.S. Department of Labor. Proprietary research from various sources.

According to Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993, COJ 2000 The Classification of Jobs, Fifth Edition, J. E. and T. F.

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Field, Elliott & Fitzpatrick, Inc., 1999, and Dictionary of Worker Traits, Volume I and Volume II, A. F. Kearns and R. E. Neeley, Vocational Research Institute, 1987, this occupation is found in the Worker Trait Group LIFE SCIENCES, and is GOE coded 02.02.01. This occupation is given the O*NET code: 19-1042.00 Medical for the occupational unit Scientists.

In analyzing aptitudes in occupations, the U.S. Department of Labor uses a five-point scale: 1 (highest 10 percent of the population), 2 (highest one-third of the population), 3 (middle one-third of the population), 4 (lowest one-third of the population), and 5 (lowest 10 percent of the population). Mr. Bauchwitz's prior work contains the following aptitudes:

G-1 **Intelligence:** General learning ability.

V-1 **Verbal:** Ability to understand meanings of words and ideas associated with them.

N-1 **Numerical:** Ability to perform arithmetic operations quickly and accurately.

S-2 **Spatial:** Ability to comprehend forms in space and understand relationships of plane and solid objects.

P-3 **Form Perception:** Ability to perceive pertinent detail in objects or in pictorial or graphic material.

Q-3 **Clerical Perception:** Ability to perceive pertinent detail in verbal or tabular material.

K-2 **Motor Coordination:** Ability to coordinate eyes, hands, or fingers rapidly and accurately in making precise movements with speed.

F-3 **Finger Dexterity:** Ability to manipulate small objects and move the fingers rapidly and accurately.

M-3 **Manual Dexterity:** Ability of a person to work with the hands in a skillful manner, as well as work with the hands to perform placing and turning motions.

E-5 **Eye-Hand-Foot Coordination:** Ability to move the hand and foot coordinately with each other in accordance with visual stimuli.

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C-3 Color Discrimination: Ability to perceive or recognize similarities or differences in colors, or in shades, or other values of the same color.

This occupation requires the following Temperaments or Situations to which the worker must adapt:

T - Situations requiring the precise attainment of set limits, tolerances, or standards.

J - Making generalizations, evaluations, or decisions based on sensory or judgmental criteria.

EMPLOYMENT SUMMARY

The following is a summary of Mr. Bauchwitz's dates of employment, job title, and employer based on the work history provided during the interview portion of the evaluation:

DATES OF EMPLOYMENT	JOB TITLE	EMPLOYER
3/18 to Present	Substitute Teacher	Source4Teachers (ESS) in Hershey, PA
2017 to Present	Independent Contractor	JFC Workforce in Harrisburg, Pa.
2011 to 2018	Director of Research and Development/ Whistleblower Consultant and Writer	Amerandus Research in Pennsylvania
Fall 2010	Adjunct Professor of Biology	Lebanon Valley College in Annville, Pennsylvania
1/01 to 10/07	Director of the Cognitive Neuroscience Laboratory	St. Lukes-Roosevelt Institute for Health Sciences in New York
2001 to 2003	Adjunct Assistant Professor Department of Natural Sciences	Fordham University in New York

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DATES OF EMPLOYMENT	JOB TITLE	EMPLOYER
9/95 to 1/01	Associate Research Scientist	Department of Genetics at Columbia University

ECONOMIC/EARNINGS HISTORY

YEAR	Actual W-2 Earnings/ Income Tax Returns
2009	0
2010	\$7,240
2011	0
2012	0
2013	0
2014	0
2015	0
2016	0
2017	\$1,473

* Wage records reviewed to ascertain evaluatee's past earnings history.

PHYSICAL COMPLAINTS

Mr. Bauchwitz's current complaints include neck pain radiating into the mid and low back varying in intensity, difficulty sleeping (3-5 hours), and weakness and swelling on the right side of his face. He gets fatigue from speaking and chewing due to his tongue being affected by his cancer surgery.

Mr. Bauchwitz reports no deficits in hearing. He wears glasses for reading and distance. He reports being color blind.

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EMOTIONAL COMPLAINTS/BEHAVIORAL HEALTH

Emotionally, Mr. Bauchwitz reports occasional feelings of anxiety and difficulty dealing with stressful situations.

He complains of significant frustration with respect to the effect his whistleblower status has had on his career as a research scientist.

He has received individual counseling services from a psychologist due the stress of his marital problems and divorce, as well as his cancer. During the evaluation, Mr. Bauchwitz expressed wanting further individual counseling sessions.

MEDICAL TREATMENT

Hospitalizations and Surgeries

Mr. Bauchwitz was hospitalized for (6/22/18) glossectomy less than half, resection of pharyngeal wall requiring flap closure, radical resection of tonsil, tonsillar pillars, and/or retromolar trigone and closure with other flap, graft island pedicle, pharyngoplasty.

Physicians

Dr. Fox (4/20/18) states "Biomedical researcher who is status post July 2, 2015 compression fracture of his spine after carrying a box which he lost grip of and caught while lunging forward...Mr. Bauchwitz's ability to sit in a car for 4-16 hours without getting out, I doubt that he would be able to do this without incurring some significant pain during or after the car ride."

Dr. Puleo (5/3/18) states "Mr. Bauchwitz required a second surgery as he continued to have issues with hemorrhoidal disease...While traveling he was unable to take his Sitz baths which are helpful to decrease pain and help with prolapsing tissue. As given that the patient had issues with his travel history, I think traveling does impact his hemorrhoidal disease as he isn't able to go to the bathroom/use Sitz baths as he should."

Dr. Bahajak (3/20/18-4/6/18) states "He does suffer from color blindness, confirmed using Ishihara color testing. He has compound myopic astigmatism which requires Robert to wear glasses full-time in order to see clearly at all distances."

Employability and Earning Capacity Evaluation on Robert Bauchwitz
September 21, 2018
Page 17

Therapy and Chiropractor Treatment

He had a period of Physical Therapy at Hershey Medical Center on a weekly basis for two months.

Pain Management Modalities

None reported.

Medication Regimen

Mr. Bauchwitz reported taking the following prescription medications: Zantac and Prevacid.

Orthotic and Positioning Devices

He uses a TLSO back support on a daily basis.

ACTIVITIES OF DAILY LIVING

He can independently wash, dress, and bathe himself.

His daily activities include reading, writing, and rehabilitation exercise.

HOUSEHOLD ACTIVITIES

Mr. Bauchwitz can do the food shopping and light household chores.

AVOCATIONAL ACTIVITIES

When he feels up to it, he participates in writing poetry (through a cancer support group) and dance.

TRANSPORTATION RESOURCES

He has a Pennsylvania State driver's license. Mr. Bauchwitz reports difficulty driving on a sustained, continuing basis due to his diagnosed severe insomnia, limiting him to 30 minutes.

Employability and Earning Capacity Evaluation on Robert Bauchwitz
September 21, 2018
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RESIDUAL FUNCTIONAL CAPACITY SELF-ASSESSMENT

As per Dr. BiFulco's report, Mr. Bauchwitz can sit ½ day, stand 1/3 day, walk 2/3 day, lift and carry 10 pounds frequently, and work for four hours out of an eight-hour day with breaks every 1.5 hours for 45 minutes.

REVIEW OF MR. BAUCHWITZ'S JOB SEARCH

Currently, Mr. Bauchwitz is working as a substitute teacher on a limited basis despite his neck and back pain and resultant physical limitations.

He reports conducting an extensive job search but did not get any interviews. Mr. Bauchwitz reports working with seven search firms for quality assurance, compliance, and laboratory research jobs. He has received no interviews from these efforts, other than the one temporary clerical position through JFC.

REVIEW OF MS DAILEY'S VOCATIONAL EVALUATION

Ms. Dailey authored a Vocational Evaluation report (5/29/18) which states that Mr. Bauchwitz has the earning capacity from \$91,593 to \$117,901 per annum. On reaching this conclusion, Ms. Dailey fails to consider Mr. Bauchwitz's past earnings which have never been more than \$7,240 per annum. Vocational experts note that past earnings are the best predictors of future earning capacity. In addition, she states that he is an "established stable executive officer" which is untrue as this was a start-up which never made any money. She fails to take into consideration the fact he is a "whistleblower" and has been out of work as a Research Scientist for more than 10 years. He is considered a worker of advanced age and has *never* worked in most of the jobs she has listed.

Mr. Bauchwitz has made numerous efforts to seek employment using search firms and has answered numerous job advertisements resulting in no job interviews. In addition, Ms. Dailey fails to consider the negative effect his advanced age, cancer and severe osteoporosis and osteoarthritis have had on reducing his physical capacity as noted in the Residual Functional Capacity form completed by Dr. BiFulco.

Lastly, she has failed to take into consideration the effect of his medical limitations on his ability to perform competitive employment on a sustained, regular basis. Thus, I totally disagree with her findings regarding Mr. Bauchwitz's employability and earning capacity as they are unrealistic and do not take into consideration his physical limitations and whistleblower status.

Employability and Earning Capacity Evaluation on Robert Bauchwitz

September 21, 2018

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EMPLOYABILITY AND EARNING CAPACITY OPINION

Based on the results of the vocational evaluation performed on Mr. Bauchwitz and the conclusions made, as well as his advanced age, education, medical condition, past work experience of professional work as a Research Scientist, and problematic work history after his whistleblower situation, the following are my opinions, as a Vocational Expert, regarding his employability, earning capacity, and rehabilitation plan:

Rehabilitation Plan

Mr. Bauchwitz's current position as a Substitute Teacher best represents his vocational capacity given his medical conditions. He has made many efforts to obtain employment commensurate with his past employment but this has been unsuccessful.

Access to the Labor Market

Mr. Bauchwitz's ability to access the labor market is limited to, at present, performing part-time employment (4-5 hours a day) requiring Sedentary or Light Physical demands.

Placeability

Given his advanced age, education, medical condition, past work experience of professional work as a Research Scientist, and problematic work history after his whistleblower situation, Mr. Bauchwitz's ability to be placed in the labor market is limited to performing part-time employment (4-5 hours a day) requiring Sedentary or Light Physical demands.

Earning Capacity

1. Mr. Bauchwitz's whistleblower status has rendered him unemployable as a Research Scientist due to the publicity of his situation which is prominently listed on the internet.
2. Given his medical limitations and whistleblower status, it is my opinion that his employability is best represented by his ability to work as a substitute teacher.

Employability and Earning Capacity Evaluation on Robert Bauchwitz

September 21, 2018

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3. The average earnings of a Substitute Teacher in the Harrisburg/Hershey, Pennsylvania areas are \$37,260 per annum (\$13.41-\$17.91 per hour) which best represent his earning capacity.

Prepared by:

Edmond Provder

Certified Rehabilitation Counselor

Diplomate, American Board of Vocational Experts

Employability and Earning Capacity Evaluation on Robert Bauchwitz
September 21, 2018
Page 21



Executive Office
 The Rothman Center
 300-3 Route 17 South
 Second Floor, Suite 4A
 Little, New Jersey 07644-3810
 Ph. 973-365-2227
 Tt. 1-800-292-1919
 Fx. 973-365-2722
 Em. oasinc@oasinc.org

Additional Locations
 New York City, NY
 Toms River/Mount Laurel, NJ
 Miami/Tampa, FL
 San Antonio, TX
 Los Angeles, CA

Residual Functional Capacity Evaluation

Patient's Name: **ROBERT BAUCHWITZ**
 Date of Birth: **MAY 3, 1960**

SS#
 Date of Injury: **2015**

Instructions: Please describe physical capacities. This information will be used for vocational planning. You may mark "N/A." Make all comments above your signature on page 4.

Based on an 8-hour workday, 5 days per week: Occasionally = 1/3 of workday
 Frequently = 2/3 of workday
 Continuously = more than 1/2 of workday

1. Full Work Day Capacity: and Consecutive Capacity:
 Sitting: F hours Sitting: 0 hours *> 1/2 of Day*
 Standing: F hours Standing: 0 hours *1/3*
 Walking: C hours Walking: C hours *2/3 of Day*

2.

Patient IS ABLE TO:	Not at all	Occasionally	Frequently	Continuously
Jump	X	X		
Climb stairs			X	
Climb hand over hand	X			
Bend		X	X	
Stoop		X		
Reach			X	
Crawl			X	
Kneel			X	
Twist/rotate		X		
Balance			X	
Push/pull <i>weight dependant</i>			X	

3.

IS ABLE TO LIFT:	Not at all	Occasionally	Frequently	Continuously
Up to 10 pounds			X	
11 - 24 pounds		X		
25 - 34 pounds	X			
35 - 49 pounds	X			
50 - 74 pounds	X			
75 - 100 pounds	X			

4. Patient can use hand for repetitive action:

	<u>Simple Grasping</u>		<u>Firm Grasping</u>		<u>Fine Manipulation</u>	
Right	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Left	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

If no, what percentage of time during an 8 hour work day can your Patient use his/her hands/fingers/arms for repetitive reaching, handling or fingering? _____%

5. Patient can use feet for repetitive movements as in operating foot controls:

Yes <input checked="" type="checkbox"/>	<u>Right</u>	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	<u>Left</u>	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	<u>Both</u>	No <input type="checkbox"/>
---	--------------	-----------------------------	---	-------------	-----------------------------	---	-------------	-----------------------------

6. Patient can use head and neck for:

Yes <input type="checkbox"/>	<u>Frequent Flexing</u>	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	<u>Frequent Rotating</u>	No <input checked="" type="checkbox"/>
------------------------------	-------------------------	--	------------------------------	--------------------------	--

7. Total hours per day Patient can work: on average 4 hrs w 8 hr day
weight & posture dependant
-5 hrs (seated)

8. Does your Patient need a job which permits shifting positions *at will* from sitting, standing or walking? Yes No

9. Will your Patient sometimes need to take *unscheduled breaks* during an 8 hour work day? Yes No

If yes, how often do you think this will happen? Every 1.5 hrs

If yes, how long will these breaks take? 45 min. (know)

10. With prolonged sitting, will your Patient need to elevate their leg(s)? Yes ___ No

If yes, if your Patient had a sedentary job, *what percentage of time* during an 8 hour work day should the leg(s) be elevated? _____%

11. While engaging in occasional standing/walking, must your Patient use a cane or other assistive device? Yes ___ No

12. What percentage of time during an 8 hour work day can your Patient bend and twist at the waist? Bend 10 % Twist 10 %

13.

IS ABLE TO ENGAGE IN WORK INVOLVING:	Not at all	Occasionally	Frequently	Continuously
Ladders & scaffolding	✓			
Machinery with moving parts			✓	
Marked change in temperature/humidity			✓	
Driving auto or other equipment		✓		
Dust, fumes & gases			✓	✓
Uneven surface or grade			✓	✓
Vibration			✓	✓

14. Should your Patient avoid exposure to the following (circle one):

- | | | |
|----------------------|-----|-------------------------------------|
| a. Extreme cold | yes | <input checked="" type="radio"/> no |
| b. Extreme heat | yes | <input checked="" type="radio"/> no |
| c. High humidity | yes | <input checked="" type="radio"/> no |
| d. Fumes, odors | yes | <input checked="" type="radio"/> no |
| e. Soldering fluxes | yes | <input checked="" type="radio"/> no |
| f. Solvents/cleaners | yes | <input checked="" type="radio"/> no |
| g. Chemicals | yes | <input checked="" type="radio"/> no |

15. Are your Patient's impairments likely to produce "good days" and "bad days"?
Yes No


16. On the average, how often do you anticipate that your Patient's impairments or treatments would cause him/her to be *absent from work*? *depends. But in general*
 Never Once a month Twice a month More than twice a month

17. Are these capacities expected to increase? Yes No
Is the Patient considered medically stable? Yes No
Would additional treatment increase these physical capacities? Yes No

Surgery Physical Therapy Occupational therapy
 Orthotic/Prosthetic device Other _____

18. Physician's Remarks:

Nature of Impairment is orthopedic? due to surgery had ligation of vessels to tongue resulting in fatigue when speaking & swallowing. Adeq Adequate accommodations are needed. has limits in weight lifting - has severe insomnia which limits driving Has known Color Blindness

Signature of treating physician:  Date: 9/8/2018

Please print name: SANTO STEVEN BIFULCO MD CLCP
or

Other health care professional with license: _____

Please print name: _____ Date: _____

Please return to: Occupational Assessment Services, Inc.
The Rothman Center
Second Floor, Suite 4A
300-3 Route 17 South
Lodi, New Jersey 07644
(fax) 973-365-2722

Rev. 06-03-03 (VOCATNL.MAT.FRM)



VOCATIONAL INFORMATION FORM

Instructions: Complete all information about educational background, training and work history for the last 15 years. If further space is required, use additional paper.

NAME Robert Palmera Bauchwitz
 ADDRESS 324 Caudkewyck Lane
 CITY Hershey STATE PA ZIP 17033
 SOCIAL SECURITY # 222/32 10490 TELEPHONE (717) 298-7578
 DATE OF BIRTH 05/03/1960 AGE 58 BIRTHPLACE Louisville, KY
 NUMBER OF CHILDREN 2 AGES 23+25 DRIVERS LICENSE: Yes No

EDUCATION, TRAINING & MILITARY

NAME OF HIGH SCHOOL Mt. Pleasant High School
 HIGH SCHOOL GRADUATE: Yes No WHAT YEAR? 1978
 HIGH SCHOOL EQUIVALENCY DIPLOMA/GED: Yes No YEAR _____
 COURSE OR TRAINING IN HIGH SCHOOL: General Academic

Vocational _____
 (list any special training, i.e., typing, machine shop)

TECHNICAL OR VOCATIONAL TRAINING: Yes No
 Name of School _____
 Years Attended, from _____ to _____ Did you graduate? Yes No
 Field of Study _____

MILITARY SERVICE: Yes No WHEN _____ BRANCH _____
 TRAINING IN THE MILITARY _____

1. NAME OF COLLEGE Harvard University (College)
 DATES ATTENDED 1978-1982 DEGREE RECEIVED AND MAJOR A.B. Biochemistry

2. NAME OF COLLEGE —
 DATES ATTENDED _____ DEGREE RECEIVED AND MAJOR _____

3. OTHER COURSES OR TRAINING RECEIVED Certified Fraud Examiner (CFE) 2016
Paralegal certification (2010)
 DATES ATTENDED CFE-online course (2016); paralegal 6/10-8/10 (online)

4. AWARDS OR HONORS EARNED IN HIGH SCHOOL OR COLLEGE Valedictorian (HS) Davis List (College)

5. DESCRIBE ANY VOLUNTEER WORK Community soccer coach 11-12 yrs water

WORK HISTORY

LAST/CURRENT EMPLOYMENT:

STARTED: March 2018 STOPPED: Continuing
 EMPLOYER: Source 4 Teachers (ESS)
 CITY/STATE: Chevy Chase, MD
 JOB TITLE: Guest Teacher
 DESCRIPTION OF DUTIES: Substitute teacher for 1) biology 2) health/gym, 3) special education
 HOW LONG DID IT TAKE TO LEARN THIS JOB? ~4 weeks
 UNION? (Give name and local) _____
 HOW MANY PEOPLE SUPERVISED? 0
 DID YOU OPERATE ANY MACHINERY? (Describe) No
 GROSS HOURLY, WEEKLY OR YEARLY SALARY: \$100/day (~\$12.31/hr)
 HOW MANY HOURS A DAY DID YOU WORK? 8
 REASON FOR LEAVING: (summer break / cancer treatment → did not leave)

PRIOR WORK HISTORY:

1. STARTED: 2008 STOPPED: 2018
 EMPLOYER: Amoratus Research (self)
 CITY/STATE: Philadelphia, PA
 JOB TITLE: Director of Research + Development
 DESCRIPTION OF DUTIES: science + creating for whistleblowers (primarily but not exclusively scientific research) + whistleblowers + mediators - generally editorial, vocational, rehabilitation network, security, white papers, litigation
 HOW LONG DID IT TAKE TO LEARN THIS JOB? Ongoing / creating a field
 UNION? (Give name and local) none
 HOW MANY PEOPLE SUPERVISED? ~4
 DID YOU OPERATE ANY MACHINERY? (Describe) no
 GROSS HOURLY, WEEKLY OR YEARLY SALARY: none (no \$)
 HOW MANY HOURS A DAY DID YOU WORK? > 8 hrs/day > 5 days/week (usually 7 days/week)
 REASON FOR LEAVING: divorce / lost of marital funding / cancer

2. STARTED: 9/2010 STOPPED: 12/2010
 EMPLOYER: Lebanon Valley College
 CITY/STATE: Anville, PA
 JOB TITLE: Adjunct Professor of Biology
 DESCRIPTION OF DUTIES: Teaching molecular biology laboratory
 HOW LONG DID IT TAKE TO LEARN THIS JOB? minimum PhD → 6 years

UNION? (Give name and local) none

HOW MANY PEOPLE SUPERVISED? none

DID YOU OPERATE ANY MACHINERY? (Describe) no

GROSS HOURLY, WEEKLY OR YEARLY SALARY: \$3620 / course section / 13 wk. seminar x 2 sections

HOW MANY HOURS A DAY DID YOU WORK? 5.5 x 2 days/week

REASON FOR LEAVING: Model decision to ~~quit~~ decrease effort in business

3. STARTED: 2/2001 STOPPED: 10/2007

EMPLOYER: St. Louis - Roosevelt Institute for Health Sciences

CITY/STATE: New York, NY

JOB TITLE: Director (Cognitive Neuroscience Laboratory) + Assistant Professor, Neurology

DESCRIPTION OF DUTIES: Applied Investigator + Laboratory Head

HOW LONG DID IT TAKE TO LEARN THIS JOB? college (4) + PhD (6) + postdoc (4 yrs) 10-12 yrs

UNION? (Give name and local) none

HOW MANY PEOPLE SUPERVISED? 2-12

DID YOU OPERATE ANY MACHINERY? (Describe) laboratory equipment

GROSS HOURLY, WEEKLY OR YEARLY SALARY: \$50,000 base salary + gross calculation from grant funding

HOW MANY HOURS A DAY DID YOU WORK? 10-12 hours/day variable

REASON FOR LEAVING: work/lower reevaluation / loss of title

IF NOT WORKING, HAVE YOU LOOKED FOR WORK? No Yes (Interested in better paying work with more better health insurance; acceptance / advice sought)

TYPE OF JOBS SOUGHT: _____

Where? _____

MEDICAL HISTORY

PERMANENT HANDICAPS OR DISEASES: severe osteoporosis, arthralgias, head + neck cancer, severe

COMPLAINTS: severe back pain while sitting, dysphagia, GERD (swat), fatigue/jaw fatigue

PHYSICIANS: Gregory Warden MD (cancer), Edward Fox MD (osteoporosis/arthralgias), Glenda Coffey (PCP), Fran Poles MD -> Cary Aueris MD (UPine / hemorrhoids), Louisa Cogan, MD (neurology/dysphagia)

PSYCHIATRISTS, PSYCHOLOGISTS, SOCIAL WORKERS: _____

HOSPITALIZATIONS: 6/4/18, 6/22/18 + following for head + neck cancer. Vertebral fracture & kidney stone 8/75

MEDICATIONS: Zolam + Brevital (relax, sleep); epidural alcoholysis, sivoracet, diphhydramine, dopamine, subcutanea

THIS FORM WAS COMPLETED BY: Robert Beuchwitz DATE: 8/9/18

****PLEASE BRING YOUR RESUME, WORK RECORDS, WAGE INFORMATION AND/OR INCOME TAX RECORDS FOR THE LAST THREE YEARS TO THE EVALUATION.** } attached as attachments

Darren Holst Esq explains to Husband why expert witnesses are not necessary in support of an alimony claim in this case

From: dholst@hkhlaw.net	Date: October 7, 2019
To: dir_amr@luxsci.net, dbell-jacobs@hkhlaw.net	Time: 9:31 am
Cc: iweinstock@weinstocklaborlaw.com	Size: 27 KB
Subject: RE: Missing exhibits and witnesses	
Tags: \$forwarded, \$mailflagbit0, \$mailflagbit2	

Robert:

As I said before we do NOT need to put on an expert in support of our alimony claim. The other side is calling no experts, and you are competent to testify as to your current medical condition and how it physically impacts and limits your ability to do day-to-day functions that would be required for work that may fall into your education and training. You are competent to testify that for the majority of the marriage you were either self-employed or employed in the research field and how that door is now closed to you as a result of you and your wife deciding to take a chance during marriage and pursue the legal action that ultimately bore no fruit. This was a joint decision that ultimately prejudiced your employment opportunities. You are competent to testify as to the jobs you have been able to find currently and the lack of jobs for a 59 year old that cannot practice medicine and cannot do the things you actually trained for before and during your marriage and who has battled cancer. You can testify as to your training and education. Your medical condition is but one component of the alimony claim. Along with that is the fact that the doors are closed to you for the main career for which you trained and that you are 59; no one is going to hire you. If you pursued you paralegal training you will make far less than the previous earning capacity. Moreover, even with a \$72k earning capacity there is still a need for alimony when your spouse will continue to earn in excess of \$400k until she decides retire.

We will pursue the additional discovery as we discussed, and you will get that draft today, but there is no reason to call an expert, particularly when that report is now close to two years old.

Darren

LAW OFFICES OF
HOWETT, KISSINGER & HOLST, P.C.130 WALNUT STREET
POST OFFICE BOX 810
HARRISBURG, PENNSYLVANIA 17108

Exhibit C

JOHN C. HOWETT, JR.*+
DONALD T. KISSINGER
DARREN J. HOLST*+
DANIEL J. BELL-JACOBS

www.hkhlaw.net

(717) 234-2616

FAX (717) 234-5402

*Fellow, American Academy of Matrimonial Lawyers

+Fellow, International Academy of Family Lawyers

DEBRA M. SHIMP
Legal Assistant

June 21, 2019

VIA E-MAIL: CConley@dauphinc.org
AND REGULAR MAILCindy S. Conley, Divorce Master
25 South Front Street
Juvenile Justice Center, 7th Floor
Harrisburg, PA 17101Re: Rogers v. Bauchwitz
No. 2017-CV-6699-DV

Dear Master Conley:

Please find enclosed a timestamped copy of Dr. Bauchwitz's Pretrial Statement. While the Pretrial Statement is being filed pursuant to your directive, please note that my client has not been provided all of the discovery that was requested from Dr. Rogers, and thus we reserve the right to amend the Pretrial Statement prior to trial. The outstanding discovery, which most recently was requested by letter dated May 31, 2019, includes the following:

1. Unredacted and complete copies of statements for the Capital One Checking and Savings accounts ending in #794 for August 2017 through August 2018.
2. Unredacted and complete copies of statements for the Northwest Savings #1459 and Checking #7874.
3. Unredacted and complete copies of statements for the Capital One credit card #8883/5838 statements, including transaction detail.
4. A complete and certified copy of the toxicology report done following the death of Dr. Rogers' father.
5. A complete and certified copy of any autopsy report done following the death of Dr. Rogers' father.

Additionally, Dr. Bauchwitz requested answers and information responsive to the following questions, which have not been provided:

Cindy S. Conley, Divorce Master
June 21, 2019
Page Two

6. Dr. Rogers has made payments throughout the marriage to a payee known as "MSPR." What is MSPR? Please explain what these payments were for.

7. Please explain why Dr. Rogers made seemingly duplicate payments to her Northwestern disability insurance in 2017 in the amount of \$11,995.71 on April 30, 2017 and again on May 18, 2017.

8. My client has asked that Dr. Rogers provide all relevant information regarding the Rogers Family Trust, including her status as a beneficiary of said trust, and asks that she provide copies of all relevant documentation regarding her interest in the trust.

9. My client insists that your client provide information as to where Dr. Rogers deposited the payroll checks that she received that were received in paper check format and not direct deposited.

Due to the significant outstanding discovery in this matter, Dr. Bauchwitz kindly requests that the settlement conference scheduled for June 28, 2019 be continued to a later date to allow adequate time to receive and review the outstanding documents and information. Please advise as soon as possible if we must file a formal continuance request. Thank you.

Sincerely,



Darren J. Holst

DJH/djk
Enclosure

cc: James R. Demmel, Esquire (w/encl) (via e-mail & regular mail)
Ira H. Weinstock, Esquire (w/encl) (via e-mail & regular mail)
Dr. Robert P. Bauchwitz (w/encl) (via e-mail only)

**CONFIDENTIAL
DOCUMENT FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS** ^{2002a}

*Public Access Policy of the Unified Judicial System of Pennsylvania:
Case Records of the Appellate and Trial Courts
204 Pa. Code § 213.81
www.pacourts.us/public-records*

ANN M. ROGERS

(Party name as displayed in case caption)

2017-CV-6699-DV

Docket/Case No.

Vs.

ROBERT P. BAUCHWITZ

(Party name as displayed in case caption)

CCP of DAUPHIN COUNTY

Court

This form is associated with the pleading titled Pre-Trial Statement, dated June 21, 2019.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Document Form shall accompany a filing where a confidential document is required by law, ordered by the court, or is otherwise necessary to effect the disposition of a matter. This form shall be accessible to the public, however the documents attached will not be publicly accessible, except as ordered by a court. The documents attached will be available to the parties, counsel of record, the court, and the custodian. **Please only attach documents necessary for the purposes of this case.** Complete the entire form and check all that apply. This form and any additional pages must be served on all unrepresented parties and counsel of record.

Type of Confidential Document	Paragraph, page, etc. where the confidential document is referenced in the filing:
<input type="checkbox"/> Financial Source Documents	
<input type="checkbox"/> Tax Returns and schedules	
<input type="checkbox"/> W-2 forms and schedules including 1099 forms or similar documents	
<input type="checkbox"/> Wage stubs, earning statements, or other similar documents	
<input type="checkbox"/> Credit card statements	
<input type="checkbox"/> Financial institution statements (e.g., investment/bank statements)	
<input type="checkbox"/> Check registers	
<input type="checkbox"/> Checks or equivalent	
<input type="checkbox"/> Loan application documents	
<input type="checkbox"/> Minors' educational records	
<input type="checkbox"/> Medical/Psychological records	
<input type="checkbox"/> Children and Youth Services' records	
<input checked="" type="checkbox"/> Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33	Entire Document
<input type="checkbox"/> Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)	
<input type="checkbox"/> Agreements between the parties as used in 23 Pa.C.S. §3105	

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

D. J. Holst
Signature of Attorney or Unrepresented Party

Name: Darren J. Holst, Esquire
Address: 130 Walnut St, PO Box 810
Harrisburg, PA 17108

June 21, 2019

Date

Attorney Number: (if applicable) 82314

Telephone: 717-234-2616

Email: dholst@hkhlaw.net

Darren J. Holst, Esquire
 Attorney ID No. 82314
 HOWETT, KISSINGER & HOLST, P.C.
 130 Walnut Street, P.O. Box 810
 Harrisburg, PA 17108
 Telephone: (717) 234-2616
 Counsel for Defendant, Robert P. Bauchwitz

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)
 Plaintiff) NO. 2017-CV-6699-DV
)
 v.)
 ROBERT P. BAUCHWITZ,) CIVIL ACTION - LAW
 Defendant) IN DIVORCE

DEFENDANT'S PRETRIAL STATEMENT
PURSUANT TO P.A.R.C.P. 1920.33(b)

I. ASSETS

A. MARITAL ASSETS

#	ASSET	VALUE	DATE OF VALUATION	ANY PORTION NON-MARITAL	LIENS OR ENCUMBRANCES
1	324 Candlewyck Lane	TBD – property to be sold	Will be valued at time of sale	N/A	Mortgage, see below
2	2006 Acura MDX	\$4,516.00	Feb 2019	N/A	N/A
2	2016 Volvo S80	\$29,343.00? May have no equity	9/20/17	N/A	Car loan, see below
3	Joint Vanguard #8869	\$17,650.18	3/31/19	N/A	N/A
3	Joint TD Ameritrade #8994	\$8,667.45	3/31/19	N/A	N/A
3	Husband's Series EE Paper Savings Bonds	\$21,024.00	2/1/19	N/A	N/A

3	Husband's Series EE Electronic Savings Bonds	\$40,872.00, TBD if separate asset from paper bonds	TBD	N/A	N/A
3	Husband's Series I Paper Savings Bonds	\$36,692.00	2/1/19	N/A	N/A
3	Wife's Series I Paper Savings Bonds	\$24,780.00	2/1/19	N/A	N/A
3	Wife's Series EE Electronic Savings Bonds	\$45,000.00 face value, value TBD	TBD	N/A	N/A
5/6	Wife's Capital One Checking #3469	\$114,996.73	9/30/17	N/A	N/A
5/6	Wife's Capital One Savings #9147	\$10.36	9/30/17	N/A	N/A
5/6	Wife's Northwest Checking #7874	\$316.65	9/25/17	N/A	N/A
5/6	Wife's Northwest Savings #1459	\$711.93	9/30/17	N/A	N/A
5/6	Husband's Capital One Checking #3580	\$31,379.19	8/31/17	N/A	N/A
5/6	Husband's Capital One Savings #0877	\$51,084.90	8/31/17	N/A	N/A
5/6	Husband's Northwest Checking #7593	\$1,110.01	9/21/17	N/A	N/A
5/6	Husband's Northwest Checking #3170	\$97.89	9/30/17	N/A	N/A
5/6	Husband's Bitcoin	1.229967 Bitcoins	TBD	N/A	N/A

18	Wife's SLRHC Pension	\$128,126.00	1/31/19	N/A	N/A
18	Husband's SLRHC Pension	\$89,247.00	1/31/19	N/A	N/A
19	Wife's TIAA CREF 403B, 401K and TSA	\$791,528.57	3/31/19	N/A	N/A
19	Wife's Empower MSHMC 401K, 403B, 457B	\$997,607.26	12/31/18	Wife made post-separation contributions	N/A
19	Wife's Vanguard Trad. IRA #2616	\$167,928.13	3/31/19	N/A	N/A
19	Husband's Vanguard Trad. IRA #2849	\$144,697.95	12/31/18	Husband made post-separation contributions	N/A
19	Wife's SLRHC 403B TSA Plan	\$8,291.12	12/31/18	N/A	N/A
19	Husband's TIAA-CREF Continuum 403B	\$74,853.45	12/31/18	N/A	N/A
19	Husband's Vanguard Columbia Retirement #0017	\$11,618.63	12/31/18	N/A	N/A
25	Personal Property	Divided by Agreement	N/A	N/A	N/A

B. NON-MARITAL ASSETS

#	ASSET	VALUE	DATE OF VALUATION	LIENS OR ENCUMBRANCES
5/6	Husband's Northwest Savings #1350 (contains Husband's mother's funds)	\$15,616.33	9/30/17	N/A
19	Wife's Empower MSHMC 401K, 403B, 457B	TBD – post-separation contributions	TBD	N/A

19	Husband's Vanguard Trad. IRA #2849	TBD – post-separation contributions	TBD	N/A
25	Husband's Pre-Marital Personal Property	Negligible	N/A	N/A
25	Laboratory Equipment	Negligible	N/A	N/A

II. EXPERT WITNESSES.

If the parties cannot stipulate as to the values of the SLRHC pensions, Husband reserves the right to call Mr. Cramer as an expert witness:

Jonathan Cramer FSA, EA, MAAA
 Conrad Siegel
 501 Corporate Circle
 Harrisburg, PA 17110-0900
 717-652-5633

If Wife intends to provide a vocational evaluation, Husband will hire his own vocational evaluator to establish his earning capacity for alimony purposes.

Husband reserves the right to identify additional expert witnesses prior to trial with advance notice to Wife, and Husband reserves the right to call unidentified rebuttal expert witnesses at trial if necessary.

III. NON-EXPERT WITNESSES OTHER THAN PARTIES. Other than the parties, Husband does not expect to call any additional non-expert witnesses at this time, however, Husband reserves the right to identify additional non-expert witnesses prior to trial with advance notice to Wife, and Husband reserves the right to call unidentified rebuttal witnesses at trial if necessary.

IV. EXHIBITS.

Husband anticipates introducing the following exhibits (absent stipulations to assets and values):

1. Counsel Fee Exhibit
2. Husband's 2018 Income Tax Return
3. Husband's Social Security Statement
4. Husband's Paystubs
5. KBB for 2006 Acura MDX
6. Joint Vanguard #8869 statements
7. Joint TD Ameritrade #8994 statements
8. Husband's Savings Bonds
9. Wife's Savings Bonds
10. Wife's Capital One Checking #3469 statements
11. Wife's Capital One Savings #9147 statements
12. Wife's Northwest Checking #7874 statements
13. Wife's Northwest Savings #1459 statements
14. Husband's Capital One Checking #3580 statements
15. Husband's Capital One Savings #0877 statements
16. Husband's Northwest Checking #7593 statements
17. Husband's Northwest Checking #3170 statements
18. Husband's Bitcoin statement from circle.com
19. SLRHC Pension Evaluation by Jonathan Cramer – Wife
20. SLRHC Pension Evaluation by Jonathan Cramer – Husband

21. Wife's TIAA CREF 403B, 401K and TSA statements
22. Wife's Empower MSHMC 401K, 403B, 457B statements
23. Wife's Vanguard IRA #2616 statements
24. Husband's Vanguard IRA #2849 statements
25. Wife's SLRHC 403B TSA Plan statements
26. Husband's TIAA CREF Continuum 403B statements
27. Husband's Vanguard Columbia Retirement #0017 statements
28. Husband's Northwest Savings #1350 statements
29. Flagstar Bank mortgage statements
30. Wife's Capital One Professional MasterCard #8883/5838 statements
31. Husband's final Income and Expense Statement

Husband reserves the right to identify additional exhibits prior to trial with advance notice to Wife, and to introduce unidentified rebuttal exhibits at trial.

Husband has not attached the listed exhibits hereto, but such exhibits will be exchanged with opposing counsel in advance of trial.

V. INCOME STATEMENT.

Please see Husband's Income and Expense Statement filed of record on January 4, 2019. Husband's current income, exclusive of interim support, is comprised of his earnings from substitute teaching, and his nominal interest, dividend and capital gain income.

VI. EXPENSE STATEMENT.

Please see Husband's Income and Expense Statement filed of record on January 4, 2019.

VII. COUNSEL FEES AND COSTS.

Husband has raised Counsel Fees, Costs and Expenses in this action. Husband proposes that as part of an overall resolution, Wife pay Husband a lump sum reimbursing him for a portion of his counsel fees, costs, and expenses. A fee exhibit will be provided prior to hearing.

VIII. PERSONAL PROPERTY.

Divided by agreement of the parties.

IX. MARITAL DEBT:

#	DEBT	AMOUNT	DATE OF VALUATION
1	Flagstar Bank Mortgage	\$117,268.02	9/27/17
2	Chase Auto Finance loan for Wife's Volvo	\$29,343.00 – Confirmation to be provided by Wife	9/20/17
5/6	Wife's Capital One Professional MasterCard #8883/5838	\$18,974.86 (amount paid off in full by Wife in the month following separation per routine)	9/25/17

X. PROPOSED RESOLUTION.

Husband maintains that Wife has not provided full and complete discovery. Husband reserves the right to pursue the outstanding discovery. However, for the limited purposes of the instant pre-trial statement, Husband proposes the following conditional settlement position:

1. Equitable Distribution.

Husband calculates the net marital estate value at approximately \$2,824,035.40, not including the equity in the marital residence which is listed for sale. This value includes assignment to Husband of electronic series EE bonds in the amount of \$40,872, which Husband has been unable to confirm whether the bonds are double counted with the paper bonds, and assignment to Wife of electronic series EE bonds in the amount of \$45,000. The value also does not include Wife's credit card debt as such debt was regularly paid off each month by Wife. Husband proposes that Husband receive 60% of the net marital estate in the approximate amount of \$1,694,421.24 and that Wife receive 40% of the net marital estate in the approximate amount of \$1,129,614.16. Husband proposes that from the net proceeds from the sale of the marital residence, Husband receive 60% of the net proceeds and Wife receive 40% of the net proceeds.

Wife should receive 40% of the net marital estate, consisting of the following:

Asset/Debt	Value
2016 Volvo S80	\$29,343.00
50% Joint Vanguard #8869	\$8,825.09
50% Joint TDA #8994	\$4,333.72
Paper I bonds	\$24,780.00
Electronic EE bonds	\$45,000.00
TIAA CREF 403B, 401K, TSA	\$791,528.57
EMPOWER 401K, 403B, 457B	\$997,607.26
SLRHC Pension	\$128,126.00
SLRHC 403B	\$8,291.12
Vanguard IRA #2616	\$167,928.13

CapOne Checking #3469	\$114,996.73
CapOne Savings #9147	\$10.36
Northwest Checking #7874	\$316.65
Northwest Savings #1459	\$711.93
CapOne MasterCard #8883/#5838	0.00
Chase Auto Finance - Volvo loan debt	-\$29,343.00
Transfer to Husband from Wife's retirement	-\$1,162,841.40
TOTAL	\$1,129,614.16

Wife will also receive 40% of the net proceeds from the sale of the marital residence.

Husband should receive 60% of the net marital estate, consisting of the following:

Asset/Debt	Value
2006 Acura MDX	\$4,516.00
50% Joint Vanguard #8869	\$8,825.09
50% Joint TDA #8994	\$4,333.73
Paper EE bonds	\$21,024.00
Paper I bonds	\$36,692.00
Electronic EE bonds – included, may be double count	\$40,872.00
Bitcoin – estimated current value	\$11,228.00
TIAA CREF Continuum 403B	\$74,853.45
Vanguard IRA #2849	\$144,697.95
SLRHC Pension	\$89,247.00
Vanguard Columbia U Ret. Plan #0017	\$11,618.63
CapOne Checking #3580	\$31,379.19
CapOne Savings #0877	\$51,084.90
Northwest Checking #7593	\$1,110.01
Northwest Checking #3170	\$97.89
Transfer to Husband from Wife's retirement	\$1,162,841.40
TOTAL	\$1,694,421.24

Husband will also receive 60% of the net proceeds from the sale of the marital residence.

2. Alimony Pendente Lite/Alimony.

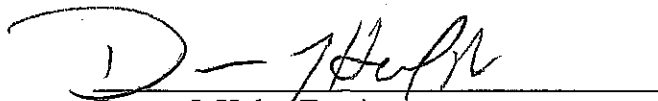
Husband proposes that Wife pay non-modifiable non-deductible alimony to Husband in the amount of \$5,700.00 per month, until Wife retires.

3. Counsel Fees and Costs.

Husband proposes that Wife pay Husband a lump sum reimbursing him for a portion of his counsel fees, costs, and expenses.

Respectfully submitted,

Date: 6/21/19



Darren J. Holst, Esquire
Attorney ID No. 82314
HOWETT, KISSINGER & HOLST, P.C.
130 Walnut Street, P.O. Box 810
Harrisburg, PA 17108
Telephone: (717) 234-2616
Counsel for Defendant, Robert P. Bauchwitz

VERIFICATION

I, Robert P. Bauchwitz, hereby swear and affirm that the facts contained in the foregoing
Pre-Trial Statement

are true and correct to the best of my knowledge, information and belief and are made subject to
the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 6/21/19


ROBERT P. BAUCHWITZ

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)	
Plaintiff	)	NO. 2017-CV-6699-DV
)	
v.)	
ROBERT P. BAUCHWITZ,	)	CIVIL ACTION - LAW
Defendant	)	IN DIVORCE

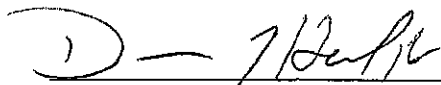
CERTIFICATE OF SERVICE

I, Darren J. Holst, Esquire, counsel for Robert P. Bauchwitz, Defendant in the above-captioned action, hereby certify that a true and correct copy of the foregoing Pre-Trial Statement was served upon James R. Demmel, Esquire, counsel for Plaintiff, Ann M. Rogers, and Ira H. Weinstock as co-counsel for Defendant, by e-mail and regular mail, on June 21, 2019, addressed as follows:

VIA E-MAIL:
jdemmel@newcumberlandlawyer.com
AND REGULAR MAIL:
 James R. Demmel, Esquire
 DEMMEL LAW OFFICE, LLC
 1544 Bridge Street
 New Cumberland, PA 17070

VIA E-MAIL:
IWeinstock@weinstocklaborlaw.com
AND REGULAR MAIL:
 Ira H. Weinstock, Esquire
 800 North 2nd Street
 Harrisburg, PA 17102

Date: 6/21/19


 Darren J. Holst, Esquire
 Attorney ID No. 82314
 HOWETT, KISSINGER & HOLST, P.C.
 130 Walnut Street, P.O. Box 810
 Harrisburg, PA 17108
 Telephone: (717) 234-2616
 Counsel for Defendant, Robert P. Bauchwitz

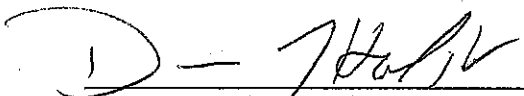
IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)	
Plaintiff	)	NO. 2017-CV-6699-DV
)	
v.)	
ROBERT P. BAUCHWITZ,	)	CIVIL ACTION - LAW
Defendant	)	IN DIVORCE

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 6/21/19



Darren J. Holst, Esquire
Attorney ID No. 82314
HOWETT, KISSINGER & HOLST, P.C.
130 Walnut Street, P.O. Box 810
Harrisburg, PA 17108
Telephone: (717) 234-2616
Counsel for Defendant, Robert P. Bauchwitz

LAW OFFICES OF
HOWETT, KISSINGER & HOLST, P.C.130 WALNUT STREET
POST OFFICE BOX 810
HARRISBURG, PENNSYLVANIA 17108

Exhibit D

JOHN C. HOWETT, JR.*+
DONALD T. KISSINGER
DARREN J. HOLST*+
DANIEL J. BELL-JACOBSwww.hkhlaw.net
(717) 234-2616
FAX (717) 234-5402*Fellow, American Academy of Matrimonial Lawyers
+Fellow, International Academy of Family LawyersDEBRA M. SHIMP
Legal Assistant

August 29, 2019

VIA E-MAIL ONLY: dir amr@luxsci.net

Dr. Robert P. Bauchwitz

Re: Rogers v. Bauchwitz

Dear Dr. Bauchwitz,

Attached please find a copy of our letter to Attorney Demmel dated July 25, 2019 which indicated the retirement documents we were requesting that we did not have in our file. None of those requested documents have thus far been provided. I have also included a memo, revised from an earlier memo, which indicates the statements we have and the statements that we need for each retirement account.

Regarding the bank account statements, we received Capital One statements for February 2013 through August 2017 on June 6, 2019, and had previously received blacked out statements for August 2017 through August 2018 for the Capital One accounts as part of initial discovery. The Capital One statements concern her accounts #3469 and #9147. Account #9147 was created on October 4, 2014 per the statements. We had also received statements for Northwest #7874 on June 6, 2019, covering May 2013 through September 2017. We had previously received statements with redacted account numbers for Northwest #7874 for August 2017 through August 2018 and for Northwest #1459 for July 2017 through September 2018 as part of initial discovery.

Regarding the Volvo, as you requested, I have asked our paralegal to obtain the NADA guide historical value for this vehicle, as we have not been able to obtain a KBB historical value.

Sincerely,


Daniel J. Bell-JacobsDBJ/dms
Enclosures

LAW OFFICES OF
HOWETT, KISSINGER & HOLST, P.C.

130 WALNUT STREET
 POST OFFICE BOX 810
 HARRISBURG, PENNSYLVANIA 17108

JOHN C. HOWETT, JR.*+
 DONALD T. KISSINGER
 DARREN J. HOLST*+
 DANIEL J. BELL-JACOBS

www.hkhlaw.net

(717) 234-2616

FAX (717) 234-5402

*Fellow, American Academy of Matrimonial Lawyers
 +Fellow, International Academy of Family Lawyers

DEBRA M. SHIMP
 Legal Assistant

July 25, 2019

VIA E-MAIL: jdemmel@newcumberlandlawyer.com
& REGULAR MAIL

James R. Demmel, Esquire
 DEMMEL LAW OFFICE, LLC
 1544 Bridge Street
 New Cumberland, PA 17070

Re: Rogers v. Bauchwitz

Dear Jim:

I have asked Dr. Bauchwitz to provide me with the second quarter 2019 statements for his TIAA CREF 403B, Vanguard IRA and Vanguard Columbia U. Retirement Plan, which I will provide to you upon receipt. I would appreciate it if you could have Dr. Rogers provide her first and second quarter 2019 statements for her Empower, second quarter 2019 statements for her TIAA CREF, SLRHC 403B, and Vanguard IRA, and the second quarter 2019 statements for the joint TDA and Vanguard accounts. Dr. Bauchwitz is not able to access the statements for the joint accounts.

We have reviewed our file and it appears that we are missing the following statements, which I do not believe were previously provided:

1. Wife's TIAA CREF: fourth quarter 2017 through fourth quarter 2018.
2. Wife's Vanguard IRA: fourth quarter 2018.
3. Joint TDA: all 2018 statements.
4. Joint Vanguard: third and fourth quarters 2018.

Dr. Bauchwitz has asked that Dr. Rogers please timely provide those statements. Please let me know if you need any additional documentation from Dr. Bauchwitz. Thank you.

Sincerely,



Darren J. Holst

DJH/glg

cc: Robert P. Bauchwitz (via e-mail only)

MEMORANDUM

August 29, 2019

TO: Dr. Bauchwitz
FROM: Daniel J. Bell-Jacobs, Esquire
RE: Robert P. Bauchwitz – account statement status

Wife's Accounts1. Wife's Empower PSU Retirement

We have Q2 2017 through Q4 2018 statements.

We do not have a statement reflecting the balance on August 30, 2017 which balance was used in Attorney Demmel's calculation of post-separation contributions and growth (such statement value is not from a quarterly statement). We also need the Q2 2019 statement for current value.

2. Wife's TIAA CREF Retirement

We have Q3 2017 and Q1 2019 statements.

We do not have the intervening statements nor the Q2 2019 statement.

But note: the investments listed on the Q3 2017 statement and the Q1 2019 statement are the same, so there is no indication that there were any withdraws from this account between these time periods, and a Q2 2019 statement should be sufficient for current value.

3. Wife's SLRHC 403B

We have Q3 2017 through Q1 2019 statements.

We need the Q2 2019 statement for current value.

4. Wife's Vanguard IRA

We have Q2 through Q4 2017, Q1 through Q3 2018 statements, and Q1 2019 statement.

We are missing the Q4 2018 statement, and need the Q2 2019 statement for current value.

Joint Accounts (Wife has access to statements)1. Joint TDA Account

We have Q1 through Q4 2017 statements and Q1 2019 statement.

We are missing the 2018 statements, and need Q2 2019 statement for current value.

But note: the shares owned in Q4 2017 are identical to the shares owned in Q1 2019, and these shares make up the majority of this account which is a relatively low balance asset in comparison to the marital estate. No indication of sale of shares during the missing time period. The 2018 Tax Information document indicates only dividend income during the 2018 time period.

2. Joint Vanguard

We have Q1 through Q4 2017 statements, Q1 and Q2 2018 statements, and Q1 2019 statement.

We are missing Q3 and Q4 2018 statements, and need the Q2 2019 statement for current value.

But note: there was growth in the number of shares owned in this account between Q2 2018 and Q1 2019 from reinvestment of dividends. This is another low balance account in comparison to the marital estate.

Husband's Accounts1. Husband's TIAA CREF 403B

We have Q1 through Q3 2017 statements, Q1, Q2 and Q4 2018 statements, and Q1 2019 statement.

We are missing Q4 2017 (as noted by Husband in his discovery production) and Q3 2018. We need the Q2 2019 statement for current value.

2. Husband's Vanguard IRA

We have Q1 through Q4 2017, Q1, Q2 and Q4 2018, and Q1 2019.

We are missing the Q3 2018 statement, and need the Q2 2019 statement for current value.

3. Husband's Vanguard Columbia U. Ret. Plan

We have Q1 through Q4 2017, Q1, Q2 and Q4 2018, and Q1 2019.

We are missing the Q3 2018 statement, and need the Q2 2019 statement for current value.

LAW OFFICES OF
HOWETT, KISSINGER & HOLST, P.C.130 WALNUT STREET
POST OFFICE BOX 810
HARRISBURG, PENNSYLVANIA 17108

Exhibit E

JOHN C. HOWETT, JR.*+
DONALD T. KISSINGER
DARREN J. HOLST*+
DANIEL J. BELL-JACOBSwww.hkhlaw.net
(717) 234-2616
FAX (717) 234-5402*Fellow, American Academy of Matrimonial Lawyers
+Fellow, International Academy of Family LawyersDEBRA M. SHIMP
Legal Assistant

November 4, 2020

VIA E-MAIL: jdemmel@newcumberlandlawyer.comJames R. Demmel, Esquire
DEMME LAW OFFICE, LLC
1544 Bridge Street
New Cumberland, PA 17070Re: Rogers v. Bauchwitz

Dear Jim:

This will confirm our conversation this afternoon in the above-referenced matter, in which we reached a settlement on the matter scheduled for hearing before Judge Marsico next Tuesday, November 10th.

We agreed that, from the home sale proceeds currently held in escrow, Dr. Rogers will be reimbursed the sum of \$5,106.91 and, Dr. Bauchwitz will be reimbursed \$16,747.20. The remaining proceeds will then be divided 60% - 40% consistent with the Court's decision.

You also confirmed that Dr. Rogers still has in storage the freezer and other items. The exchange of that personalty will be effectuated in conjunction with and as part of the exchange of the personalty as set forth in the Court's Order.

In a separate matter unrelated to the issues set for hearing next Tuesday, the Court's final Order directed Dr. Rogers to reimburse Dr. Bauchwitz the \$600 he paid for the Jon Cramer pension valuations. Please have Dr. Rogers submit that reimbursement directly to Dr. Bauchwitz. Thanks.

Sincerely,



Darren J. Holst

DJH/alg

Enclosure

cc: Dr. Robert P. Bauchwitz (via e-mail only)

LAW OFFICES OF
HOWETT, KISSINGER & HOLST, P.C.130 WALNUT STREET
POST OFFICE BOX 810
HARRISBURG, PENNSYLVANIA 17108JOHN C. HOWETT, JR.*+
DONALD T. KISSINGER
DARREN J. HOLST*+
DANIEL J. BELL-JACOBS

www.hkhlaw.net

(717) 234-2616

FAX (717) 234-5402

*Fellow, American Academy of Matrimonial Lawyers
+Fellow, International Academy of Family LawyersDEBRA M. SHIMP
Legal Assistant

November 18, 2020

VIA E-MAIL ONLY: jdemmel@newcumberlandlawyer.comJames R. Demmel, Esquire
DEMME LAW OFFICE, LLC
1544 Bridge Street
New Cumberland, PA 17070Re: Rogers v. Bauchwitz

Dear Jim:

On Monday, my office delivered to you two additional boxes of property responsive to your Exhibit 8 that Robert located at his mother's home. With that submission, as well as the other submissions earlier this year, he has returned to Ann the items in his possession responsive to numbers 1 through 9 on Exhibit 8. In specific response to each:

1. As Robert testified on the record, he does not have the original check registers. With the most recent delivery on Monday, he provided the post-it note from Jeremy.
2. After an exhaustive search, Robert did not find any baby books.
3. The wedding pictures were provided as part of the previous submissions.
4. After an exhaustive search, Robert did not find the album of Brazil photos.
5. The red bound album and its contents were returned as part of a previous submission.
6. Robert has returned all items that were located.
7. The records, CD's, DVD's and other items were returned as part of an earlier submission.

James R. Demmel, Esquire
November 18, 2020
Page Two

8. There were no medical records or other memorabilia located in the storage unit. However, as part of his search of his mother's basement, Robert has found seven sealed boxes on which, in Ann's handwriting, it says "AMR Pt. Charts - For MHB." "MHB" are Robert's mother's initials, so Ann, herself, clearly left these boxes in Robert's mother's basement for storage well before separation. Inasmuch as Robert did not transfer these items to his mother's home following the sale of the marital residence and the removal of items in storage, Ann can pay to have these seven boxes shipped to her if she wants them.

9. Items responsive to number 9 of Exhibit 8 have been returned.

Inasmuch as Robert has paid to transfer to Ann those items forwarded, please have your client make arrangements to ship to Robert the freezer and his other personalty that she removed from the marital residence and placed into storage, and confirm those arrangements at your earliest convenience. Thanks.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized capital letter 'D' with a vertical line through its center, followed by a horizontal line extending to the right.

Darren J. Holst

DJH/alg

cc: Dr. Robert Bauchwitz (via e-mail only)

LAW OFFICES OF
HOWETT, KISSINGER & HOLST, P.C.130 WALNUT STREET
POST OFFICE BOX 810
HARRISBURG, PENNSYLVANIA 17108

Exhibit F

JOHN C. HOWETT, JR.*+
DONALD T. KISSINGER
DARREN J. HOLST*+
DANIEL J. BELL-JACOBS

www.hkhlaw.net

(717) 234-2616

FAX (717) 234-5402

*Fellow, American Academy of Matrimonial Lawyers
+Fellow, International Academy of Family LawyersDEBRA M. SHIMP
Legal Assistant

November 25, 2020

VIA E-MAIL ONLY: jdemmel@newcumberlandlawyer.comJames R. Demmel, Esquire
DEMME LAW OFFICE, LLC
1544 Bridge Street
New Cumberland, PA 17070Re: Rogers v. Bauchwitz

Dear Jim:

It is my understanding that TD Ameritrade sent to Dr. Rogers in September an account transfer form in order to transfer the account into Dr. Bauchwitz' sole name. TD Ameritrade sent the form a second time to her on November 6th.

I do not know whether Dr. Rogers received those forms, but enclosed herewith please find the account modification form that needs to be executed in order to transfer the account into Dr. Bauchwitz' sole name. Dr. Rogers needs to complete Sections 3, 4, and 11 on the form and then have the form signed and notarized. You can return the original signed form to me once that is accomplished.

Thanks.

Sincerely,



Darren J. Holst

DJH/alg

Enclosure

cc: Dr. Robert P. Bauchwitz (via e-mail only; w/out encl)

DEMME LAW OFFICE, LLC
James R. Demmel, Esquire
Attorney & Counselor at Law

1544 Bridge Street
New Cumberland, PA 17070
(717) 695-0705
Fax (717) 695-0770
jdemmel@demmellawoffice.com
www.demmellawoffice.com

June 24, 2021

Dr. Robert P. Bauchwitz
23 Harlech Drive
Wilmington, DE 19807

Re: Ann Rogers v. Robert Bauchwitz

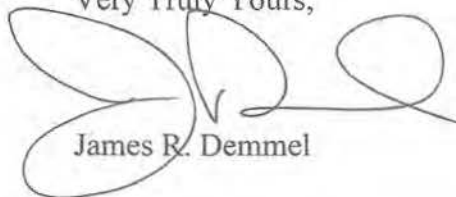
Dear Dr. Bauchwitz:

Enclosed is the TD Ameritrade Account Modification Form that I am sending to you on behalf of Dr. Ann Rogers.

I represent Ann in this matter and cannot give you legal advice. If you have retained an attorney to represent you, please provide this letter and the enclosures to your attorney and ask him or her to contact me. If you wish to have legal advice, you must consult your own attorney. If you are not represented by an attorney and wish to contact me directly regarding the document, you may do so. However, I cannot and will not give you legal advice.

Thank you for your attention to this matter.

Very Truly Yours,



James R. Demmel

Enclosure

Cc: Dr. Ann Rogers

6/26/21

From: Robert Bauchwitz <dir_amr@luxsci.net>
To: jdemmel@demmellawoffice.com
Subject: communications on appeal-related matters
Tags: \$mailflagbit1, \$mailflagbit2

Date: April 11, 2021
Time: 9:25 pm
Size: 10 KB

Exhibit G

Mr. Demmel,

Attorney Holst has forwarded to me the "Plaintiff's Answer to Defendant's Response to Order to Detail Flaws Asserted in the Hearing Transcript" which you forwarded to him by email. I am writing here to note the following to you:

Communicate directly with me when I file

It was I who filed the response in this transcript matter to the trial court based on remand from the Superior Court.

For this reason, and as I believe supported under 42 Pa. C.S. § 2501(a)^[1], I or my attorney can file or otherwise handle an aspect of an action, so long as both of us do not file contemporaneously.^[2]

Consequently, I am writing to inform you that henceforth in matters that have to do with the appeal, including as remanded to the trial court, please communicate directly with me, as you did previously with the issue of service that you raised.

The need for evidentiary support in making allegations to a tribunal

I also bring to your attention Rule 3.4 (c) of the Code of Professional Conduct for Pennsylvania attorneys which deals with "Fairness to Opposing Party and Counsel". It is implied there that any judgments you present to the tribunal, such as my purportedly improperly delaying my appeal, be supported by analysis of the evidence.

I presented well over one hundred concerns about the testimony presented in the transcript at issue. I then presented the opinion of a person expert in court reporting who examined the errors and recommended that the original notes be reviewed.

In your answer, however, there was no reasonable basis to conclude that you had made any analysis of the evidence other than to affirm that the person whom I presented as having expertise in court reporting was acting appropriately in identifying errors. You presented no analysis of evidence that the transcript was reasonably accurate and that therefore it was I who acted improperly.

Thank you for your attention to these matters.

Robert Bauchwitz

[1] ("In all civil matters before any tribunal every litigant shall have a right to be heard, by himself and his counsel, or by either of them.")


[2] (*Winters v. Pennsylvania Board of Probation and Parole*, 94 Pa.Cmwlth. 236 (<https://casetext.com/case/winters-v-pa-bd-of-prob-parole-1>), 503 A.2d 488, 493 (<https://casetext.com/case/winters-v-pa-bd-of-prob-parole-1#p493>) (1986).

--

Robert Bauchwitz
dir_amr@luxsci.net (mailto:dir_amr@luxsci.net)

Attachments

Based on your HTML message display preferences, some plain text message part(s) have been hidden as they may be redundant with the displayed HTML content. Additionally, images that seem to be referenced by the displayed HTML are not being shown as separate attachments.

 **Message_Section_1.2.html (HTML, 6.25 KB)**

 **View**

 **Download (/perl/member/email/mime_display.pl/Message_Section_1.2.html?mailpath=mail/sent-mail&view=2423&part=1.2&html=1&ct=download)**

Tax calculations on asset use versus alimony from corrected advance appeal brief (1499 MDA 2020)

“With respect to assets, the master noted that “Husband's income until retirement should be focused on first meeting his needs so that he does not have to raid his retirement accounts until retirement.” (MRep p.31). For the purposes of this analysis, Husband takes the master’s position, supported by the trial court, that retirement funds were intended for use only beginning at the age of 67, except presumably for any funds that she has termed “a greater distribution”, i.e. within the additional 10% of the marital estate.

□ The master did not show any tax consequences for the almost 88% of retirement funds which made up the recommended asset distribution:

“[T]he master is aware that generally retirement assets are subject to federal and sometimes state income tax and other marital property may not be subject to tax. The precise tax effects of the distribution cannot be calculated at this time. Even so, the master has considered the forgoing in her recommended distribution. Therefore, while this factor impacted upon the method of distribution, it did not favor a larger distribution to either party.” (MRep p.41).

Nothing appears in the record to show how the tax considerations were factored in to the distribution, or why a larger distribution would not have been appropriate to compensate for such taxes.

In his exceptions to the master’s report, Husband noted this potential tax issue, assuming Husband were to have to use such funds, as the master seemingly intended to provide some discretionary funds or otherwise elevate his standard of living:

“The master's recommended distribution affords Husband a distribution that is almost exclusively comprised of retirement assets. Husband will incur ordinary income tax on any retirement withdrawals.” (AmenExcepBrief p.14)

After taking out taxes owed on retirement funds, **including** in Delaware, Husband's state of residence, an estimate **could have been** made of the total income which could be derived from the 10% supplemental marital assets provided to Husband **at various income levels**. **[Corrected]**: By way of illustration, it is noted here that taxable gross income can be amortized by division, using the numbers cited above from the table in the Master's Report at page 43, over the 86 months between the issuance of the master's report dated March 2020 and Husband's 67th birthday in May 2027. The results could then be annualized by multiplication by 12 months in the year to produce the following annual gross income from the retirement portion of the 10% estate supplement: $\$257,211/86 \times 12 = \underline{\$35,890/yr}$. Similarly, non-retirement income, if assumed all post-tax, could be annualized in the same way to produce a hypothetical income: $\$37,081 = \underline{\$5174/yr}$.

Leaving aside the actual data suggesting that Husband is only getting low wage income through temporary employment agencies (Br.APL Ex. J pp. 21 - 23), if Husband actually can get the income of a Ph.D. entering a field involving C.F.E.-like employment consistent with the information Husband submitted in the support conference of November 29, 2017, then such a person might make \$44,000/year. (Support Order of December 27, 2017 pp. 2-3). In contrast, an "averaged" income of C.F.E.s was employed to produce an earning capacity of \$72,000/yr, a method challenged by Husband. (*Ibid.*) Regardless, in both cases, it is possible to make some estimation of tax effects. To do so, notice could be made of the Delaware Division of Revenue's "Available Income Calculator" (https://treasurer.delaware.gov/de_calculator/). After tax calculations using such a calculator, the assumed post-tax non-retirement income of \$5174/yr from the 10% of supplemental marital estate assets could be added to produce a hypothetical range of incomes, depending on earning capacity.

Therefore, by using the appropriate (**corrected**) values from the master's report (MRep pp. 42 - 43), and taking notice of an official tax calculator, Husband's after tax monthly incomes by earning capacity, including the additional 10% of marital assets also after tax, would be \$4836/mo for a Ph.D. in a field relevant to the C.F.E., and \$6288/mo for an income elevated by averaging the latter income with the

peak earnings of a C.P.A with a C.F.E. For the earning capacity of a Ph.D. with a C.F.E., even with the 10% additional income from marital assets after tax, Husband would not quite make the \$4,881/mo in expenses claimed by the master (MRep. p.8). Even if \$500/mo is added back to income by discontinuing Husband's practice of contributing to his IRA, then he still has almost no discretionary income, as the master noted could occur, since she had not accounted for his paying for health insurance, which she took as potentially costing \$1000/mo. (MRep. p. 37).

Of note, in obtaining the reduced expenses for Husband, the master reduced his mortgage/rent expense to that of Wife who was renting an apartment for \$1390/mo, and she also removed Husband's marital expenses for home maintenance, gas utilities, trash removal and lawncare, among others.¹ These lowered expenses can be contrasted with the over \$7000 of *actual* expenses presented to the court by Husband. (Income and Expense Statement of January 4, 2019) and \$8377/mo. *anticipated without legal expenses in Delaware (Br.APL Ex. G, pp. 13-17.)*] (Wife testified to \$8447/month in expenses, at T. p. 72, which was also sharply reduced by the master in her report of March 2020.) Therefore, there is an issue that by setting the couple's submitted expenses much lower than had comported with their standard of living according to the record submitted by both spouses, the master created a situation by which it might appear Husband could almost meet what she *claimed* were his needs, but not the *actual* expenses.

Wife, in contrast, will continue her life with a net income reported in the record as over \$25,000/month. Furthermore, testimony was provided that Husband did quite a bit to elevate Wife's income during the twenty-seven year marriage. (T. p. 138 – 141, *p. 54 and associated exhibit D-30/31*). This was, of course, reasonably seen as a joint investment in the future of each. The master now proposes that Husband's receipt of 10% of marital assets will adequately compensate for this very large disparity in Wife's real income vs. that theoretically ascribed to Husband. Note

¹ Husband further notes that his current attempts at frugality, e.g. by living with his 94 year old mother who is near the end of her life in a healthcare facility, will not continue with her passing.

that the 10% supplement from marital assets is a *one-time* payment, while Wife makes over 600% more in income *every year*.

Therefore, the preceding calculations support the master's contention that Husband's earning capacity could not cover his expenses, even as his expenses were very restricted and unrealistic as reduced by the master. Moreover, a 10% supplement of marital assets will not be enough to help Husband achieve some sort of similarity to his long-time marital standard of living. []

Comparison of reduced asset distribution to Husband with alimony at the level suggested in alternative by the master

The master did provide in her report some idea of the level of alimony she would have awarded in lieu of some of the additional assets provided. As the trial court noted:

"Were the master to recommend an award of alimony in this case, she would also have recommended that the distribution of marital assets be closer to a fifty-fifty distribution as opposed to the sixty-forty split that has been recommended. Given the incomes/earning capacities of the parties and their reasonable needs, the recommended alimony award in that event would have been around \$3,000 a month terminating upon Wife reaching her full Social Security Retirement age." (MRep p.51)

While it was not made clear exactly what lesser percentage of assets she had in mind, the trial court noted:

"Wife posits that a more equitable distribution under the factors would be 55% to Husband and 45% to Wife." (DivOp p.5)

Since Wife has already herself recommended a 55% split, Husband will for the purposes of argument here take the master's "closer" to fifty-fifty as 55% and now examine the consequences of both 50% and 55% asset splits to Husband using a \$3000/month alimony to 67 years of age.

First, once again, tax implications could have been explicitly *estimated* by the master, but they were not. In the case of alimony, since the passage of S. 2254 —

115th Congress: Tax Cuts and Jobs Act, alimony awarded after January 1, 2019 is no longer taxable to the recipient. This means that in the 86 months between the master's report and Husband's 67th birthday, he would have received **\$36,000/yr** in net income from alimony (Br.APL pp. 36 – 37). **[Corrected:** By taking after-tax income for each of the earning capacity wages discussed above, and adding \$36,000/year in alimony not taxable to Husband, it can be estimated that Husband would make between 10% and over 13% more net income than if he used the after tax income from the supplemental 10% of the marital assets. For the first 1% of additional marital assets received in addition to alimony, it can be estimated from the numbers presented above that Husband's annual income would increase by 17% to 19%. The increases from an extra 5% of the marital assets along with the proposed alimony could range from 35% to over 50% more per year.

In effect, Husband would be trading some assets composed of 88% taxable retirement funds for non-taxable alimony. Again, it is not understood why the master failed to present her tax calculations for the scenarios she noted. It is also not clear why the trial court did not do so upon review of her work.²

The other important point about alimony is that it is modifiable. Should Husband the Harvard graduate become very wealthy, Wife might stop paying alimony, (or perhaps start earning some). But in the more likely case, if Husband were to break his back for the last time from his severe osteoporosis, then a safety net would exist to prevent the complete and certain demise of his standard of living. In addition to the preceding, by keeping his retirement funds invested, Husband might more equitably be able to participate in market growth, as Wife would."

² These simple calculations are meant for illustrative estimates only and are not intended as anything other than a conceptual guide for the court's consideration, and as necessary, correction. No guarantee is made that Husband has performed his tax estimations in a manner consistent with what divorce courts would do; however, Husband intends to employ an expert in economics should this matter be brought to hearing again.

**Table of tax estimations for different income levels
and asset-alimony amounts**

annual wage income		\$0	\$14,000	\$44,000	\$72,000
total taxable income	with \$35,890/yr retirement funds	\$35,890	\$49,890	\$79,890	\$107,890
After tax income	Delaware Division of Revenue (5)	\$23,426	\$33,670	\$52,858	\$70,278
	confirm calc +/- IRA (6)	\$28,656 \$23,784	\$40,081 \$34,081	\$59,899 \$53,899	\$77,319 \$71,319
total after tax income (Delaware)	+ \$5174/yr non-retirement funds (3)	\$28,600	\$38,844	\$58,032	\$75,452
monthly post-tax income with 10% asset supplement		\$2382/mo	\$3237/mo	\$4836/mo	\$6288/mo
after-tax, wage-only income	(+/- IRA)	\$0	\$12,771 \$6,771	\$35,748 \$29,748	\$54,967 \$48,967
+ \$36,000 alimony	(+/- IRA)	\$36,000	\$48,771 \$42,771	\$71,748 \$65,748	\$90,967 \$84,967
alimony benefit (7)		25.9%	10.0%	13.3%	12.6%
1% addl assets to alimony income	\$3,383/yr	37.7%	18.8%	19.1%	17.1%
5% addl assets	\$16,915/yr	85.0%	53.7%	42.4%	35.0%

(1) Annual post-tax income estimates for various wage income levels plus assets amortized over 86 months with or without alimony.

(2) \$294,292 is the 10% of supplemental marital assets used for these calculations, and \$257,211 (87.4%) of those were retirement assets. Non-retirement income was \$37,081 (12.6%). Values are from (MRep. pp. 42-43).

- (3) Taxable gross income was derived over 86 months (division) and then annualized (x 12): $\$257,211/86 \times 12 = \$35,890/\text{yr}$. Non-retirement income was assumed post-tax and annualized in the same way: $\$37,081 = \$5174/\text{yr}$.
- (4) Home sale funds of \$145,548.85 (Nov. 18, 2020) were not known at the time of the master's report (March 13, 2020) and were not used for calculations here since the master did not attempt to estimate this value. Instead these are held here for an emergency fund.
- (5) Delaware Available Income Calculator. IRA contributions of \$6000/year are continued. These are taken off as \$231/biweekly. Biweekly net income values (shown in the attached screenshots) were multiplied by 26 to produce a net annual income. https://treasurer.delaware.gov/de_calculator/
- (6) Smartassets.com tax calculator for Delaware was used to confirm the values (including \$6000/year towards IRA).
- (7) Compared to total after tax income including IRA deductions.
- (8) \$35,890/yr in retirement fund income (see point 4, above) was calculated to produce \$28,656 in after tax income (DE Tax Calculator, above) in the absence of other income, which if present would reduce this amount. Adding the assumed post-tax \$5174/yr (point 3) produces a maximal \$33,830/yr for 10% marital assets. Each percentage of marital assets might therefore produce about \$3,383/yr in additional income (or less if there was other taxable income that could push it to a higher marginal tax bracket).

Delaware Division of Revenue Available Income After Tax Calculator Results

Delaware Available Income Calculator


Annual Ho...

Paycheck P...

Federal Marital Status

DE Marital Status

Allowances



Bi-Weekly Paycheck Calculator

Income Bi-Weekly	\$2,841.69
State Taxes Withheld	\$140.21
Federal Taxes Withheld	\$437.69
Fed MED/EE	\$43.76
Fed OASDI/EE	\$186.73
Net Bi-Weekly Paycheck	\$2,033.30

Bi-Weekly Estimated Household Expenses

Net Bi-Weekly Paycheck	\$2,033.30
Housing & Utilities	\$717.88
Food	\$238.32
Transport	\$291.16
Healthcare	\$152.54
Clothing	\$19.15
Other	\$328.58
Available Bi-Weekly Income	\$285.66
Available Monthly Income	\$571.32
Available Annual Income	\$7,427.18

\$2033 biweekly net income x 26 = \$52,858

Delaware Available Income Calculator

Annual Ho...

Paycheck P...

Federal Marital Status

DE Marital Status

Allowances



Bi-Weekly Paycheck Calculator

Income Bi-Weekly	\$1,687.85
State Taxes Withheld	\$71.87
Federal Taxes Withheld	\$183.85
Fed MED/EE	\$25.99
Fed OASDI/EE	\$110.91
Net Bi-Weekly Paycheck	\$1,295.23

Bi-Weekly Estimated Household Expenses

Net Bi-Weekly Paycheck	\$1,295.23
Housing & Utilities	\$457.30
Food	\$151.81
Transport	\$185.47
Healthcare	\$97.17
Clothing	\$12.20
Other	\$209.31
Available Bi-Weekly Income	\$181.97
Available Monthly Income	\$363.93
Available Annual Income	\$4,731.15

\$1,295 biweekly x 26 = \$33,670

Delaware Available Income Calculator

Annual Ho...

Paycheck P...

Federal Marital Status

DE Marital Status

Allowances



Bi-Weekly Paycheck Calculator

Income Bi-Weekly	\$3,918.62
State Taxes Withheld	\$211.28
Federal Taxes Withheld	\$686.69
Fed MED/EE	\$60.35
Fed OASDI/EE	\$257.49
Net Bi-Weekly Paycheck	\$2,702.81

Bi-Weekly Estimated Household Expenses

Net Bi-Weekly Paycheck	\$2,702.81
Housing & Utilities	\$954.26
Food	\$316.79
Transport	\$387.03
Healthcare	\$202.77
Clothing	\$25.46
Other	\$436.78
Available Bi-Weekly Income	\$379.72
Available Monthly Income	\$759.44
Available Annual Income	\$9,872.71

\$2,703 biweekly x 26 = \$70,278

Delaware Available Income Calculator

Annual Ho...

Paycheck P...

Federal Marital Status

DE Marital Status

Allowances



Bi-Weekly Paycheck Calculator

Income Bi-Weekly	\$1,149.38
State Taxes Withheld	\$41.99
Federal Taxes Withheld	\$113.55
Fed MED/EE	\$17.70
Fed OASDI/EE	\$75.53
Net Bi-Weekly Paycheck	\$900.62

Bi-Weekly Estimated Household Expenses

Net Bi-Weekly Paycheck	\$900.62
Housing & Utilities	\$317.98
Food	\$105.56
Transport	\$128.97
Healthcare	\$67.57
Clothing	\$8.48
Other	\$145.54
Available Bi-Weekly Income	\$126.53
Available Monthly Income	\$253.06
Available Annual Income	\$3,289.76

\$901 biweekly x 26 = \$23,426

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ROBERT P. BAUCHWITZ,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

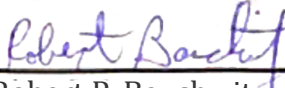
PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the **MOTION TO VACATE APL TERMINATION RELATED ORDER OF JULY 27, 2021** upon the persons and in the manner indicated below:

Service and Filing

By Overnight Mail to: Prothonotary DAUPHIN COUNTY COURTHOUSE 101 Market Street, Rm. 101 Harrisburg, PA 17101	By First Class Mail to: James R. Demmel, Esquire DEMMEL LAW OFFICE, LLC 1544 Bridge Street New Cumberland, PA 17070
---	--

Date: 8/11/21



 Robert P. Bauchwitz
 Plaintiff
 23 Harlech Drive
 Wilmington, DE 19807
dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN SUPPORT

ORDER RE RELATIONSHIP

AND NOW, this _____ day of _____, 2021, upon consideration of Plaintiff's Motion of Inquiry re Relationship to Opposing Party, it is hereby **ORDERED** that that the record reflect that trial court Judge Edward M. Marsico has the following relationships to former Pennsylvania State Legislature Representative Ronald Marisco:

business: _____; NONE

professional: _____; NONE

personal: _____; NONE

kinship: _____; NONE

BY THE COURT

J.

Distribution:

1) James R. Demmel, Esquire, for the Defendant, 1544 Bridge Street, New Cumberland, PA, 17070, (717)-695-0705, fax: (717)-695-0770, jdemmel@demmellawoffice.com

2) Robert P. Bauchwitz, *pro se* Plaintiff, 23 Harlech Drive, Wilmington, DE, 19807, 717-395-6313, dir_amr@luxsci.net

Robert Bauchwitz
 23 Harlech Drive
 Wilmington, DE 19807
 telephone: 717-395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff)	NO. 01336-DR-17
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v.)	
)	
ANN M. ROGERS,)	CIVIL ACTION – LAW
Defendant)	IN SUPPORT



**MOTION OF INQUIRY
 RE
 RELATIONSHIP TO OPPOSING PARTY**

1. Plaintiff Robert P. Bauchwitz in the above captioned case motions to the trial court for responses regarding the relationship between trial court Judge Edward M. Marsico and Pennsylvania State Legislator Ronald (Ron) Marsico.

Background


2. Defendant Ann M. Rogers M.D. of the Penn State Milton S. Hershey Medical Center (Hershey Medical Center) is the Director of the Penn State Surgical Weight Loss Program. (<https://www.pennstatehealth.org/doctors/ann-m-rogers-md> ; last recorded August 1, 2021.)

3. The Surgical Weight Loss program of the Hershey Medical Center appears to have been involved in lobbying former Pennsylvania State legislator Ron Marsico. From a Hershey Medical Center post on Facebook of April 15, 2016:

 **Surgical Weight Loss at Milton S. Hershey Medical Center**
April 15, 2016 · 

Learn about a Harrisburg woman's fight to make surgical weight loss a covered benefit for state employees in Pennsylvania.

https://www.change.org/p/ron-marsico-add-the-benefit-of-weight-loss-surgery-for-pennsylvania-state-employees-3bbb52a7-78f8-49f3-8e00-f01132f77e75?recruiter=10712801&utm_source=share_petition&utm_medium=copylink



CHANGE.ORG
Ron Marsico: Add the Benefit of weight loss surgery for Pennsylvania State Employees

4. Ron Marsico was a Pennsylvania State Legislator until 2018, including with involvement in some medically related legislation. Since June 2020 he has been a member of the Court of Judicial Discipline of the Commonwealth of Pennsylvania. From the website of the latter:

“Representative Ronald S. Marsico represented the 105th Legislative District in Pennsylvania for 30 years. He was first elected to the state House of Representatives in 1988 and retired in 2018. ... [he] also played an instrumental role in the passage of the Medical Marijuana Act. He authored the first comprehensive bill in the House of Representatives permitting the medicinal use of marijuana, which played an integral role in the development of the legislation which is now law. As part of the House’s Task Force on Medical Marijuana, he was the primary voice advocating for the law through the days of debate on the House floor in March and April 2016. ...”

(Last recorded August 1, 2021 from <https://www.pacourts.us/courts/court-of-judicial-discipline/current-and-historical-list-of-judges/judge-ronald-s-marsico>.)

5. The following information concerning lobbying efforts by Defendant Rogers was found at <https://bariatrictimes.com/samer-mattar-interview-march-2018/>:

“Coverage Offered for Bariatric Surgery on Limited Basis to Pennsylvania State Employees

[BT Online Editor](#) | March 1, 2018 ...

"What was the role of the ASMBS in helping Pennsylvania state employees gain this coverage?

Dr. Samer Mattar: This monumental effort was the fruition of relentless efforts, much energy, and provision of resources by numerous components of ASMBS. It is a prime example of what can be achieved through the power of organization and unified sense of purpose.

Our Access To Care committee under the leadership of John Scott, MD, FASMBS, and our Political Action Committee (PAC), under the directorship of John Morton, MD, MPH, FACS, FASMBS, played important and sustained roles in this effort, ... Ann Rogers, MD, FASMBS, and her local team of activists ... doggedly and repeatedly pursued opportunities to meet with state legislators and decision makers and explain the myriad benefits of providing access for our patients." [With font emphasis added.]

6. The lobbying efforts of Dr. Rogers are also mentioned by her employer in similar (or identical) articles published in January 2018 and republished on August 1, 2021:

“She is Pennsylvania’s Access to Care representative for the American Society for Metabolic and Bariatric Surgery ...

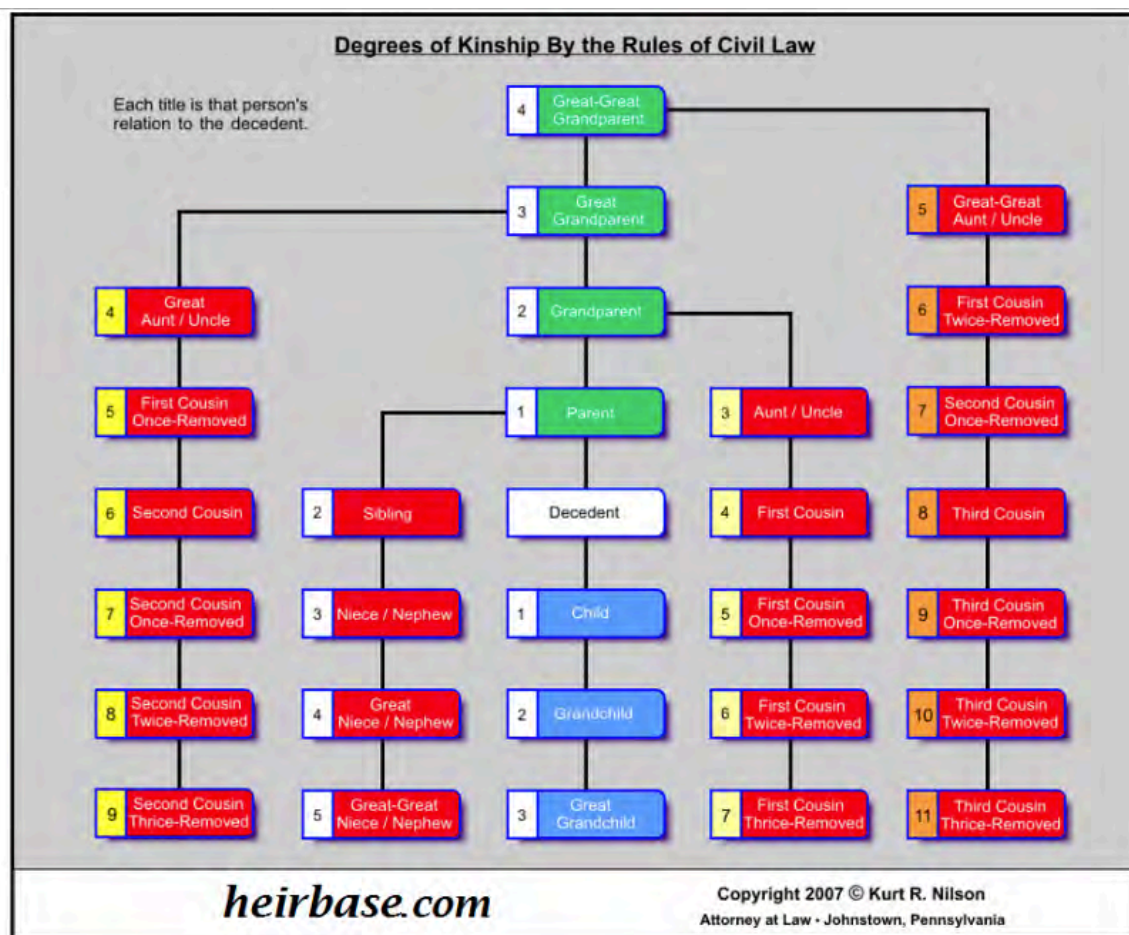
Over the years, Rogers has met with state and national legislators, the physician general of Pennsylvania and Gov. Tom Wolfe. Each year, she makes presentations to the Pennsylvania Employees Benefit Trust Fund [PEBTF] about the safety, effectiveness and health benefits of weight-loss surgery.”

Questions posed

7. Based on the preceding information, the following inquiry is made:

Is Judge Edward M. Marsico of the Dauphin County Court in Harrisburg, PA related in any way to Ron Marsico, the person who was associated with the Pennsylvania State Legislature in Harrisburg, PA, and who seemingly was being lobbied by those affiliated with the professional interests of Ann M. Rogers M.D. of the Hershey Medical Center located near Harrisburg, PA?

8. If related by kinship, what is the degree of relationship? The following chart shows designations of degree of kinship used in civil law (as reproduced from https://heirbase.com/degrees_of_kinship_chart/):



9. If related by any business, professional, personal or other interaction, what is the nature of the interaction?

10. A proposed order is attached to allow acknowledgment or denial of relationship between Edward M. Marsico and Ron Marsico, and if related by kinship, by what degree.

Date: 8/17/21

Robert P. Bauchwitz
Plaintiff
23 Harlech Drive
Wilmington, DE 19807
dir_amr@luxsci.net
Telephone: (717) 395-6313
pro se

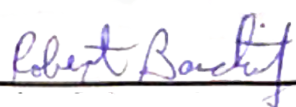
IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
Plaintiff	)	NO. 01336-DR-17
	)	PACES Case No. 640116732
)	
v.)	
)	
ANN M. ROGERS,	)	CIVIL ACTION – LAW
Defendant	)	IN DIVORCE

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/17/21



Robert P. Bauchwitz
 Plaintiff
 23 Harlech Drive
 Wilmington, DE 19807
 dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,)	
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Defendant)	IN SUPPORT

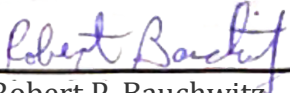
PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the Motion Of Inquiry Re Relationship To Opposing Party upon the persons and in the manner indicated below:

Service and Filing

By First Class Mail to: DOMESTIC RELATIONS SECTION Human Services Building 8 th FL 25 S. Front St. Harrisburg, PA 17101	By First Class Mail to: James R. Demmel, Esquire DEMMEL LAW OFFICE, LLC 1544 Bridge Street New Cumberland, PA 17070
--	--

Date: 8/17/21



 Robert P. Bauchwitz
 Plaintiff
 23 Harlech Drive
 Wilmington, DE 19807
dir_amr@luxsci.net
 Telephone: (717) 395-6313
pro se

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF
PENNSYLVANIA – MIDDLE DISTRICT

ANN M. ROGERS,
Appellee

)
)
)

v.

1499 MDA 2020

)
)

ROBERT P.
BAUCHWITZ,
Appellant

)
)

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/22/21

/s/ Robert Bauchwitz

Robert P. Bauchwitz
Appellant
23 Harlech Drive
Wilmington, DE 19807
dir_amr@luxsci.net
Telephone: (717) 395-6313
pro se