

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,

Plaintiff

v.

ROBERT P. BAUCHWITZ,

Defendant

NO. 2017-CV-6699-DV

CIVIL ACTION - LAW

IN DIVORCE

2019 MAR 21 AM 9:59
OFFICE OF THE
PROTHONOTARY
DAUPHIN COUNTY
PENNSYLVANIA

ORDER

AND NOW, this 21st day of March, 2019, the Prothonotary is directed to docket and seal the attached PRELIMINARY CONFERENCE MEMORANDUM filed by the Divorce Master in the above-captioned case.

BY THE COURT:

Per Curiam / 

DISTRIBUTION:

Prothonotary

James R. Demmel, Esquire
1544 Bridge Street
New Cumberland, PA 17070

Ira H. Weinstock, Esquire
800 N. 2nd Street, Suite 100,
Harrisburg, PA 17102

Darren J. Holst, Esquire
P.O. Box 810
Harrisburg, PA 17108

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,	:	
	:	NO. 2017-CV-6699-DV
Plaintiff	:	
	:	CIVIL ACTION - LAW
v.	:	
	:	
ROBERT P. BAUCHWITZ,	:	
	:	IN DIVORCE
Defendant	:	

BEFORE: Cindy S. Conley, Divorce Master

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 DAUPHIN COUNTY
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PRELIMINARY CONFERENCE MEMORANDUM

I. Date of Conference (PLC): March 19, 2019.

II. Parties:

Plaintiff. Name: Ann M. Rogers (Wife).

Address: 247 Crescent Drive, Hershey, Pa 17033.

Year of Birth: 1960.

Employment: Physician at Hershey Medical Center. Paid: Monthly. DOH: July 1, 2006. Benefits: Medical, dental, vision, life, and disability insurance, retirement plan participation and a flexible spending account.

Education: Wife obtained a bachelor's of Science degree in Spanish and biology from Cornell University in 1983 and a medical degree from Cornell University in 1987.

Number of marriage: 1st.

Health: Good.

Defendant. Name: Robert P. Bauchwitz (Husband).

Address: 324 Candlewyck Lane, Hershey, PA 17033.

Year of Birth: 1960.

Employment: Education Staffing Solutions as a Substitute Teacher. Paid: Varies.

DOH: March of 2018. Benefits: None.

Education: Husband obtained a bachelor of science degree in biochemistry from Harvard College in 1982. Husband also obtained a medical degree from Cornell University in 1990 and a doctorate degree from Cornell University in 1991. In 2010, Husband obtained a paralegal certificate from Delaware Law School.

Number of marriage: 1st.

Health: Poor. In 2018 Husband was treated for head and neck cancer and he now has periodic screenings to ensure it has not returned. Husband has been diagnosed with osteoporosis, osteoarthritis, and degenerative disk disease. Husband suffers from hemorrhoids and insomnia.

III. Children: There are two adult children of this Marriage.

Support: In accordance with an Order dated December 26, 2017, Wife pays Husband alimony pendente lite of \$6,735 a month. The domestic relations office found Husband to have an earning capacity of \$72,000 per year.

IV. Basic Dates and Pleadings:

Date of Marriage (DOM): April 21, 1990.

Place of Marriage: New York, New York.

Date of Separation (DOS): Per Wife: August 28, 2019; Per Husband: September 20, 2017. **NOTE: The term "date of separation" as used in this memorandum shall refer to both dates of separation asserted.**

Date Complaint Filed: September 20, 2017- raising Equitable Distribution and an Amended Complaint filed on October 3, 2017.

Method of Service: Personal Service of the Amended Complaint to Husband's Attorney sign for on October 5, 2018.

Proof of service filed: Acceptance of Service filed on October 12, 2017

Other pleadings: September 26, 2017- Husband filed an Answer to the Original Complaint raising counts for Alimony, Alimony Pendente Lite, Counsel Fees, Costs, and Expenses.

V. Divorce Status:

Plaintiff-Wife's 3301(d) Affidavit filed: Wife will file her affidavit by March 22, 2019.

Defendant-Husband's Counter-Affidavit filed: Not yet.

The grounds for divorce are established under Divorce Code Section 3323(g)(3).
(X) Proceeding on a non-bifurcated basis.

VI. Master Appointed on November 20, 2018 at the request of Wife on all claims raised of record.

VII. Discovery Directives regarding assets. These items are to be provided to opposing Counsel before **MAY 31, 2019** unless another date is provided herein.

1. Real estate.

Joint. 324 Candlewyck Lane, Hershey, PA 17033. At the PLC, the parties **stipulated** to list the home for sale. Wife and Husband both appeared agreeable to use Joan May as the listing agent. Husband shall contact Ms. May by March 22, 2019.

2. Vehicles.

Joint. 2016 Volvo S80. Wife shall provide Husband with documentation evidencing the date of separation trade-in value of this vehicle. Wife shall also provide Husband with documentation evidencing the date of separation debt owed on this vehicle.

Joint. 2006 Acura MDX. Husband shall provide Wife with documentation evidencing the date of separation trade-in value of this vehicle.

3. Stocks, bonds, securities, options.

Joint. Vanguard Investment Account #8869. In the event Husband does not receive duplicate statements for this account, Wife shall provide Husband with updated statements as she receives them.

Joint. TD Ameritrade #774. Both parties receive statements for this account.

Husband. Series EE Paper Savings Bonds. Husband has provided Wife with documentation regarding these bonds.

Husband. Series EE electronic bonds. At the PLC, Husband indicated that he might also own some series EE electronic bonds. **Husband shall ascertain whether or not he owns series EE electronic bonds and if so, ascertain all relevant information concerning each bond and then share the results with Wife.**

Husband. Series I Savings Bonds. Husband has provided Wife with documentation regarding these bonds.

Wife. Series I Savings Bonds. Husband has all relevant documentation regarding the Series I Savings bonds owned by Wife.

Wife. Series EE Paper and/or Electronic Bonds Wife does not believe that she owns any EE bonds. **Wife shall ascertain whether or not he owns any series EE bonds in paper or in electronic form and if so, ascertain all relevant information concerning each bond and then share the results with Husband.**

4. Certificates of Deposit. None.

5. Checking accounts, cash.

6. Savings accounts, money market and savings certificates.

Wife. Capital One Checking Account #469. To the extent not already done, Wife shall provide Husband with statements for this account commencing five years prior to separation through the date of separation.

Wife. Northwest Checking Account #7874. To the extent not already done, Wife shall provide Husband with statements for this account commencing five years prior to separation through the date of separation.

Wife. Capital One Savings Account #147. At the PLC, the parties stipulated that this account had a date of separation value of \$10 and that Wife retained these funds.

Wife. Northwest Savings Account #1459. At the PLC, the parties stipulated that this account had a date of separation value of \$712 and that Wife retained these funds.

Husband. Capital One #3580. To the extent not already done, Husband shall provide Wife with statements for this account commencing five years prior to separation through the date of separation.

Husband. Northwest Saving Bank #7593. To the extent not already done, Husband shall provide Wife with statements for this account commencing five years prior to separation through the date of separation.

Husband. Northwest Saving Bank #3170. To the extent not already done, Husband shall provide Wife with statements for this account commencing five years prior to separation through the date of separation.

Husband. Capital One's Savings MMT #0877. Husband claims that the value of this account as of September 30, 2017 is \$51,135.01. Husband shall provide Wife with statements as of the date of separation.

Husband. Northwest savings account #1350. At the PLC, Husband stated that he does not own the funds in this account but rather this account receives rental income from his mother's home in Rio De Janeiro. Husband also asserted that he has been receiving the rental income since about 2014. Husband shall provide Wife with statements for this account commencing either five years prior to separation or from the opening of the account, whichever is later, through the date of separation.

Husband. Bitcoins. Husband has \$1.229967 BTC.

7. Contents of safe deposit boxes. None.

8. Trusts. None.

9. Life insurance policies. None.

10. Annuities. None.

11. **Gifts.** None.
 12. **Inheritances.** None.
 13. **Patents, copyrights, inventions, royalties.** None.
 14. **Personal property outside the home.** None.

15. **Business.**

Husband. Amerandus Research. At the PLC, the parties **stipulated** that this trademark/business has no value.

16. **Employment termination benefits.** None.
 17. **Profit sharing plans.** None.

18. **Pension plans (Defined Benefit).**

Wife. SLRHC Pension.

Husband. SLRHC Pension.

Valuations of these pensions have been completed by Jonathan Cramer.

19. **Retirement plans, IRAs, 401(k)s, etc. (Defined Contribution).**

Wife. Great West now Empower MSHMC 401(k), 403(b), 457(b) TSA.

Wife. Vanguard IRA.

Husband. Vanguard Traditional IRA.

Husband. TIAA-CREF Continuum 403(b).

Husband. Vanguard Columbia Retirement.

To the extent not already done, each party shall obtain and provide to the other party a copy of the date of marriage (if applicable), date of separation, and current statement for each of his/her accounts. Then each party shall provide to the other party each monthly/quarterly/annual statement as received. If a party desires to exclude any increase from post separation contributions, then that party shall provide to the other party documentation evidencing all post-separation contributions.

20. **Disability payments.** None.
 21. **Litigation claims.** None.
 22. **Military/VA benefits.** None.

23. **Education benefits.**

Husband. 529 Account for Son. At the PLC, the parties **stipulated** that the remaining balance in this account will be used for expenses related to their son's pursuit of a doctorate degree.

24. **Accounts receivable, including loans and mortgages payable to a party.** None.

25. Household furnishings and other personal property.

Laboratory Equipment in Basement. At the PLC, the parties **stipulated** that so long as there is no written contractual agreement to return the equipment to the research foundation, the parties will work together to sell this equipment to realize the greatest amount of proceeds.

Other Household Furnishings and Personal Property. The parties will meet at an agreed time and date at the marital residence and at the storage unit to go through the items in the home and storage unit. The parties anticipate mutually agreeing to the distribution of their items without the need for further set-off.

26. Other.

In the absence of an agreement of the parties to give credit to a party for paying unsecured marital debt, the party seeking credit shall provide to the other, at the minimum, the date of separation statements and verification of their being paid.

VIII. Discovery directives regarding income. Each party shall provide to the other the following income information:

- a. **Current income information. A copy of their respective pay stubs OR Written third-party verification of current gross income and deductions as well as Social Security payments and deductions, verification of other income they receive from every source, for the time period beginning January 1, 2019 to current and provide new information as received.**
- b. **Complete tax returns, plus for 2018. Each party shall provide to the other a copy of their respective returns, Schedules, Attachments, Statements, work papers, W-2s, K-1s, 1098s, 1099s etc.**
- c. **CURRENT Social Security Statements. Each party shall obtain and provide to each other and to the master a complete copy of his/her CURRENT Social Security earnings history and expected benefit statement. This statement can be downloaded by registering at the following website: <http://socialsecurity.gov/mystatement/>. Log in, and then agree to the terms of service. Click the "next" button at the bottom of the page. This will open the "Overview" page. Click on "Print/Save Your Full Statement" at the bottom of the page. This will open the four-page PDF document that you can print on your local printer or save and then e-mail to your attorney.**

IX. Miscellaneous:

Discovery shall be completed on or before MAY 31, 2019, unless another date is provided herein.

Pretrial Statements required pursuant to Pa. R.C.P. 1920.33(b), must be filed as set forth in this Memorandum. If a party fails to file a Pretrial Statement, the Court may make an

regarding sale of the property, which she refused to do. Presumably based on the advice of his counsel, Husband has accepted that Ms. May will communicate with both parties. Ms. May has recommended some changes to the marital home to maximize the marketing appeal. The recommended changes include, among other things, renovating a bathroom, which would require a significant financial investment, increased communication between the parties and would delay the listing for a significant period of time. Wife wishes to list the marital home for sale "as is" and get it on the market immediately. Neither party is residing in the marital home, so the only necessary preparation is to remove the remaining personal property. If Husband is unwilling to immediately list the property for sale "as is," then Wife requests that she have sole authority to list and sell the marital home. If the marital home sells before this matter is resolved, the sale proceeds should be held in escrow pending equitable distribution.

At the preliminary conference, the parties agreed to meet to distribute the personal property located at the marital home and in the storage unit. The parties met at the marital home on May 25, 2019, at which time Wife learned that after separation, Husband had moved some of her personal property to his mother's house in Delaware without Wife's knowledge or consent. Husband agreed on May 25th to deliver the personal property from his mother's home to Wife, but has not done so. On the same day, Husband made a comment about burying Wife in the backyard, which Wife took as a threat to her safety. Husband was physically and mentally abusive to Wife during their marriage and Wife feels unsafe around Husband. For that reason, Wife has minimized her contact with Husband since their separation.

Wife proposes that Husband deliver Wife's remaining personal property to her at a mutually agreed time. One of the parties' sons (Benjamin) wishes to keep some of the personal

appropriate order for sanctions, which may include assessment of counsel fees, striking pleadings exclusion of evidence and testimony or other relief as provided by Pa. R.C.P. 4019(c).

The Pre-Trial Statement **shall be** filed with the Prothonotary, **shall** provide the information required by Rule 1920.33(b), and **shall be** in chart form. The listing of assets **shall be** in the same order as the items are listed in this Preliminary Conference Memorandum.

Rule 1920.33 Statements to be filed with the Prothonotary no later than JUNE 11, 2019, with a copy delivered to the Divorce Masters Office the same date.

A SETTLEMENT CONFERENCE WILL BE HELD ON JUNE 28, 2019 AT 9:00 A.M. IN CONFERENCE ROOM 2 ON THE 7TH FLOOR OF THE JUVENILE JUSTICE CENTER, 25 SOUTH FRONT STREET, HARRISBURG, PENNSYLVANIA. TWO HOURS HAVE BEEN SET ASIDE FOR THIS CONFERENCE. Both counsel and parties are to attend settlement conferences. Each party is to bring to such conference a listing all assets to be distributed and a figure to be used as a valuation of each asset. Each party shall be prepared to furnish a schedule of distribution, which they will accept.

DIVORCE MASTER'S OFFICE



Cindy S. Conley, Esquire
Divorce Master

Dated: 21 March 2019

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 Counsel for Defendant, Robert P. Bauchwitz

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DAUPHIN COUNTY
 PENNSA

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 RESPONSE TO FACTUAL CLAIMS WITHIN PLAINTIFF'S
 PRETRIAL STATEMENT**

AND NOW, comes Defendant, Robert P. Bauchwitz, by and through Howett, Kissinger & Holst, P.C., co-counsel with Ira H. Weinstock, Esquire, who hereby files the instant Response to Factual Claims Within Plaintiff's Pretrial Statement, and in support thereof states as follows:

1. It is denied that Husband did not contact the realtor, Joan May, until much later than March 22, 2019. Husband contacted Ms. May on March 20, 2019 and left a voicemail, which was not responded to by Ms. May until Husband received a voicemail from Ms. May dated March 26, 2019. In Ms. May's voicemail, she apologized for missing Husband's voicemail as she was out of town and asked Husband to contact her if he was still interested in listing the house with her. Husband returned Ms. May's call that day, which resulted in a voicemail being left for Ms. May.

2. It is denied that Husband insisted that Ms. May communicate only with Husband. Rather, Husband requested that he be the primary point of contact for matters

regarding the sale of the house because Husband was residing in the house. In fact, it is Wife who attempted to exclude Ms. May from talking to Husband regarding the sale of the house. On June 14, 2019, Wife's counsel wrote to Husband's counsel alleging that Ms. May refused to work with Husband and sought agreement to gain complete control over the process for the sale of the house. Such statement that Ms. May refused to work with Husband was categorically false, as Husband's counsel determined in speaking to Ms. May, and in fact Ms. May's last communication to Husband by email on June 7, 2019 ended with "Have a great weekend!"

3. It is denied that Ms. May ever made a recommendation to Husband regarding a renovation of the bathroom in the house. Ms. May confirmed to Husband by email on June 7, 2019 that Husband's notes regarding Ms. May's list of recommended items to be completed to prepare the home for sale was accurate, with the addition of a cleaning to be performed on the tub. A bathroom renovation was not included in the list. A copy of that email is attached as Exhibit "A."

4. It is denied that it would take a "significant financial investment" to comply with Ms. May's recommendations. In fact, Ms. May indicated that it is likely the parties would lose more money in the sale of the residence by not completing the recommended preparation than it would cost to complete the recommendations.

5. It is denied that the completion of renovations is the limiting factor in listing the house for sale. Ms. May made it clear to Husband that despite the recommendations, the house would be difficult to sell without remediating an issue of water flowing into the street in front of the home.

6. It is vehemently denied that Husband ever made any comment to Wife regarding burying Wife in the backyard. Such allegation is slanderous, libelous, arbitrary,

vexatious, and made in bad faith. On May 25, 2019, while in the presence of third parties including Lisa Hardy, Husband, Wife and Ms. Hardy discussed conducting a burial for the family pet rats, Peaches and Oats, that had been frozen in a freezer in the house. Such conversation was light hearted and consumed by laughter on the part of all parties involved. At no time did Husband make any statement regarding burying Wife in the backyard.

7. It is denied that Wife feels threatened by Husband and it is denied that Wife feels unsafe around Husband. At no time during the May 25, 2019 meeting did Wife express any fear or concern about Husband. On the contrary, Wife caused alarm in the security officer that had been hired by Husband to mediate the meeting due to her sudden change in temper and unjustified cursing.

8. It is denied that Husband was physically and mentally abusive to Wife during the marriage. In fact, during the marriage, it was Wife who was physically and mentally abusive to Husband. Husband made a report to the Derry Township Police on August 28, 2017, and subsequently made two associated Voluntary Statements about matters detailed in the August 28 report: one regarding an August 9, 2016 assault (19-0003480) and one regarding a July 3, 2017 assault (19-0003591). Husband will present evidence at trial regarding Wife's mental and physical abuse of Husband including her repeated expressions to Husband of her thoughts of poisoning him.

9. It is denied that Wife has attempted to minimize her contact with Husband because of any perceived threat to Wife by Husband. After separation, Wife remained in written contact with Husband into 2018. At the parties' May 25, 2019 meeting, which meeting was in the presence of a security officer, Wife made no representation or indication of feeling any threat by Husband, but rather proposed several times to meet with Husband again to continue the

distribution of personal property. Further, and most exculpatory, is that Wife proposed to Husband that in such future meetings, there would be no need to have a security officer present.

10. It is denied that Wife made repeated requests that Husband obtain “gainful” employment throughout the marriage, or that there was any disagreement over career choices, including to pursue a business or entrepreneurial venture. On the contrary, Husband and Wife mutually agreed that Husband’s employment as an adjunct lecturer in 2010 was not worth the small income derived. Further, Wife rejected on three occasions in 2011 Husband’s suggestion that he begin a residency in psychiatry. At that time, Wife told Husband that the parties had more than enough income, that Husband would not likely be physically able to complete the residency given his age and medical conditions, and that Wife would rather see him expand the business known until 2011 as “Bauchwitz Laboratories” into an entrepreneurial venture (i.e. Amerandus Research). Wife was supportive and involved in the Amerandus Research venture; she monitored its finances and other matters and advised Husband on operations. Husband’s efforts in these ventures was considered at all times “working” by the parties; Husband acted as the employer rather than as a “gainful” employee of others. By the agreement of the parties and in hope for future progress and success, Husband ran Amerandus Research without any immediate income. Husband relied upon Wife’s agreement for Husband to pursue this business venture and Wife was at all times aware of the operations and financial status of the business.

11. It is denied that Wife was not in agreement for Husband to pursue the *qui tam* lawsuit. In fact, Husband pursued the *qui tam* case with Wife’s full commitment and support. The parties had a strong expectation of a possible windfall of over One Million Dollars

from Husband's efforts in the case, however despite the very substantial effort of Husband and high quality of evidence and testimony presented by him, the case was not ultimately successful.

12. It is denied that Wife "contributed virtually all of the funds used to obtain the parties' marital assets." Husband was employed, as Wife has acknowledged, as a scientific researcher in various positions from the beginning of the marriage in 1990 through 2007. Later, Husband was employed as an adjunct lecturer. In fact, Husband was instrumental in substantially increasing Wife's income and Husband will present evidence at trial regarding same.

13. It is denied that Wife "was the primary caretaker of the parties' two children." Husband is a very good father, as Wife herself had admitted, and Husband will provide evidence at trial of his great benefit to the children in many endeavors.

14. It is denied that Husband will be able to obtain sufficiently high-paying employment to supplement the insufficient income that Husband will receive from the retirement distribution proposed by Wife.

15. It is denied that Husband has not pursued full-time employment, it is denied that Husband chooses to "live comfortably" on alimony pendente lite instead of pursuing full-time employment, and it is denied that Husband lives a financially comfortable life. Husband has expended tens of thousands of dollars on the instant litigation due to Wife's actions. Great time, money and effort has been expended by Husband on pursuing discovery answers and hiring experts. Wife, for a sustained time, failed to disclose nearly One Million Dollars of her retirement assets to Husband, and Wife claimed that her car was leased (when it was in fact purchased and subject to a loan), both examples of Wife's conduct in this case which contributed to Husband's increased counsel fees. Husband has also had several medical issues which have

prevented him from working full-time, including treatment and rehabilitation for a serious, potentially life-threatening medical condition in the summer of 2018.

16. It is denied that Husband was physically abusive toward Wife, it is denied that Husband insisted that Wife always keep Husband informed of her whereabouts, it is denied that Husband forbade Wife from interacting with other men except under certain conditions dictated by him, and it is denied that Husband exerted extreme control over Wife's daily life. Such allegations are slanderous, libelous, arbitrary, vexatious, and made in bad faith. In contrast, Husband alleges that Wife had at least one major extramarital affair early in the marriage. The affair occurred at a time when the couple had small children at home. Such behavior caused enormous psychological distress to Husband. Husband will provide evidence of Wife's behavior at trial. Husband never committed adultery and was also never accused of doing so by Wife.


17. It is denied that the personal property of the parties that is to be kept by the parties' son Benjamin Bauchwitz be placed in storage and it is denied that Wife is prejudiced by waiting until mid-August to remove the furnishings from the residence. On May 25, 2019, Wife agreed with Husband that Benjamin could take certain items of property, and it was understood by both parties that the property would not be moved until Benjamin's arrival with movers on or about August 14, 2019.

18. It is denied that Wife has been prejudiced in the process to distribute the parties' personal property. Husband denies that boxes of DVDs, CDs, and wedding albums consist of Wife's personal property; however, Husband is willing to have professional copies made of any item desired by both parties so both parties can have a copy. During the May 25, 2019 meeting, which meeting lasted less than two hours, the parties divided all of the major personal property in the house and came to agreement to distribute the remainder in a yet to be

determined manner. Husband notes that Wife removed many items of personal property without Husband's agreement on August 28, 2017 and thereafter. Wife had repeated access to all storage boxes in the home after separation. She had multiple opportunities to take what she wanted, and she did in fact take many items, including all current financial documents, without any discussion with Husband, to his disadvantage. Wife also declined to remove two boxes labeled with her initials located at the home at the May 25, 2019 meeting, including one box containing books which she had previously requested through counsel.

Respectfully submitted,

Date: 6/27/19



Darren J. Holst, Esquire
Attorney ID No. 82314
HOWETT, KISSINGER & HOLST, P.C.
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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 Defendant's Response to Factual Claims Within Plaintiff's Pretrial 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: 06/27/19


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

FILED
 2017 OCT 11 AM 11:12
 CLERK OF COURT
 DAUPHIN COUNTY
 PENNSYLVANIA

DEFENDANT'S MOTION TO EXTEND DISCOVERY AND CONTINUE TRIAL

AND NOW, comes Defendant, Robert P. Bauchwitz, by and through his counsel, Howett, Kissinger & Holst, P.C., who hereby files the instant Motion to Extend Discovery and Continue Trial, and in support thereof avers as follows:

1. Movant is Robert P. Bauchwitz ("Husband"), Defendant in the above-captioned divorce action.
2. Respondent is Ann M. Rogers ("Wife"), Plaintiff in the above-captioned divorce action.
3. The parties are currently involved in divorce litigation before the appointed divorce master, Cindy S. Conley, Esquire.
4. When Wife filed her verified Inventory immediately prior to the appointment of the divorce master, Wife failed to disclose her Empower Penn State MSHMC 401(k), 403(b) and 457(b) retirement assets earned through her current employer, such assets having a value at the time of slightly less than \$1,000,000.
5. Moreover, Wife failed to identify on her Inventory her St. Lukes-Roosevelt Hospital Center pension benefits from a prior employer having a present value in excess of \$100,000.

6. Husband also sought discovery of Wife concerning, *inter alia*, the assets in her possession, and Wife provided a verified response in discovery that likewise failed to include the St. Lukes-Roosevelt Hospital Center pension omitted from her Inventory and failed to include the TIAA-CREF retirement assets that were disclosed in her Inventory. Wife did provide information regarding the Empower Penn State MSHMC retirement assets, however, for an extended period of time, representations were made through Wife's counsel to Husband that the Empower Penn State MSHMC retirement assets and the TIAA-CREF retirement assets were the same retirement assets.

7. If not for Husband's ability to independently ascertain and verify the existence of the separate and unique Empower Penn State MSHMC and TIAA-CREF retirement assets, and the existence of the St. Lukes-Roosevelt Hospital Center pension, all listed above, Wife would have successfully undervalued the marital estate by and secreted assets in her possession of approximately \$1,100,000.

8. Wife further failed to provide full and complete documentation in her discovery responses, which forced Husband to seek to obtain full, complete, and unredacted copies of documents during the course of discovery.

9. Throughout the time that the master has been appointed Husband has continued to insist upon obtaining full, complete, and unredacted copies of bank statements, credit cards, and other documents requested in discovery.

10. The divorce master has conducted two conferences in this matter, most recently a settlement conference on June 28, 2019, and leading up to said conference, the master implemented a discovery deadline.

11. The discovery deadline was May 31, 2019, and on that day counsel for Husband provided follow-up information to Wife's counsel and, in that letter, counsel renewed his demand that Wife provide "unredacted, unaltered and complete documents" for Wife's Capital One and Northwest accounts, and her Capital One credit card. A copy of counsel's May 31, 2019 letter is attached hereto as Exhibit "A" and is incorporated herein by reference thereto.

12. Wife had never provided said unredacted and unaltered statements, and in preparing for trial Husband's counsel analyzed in detail Wife's 2017 and 2018 tax returns, and on both returns Wife does not report any interest from her Capital One accounts.

13. However, on the redacted statements provided as to Wife's Capital One accounting number ending in #3469, the redacted statements contain information purporting to show interest of \$966.58 as of December 31, 2017.

14. Similarly, the redacted statement for August 31, 2018 purports to show year-to-date interest of \$374.86.

15. Inasmuch as Wife did not report any taxable interest from her Capital One accounts in either 2017 or 2018, despite what is purportedly shown on the redacted statements, this may be evidence of a marital qualified investment account with Capital One that has previously not been disclosed.

16. As a result, equity and justice require that Wife provide Husband with complete, unredacted and unaltered copies of her statements for all Capital One accounts for September 1, 2017 to the present and all Northwest accounts for July 1, 2017 to the present, which complete, unredacted and unaltered statements were not previously provided.

17. Equity and justice further require that Wife provide Husband with all 1099s received for interest and dividend income for 2017 and 2018, which 1099s were not previously provided.

18. Given Wife's efforts to conceal roughly \$1,100,000 in marital retirement assets and the anomalies in Wife's tax reporting (including failing to report interest in 2017 and 2018), Husband believes, and therefore avers, there is substantial evidence of impropriety concerning Wife and the candor in her disclosures to the Court.

19. Said impropriety likely includes the discovery of double insurance payments in the amount of \$11,995 each that Wife made immediately prior to separation.

20. Given Wife's repeated untruthful statements in the course of these proceedings, Husband further needs complete, unaltered and unredacted copies of Wife's Capital One credit card statements from July 26, 2017 to the present in order to rule out any further failure to identify marital assets, which complete, unaltered and unredacted statements were not previously provided.

21. Because Wife took with her all of the parties' financial records when she left the marital home, Wife was the primary account holder of the Capital One credit card, and Wife has not previously provided unredacted credit card statements for the Capital One credit card, Husband requires Wife to provide complete, unaltered and unredacted copies of Wife's Capital One credit card statements for the period of January 1, 2013 through July 26, 2017.

22. Wife has also not provided any statements for her Northwest account ending in #1459 for the five years prior to July 1, 2017, and given Wife's repeated untruthful statements in the course of these proceedings, Husband requires complete, unaltered and

unredacted copies of these statements in order to rule out any further failure to identify marital assets.

23. Wife has also failed throughout discovery to provide copies of her paper paychecks which had been stored in the marital home and were part of the financial records she removed from the marital home, and thus Husband requires Wife to provide copies of her paper paychecks so that Husband may account for the destination of all pay she received during the marriage that was not electronically deposited into Wife's bank accounts.

24. Husband has retained a Certified Divorce Financial Accountant, who in addition to Husband and Husband's counsel, requires access to the requested documents in order to complete his forensic evaluation of Wife's finances, including transaction level assessment of cash flow, and comparison of income and expenses, to ensure that no further attempt at non-disclosure or dissipation of assets has been attempted by Wife.

25. The master has trial scheduled for October 17 and 18, 2019.

26. Given the need for Husband to obtain this additional documentation, equity and justice are served by extending the discovery deadline and continuing the trial before the divorce master scheduled for October 17 and 18, 2019.

WHEREFORE, Defendant respectfully requests that the Court grant his motion, continue the scheduled hearing before the divorce master, extend discovery, and compel Plaintiff to provide the following:

A. Complete, unaltered, and unredacted statements for Wife's Capital One bank accounts for September 1, 2017 to the present and Northwest bank accounts for July 1, 2017 to the present;

B. Copies of all 1099s received by Wife in 2017 and 2018; and

C. Complete, unredacted, and unaltered statements for Wife's Capital
One credit card accounts for the period January 1, 2013 to the present.

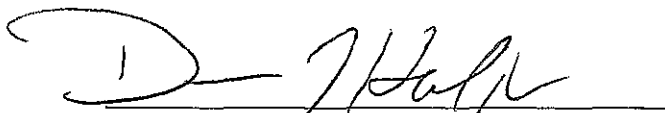
D. Complete, unredacted, and unaltered statements for Wife's
Northwest account #1459 for January 1, 2013 through June 30, 2017.

E. Copies of all paper paychecks and other non-electronically
deposited income of Wife and an accounting of the destination and disposition of those funds.

Respectfully submitted,

Date:

10/11/19



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 Defendant's Motion to Extend Discovery and Continue Trial 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: 10/11/19



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 Defendant's Motion to Extend Discovery and Continue Trial 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 October 11, 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: 10/11/19


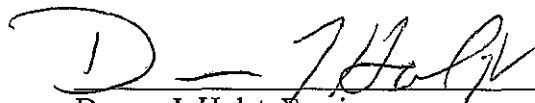
Darren J. Holst, Esquire
 Attorney ID No. 82314
 HOWETT, KISSINGER & HOLST, P.C.
 130 Walnut Street, P.O. Box 810
 Harrisburg, PA 17108
 Telephone: (717) 234-2616
 Counsel for Defendant, Robert P. Bauchwitz

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: 10/11/19


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

EXHIBIT

“A”

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

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(717) 234-2616

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*Fellow, American Academy of Matrimonial Lawyers
+Fellow, International Academy of Family LawyersDEBRAM. SHIMP
Legal Assistant

May 31, 2019

VIA HAND DELIVERYJames R. Demmel, Esquire
DEMME LAW OFFICE, LLC
1544 Bridge Street
New Cumberland, PA 17070Re: Rogers v. Bauchwitz

Dear Jim:

Please find enclosed the following documents provided in response to Master Conley's Preliminary Conference Memorandum and Discovery Order of March 21, 2019:

1. Northwest Bank Checking Account #7593. Statements from inception on February 26, 2013 through December 21, 2016. Statements for after December 21, 2016 were previously provided.
2. Northwest Bank Business Account #3170. Statements from inception on February 28, 2013 through December 31, 2016. Statements for after December 31, 2016 were previously provided.
3. Northwest Bank Savings Account #1350. Statements from inception on February 26, 2013 through December 31, 2016. Statements for after December 31, 2016 were previously provided.
4. Capital One NOW Account #3580. Statements from February 1, 2013 through December 31, 2016. Statements for after December 31, 2016 were previously provided.
5. Current paystubs for my client from substitute teaching.
6. My client's 2018 tax returns.
7. My client's Social Security Statement dated May 29, 2019.

James R. Demmel, Esquire
May 31, 2019
Page Two

8. Acura MDX. My client estimates that the Acura MDX had 50,854 miles as of August 2017. The current KBB Trade-in valuation for my client's Acura MDX (with 50,854 miles) is attached. My client does not believe that the date of separation value would be substantially different for a vehicle of this age. If your client insists, my client can pay to obtain a historical valuation from KBB.

Regarding the Capital One MMT Account #0877, this account was opened on July 5, 2017 and the statements were combined with the Capital One NOW Account #3580 statements from the July 2017 statement onward. These statements were previously provided.

Regarding any Series EE electronic savings bonds, my client is still attempting to determine if there are any separate electronic savings bonds. My client believes it is possible that the electronic savings bond balance is sourced from a conversion of his paper bonds into electronic format. If that is the case, imputing both the electronic bonds and the paper bonds to my client would be an impermissible double count of the bonds.

Regarding the lab equipment, it is my understanding that when the parties' met at the marital residence this past weekend, your client had indicated that Dr. Bauchwitz could retain the lab equipment and that no further issue regarding these items remains.

Regarding the discovery your client is to provide pursuant to Master Conley's directive, please ensure that unredacted, unaltered and complete documents are provided. In our review of the discovery previously provided by Dr. Rogers we determined that certain documents were provided with large sections of information redacted and statements were in some instances incomplete. This includes the Capital One Checking and Savings accounts ending in #794, which statements provided for August 2017 through August 2018 were significantly redacted, and Northwest Savings #1459 and Checking #7874 where the account numbers were redacted. Additionally, the Capital One credit card #8883/5838 statements were not complete and did not show transaction detail. My client demands that unredacted and complete copies be provided immediately.

As I am sure you are aware, while Master Conley's March 21, 2019 memorandum recognized your client's Empower retirement assets, it failed to include your client's TIAA CREF retirement assets. I am sure you will have no objection to correcting this matter, along with the two typos identified in your April 2, 2019 email to me, with the master at the June 28th settlement conference.

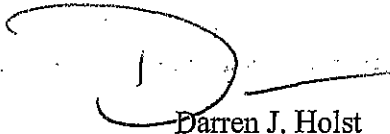
My client renews his demand that your client provide a complete and certified copy of the toxicology report done following the death of Dr. Rogers' father. In addition, my client demands that your client provide a complete and certified copy of any autopsy report. If your client refuses to provide these documents, my client will begin the process of instituting proceedings in California to compel their release.

James R. Demmel, Esquire
May 31, 2019
Page Three

Finally, please have your client provide answers to the following questions and/or provide information responsive to the questions in furtherance of discovery. My client hopes that Dr. Rogers will provide this information without the need to pursue further formal discovery or additional directives from the master:

1. Dr. Rogers has made payments throughout the marriage to a payee known as "MSPR." What is MSPR? Please explain what these payments were for.
2. 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.
3. 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.
4. 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.

Sincerely,



Darren J. Holst

DJH/djk

Enclosure

cc: Dr. Robert P. Bauchwitz (w/o encls) (via e-mail only)

11. Husband's counsel's letter speaks for itself.
12. Denied. Wife provided complete statements for her Capital One and Northwest bank accounts from 2013 through September 2017, as required by the divorce master's preliminary conference memorandum. Wife voluntarily provided additional statements for the accounts for the time period after September 2017, but redacted some of the detail from the statements because she was not required to provide the statements all and did not want to provide details regarding her post-separation banking to Husband. Wife has no information or knowledge regarding Husband's counsel's preparation for the divorce master's hearing.
13. Admitted.
14. Admitted.
15. Denied. Wife inadvertently failed to report the interest on her 2017 and 2018 income tax returns and the IRS recently reminded Wife to do so.
16. Denied. There is no basis for Husband to have copies of Wife's bank account statements past September 2017.
17. Simultaneously with the filing of this answer, Wife's counsel is providing copies of Wife's Capital One 1099s for the 2017 and 2018 tax year to Husband's counsel. Wife did not received 1099s from Northwest for the 2017 or 2018 tax years because her interest income did not exceed ten (\$10) dollars.
18. Denied. Wife denies that she has attempted to conceal any assets or that there is any evidence of impropriety concerning Wife or her candor in disclosures to the court.

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,	:	
	:	NO. 2017-CV-6699-DV
Plaintiff	:	
	:	CIVIL ACTION – LAW
v.	:	
	:	IN DIVORCE
ROBERT P. BAUCHWITZ,	:	
	:	
Defendant	:	

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 COUNTY OF DAUPHIN

BEFORE: Cindy S. Conley, Divorce Master

DISTRIBUTED TO:
 James R. Demmel, Esquire
 1544 Bridge Street
 New Cumberland, PA 17070

Ira H. Weinstock, Esquire
 800 N. 2nd Street, Suite 100,
 Harrisburg, PA 17102

Darren J. Holst, Esquire
 P.O. Box 810
 Harrisburg, PA 17108

TELEPHONE SETTLEMENT CONFERENCE MEMORANDUM

On November 22, 2019, the master spoke with counsel for Plaintiff-Wife, and counsel for Defendant-Husband via a Telephone Conference (TC). During the TC, the master and the attorneys discussed options for resolving the Petition to Find Defendant in Civil Contempt for Refusing to Comply with Court Order. During the TC, the master first relayed to the parties that Judge Marsico had reviewed the agreed upon Order at issue in this matter and the emails between the master and the attorneys regarding the agreed upon terms. The master further relayed that after this review, Judge Marsico directed that the order be signed “*Per Curiam*”. In any event neither attorney appears to be disputing the validity and enforceability of the order.

Attorney Holst advised that Husband has executed the power of attorney (“POA”) required by paragraph 1 of the order. However, he has not permitted Attorney Holst to release it to Attorney Demmel. Husband has consulted with a different real estate agent regarding the listing of the marital residence. That realtor has recommended that the home be listed for \$334,900. Attorney Demmel indicates that Wife is not agreeable to a real estate agent other than Joan May, the realtor contemplated by the agreed upon order. Joan May is agreeable to be the listing agent once Wife has the POA and she only has to deal with one party. Important to note is the fact that Joan May was the real estate agent originally chosen by Husband. Attorney Holst inquired as to the expected list price with Ms. May. Attorney Demmel indicated that he is not aware of that figure as of yet since, Wife and Ms. May have not yet inspected the home since Husband vacated it as Ms. May is awaiting the POA before she takes steps toward listing the home. Attorney Holst advised that prior to vacating the home, Husband fixed the holes in the

walls, did some repainting, removed stumps and trimmed some trees. All of these actions had been previously recommended by Ms. May. Attorney Demmel advised that Wife has not yet entered the home, although the keys have been provided, because she is concerned that the security code might have been changed. In any event, as soon as Attorney Demmel is advised of the listing price, he will relay it to Attorney Holst. Attorney Holst indicated that he will be speaking with Husband this afternoon and will find out from Husband if the code has been changed and he will advise Attorney Demmel of whether or not the code had been changed. If the code has changed, Husband will provide it to his attorney who will provide it to Wife's attorney.

It is apparent to the master that Husband is concerned that Wife will list the home for less than market value in an effort to deprive the marital estate, and ultimately Husband, of the full value of the home. Wife on the other hand is concerned that Husband is attempting to delay the sale of the home in an effort to exert control over Wife. The master notes the following:

1. Joan May was originally chosen by Husband and given her commission is a percentage of the sale price of the home, Ms. May has no reason to list the home for less than market value.
2. Both parties benefit by obtaining the most money for the home as possible as the more money received the more money is available to each of them.
3. The order specifically provides that the order is entered without prejudice to either party's arguments in equitable distribution so in the event the home is listed at a price that is clearly below market value (the master notes that both parties testified as to the general value of the home), Husband has not waived that argument.
4. Neither party desires to retain this home in equitable distribution. Husband has already moved to his mother's residence in Delaware. Wife resides in an apartment and has no desire to move back into the home. The home is sitting vacant and effective November 1, 2019, Wife is advancing all costs associated with this home, which costs are to be reimbursed to her at sale thus diminishing the net proceeds of sale each and every month.
5. Accordingly, it behooves both parties to get this property listed for sale as soon as possible and at market value.

At the conclusion of the TC, Attorney Demmel advised that if the POA is released to him without the necessity of proceeding on Wife's Petition, Wife is agreeable to the issue of attorney's fees being referred to the master to deal with in her Report and Recommendation.

DIVORCE MASTER'S OFFICE

Cindy S. Conley

Cindy S. Conley, Esquire
Divorce Master

NOV 25 2019

Dated: 25 November 2019

XC: The Honorable John Joseph McNally

I hereby certify that the foregoing is a true and correct copy of the original
John Joseph McNally

85. Husband replaced the door that was broken by Wife at a cost of \$300. (R. at 168).
86. Husband believed that, if the minimal repairs undertaken at the recommendation of the realtor were completed, the cost would be less than \$10,000 but would increase the value of the marital residence by as much as \$65,000. (R. at 174-75).
87. Husband actively assisted Wife in the advancement of her medical career. Wife acknowledged telling Husband she would be much poorer and not nearly as far along without Husband's assistance. (R. at 54).
88. In her filed Inventory, Wife did not list her Empower retirement or her St. Luke's pension as marital assets. (R. at 61-63).
89. During marriage, Wife prepared documents that acknowledged her Empower retirement as an asset and that it was separate and distinct from her TIAA retirement. (R. at 64).
90. During marriage, Husband assisted Wife with her career including establishing that Wife was being underpaid by her employer and the amounts and causes, interacting with her departmental administrator to help improve Wife's income, and assisting Wife in defending against a malpractice action against her. (R. at 138-41).
91. When the parties' children were minors, Husband and Wife shared household responsibilities and child care. (R. at 142).
92. Husband was highly involved in academic, sports, and other enrichment activities with the parties' children who went onto to win numerous awards, produce important research results, including some of international significance, and attend top universities. (R. at 142-44).

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

ANN M. ROGERS,	:	IN THE COURT OF COMMON PLEAS
PLAINTIFF	:	DAUPHIN COUNTY, PENNSYLVANIA
	:	
v.	:	DOCKET NO. 2017 – CV – 6699 - DV
	:	
ROBERT P. BAUCHWITZ,	:	
DEFENDANT	:	CIVIL ACTION - DIVORCE

**PLAINTIFF’S PETITION FOR CIVIL CONTEMPT AND SPECIAL RELIEF TO
ESTABLISH SOLE AUTHORITY TO SELL MARITAL HOME**

AND NOW, comes Plaintiff, Ann M. Rogers, by and through her counsel, James R. Demmel, Esquire, who hereby files this Petition for Civil Contempt and Special Relief to Establish Sole Authority to Sell Marital Home and in support thereof avers as follows:

1. Movant is Ann M. Rogers (“Wife”), Plaintiff in the above-captioned divorce action.
2. Respondent is Robert P. Bauchwitz (“Husband”), Defendant in the above-captioned divorce action.
3. The divorce master, Cindy S. Conley, Esquire, conducted a hearing in this matter on October 17, 2019.
4. At the time of the divorce master’s hearing, the parties entered into an agreement governing listing their marital home for sale.
5. The terms of the parties’ agreement were incorporated into an order issued by this Honorable Court on October 23, 2019, a copy of which is attached hereto as Exhibit A.

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ANN M. ROGERS,	:	
	:	NO. 2017-CV-6699-DV
Plaintiff	:	
	:	CIVIL ACTION – LAW
v.	:	
	:	
ROBERT P. BAUCHWITZ,	:	
	:	IN DIVORCE
Defendant	:	

BEFORE: Cindy S. Conley, Divorce Master

DISTRIBUTION:

For Plaintiff:

James R. Demmel, Esquire
1544 Bridge Street
New Cumberland, PA 17070

For Defendant:

Darren J. Holst, Esquire
P.O. Box 810
Harrisburg, PA 17108

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DAUPHIN COUNTY
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REPORT AND RECOMMENDATION OF THE MASTER

PROCEDURAL BACKGROUND

Plaintiff, Ann M. Rogers (Wife) filed a complaint in divorce on September 20, 2017 raising claims for a divorce pursuant to §3301 (c) or (d) of the divorce code and for equitable distribution. On September 25, 2017, the court entered an Order directing Wife to file an amended complaint that complied with local rules of court. On September 26, 2017, Defendant, Robert P. Bauchwitz (Husband) filed an answer to Wife’s complaint in divorce in which he denied that the marriage of the parties was irretrievably broken and raised claims for alimony, alimony pendente lite, counsel fees, costs and expenses. On October 3, 2017, Wife filed an amended complaint in divorce again raising claims for no-fault divorce and equitable distribution. On October 5, 2017, Husband’s attorney accepted service of the amended complaint

in divorce and proof of service was filed on October 12, 2017.

At Wife's request, the undersigned was appointed as master, on November 20, 2018, to address all claims raised of record. At the request of both parties, the preliminary conference originally scheduled for January 30, 2019 was rescheduled to February 6, 2019. At Husband's request and over Wife's objection, the February 6, 2019 preliminary conference was rescheduled to and held on March 19, 2019.

On March 21, 2019, Wife filed an Affidavit pursuant to §3301(d) of the divorce code in which she averred that the parties had separated in August of 2017, had been separated in excess of one year and that the marriage was irretrievably broken. On April 17, 2019, Husband filed a counter-affidavit pursuant to §3301(d) of the divorce code in which he averred that the parties had not been separated in excess of two years, that the marriage was not irretrievably broken and that he wished to claim economic relief.

A settlement conference was held on June 28, 2019. Although the parties were able to enter into many stipulations and execute §3301(c) affidavits of consent and waivers of notice, they were unable to reach an overall agreement resolving all issues. Nevertheless, the grounds for divorce have been established under 23 Pa.C.S.A. Section 3323(g). At the conclusion of the settlement conference, a hearing was scheduled for the remaining issues to occur on October 17 and 18, 2019.

On October 11, 2019, Husband filed a motion requesting that that the hearing be continued, and that discovery be extended. Wife filed an answer to Husband's motion and on October 15, 2019, the master directed that the motion be denied. Accordingly, the hearing commenced as scheduled on October 17, 2019. The parties were able to complete their cases on

that date and thus, the October 18, 2019 hearing date was not necessary.

Both parties were present at the October 17, 2019 hearing with counsel and testified under oath. At the conclusion of the hearing, the parties did not waive the preparation and filing of the transcript. Accordingly, the master issued a post-hearing directive establishing a deadline for the filing of post-hearing briefs to be within thirty-days of the date the transcript was filed. The transcript was filed on December 9, 2019. Both parties filed timely post-hearing briefs.

In the preparation of this report and recommendation, the undersigned considered the stipulations of the parties, the evidence of record, the witnesses' credibility, the post-hearing submissions of both parties and the applicable law.

FINDINGS OF FACT

Names, residences, ages, and health

1. The Plaintiff is Ann M. Rogers (Wife), an adult individual presently residing at 247 Crescent Drive, Hershey, Pennsylvania. T. p. 9.
2. Wife has resided at the Crescent Drive address since February of 2018. Id.
3. From August 28, 2017 until February of 2018, Wife resided at 13 Killarney Building, Hershey, Pennsylvania. T. p.10.
4. From the summer of 2007 through August of 2017, Wife resided in Hershey, Pennsylvania at the former marital residence. T. pp. 11 and 25.
5. Wife was born in 1960 and was fifty-nine years of age at the time of the hearing. T. p. 49; P – 3.
6. Wife is in good health. T. p.4; Preliminary Conference Memorandum filed 3/21/2019.
7. The Defendant is Robert P. Bauchwitz (Husband), an adult individual presently residing at

- 23 Harlech Drive, Wilmington, Delaware. T. p.91.
8. At the date of the hearing, Husband was dividing his time between the Delaware address and the former marital residence, 324 Candlewyck Lane, Hershey, Pennsylvania. Id.
 9. In accordance with an agreed upon court order filed on October 23, 2019, Husband vacated the former marital residence on or before November 1, 2019. 10/23/2019 Court Order.
 10. However, Husband had resided in the former marital residence from well before the date of the parties' separation through November 1, 2019.
 11. Husband was born in 1960 and was fifty-nine years of age at the time of the hearing. T. p. 91. D – 22.
 12. In 2018 Husband was treated for head and neck cancer and he now undergoes periodic screenings to ensure it has not returned. Husband has also been diagnosed with osteoporosis, osteoarthritis, and degenerative disk disease. Husband suffers from hemorrhoids and insomnia. Recently, Husband was diagnosed with a mediastinal mass which is being monitored for growth. T. pp. 96 – 102; Preliminary Conference Memorandum filed 3/21/2019.
 13. The jurisdictional requirement of Section 3104(b) of the Divorce Code has been met.

Marriage, children, separation, divorce

14. The parties were married on April 21, 1990 in New York, New York. T. p. 92; Preliminary Conference Memorandum filed 3/21/2019.
15. This was the first marriage for both parties. Id.
16. The parties are the parents of two adult children born of the marriage.
17. The parties separated on August 28, 2017.

18. The length of the intact marriage was twenty-seven years and four months.
19. Wife filed the divorce complaint on September 20, 2017 and an amended divorce complaint on October 3, 2017.
20. Husband's attorney at the time, accepted service of the amended complaint on October 5, 2017 and proof of service was filed on October 12, 2017.

Education, employment, income, benefits, and retirement

21. Wife obtained a bachelor of science degree in Spanish and biology from Cornell University in 1983 and a medical degree from Cornell University in 1987. T. p. 10; Preliminary Conference Memorandum filed 3/21/2019.
22. At the time of the parties' marriage, Wife was a resident in general surgery at St. Lukes-Roosevelt Hospital Center in New York City (St. Lukes). Id.
23. At the time of the parties' marriage, Wife had gross annual Social Security Wages of \$36,469. P – 3.
24. After completing her residency, Wife remained an employee of St. Lukes as an attending surgeon until June of 2006. T. 10.
25. In June of 2006, the parties and their then minor children relocated to Hershey, Pennsylvania so that Wife could enter a twelve-month fellowship in minimally invasive bariatric surgery at Penn State Hershey Medical Center (Hershey Medical Center). T. pp.10 – 11.
26. Following the completion of her fellowship, Wife remained employed by Hershey Medical Center as a bariatric surgeon. Id.
27. At the time of the hearing, Wife remained employed at Hershey Medical Center as the head of bariatric surgery. Id.

28. In addition, Wife receives minimal additional income for legal chart review, speaking honorarium, and for being a national site surveyor for bariatric surgery which Wife reports via a Schedule C to her tax return. T. 16 – 17.
29. In 2018, Wife received \$437,190.88 in gross Medicare earnings from Hershey Medical Center. P – 2 and 3.
30. In 2018, Wife received gross, before tax, but after expenses, Schedule C income of \$11,549. P – 2.
31. Based on a recent pay stub, Wife is expected to have gross annual earnings from Hershey Medical Center in 2019 of \$468,416.28. P – 1.
32. After taking taxes into consideration, Wife has net monthly earnings from Hershey Medical Center of about \$24,700 without deducting costs of medical insurance and retirement plan contributions. Wife's Schedule C income would add several hundred more dollars per month to Wife's net income bringing her to about \$25,374 net per month.
33. Wife receives, at a reasonable cost, employment benefits of medical, dental, vision, disability and life insurance along with retirement plan participation.
34. Wife has reasonable monthly expenses of \$5,467.
35. Wife expects a Social Security Retirement benefit of \$3,053 per month when she reaches her full Social Security Retirement age of sixty-seven years. P – 3.
36. In addition, Wife will receive retirement benefits from her share of the marital portion of her other retirement accounts.
37. Husband obtained a bachelor of science degree in biochemistry from Harvard College in 1982. Husband also obtained a medical degree from Cornell University in 1990 and a

- doctorate degree from Cornell University in 1991. In 2010, Husband obtained a paralegal certificate from Delaware Law School and in 2016, Husband completed a certified fraud examiner certification. T. pp. 92 – 93; 198 – 199; Preliminary Conference Memorandum filed 3/21/2019.
38. At the time of the parties' marriage, Husband was a student, completing his doctorate of philosophy degree (PHD) and his medical degree (MD) that was conferred in 1991. T. p. 34.
39. Following his receipt of his MD and Ph.D, Husband was in a post-doctoral fellowship at Columbia for five or six years. Id.
40. By agreement of the parties, Husband was never licensed to practice medicine and instead, focused on research. T. p. 65.
41. Although Husband's Social Security Earnings History (D – 22) shows numerous years during the marriage where Husband had zero Medicare earnings, Husband testified that for some of those years he received Fellowship money that was not subject to Social Security or Medicare Taxes. T. p. 201.
42. In 2005, Husband earned gross Medicare wages of \$90,000, the most Husband ever earned during the marriage. D – 22.
43. When the parties relocated to Hershey, Pennsylvania in 2006, Husband continued to work in his research lab in New York during the 2006 to 2007 academic year, but ceased that employment in 2007. T. p. 34.
44. After Husband relocated to Hershey, he began his own business first known as Bauchwitz Laboratory but later changed to Amerandus Research. T. pp. 119 – 123.
45. Neither of Husband's businesses ever made a profit. Id.

46. For a brief period of time, Husband was an adjunct professor at Lebanon Valley College and earned a few thousand dollars per course. T. pp. 34, 132.
47. At the time of the hearing, Husband was employed on a part-time basis as a substitute teacher earning about \$52 gross per day. D – 17.
48. In 2018, Husband had gross annual wages of \$1,687. D – 19.
49. In December of 2017, the Dauphin County Domestic Relations Office determined Husband's gross earning capacity to be \$72,000 per year as a Certified Fraud Examiner. While Husband initially requested a De Novo Review of the Order, he later withdrew his request. D – 26.
50. While Husband's health has deteriorated somewhat since 2017 in that he has lifting restrictions, there was no evidence that the restriction would prohibit him from obtaining employment as a Certified Fraud Examiner, a Paralegal, or employment that utilizes his medical education.
51. A \$72,000 gross earning capacity results in a \$4,423 net after tax monthly earning capacity.
52. Husband has no employment benefits available because he is not employed on a full-time basis.
53. Husband has reasonable monthly expenses of \$4,881.
54. Husband expects a Social Security Retirement benefit based on his earnings record of \$1,162 per month when he reaches his full Social Security Retirement age of sixty-seven years. D – 22. However, when Husband reaches his full Social Security Retirement age, he will have the option of claiming Social Security on Wife's earning record to receive an amount equal to half of Wife's benefit or \$1,562.50. Moreover, if Husband obtains employment equal to his earning capacity, his Social Security retirement benefit should increase in amount over half

of Wife's entitlement.

55. In addition, Husband will receive retirement benefits from his share of the marital portion of his and Wife's other retirement accounts.

Assets and claims

56. At the time of separation, the parties owned the following marital property: [Note:

Stipulations are noted by an Asterisk*]

▶ **Jointly Titled Property at 324 Candlewyck Lane, Hershey, PA 17033.** The mortgage balance as of the date of the hearing was about \$92,000. As of the date of this Report and Recommendation, the former marital residence is under agreement for sale with a gross sales price of \$340,000 with an anticipated settlement date of March 16, 2020. Jt. -1

▶ **2016 Volvo S80*.** This vehicle has no marital equity.

▶ **2006 Acura MDX*.** This vehicle has marital equity of \$4,516 and shall be distributed to Husband in equitable distribution.

▶ **Jointly Owned Vanguard Investment Account #8869*.** As of June 30, 2019, the value of this account is \$17,953.

▶ **Jointly Owned TD Ameritrade #774*.** As of June 30, 2019, the value of this account is \$8,867.

▶ **Husband's Series EE Paper Savings Bonds*.** The marital value of these bonds is \$21,192 and Husband shall retain them in equitable distribution.

▶ **Husband's Series EE Electronic Savings Bonds*.** The marital value of these bonds is \$40,872 and Husband shall retain them in equitable distribution.

▶ **Husband's Series I Savings Bonds*.** The marital value of these bonds is \$37,172 and Husband shall retain them in equitable distribution.

▶ **Wife's Series I Savings Bonds*.** The marital value of these bonds is \$25,044 and Wife shall retain them in equitable distribution.

▶ **Wife's Series EE Paper and/or Electronic Savings Bonds*.** The marital value of the electronic bonds is \$61,992 and Wife shall retain them in equitable distribution.

▶ **Wife's Capital One Checking Account #469*.** At the date of separation this account had

61. Husband also helped the children with their educational endeavors, attended and coached their sporting events, and after the children were adults and no longer living at home, began to make dinner for the parties. T. pp. 142 – 144.
62. Wife was the primary wage-earner throughout the marriage and therefore, most of the monthly bills were paid out of her earnings. Id.
63. However, Husband had a handle on the parties' investment and retirement assets and consulted annually with Wife in regard to how much the parties should be contributing to those assets. T. p.54.
64. Throughout the marriage, Wife, unsuccessfully, encouraged Husband to obtain gainful employment and supported him in his attempts to do so. T. pp. 34 – 39.
65. Wife also supported Husband in a lawsuit against his previous employer. T. p. 37.
66. During the marriage, Husband helped Wife when a malpractice action was filed against her and in obtaining equal pay to that of her male colleagues. T. pp. 53 -54; 138 – 141.
67. During the marriage, the parties engaged in infrequent physical altercations.
68. The parties established a middle-class lifestyle during the marriage. They purchased a home for \$307,000, each had nice vehicles, took periodic vacations, saved for retirement by putting the maximum amount into their retirement accounts, all while living within their means and, for most the marriage, on one income. T. 39 – 40.
69. The parties also paid for their two sons' college educations with some help from their parents (the grandparents). T. pp. 84 – 85.
70. Wife paid Husband significant sums of alimony pendente lite that along with his earning capacity was sufficient to meet his reasonable needs and pay his attorneys' fees as they were

incurred.

71. Wife's superior income was sufficient to meet her reasonable needs and pay her attorneys' fees as they were incurred.

72. Husband's own actions in this proceeding and in repeatedly failing, to adhere to the Court Order entered after the master's hearing by agreement of the parties, caused Wife to unnecessarily incur additional attorneys' fees and costs.

FACTUAL / LEGAL DISCUSSION

Credibility of Parties. Husband argued throughout these proceedings that Wife intentionally failed to disclose marital assets in an attempt to deprive him of his equitable share of the marital assets. However, Husband's arguments in this regard are disingenuous to say the least. It is clear from the testimony that Husband, who oversaw the parties' investments during the marriage, had very detailed and exhaustive knowledge of and documentation in regard to every one of Wife's accounts to the extent that Wife had to ask Husband for her own check registers during this proceeding. Moreover, it is also clear from the testimony that, while Wife may have been confused in regard to the number of retirement accounts she possessed, due the changes of the account names over the years, and did not believe she had an interest in a defined benefit pension, Wife did not intentionally fail to disclose any marital assets in an attempt to defraud Husband. As soon as Husband's attorney (because Husband had the documentation in his possession at separation) disclosed the discrepancy in Wife's identification of her contributory retirement accounts, Wife readily accepted that she had additional accounts. Wife's attorney has indicated that it is he who failed to disclose a contributory account because he thought it was the same as an account that had been disclosed as opposed to two separate accounts. In regard to the

defined benefit pensions which each party earned in the early years of their marriage, Wife not only failed to disclose her defined benefit pension on her Inventory, but she also did not disclose Husband's defined benefit pension because **she did not believe they existed**. Wife testified credibly that she did not believe that they existed and by her demeanor at the hearing, was happy to hear that both parties did in fact have a defined benefit pension.

It also bears noting that Husband's Inventory was not entirely accurate in all areas. In his Inventory, Husband indicated that he had U.S savings bonds which would be worth about \$50,000 when they matured in 2023 when ultimately the parties stipulated that Husband's savings bonds are currently worth over \$100,000. Even though the savings bonds were in Husband's possession at all times, he was obviously mistaken as to the value of the bonds. Just as Wife was mistaken as to the exact number and names of her retirement accounts. Ultimately, as is often the case, as the proceedings progressed and documentation was exchanged, the mistakes become known and were corrected.

The master believes that the majority of the discrepancies between the testimony of the parties were due to a difference in the parties' perspectives and not due to an intent to deceive the fact-finder. However, overall, the master found Wife to be slightly more credible than Husband. Wife testified in a matter of fact demeanor whether or not she was testifying as to her contributions to the marriage or to her detriment. Also, Wife did not hesitate to provide Husband with credit where credit was due for his contributions to the marriage. For instance, Wife very clearly stated ". . . the point here is not that Robert was of no assistance to me in my life. He certainly encouraged us to invest and to pay fully into our retirement funds and so on and so forth.: T. p. 54. Husband, however, tended to embellish his contributions to the marriage, failed

to provide Wife with much credit in regard to her contributions and was extremely hesitant to admit any faults on his part.

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. Wife also agreed that Husband aided her in a malpractice action that had been brought against her and in helping her obtain a better paying contract. Wife testified quite candidly that although she did the majority of the household chores, she was not particularly good at them.

Husband was quite specific in his testimony as to how he was able to help Wife obtain a better paying contract and in defending the malpractice action brought against her and the tasks he took in achieving those goals. T. pp. 138 – 141. However, when asked twice on cross examination whether it was his contention that being involved in the whistle blower lawsuit prevented him from working, Husband’s answer can only be described as evasive. T. pp. 196 – 198.

One area of disagreement between the parties was whether or not Husband incurred attorney’s fees in pursuing his whistleblower suit. Wife testified that in supporting Husband in the lawsuit, she paid the attorney’s fees associated with it. T. p. 76. Husband testified that the suit was brought on a contingency basis and there were no fees. In describing the whistleblower lawsuit, technically called a *Qui Tam* action, Husband indicated that he was testifying by memory but would “stand by what the record is.” T. p. 115. Accordingly, the master takes judicial notice of the opinions filed in the lawsuit titled “United States of America, *ex rel.* Robert Bauchwitz, M.D. v William K. Holloman, Ph.D. *et al.*” Pa.R.E. 201(c). Husband testified accurately that the lawsuit was eventually dismissed in its entirety because it was not brought

within the statute of limitations. *United States of America, ex rel. Robert Bauchwitz, M.D., Ph.D. v. William K. Holloman, Ph.D. et al.*, 671 F.Supp 2d 674 (E.D. Pa. 2009). In a later 2016 opinion, the U.S. Court of Appeals for the Third Circuit provided the following procedural history of the initial lawsuit:

In June of 2004, Appellant, Robert P. Bauchwitz, filed a *qui tam* action against William K. Holloman, Cornell University Medical College, Eric B. Kmiec, and Thomas Jefferson University. . . . In December of 2009, the District Court granted summary judgment to Thomas Jefferson University and Dr. Kmiec, but denied the same to Cornell University Medical College and Dr. Holloman. See *United States ex rel. Bauchwitz v. Holloman et al.*, 671 F.Supp. 2d 674 (E.D.Pa.2009). In April of 2010, the District Court dismissed the remaining case with prejudice by stipulated order. No appeal was taken from that dismissal.

United States ex rel. Bauchwitz v Holloman, 670 Fed. Appx. 762 (3rd Cir. Pa. 2016), *Cert. denied* 137 S. Ct. 2170 (2017). The 2016 Third Circuit opinion addressed Husband's request for a transcript of a show cause hearing that took place on October 17, 2005 in the *qui tam* action and concerned Husband's then counsel's request to withdraw representation. *Id.* However, the transcript was not requested immediately after the hearing, but sometime after the hearing. When Husband was advised, in September of 2012, that there had been an equipment malfunction and there were no court reporter's notes available from the hearing, Husband filed a motion requesting access to the court reporter's original stenographic record and/or untranscribed recordings of the October 17, 2005 hearing. The District Court held a hearing on that request and denied it a few months later. Husband appealed to the third circuit Court of Appeals who affirmed the District Court. Husband then filed a Petition for Writ of Certiorari in the United States Supreme Court which was ultimately denied by the U.S. Supreme Court *en banc*.

After a review of the above procedural history, it is certainly possible that both parties are

correct in their testimony. The lawyer representing Husband in the *qui tam* action in which a large monetary recovery was anticipated may very well have accepted the case on a contingency basis. On the other hand, the lawyer representing Husband, Ronald T. Tomasko, Esquire, of JSDC in Hershey, Pennsylvania, in his efforts to obtain a transcript of a 2005 hearing, several years after the case had been dismissed with prejudice, likely would not have done it on a contingency basis given that there was no monetary recovery anticipated and requiring Husband and Wife to pay Attorney Tomasko's fees.

However, a review of the December 2009 District Court opinion also evidences Husband's embellishments. For instance, Husband explained the lawsuit as follows:

I was formally called a relater [sic]. So if you look at the case, it's U.S. ex rel. with my last name, Bauchwitz. So it's formally called a relater [sic]. But yeah, we call it whistleblower; just if you talk to people, that's what you are. **But I was actually brought in by the government.** They decided where the case was gonna go, which was Philadelphia. So - - because they had a Assistant U.S. Attorney there that they liked. They had won another case against one of the defendants - -

As I just started, first of all, we - - meaning the attorneys, **the U.S. government, Department of Justice** - - it was dismissed, a large - - largely in bulk under summary judgment in December 2009 based on statute of limitations. Although nobody agreed with that interpretation, that's what happened.

(emphasis added) T. pp. 112, 115. Wife testified that she did not think that Husband was approached by someone who told him to engage in the lawsuit. T. p. 77. In its Opinion, the U.S. District Court explained as follows:

An action under the FCA [False Claims Act] may be commenced in two ways. The attorney general may sue on behalf of the United States government; or, a private individual, known as a relator, can bring a *qui tam* action. Because the relator brings the action on behalf of the government, he must give the government notice of the action. The government has sixty days for the filing of a *qui tam* complaint to elect to

intervene in the action, and, for good cause shown, can petition the court to permit it to intervene at a later date.

671 F. Supp. 2d 674. (*citations omitted*). The Background and Procedural History portions of the U.S. District Court's Opinion notes the following:

Also, in 1990, he [Husband] urged the Office of Scientific Integrity ("OSI") to investigate the accuracy of Holloman's reported findings regarding the Rec 1 protein activity.

.....

Between December of 1994 and February of 1995, he [Husband] pursued his own investigation by contacting current and former colleagues of Holloman and current and former graduate students who worked in Holloman's lab.

.....

As part of his investigation, Bauchwitz contacted ORI on February 6, 1995 to learn the status of the government's investigation of the defendants instigated by his first call to ORI in 1990, and to give ORI additional information based on his December 1994 phone call with Brian Rubin, a graduate student who succeeded Bauchwitz at Holloman's lab.

.....

Bauchwitz filed his original complaint under seal on June 30, 2004. The government investigated the case while the complaint remained under seal. At the request of the United States Attorney's Office, ORI conducted a scientific review of the allegations set forth in Bauchwitz's complaint. Because the research at issue had taken place so many years earlier and because it did not view the statements at issue as intentionally false, ORI concluded that it did "not believe that evidence is available" to prove that any of the three claims alleged by Bauchwitz are false. On August 31, 2005, after its fourth motion for an extension was denied, **the government elected not to intervene.**

(emphasis added) 671 F. Supp. 2d 674. Accordingly, Husband's statements that he was "brought in by the government" was certainly meant to lead one to believe that but for the government's insistence, Husband would not have brought the suit when in fact, Husband instigated the initial

investigation in the 1990's by his report to the ORI. When it was all said and done, the government declined to intervene in the lawsuit. Whether or not the lawsuit was commenced by Husband and Husband alone or at the behest of the Federal government is not relevant to any of the determinations to be made in the case at hand. However, the fact that Husband felt it necessary to embellish the importance of the lawsuit by implying that the Federal government was one-hundred percent behind it when, in actuality, the Federal government declined to intervene in the suit does impact somewhat negatively on Husband's credibility.

Date of Separation. Wife asserts that the parties separated on August 28, 2017. Husband asserts that the parties separated on September 20, 2017. Based on the credible evidence at the hearing, the parties were separated by August 28, 2017. The Pennsylvania Divorce Code defines "separate and apart" as follows:

Cessation of cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.

23 Pa.C.S.A. §3103. In this case, the Amended Divorce Complaint was served on October 3, 2017.

Wife's testimony in regard to the date of separation is as follows:

On Direct:

Q. You said you leased your apartment in Hershey on August 28th - -

A. Yes.

Q. - - 2017?

A. Yes.

Q. Prior to that, you were living in the marital home; is that correct?

A. I knew that after the 28th of - - well, I knew it in the beginning of September because I didn't know what was going on. I didn't know when it happened. She was supposed to come back on the 20th of August and speak to me. Never happened.

T. pp. 92 and 196.

The final date of separation is determined upon a showing of “an independent intent on the part of one of the parties to dissolve the marital union and that the intent was clearly manifested and communicated to the other spouse.” *McCoy v. McCoy*, 888 A.2d 906, 910 (Pa.Super. 2005) citing *Sinha v. Sinha*, 526 A.2d 765, 767 (Pa. 1987).

In this case it appears that Wife decided that she intended to dissolve the parties' marriage during a conversation Wife had with Husband over the telephone on August 20, 2017. Wife credibly testified that by the conclusion of that call she told Husband she was pretty sure she never wanted to see him again. At the time, Wife was in California because her father had just died. When Wife left for California on August 17, 2017, she was not intending to separate from Husband. The text messages submitted by Husband dated July 29, 2017, August 6, 2017 and August 16, 2017 as Defendant's exhibit #31 certainly bolster that fact. However, they do not speak to the state of the parties' marriage after the August 20, 2017 conversation. Husband testified that he anticipated that Wife would return from California on August 20, 2017 and talk to him presumably about the telephone conversation they had that day. There is no dispute that Wife did not return to the former marital residence on August 20, 2017. Wife leased her own apartment and moved into it on August 28, 2017 and Husband's testimony reveals that he knew this as of the 28th or early September, but certainly before the divorce complaint was filed on September 20, 2017. Apparently as of August 29, 2017, the day after Wife moved into her separate residence, Husband had retained the first attorney that represented him in this matter,

Max Smith. D-24-3. Accordingly, the August 20, 2017 telephone call combined with Wife's failure to return to the marital residence and leasing of her own residence on August 28, 2017 support Wife's August 28, 2017 separation date.

Parties' Incomes/Earning Capacities.

Wife's Income. Wife is the head of bariatric surgery at Hershey Medical Center.

T. pp. 10 – 11. Based on Wife's September 30, 2019 paystub, she receives a gross monthly salary of \$36,409.69 and an annual physician's incentive of \$31,500, equating to a total annual gross income from Hershey Medical Center of \$468,416.28. P – 1.

Without reducing Wife's gross income for non-taxable deductions such as health insurance and retirement contributions, Wife receives net monthly income from Hershey Medical Center of \$24,700 calculated as follows.

Federal Taxable Wage Calculation (Using 2019 Tax Tables).

\$468,416.28 Gross Annual Income
 - 12,200.00 2019 Standard Deduction for Single Filer
 \$456,216.28 Federal Taxable Income

Federal Tax Calculation (Using 2019 Tax Tables for Single Filer).

\$456,216 - \$306,176 = \$150,040 X 37% = \$55,514.80
 \$306,175 - \$204,101 = \$102,074 X 35% = \$35,725.90
 \$204,100 - \$160,726 = \$ 43,374 X 32% = \$13,879.68
 \$160,725 - \$ 84,201 = \$ 76,524 X 24% = \$18,365.76
 \$ 84,200 - \$ 39,476 = \$ 44,724 X 22% = \$ 9,839.28
 \$ 39,475 - \$ 9,701 = \$ 29,774 X 12% = \$ 3,572.88
 \$ 9,700 X 10% = \$ 970.00

Total Federal Tax - \$137,868.30

Net Monthly Income Calculation.

\$468,416.00 (Gross Annual Income)
 - 137, 868.00 (Federal Tax)
 - 14,380.00 (State Tax – 3.07%)
 - 8,240.00 (Social Security Tax – 6.2% of \$132,900)
 - 6,792.00 (Medicare Tax – 1.45%)
 - 4,684.00 (Local Tax – 1%)

- 52.00 (EMT Tax)
 $\$296,400 \div 12 \text{ months} = \$24,700 \text{ per month net income}$

In addition, Wife has minimal additional income for legal chart review, speaking honorarium, and for being a national site surveyor for bariatric surgery which she reports on a Schedule C to her tax return. T. pp. 16 – 17. In 2018, Wife earned Schedule C income of \$11,549. P – 2. Assuming Wife earns the same in 2019 and also assuming an overall tax of about 30%, Wife will net about \$8,085 annually or \$674 monthly raising her monthly net income to \$25,370.

Husband's Income/Earning Capacity. Husband is employed on a part-time basis as a substitute teacher earning \$52 gross income per day. D – 17. In 2018, Husband had gross annual wages of \$1,687. D – 19.

Husband testified at the hearing that he prefers to continue to operate his own research laboratory even though he never earned a profit when he did so throughout the marriage. However, he also indicated that he has reignited his business recently and he believes that if he operated it as a non-profit, he could draw about \$60,000 in annual gross income. If he became a full-time teacher in Delaware, he believes he could start at \$42,000 per year. T. pp.135 – 137.

In December of 2017, the Dauphin County Domestic Relations Office determined Husband's gross earning capacity to be \$72,000 per year as a Certified Fraud Examiner. D – 26. While Husband initially requested a de novo review of that determination, he ultimately withdrew his request. While Husband's health has deteriorated somewhat since 2017 in that he has lifting restrictions, there was no evidence that the restriction would prohibit him from obtaining employment as a Certified Fraud Examiner, a

Paralegal or employment that utilizes his extensive and impressive medical education and background.

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. With his education and background, Husband will not be a candidate for laborer jobs that require lots of lifting and other physical tasks. Most likely he will be seeking an office job and his employers, given his superior education, will be willing to work around his lifting limitations. For instance, Husband with his medical degree, enabling him to decipher medical charts and with his knowledge of medical terms, would be a tremendous asset as a paralegal for a law firm practicing medical malpractice or for an insurance company in their fraud department. At the hearing, Husband indicated an inability to sit for great periods of time. In this day and age, standing desks are available. Husband indicated that because of his neck and head cancer, now in remission, he had been concerned about his ability to speak. At the hearing, aside from a dry mouth requiring water, the master observed no negative impact on Husband's ability to speak and, in fact, Husband had to be admonished to slow down

Reasonable Monthly Expenses. The following charts evidence the determination of the parties' reasonable monthly expenses.

Wife's Reasonable Monthly Expenses.

Based on her Expense Statement (P – 4), and her testimony, the master has determined that Wife's reasonable basic monthly expenses will be \$5,467 after the divorce decree is entered.

The analysis of Wife's Expense Statement follows:

<u>Expense</u>	<u>Amount Claimed</u>	<u>Amount Accepted</u>	<u>Explanation of difference between amount claimed and amount accepted</u>
Rent	\$1,390	\$1,390	Wife's expense is accepted as reasonable.
Electric	\$250	\$250	Wife's expense is accepted as reasonable.
Cell Phone	\$250	\$86	Wife's claimed expense is excessive for one person. Husband's claimed expense of \$86 per month for phone service is reasonable and accepted as such for both parties.
Water	\$35	\$35	Wife's expense is accepted as reasonable.
Sewer	\$20	\$20	Wife's expense is accepted as reasonable.
Cable TV and Internet	\$170	\$170	Wife's expense is accepted as reasonable.
Security System	\$45	\$45	Wife's expense is accepted as reasonable.
Lunches	\$175	\$175	Wife's expense is accepted as reasonable.
Renters Insurance	\$70	\$70	Wife's expense is accepted as reasonable.
Life Insurance	\$219	\$219	Wife's expense is accepted as reasonable.
Disability Insurance	\$125	\$125	Wife's expense is accepted as reasonable.
Automobile Payments	\$621	\$621	Wife's expense is accepted as reasonable.
Automobile Fuel	\$50	\$50	Wife's expense is accepted as reasonable.
Medical Insurance	Not include on Expense statement but on Wife's paystub.	\$783	Wife testified that her medical insurance covers herself, Husband and one of the parties' adult children. T. pp. 15 – 16. However, there was no breakdown as to the amount Wife would pay if only ensuring herself.
Vision Insurance	Not included on Expense Statement but on Wife's paystub.	\$4.71	This expense is reasonable
Dental Insurance	Not included on Expense Statement but on Wife's paystub	\$18.71	This expense is reasonable
Doctor Visits	\$4.00	\$4.00	Wife's expense is accepted as reasonable.
Medication	\$20.00	\$20.00	Wife's expense is accepted as reasonable.
Counseling / Therapy	\$202	\$202	Wife's expense is accepted as reasonable.
Glasses / Contacts	\$50	\$50	Wife's expense is accepted as reasonable.
Clothing	\$42	\$42	Wife's expense is accepted as reasonable.
Laundry / Dry Cleaning	\$25	\$25	Wife's expense is accepted as reasonable.
Groceries	\$500	\$500	Wife's expense is accepted as reasonable.
Barber / Hairdresser	\$50	\$50	Wife's expense is accepted as reasonable.
Gym Membership	\$225	\$225	Wife's expense is accepted as reasonable.
Household Help	\$165	\$165	Wife's expense is accepted as reasonable.
Papers / Books / Magazines	\$30	\$30	Wife's expense is accepted as reasonable.
Entertainment	\$30	\$30	Wife's expense is accepted as reasonable.

Gifts	\$2,333	\$62	Wife's claimed expense is excessive when determining income available for support purposes. Husband's claimed expense of \$62 per month for gifts is reasonable and accepted as such for both parties.
Legal/Professional Fees	\$1,000	\$0	Once these proceedings are completed there should be no need for this expense
Charitable Contributions	\$350	\$0	Wife's claimed expense is excessive when determining income available for support purposes. Once these proceedings have concluded and her financial condition is known, Wife will be able to determine if she is able to continue such contributions.
TOTAL	\$8,446	\$5,467	

Husband's Reasonable Monthly Expenses.

Based on Husband's Income and Expense Statement (D - 25), and his testimony, the master has determined that Husband's reasonable monthly expenses will be \$4,881 after the divorce decree is entered. The analysis of Husband's Expense Statement follows:

<u>Expense</u>	<u>Amount Claimed</u>	<u>Amount Accepted</u>	<u>Explanation of difference between amount claimed and amount accepted</u>
Rent / Mortgage	\$1,934	\$1,390	The figure on Husband's Expense Statement relates to the former marital residence. Husband is currently living at his mother's home and not paying rent. Most likely this is not a permanent arrangement. Husband did not provide testimony of his anticipated expenses when he moves from his current residence. Wife is currently renting a residence which is appropriate for one person and paying \$1,390 per month which is a reasonable housing expense.
Home Maintenance	\$272	\$0	The figure on Husband's Expense Statement relates to the former marital residence. Husband is currently not paying any home maintenance fees as he is residing at his mother's home and traditionally, this is not an expense associated with rental properties.
Lawn / Yard Care	\$80	\$0	The figure on Husband's Expense Statement relates to the former marital residence. Husband is currently not paying any lawn or yard care expenses as he is residing at his mother's home and traditionally, this is not an expense associated with rental properties.
Home Security	\$133	\$45	The figure on Husband's Expense Statement relates to the former marital residence and he is currently not paying this expense. However, he might have this expense if he rents a residence. Wife is paying \$45 for security expense at her rental property which is reasonable and accepted as such for both parties.
Electric	\$127	\$250	The figure on Husband's Expense Statement

			relates to the former marital residence and he is currently not paying this expense. However, he might have this expense if he rents a residence. Wife is paying \$250 for electricity at her rental property which is reasonable and accepted as such for both parties.
Gas	\$80	\$0	The figure on Husband's Expense Statement relates to the former marital residence and is currently not paying this expense.
Telephone	\$86	\$86	Husband's expense is accepted as reasonable.
Water	\$49	\$49	The figure on Husband's Expense Statement relates to the former marital residence and is currently not paying this expense. However, he might have this expense if he rents a residence and the figure claimed by Husband is accepted as reasonable.
Sewer	\$18	\$18	The figure on Husband's Expense Statement relates to the former marital residence and is currently not paying this expense. However, he might have this expense if he rents a residence and the figure claimed by Husband is accepted as reasonable.
Cable T.V. Internet	\$169	\$169	Husband's expense is accepted as reasonable.
Trash / Recycling	\$13	\$0	The figure on Husband's Expense Statement relates to the former marital residence. Husband is currently not paying sewage fees as he is residing at his mother's home and traditionally, this is not an expense associated with rental properties.
Renter's Insurance	\$0	\$70	Husband's Expense Statement does not include a renter's insurance figure and he is currently not paying this expense. However, he might have this expense if he rents a residence. Wife is paying \$70 for renter's insurance at her rental property which is reasonable and accepted as such for both parties.
Automobile Fuel	\$60	\$60	Husband's expense is accepted as reasonable.
Automobile Repairs	\$115	\$115	Husband's expense is accepted as reasonable.
Medical Insurance	\$0	\$1,000	Husband's expense statement does not have an expense listed for medical insurance as Wife has been providing coverage for him since separation. Husband will need to obtain his own coverage after the divorce decree is entered. It is anticipated that Husband will acquire employment that provides such coverage at a lower rate. The documentation provided by Husband at D - 27 indicates that Husband should be able to obtain a reasonable medical insurance plan for \$1,000 per month if is not able to obtain lower cost insurance through employment.
Counseling / Therapy	\$34	\$34	Husband's expense is accepted as reasonable.
Glasses	\$0	\$0	Husband's expense is accepted as reasonable.
Miscellaneous Medical Expenses	\$845	\$650	Husband testified that this expense is not ongoing and is expected to be less in the future. The master estimated the reduction.
Clothing	\$28	\$28	Husband's expense is accepted as reasonable.
Groceries	\$318	\$318	Husband's expense is accepted as reasonable.
Gym Membership	\$80	\$80	Husband's expense is accepted as reasonable.
Other Memberships	\$20	\$20	Husband's expense is accepted as reasonable.
Meals	\$90	\$90	Husband's expense is accepted as reasonable.
Entertainment	\$78	\$78	Husband's expense is accepted as reasonable.
Pet Expenses	\$30	\$30	Husband's expense is accepted as reasonable.
Vacation	\$228	\$228	Husband's expense is accepted as reasonable.

Gifts	\$62	\$62	Husband's expense is accepted as reasonable.
Legal / Professional Fees	\$1,479	\$0	Once this proceeding has concluded, Husband should incur no more such fees.
Shipping Expense	\$11	\$11	Husband's expense is accepted as reasonable.
Business Expense	\$515	\$0	A business expense for a defunct business that has never been profitable is not reasonable.
Employment	\$51	\$0	Husband did not explain the nature of this expense.
IRA	\$500	\$0	Husband will be receiving over a million dollars in retirement assets in equitable distribution. 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.
TOTAL	\$7,505	\$4,881	

Husband's Northwest Savings Account #1350. At the time of separation, Husband was the titled owner of this account with a stipulated balance of \$14,925. T. p. 6. Wife contends the funds in this account are marital property while Husband contends the funds belong to his mother. Husband testified credibly at the hearing that the funds contained rental receipts from a property his mother owned in Brazil. T. pp. 144 – 148. Furthermore, Husband provided statements evidencing wire transfers from the renter of this property into this account. D – 4. Husband also testified credibly that from time-to-time, his mother distributes the profits from this rental to Husband and his siblings. T. 147. Wife did not provide any evidence that contradicts Husband's testimony. Given that the source of funds for this account are rental receipts for a property owned by Husband's mother, even if Husband, with the permission of his mother, retained all of the rental receipts, his receipt of these funds would constitute a gift from a third party and thus, are not, under any circumstance, marital property. See 23 Pa.C.S.A. §3501(3).

Personal Property. Sometime after separation, Husband removed a substantial number of Wife's items from the former marital residence including items that have sentimental value to Wife. Husband transported these items to his mother's home in Delaware. Husband did not have a credible explanation as to why he took this action and thus, the only conclusion is that Husband

intended to deprive Wife of items that had sentimental value to her.

When the parties first met with the master at the March 19, 2019 Preliminary Conference, the discussion concerning the parties' household furnishings and other personal property items (not including laboratory equipment) was summarized in the March 19, 2019 Preliminary Conference Memorandum as follows:

Other Household Furnishings and Personal Property. The parties will meet at an agreed time and date at the marital residence and at the storage unit to go through the items in the home and storage unit. The parties anticipate mutually agreeing to the distribution of their items without the need for further set-off.

The parties apparently failed to accomplish this task by the June 28, 2019 Settlement Conference and at that Conference, the parties stipulated as follows:

Other Household Furnishings and Personal Property. At the SC, the parties stipulated that immediately following the SC, the parties would appear at the former marital residence and Wife would be allowed to remove the items the parties agreed that she could remove and retain, including all of her financial records and check registers. The parties further stipulated that the items that are being retained for Ben, shall remain at the marital residence until Ben retrieves them or until they must be moved to a storage unit because the house has been sold. However, once Wife has retrieved her items, the parties stipulated that all of their personal property items have been distributed between them to their mutual satisfaction and without the need for further set-off.

Wife testified credibly at the hearing that in accordance with the stipulation reached at the Settlement Conference, the parties and their attorneys traveled to the former marital residence after the Settlement Conference. When they reached the residence, Husband would not allow Wife to enter it, but rather brought six boxes out that Wife placed in her trunk and transported to her residence. T. p. 29. After Wife had an opportunity to look at the items in the boxes, she realized that not all of the items she requested had been returned to her. T. p. 30. Husband had

DISCUSSION AND CONCLUSIONS OF LAW FOR EQUITABLE DISTRIBUTION

Equitable distribution factors. “[T]here is no simple formula by which to divide marital property. The method of distribution derives from the facts of the individual case. The list of factors of [section 3502(a)] serves as a guideline for consideration, although the list is neither exhaustive nor specific as to the weight to be given the various factors.” *Smith v. Smith*, 653 A.2d 1259, 1264, 439 Pa.Super. 283, 294 (1995). The master applied the eleven equitable distribution factors listed in Section 3502(a) of the Divorce Code to this case as follows.

1. **The length of marriage.** The length of the intact marriage of the parties was about twenty-seven years and four months. This factor, in and of itself, does not favor a larger distribution to either party.

2. **Any prior marriages of either party.** This was the first marriage for both parties. This factor does not favor a larger distribution to either party.

3. **The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.** The parties were both born in 1960 and will reach the age of 60 in 2020. Accordingly, both parties have about seven years to work until they reach their full Social Security Retirement age. Wife is in good health. Husband has some health issues that have resulted in lifting restrictions, but do not prevent him from being employed. Husband’s educational background is somewhat more impressive than Wife’s. While both parties received undergraduate degrees and then medical degrees, Husband also has a doctorate degree in philosophy, a paralegal certificate and is a certified fraud examiner. Wife’s employment history is more lucrative than Husband’s. By agreement of the

parties, Husband has never practiced medicine despite his degree, preferring to work in research. Wife on the other hand, was a general surgery resident at the time of the parties' marriage and by the time of separation was appropriately employed as the head of bariatric surgery at Hershey Medical Center earning in excess of \$450,000 annually. Husband has an annual earning capacity of \$72,000. Given his incredibly impressive education (the master notes he has a degree in biochemistry from Harvard College) Husband should have no problem obtaining employment at or exceeding his earning capacity. Nevertheless, Wife's income is more than six times Husband's earning capacity. Wife's major source of income is her employment. Husband's only sources of income are his employment and alimony pendente lite paid by Wife. Aside from the mortgage associated with the former marital residence, which will be fully satisfied upon sale, neither party has any significant debt. Wife is able to meet her reasonable monthly needs and still have a significant amount of discretionary funds remaining. Assuming Husband pays \$1,000 a month for health insurance, Husband is not able to meet his reasonable needs from his earning capacity. However, once Husband obtains employment that provides health insurance at what should be a significantly reduced cost, Husband will be able to meet his monthly needs and as he continues to work and his income increases overtime he should be able to have discretionary income. However, Husband will most likely never have the discretionary income of Wife.

Given Wife's greatly superior income, this factor favors a greater distribution to Husband.

4. **The contribution by one party to the education, training, or increased earning power of the other party.** At the time of the parties' marriage, Wife had already

obtained her education and Husband was completing his doctorate degree, which he received in 1991 and his medical degree which he received in 1990. During the marriage, with Wife's support, Husband obtained a paralegal certification and a certified fraud examiner certification. Husband aided Wife during the marriage by helping her defend a malpractice action and by helping her obtain a better paying contract. Therefore, each party contributed to the other parties' education or earning power and this factor does not favor a larger distribution to either party.

5. **The opportunity of each party for future acquisitions of capital assets and income.** Wife is earning almost half a million dollars a year and Husband is capable of earning at least \$72,000 per year. Wife has a much greater opportunity for future acquisitions of capital assets and income and this factor favors a larger distribution to Husband.

6. **The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.** Wife's only major source of income is through her employment. Wife receives medical insurance and the ability to contribute to retirement through her employment. Husband has the ability to earn at least \$72,000 annually and other employment benefits, but since separation, has not seen fit to find full-time employment. The fact that Husband has not taken the initiative to find full-time employment when he has the obvious ability to do so, should not be a reason to award him a greater portion of the marital assets. Accordingly, this factor does not favor a larger distribution to either party.

7. **The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.** Wife has been employed throughout the marriage earning significantly more than Husband. Accordingly, it is fair to say that the majority of the parties' marital estate valued

at over three million dollars is attributable to Wife's income. Until the parties' relocated to Hershey for Wife's career in 2006, Husband was employed on a full-time basis from the time he finished his graduate and doctorate degrees in 1991. According to his Social Security earnings history, the most Husband ever earned during the marriage was \$90,000 in 2005. D – 22. Nevertheless, there is no dispute that both parties' earnings were contributed to the marriage. Husband testified that by the time the parties relocated to Hershey, he had amassed about \$250,000 from his employment that was eventually used for marital expenses. When the children were young, they were in daycare and neither parent was a stay at home parent. It also does not appear that either party was the majority homemaker, even after the parties relocated to Hershey and Husband started his research business and ran it out of the marital residence. Wife did the majority of the housekeeping, grocery shopping and cooking. Wife also took care of the early morning child activities given that Husband suffered from insomnia and was often not active in the morning. Husband on the other hand took care of the afternoon and evening child activities such as homework. Husband also oversaw the parties' finances. After the parties moved to Hershey, Husband's research company never claimed a profit and while Wife gently prompted Husband to obtain employment with an actual income so that he would be able to take care of himself and the children if something happened to her, she hesitated to push the issue because of the arguments that would ensue. It appears that the parties were both focused on living within their means, educating their children with some help from their parents, and saving for retirement. The parties have amassed a marital estate of over three million dollars and from the testimony at the hearing, the parties' children have become successful adults thanks to both of their efforts. Had Husband obtained employment during the marriage instead of continuing

with a non-profitable business, the marital estate would undoubtedly be larger.

Given Wife's greater contribution of income to the marriage, this factor favors a larger distribution to Wife.

8. **The value of property set apart to each party.** There was no evidence that either party has a substantial separate estate and this factor does not favor a larger distribution to either party.

9. **The standard of living of the parties established during the marriage.** The parties had what can be described as an upper middle-class standard of living. Although in the later years of the parties' marriage, Wife's income was quite substantial, the parties lived well within their means while contributing the maximum to their retirement accounts. Still the parties lived in a nice home, went on vacations, sometimes to Europe, and drove nice, but not luxury, vehicles such as Volvos and Acuras. It does not appear that the parties ever struggled for money. Husband with a \$72,000 annual earning capacity should be able to maintain a middle-class standard of living while Wife will be able to not only maintain the standard established during the marriage, but also easily surpass it. This factor favors a larger distribution to Husband.

10. **The economic circumstances of each party at the time the division of property is to become effective.** Wife's far superior income means that she will be able to contribute significantly to her retirement and other investments accounts. Wife will be able to overcome any financial disadvantage as a result of this divorce so long as she is capable of continuing in her current line of work. Husband on the other hand, if not provided a greater share of the marital assets, will not be able to recover as easily from the divorce as Wife. However, with an earning capacity of at least \$72,000 per year and attendant employment benefits,

Husband should be able to contribute (obviously not to the extent of Wife) to his retirement and investment accounts until he reaches his full Social Security retirement age. Accordingly, this favors a larger distribution to Husband.

10.1. The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.

Neither party submitted evidence of tax ramifications associated with the assets in this case.

However, the 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.

10.2. The expenses of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain. The expense of sale, transfer or liquidation associated the assets have been addressed in the recommendation and therefore, this factor does not favor a larger distribution to either party.

11. Whether the party will be serving as the custodian of any dependent minor children. Neither party is serving as the custodian of a minor child and thus, this factor does not favor a larger distribution to either party.

Summary. The majority of the factors favor a larger distribution to Husband and only one factor favors a larger distribution to Wife. Given his education, Husband should be able to obtain employment that at least meets, if not exceeds, his earning capacity of \$72,000 annually. However, Wife's income will most likely always exceed Husband's income many times over.

Proceeds. The marital residence was listed for sale after the master's hearing in accordance with the Court's Order Addressing Sale of Marital Residence Pending Final Order of Court entered on October 23, 2019. On or about January 20, 2020, a sales agreement was entered into in regard to the marital residence. JT. – 1. As will be addressed in detail in the attorney's fees portion of this report, the sales price of \$340,000 is appropriate given the circumstances and the evidence presented at the hearing. Pursuant to the sales agreement, settlement will not occur until March 16, 2020, after the date of filing of this report. The net funds after the costs of sale (mortgage, real estate commission, etc.) and after Wife is reimbursed for the items listed in paragraphs 8 and 10 of the Court Order are to be placed in Husband's attorney's escrow account. From that account, Husband should be reimbursed for the cost of replacing the basement door of the marital residence assuming he is able to provide Wife with documentation evidencing the cost. The remaining proceeds of sale of the home and personal property (if any) should be distributed sixty percent to Husband and forty-percent to Wife.

Personal Property Items. Within thirty days of the court's final order for equitable distribution, Husband should deliver to Wife's attorney's office, every item contained on P – 8 that is in his possession, custody and/or control.

Other Documentation. Within thirty days of the court's final order for equitable distribution, each party, should at the request of the other, execute and return any other documentation necessary to effectuate this distribution, such as vehicle titles.

DISCUSSION AND CONCLUSIONS OF LAW FOR ALIMONY

The Pennsylvania Superior Court has, on several occasions, stated that the purpose and intent of an alimony award is as follows:

We previously have explained that ‘the purpose of alimony is not to reward one party and to punish the other, but rather to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met.’ Alimony ‘is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor’s ability to pay.’ Moreover, ‘alimony following a divorce is a *secondary remedy* and is available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution award and development of an appropriate employable skill.’ *Teodorski v. Teodorski*, 857 A.2d 194, 200 (Pa.Super. 2004), quoting *Moran v. Moran*, 839 A.2d 1091, 1096 (Pa.Super. 2003).

Gates v. Gates, 933 A.2d 102, 106 (Pa.Super. 2007). Moreover, Section 3701(b) of the Divorce Code sets forth seventeen factors that must be considered in making a recommendation for alimony. The master considered the alimony factors as follows.

1. The relative earnings and earnings capacities of the parties. Wife’s earnings are over six times Husband’s earning capacity. This factor favors an award of alimony to Husband.

2. The ages and the physical, mental and emotional conditions of the parties. The parties were both born in 1960. Wife is in good physical condition and Husband, although suffering from some health issues that restricts the amount he is able to lift, is not prohibited from working. There was no evidence that either party suffers from any mental or emotional conditions that would prohibit him/her from working. This factor does not favor an award of alimony to Husband.

3. The sources of income of both parties including, but not limited to, medical retirement, insurance or other benefits. After the divorce decree is entered in this case and if the master’s recommendation becomes the final order of court, the main source of income for each of the parties will be through their employment. Wife’s current employment provides medical insurance, retirement participation and other benefits. Given his education, there is no reason why Husband should not be able to obtain employment with like benefits. Accordingly,

this factor does not favor an award of alimony to Husband.

4. The expectancies and inheritances of the parties. There is no evidence that Wife expects any inheritances. At the hearing, Husband testified that he might inherit his mother's house upon her passing. However, after the hearing it was discovered that Husband's mother's residence is held by a trust. Accordingly, after Husband had an opportunity to investigate the trust, the parties stipulated, through counsel, that had Husband testified, he would have testified that unbeknownst to Husband, his father created a trust for the property before he died. Husband would have further testified that he confirmed with his mother and her estate attorney that Husband is not a beneficiary of the trust. The parties, through their attorneys, further stipulated to note that there was no opportunity for cross-examination. In any event, there was no evidence that Husband expects any inheritance. This factor does not favor an award of alimony to Husband.

5. The duration of the marriage. The parties were married for about twenty-seven years and four months. This factor does not favor an award of alimony to either party, but would impact on the length of alimony if recommended.

6. The contribution by one party to the education, training or increased earning power of the other party. As set forth in detail in equitable distribution factor #4 above, each party supported the other's education and/or career goals during the marriage. 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. Husband has not adequately explained his failure to obtain profitable employment since then. This factor does not favor an award of alimony to Husband.

7. The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child. Neither party is the custodian of a minor child, so this factor does not favor or disfavor an award of alimony to Husband.

8. The standard of living of the parties established during the marriage. The parties established an upper-middle class standard of living during the marriage. Given Wife's superior income, she will have no problem maintaining and perhaps even exceeding the marital standard of living. With his earning capacity alone, Husband will not be able to maintain an upper-class standard of living. This favors an award of alimony to Husband.

9. The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment. Husband's education is superior to Wife's education. However, Wife's continued work experience is superior to Husband's. Wife is appropriately employed. Husband is not. The parties have been separated since August 28, 2018. Since separation, the only employment Husband has engaged in is substitute teaching, earning less than \$100 a day and working very few days a week. Had Husband obtained employment shortly after separation at his Court determined earning capacity, he most likely would now be earning more than \$72,000 annually, have access to medical benefits and the ability to accrue employer sponsored retirement benefits. However, Husband made it clear at the hearing that he does not feel he has any obligation to find full-time lucrative employment, so he is able to support himself. Husband testified to a desire to revive his research lab despite the fact that his previous efforts in that regard yielded no income and only expenses. Be that as it may, Husband has sufficient education to find appropriate

employment that would allow him to support himself. At the trial Husband presented as highly intelligent and capable. This factor does not favor an award of alimony to Husband.

10. The relative assets and liabilities of the parties. Neither party has substantial separate assets and neither party has substantial outstanding debts. This factor does not favor an award of alimony to Husband.

11. The property brought to the marriage by either party. Husband testified, without providing any documentation, that he contributed \$250,000 to the marriage. Later in his testimony, Husband indicated that the \$250,000 would have been from his earnings during the marriage. There was no evidence that either party brought substantial pre-marital assets to the marriage. This factor does not favor an award of alimony to Husband.

12. The contribution of a spouse as homemaker. The parties shared the homemaking and child rearing activities. Accordingly, this factor does not favor an award of alimony to Husband.

13. The relative needs of the parties. Wife has net income in excess of \$20,000 per month and monthly reasonable expenses of \$5,467 and thus, has a great deal of discretionary income. However, if the master's recommendation is upheld and Wife receives only 40% of the marital estate, a portion of her discretionary income will be required to bolster her retirement and other investments. With a \$72,000 a year earning capacity, Husband has net monthly earnings of about \$4,422.88 and reasonable monthly net expenses of \$4,881. However, \$1,000 of his expenses as calculated by the master is for medical insurance. Once Husband obtains full-time employment, he should be able to obtain insurance through that employment at a greatly reduced rate. This factor favors an award of alimony to Husband.

14. The marital misconduct of either of the parties during the marriage. Both testified that the parties would, not frequently, but from time to time, engage in physical altercations. Wife submitted photographs evidencing some of the injuries she sustained at Husband's hands during these altercations. P – 9. Wife testified credibly that sometimes she instigated the violence and sometimes Husband instigated it. Wife also admitted that she never reported the violence to the police. Husband did not deny Wife's allegations specifically. Husband did not testify that Wife always instigated the violent episodes but testified that "pretty consistently [Wife] instigates and escalates." T. p. 161. Husband did not deny injuring Wife as depicted by the photographs. Husband testified that he reported at least one of the physical altercations to the police. Wife's testimony made it clear that Husband's report was made after the parties' separation leading Wife to surmise that the report was made to bolster Husband's position in the divorce action. Despite these allegations, it was Husband who denied that the marriage was irretrievably broken after Wife filed her Section 3301(d) affidavit. Obviously, violence is never acceptable in any relationship, but both parties were active participants in the violence that occurred in this relationship and thus, both are guilty of marital misconduct. There was no credible evidence that the marital misconduct on either party's part affected either party's financial needs or his or her ability to meet those needs. Therefore, this factor does not impact on the alimony determination.

15. The Federal, State and local tax ramifications of the alimony award. Alimony is neither tax deductible by the payee or included in the taxable income of the payee. This factor does not favor an award of alimony to Husband.

16. Whether the party seeking alimony lacks sufficient property including, but not

limited to, property distributed in the divorce action, to provide for the party's reasonable needs. The parties' marital estate is in excess of three million dollars. If the master's recommendation is upheld, Husband will receive sixty-percent of the marital estate or almost one point nine million dollars. Husband will be receiving almost \$600,000 more of the marital estate than will Wife. The majority of the parties' assets are in retirement accounts, however, the sale of the marital residence should result in net proceeds of about \$200,000. Husband's sixty-percent share of the proceeds will provide him with about \$120,000 in liquid funds. Husband will also be receiving about \$220,000 in non-retirement assets, such as savings bonds and investment accounts, that are accessible even though they may have tax consequences associated with them. Moreover, as Husband will reach age sixty, this year, he is certainly able to begin drawing on his retirement accounts without worrying about an early withdrawal penalty. If Husband chooses to remain employed as a substitute teacher, he may have to begin utilizing his share of the marital estate to meet his reasonable needs. In that event, Husband might not be able to live lavishly, but with assets worth almost 1.9 million dollars, he certainly should be able to meet his reasonable needs. This factor does not favor an award of alimony to Husband.

17. Whether the party seeking alimony is incapable of self-support through appropriate employment. As discussed previously, Husband is certainly capable of supporting himself through appropriate employment. Husband has an undergraduate degree from Harvard College, a medical and another doctorate degree from Cornell University, a paralegal certificate and a certified fraud investigator designation. The fact that Husband has to date, refused to obtain employment commiserate with his education does make him incapable of self-support. This factor does not favor an award of alimony to Husband.

Summary. Of the factors above, three favor an award of alimony to Husband. However, it is important to note that the three alimony factors that favor an award of alimony to Husband were also contained within the equitable distribution factors that favored a larger distribution of marital property to Husband. Alimony and equitable distribution are not determined in a vacuum, alimony is a secondary remedy, only to be awarded if economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution award and development of an appropriate employable skill cannot be effectuated without an alimony award. As the Pennsylvania Superior Court stated in *Nemoto v Nemoto*, 620 A.2d, 1216, 1221 n. 6 (Pa. Super. 1993), “we cannot view an order granting alimony in isolation from a trial court’s equitable distribution scheme. . .”

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. The alimony would terminate upon either party’s death, Husband’s remarriage or cohabitation and be modifiable (upward or downward) based upon a change of circumstance. In other words, Husband would not be guaranteed receipt of the entire alimony award. Moreover, it would keep these parties tied together for potentially seven more years and would certainly discourage Husband from moving on with his life and perhaps entering into a new relationship and/or accepting lucrative employment. If Wife were to become disabled and the alimony terminated, the equitable distribution scheme would not be modifiable.

By recommending that Husband's request for alimony be denied and instead recommending that Husband receives sixty-percent of the marital assets in equitable distribution, Husband should be motivated to find employment close to his earning capacity. Moreover, even if Husband decides never to work again, the extra funds should permit him to provide for his reasonable needs without worrying about Wife's ability to continue to earn her current salary. Husband will not have to be concerned that his new relationship will jeopardize his income.

An alimony award to Husband in this case is not equitable.

RECOMMENDATION FOR ALIMONY

Based on the foregoing, the master recommends that Husband's request for alimony be denied.

DISCUSSION FOR COUNSEL FEES, COSTS AND EXPENSES

Husband's Request for Counsel Fees, Costs and Expenses.

Husband raised a claim for counsel fees, costs, and expenses under Section 3702 of the Divorce Code, which authorizes an award of reasonable counsel fees and expenses in appropriate cases. In determining the appropriateness of an award of counsel fees, it is necessary to review all relevant factors. "These factors include the payor's ability to pay, the requesting party's financial resources, the value of services rendered, and the property received in equitable distribution." *Busse v. Busse*, 921 A.2d 1248, 1258 (Pa.Super. 2007) (citations omitted). Accordingly, "[i]n most cases, each party's financial considerations will ultimately dictate whether an award of counsel fees is appropriate." *Id.* "In addition, "[c]ounsel fees are awarded only upon a showing of actual need." *Harasym v. Harasym*, 614 A.2d 742, 747 (Pa.Super. 1992). Husband requests an attorney's fee award of \$20,000.

unnecessarily. As Wife points out in her post-hearing submission at page 29:

Husband chose to be represented by five different law firms throughout this divorce action. In some cases, multiple attorneys in various firms were doing work for Husband simultaneously. With each change of counsel, Husband incurred counsel fees for the new law firm to review the existing records before taking any substantive action in the matter. When Husband's current counsel took over, Attorney Bell-Jacobs billed Husband for a total of \$2,542.50 from January 22, 2019 through January 31, 2019 for "case work-up" From January 18, 2019 through September 26, 2019, Husband was represented by two separate law firms for no discernable reason. There is questionable "value" for some of the counsel fees Husband paid. Husband brought this additional cost on himself, by his choice.

In addition, the master notes that in addition to filing his own 1920.33(b) Pretrial Statement, Husband apparently directed his attorney to prepare and file a response to Wife's 1920.33(b) Pretrial Statement. Pa.R.Civ.P. 1920.33(b) does not envision a response to Pretrial Statements. In fact, when both parties file pretrial statements that are diametrically different in their positions, the pretrial statements are enough for the fact-finder to understand that the parties are not in agreement on most of the issues. A response to the other parties' pretrial statement is simply redundant and unnecessary. Certainly, it is Husband's right to have as many attorneys represent him together or separately as he desires, and he certainly may direct his attorney to file a response to a document to which no response is required, however, in determining whether an award of attorney's fees is appropriate, the fact-finder must objectively look beyond the requestor's subjective view of the reasonableness of his/her fees.

Husband also argues that his need for an award of counsel fees is amplified by the fact that Wife and her counsel attempted to conceal more than a million dollars in marital assets therefore, forcing Husband to incur additional fees in his pursuit of the truth. As has previously been addressed, Wife testified credibly that she was mistaken in her initial recitation of her

residence was to be listed for sale as soon as possible. Husband failed to provide any reasonable explanation as to why the home was not listed for sale from the date of the settlement conference in June through the hearing in October of 2019.

Husband attempted to justify the failure to list the home by indicating that there were numerous items of personal property remaining in the home and noting that Wife had suggested that an estate sale be held, a suggestion with which Husband agreed. Husband then indicated that it was his understanding that Wife would take care of getting the items sold and that she had not done so. T. pp. 172 – 173. However, for Wife to complete that task, she would have required access to the home and Husband had refused her access. At the settlement conference, the parties stipulated that immediately following that conference, the parties would appear at the former marital residence and Wife would be allowed to remove the items the parties agreed that she could remove and retain, including all of her financial records and check registers. When Wife appeared at the marital residence in accordance with that stipulation, Husband refused Wife entry to the marital residence and instead, brought boxes from the home, which Husband asserted contained Wife's items. T. p. 29.

However, immediately following the hearing and after discussion between the master and the attorneys and the attorneys and their clients, the parties agreed to the entry of an Order that would authorize Wife to list and sell the home. The master prepared a draft of the Order, provided it to both attorneys, who, after minor adjustments and corrections, approved the Order of Court dated and entered on October 23, 2019⁴. One of the provisions of the Order directed that Husband sign a power of attorney and return it to Wife so that she would be able to list the home for sale. While Husband executed the power of attorney, he refused to allow his attorney to deliver it to Wife's attorney.

⁴ Although the Order was reviewed and approved by the Honorable Edward M. Marsico, Jr., it was filed with a *Per Curiam* signature.

Wife and on January 22, 2020, the master was advised by the parties' attorneys that it was under agreement for sale with a sales price of \$340,000. A copy of the sales agreement was provided, and the attorneys also stipulated that it should be entered as Joint Exhibit #1. Settlement on the sale is scheduled to occur on March 16, 2020.

On February 11, 2020, Wife filed a second petition for contempt. In that petition, Wife asserted that Husband had, in contravention of the court's order, revoked the power of attorney. According to the Petition, Husband sent the revocation only to the listing agent, Joan May. A copy of Husband's revocation was attached to Wife's February 11, 2020 petition for contempt. Wife requested that she be granted sole authority to sell the marital home and for reimbursement of the counsel fees she incurred to enforce the court's order.

By court order dated February 13, 2020 and entered February 14, 2020, the court provided Wife with the sole and exclusive authority to sell the former marital residence. The court also referred Wife's request for counsel fees to the undersigned.

In the proposed order attached to Wife's first petition for contempt, Wife requested reimbursement for counsel fees in the amount of \$600 and in the second petition for contempt, she requested reimbursement for counsel fees in the amount of \$900.

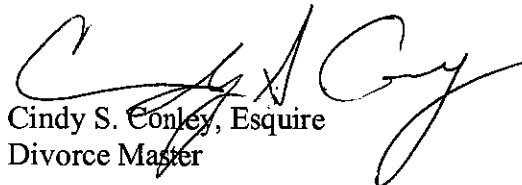
In refusing to deliver the power of attorney as required by the court order and then, by revoking the power of attorney, Husband clearly acted in contravention of the court order. When Husband filed his answer to the first petition for contempt, the gist of Husband's answer was that he never agreed, and the order did not mandate him to sell the property "as is" and at a "fire sale". In fact, the order did not mandate that the home be sold "as is" and at a "fire sale". However, it did unequivocally require Husband to not only execute, but also, deliver to Wife the Power of Attorney that permitted Wife to list

and sell the home for sale with Joan May or another agreed upon realtor. It appears from a review of Joint Exhibit #1, that not only was the house listed for \$334,000, the figure suggested by Husband when he refused to deliver the executed power of attorney to Wife, but also that it is under agreement for sale at a price of \$340,000. Clearly, Husband's fears of an "as is" and a "fire sale" were not warranted. But yet, Husband still felt it necessary to, contrary to the court order, revoke the power of attorney. As stated by Wife in the second petition for contempt "Husband has shown a settled and consistent intention to disobey this Honorable Court's orders, first by refusing to deliver the signed POA to Wife and then by revoking the POA. . ." It is equitable to award counsel fees to Wife for having to enforce the October 23, 2019 Order. In her first petition, Wife requested \$600 reimbursement and in her second \$900. The preparation of the second petition should not have required any more time than the preparation of the first petition so the \$900 request must also include the time for the first petition. Accordingly, an award of \$900 to Wife to reimburse her for the attorneys' fees incurred to enforce the order is appropriate and reasonable. After offsetting the award to Wife by the reimbursement to Husband for costs, Wife is owed \$300.

RECOMMENDATION FOR COUNSEL FEES, COSTS, AND EXPENSES

Based on the forgoing, Husband should pay Wife the sum of \$300 to reimburse her for the reasonable attorneys' fees and costs incurred to enforce the October 23, 2019 Order of Court. Said sum should be paid to Wife out of Husband's share of the marital residence sales proceeds.

Respectfully submitted,


Cindy S. Conley, Esquire
Divorce Master

DATE: 13 March 2020

I. THE MASTER ERRED AND ABUSED HER DISCRETION IN FINDING HUSBAND COMMITTED MARITAL MISCONDUCT WHERE THE TWO IMAGES OFFERED INTO EVIDENCE BY WIFE WERE APPARENTLY FROM 1993 AND 2002, AND HUSBAND DID NOT AFFIRM THAT HE RECOGNIZED SUCH IMAGES, WHERE HUSBAND TESTIFIED THAT VIOLENCE DURING THE MARRIAGE WAS RARE, BUT WHEN IT OCCURRED, IT WAS WIFE WHO WAS THE INITIATOR, AND HUSBAND TESTIFIED THAT WIFE THREATENED HUSBAND'S LIFE AND MADE VIOLENT ATTACKS AGAINST HIM, INCLUDING THE USE OF DEADLY WEAPONS, IN 2016 AND 2017. (Defendant's Exhibit 7).

In her report, the divorce master finds both parties guilty of committing marital misconduct during the marriage. As to Husband's claims of misconduct on the part of Wife, Wife acknowledged her violent attacks against Husband. In attempting that Husband was also guilty of misconduct, Wife submitted into evidence two photographs allegedly from 1993 and 2002 that she claimed showed the after effects of violence from Husband. However, Husband denied in engaging in violent attacks against Wife, and on the stand he did not affirm that he recognized the images submitted by Wife. Husband testified credibly that, despite the fact that incidents of violence were rare during the marriage, when they occurred it was Wife who was instigator, and Husband testified about the violent attacks Wife made against him in 2016 and 2017, including chasing Husband around the marital residence and swinging a baseball bat at him; hitting him with a flashlight; spraying his face with phenol. Wife's misconduct was conclusively established, yet the master chose to find both parties committed marital misconduct. Such a finding is not supported by the record and is an abuse of discretion.

IV. PROPOSED RESOLUTION.

Husband agrees that the master correctly determined that the marital estate should be divided 60% to Husband and 40% to Wife and that the net sale proceeds of the marital residence should be divided 60% to Husband and 40% to Wife.

One of the paramount considerations that a divorce court must consider when addressing the underlying economic issues is to effectuate economic justice between the parties and “insure a fair and just determination and settlement of their property rights.” 23 Pa.C.S.A. § 3102(a)(6) (2010). A divorce court has full equity power and jurisdiction to ensure that economic justice is effectuated. *See* 23 Pa.C.S.A. § 3323(f) (2010). Notwithstanding the fact that the master recommended an equitable distribution of the marital assets 60% in favor of Husband, the master’s overall determination fails to effectuate economic justice by denying Husband’s alimony claim.

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. In the absence of an alimony award, Husband will be forced to begin exhausting his retirement benefits now at age sixty, and by the time Husband reaches his normal retirement age, age sixty-seven, and begins collecting social security, Husband will have substantially depleted his assets. Wife, conversely, will continue to work for at least the next seven years, earning in excess of \$400,000 per year, and will have the luxury of not only deferring liquidation of the marital retirement assets awarded to her but also accumulating substantially more assets to enjoy at the time of retirement. Without an award of alimony to Husband, seven years from now a seriously inequitable result will occur: Wife will retire with substantial retirement benefits at her disposal while Husband will have virtually depleted the retirement assets awarded to him and will have little asset security as he enters the final stages of his life. As the current COVID-19 pandemic has shown, the value of the retirement assets awarded to Husband can diminish drastically due to market conditions. While alimony is a secondary remedy, this Court must, nevertheless, effectuate economic justice with the totality of

E. THE MASTER ERRED AND ABUSED HER DISCRETION IN FAILING TO PROVIDE THAT HUSBAND SHOULD BE REIMBURSED FROM THE MARITAL RESIDENCE SALE PROCEEDS THOSE MONIES HE PAID TO GET THE RESIDENCE READY FOR SALE, TO EFFECTUATE ITS SALE, AND TO MAINTAIN THE RESIDENCE PENDING SALE. (DEF.'S EX. 12, 19).

At trial, Husband testified as to the expenses he had thus far incurred in getting the residence ready for sale. Following trial, and while the house was listed for sale, Husband incurred additional expenses related to getting the residence ready for sale, effectuating at sale, and maintaining the residence pending sale, which expenses the master failed to award reimbursement notwithstanding Husband's request in his brief. Husband provided evidence to show that he incurred \$8,612.70 in repair costs to get the marital residence ready for sale, as well as mortgage, utility, and other expenses he paid after November 1, 2019.³ After the marital residence sold, the net proceeds were placed into escrow where they currently remain. Not only should Husband receive 60% of the sale proceeds, he should be reimbursed the \$8,612.70 in expenses as well as the mortgage and utility expenses he incurred after November 1st from the sale proceeds, as well as other costs enumerated (*see* Defendant's Petition for Contempt and Special Relief filed on March 10, 2020, which is incorporated herein as if set forth at length). Such a determination is the only fair and equitable result inasmuch as Wife will be reimbursed from the sale proceeds for any expenses she has incurred pursuant to the Court's October 23, 2019 order. In failing to direct that Husband should likewise be reimbursed for expenses he has incurred, the master erred and abused her discretion.

Husband further notes the following with respect to the issues of credibility and the purported need for a Power of Attorney to be to Wife in the first place. In what Husband

³ The Court's October 23, 2019 Order regarding the sale of the house provided that, effective November 1, 2019, Wife was responsible for all costs related to maintaining the home.

believed to be a planned effort to take over the sale of the marital home in order to sell it “as is” (according to Wife’s numerous statements from the spring of 2019 through January 2020), Wife filed a false claim, first in a letter to counsel and then repeated in her pretrial statement, alleging on May 25, 2019, while both spouses were dividing property at the marital home, Husband threatened Wife’s life. In Wife’s pretrial statement she stated: “On the same day [May 25, 2019, while Husband and Wife met at the marital home to divide property] Husband made a comment about burying Wife in the backyard, which Wife took as a threat to her safety . . . Wife feels unsafe around Husband. For that reason, Wife has minimized her contact with Husband since their separation. Husband vehemently denied such allegations in his court filing in which he stated: “It was vehemently denied that Husband ever made any comment to Wife regarding burying Wife in the backyard. Such allegation is slanderous, libelous, arbitrary, vexatious and made in bad faith. On May 25, 2019, around the presence of third-party including Lisa Hardy, Husband, Wife, and Ms. Hardy discussed conducting a burial for the family pet rats, Peaches and Oats, that had been frozen in a freezer in the house. Such a conversation was light-hearted and consumed by laughter on the part of all parties involved. At no time did Husband make any statement regarding burying Wife in the backyard. In point number 7, Husband said: “It is denied that Wife feels threatened by Husband and it is denied that Wife feels unsafe around Husband. At no time during the May 25, 2019 meeting did Wife express any fear or concern about Husband. On the contrary, Wife caused alarm in the security officer that had been hired by Husband to mediate the meeting due to her sudden change in temper and unjustified cursing.” Finally, at point 9, Husband stated: “It is denied that Wife has attempted to minimize her contact with Husband because of perceived threat to Wife by Husband. After separation, Wife remained in written contact with Husband into 2018. At the parties’ May 25, 2019 meeting, which meeting

was in the presence of a security officer, Wife made no representation or indication of feeling any threat by Husband, but rather proposed several times to meet with Husband again to continue the distribution of personal property. Further, and most exculpating, it is that Wife proposed to Husband that in such future meetings, there would be no need to have a security officer present.” *See* Husband’s Response to Pretrial Statement, which is incorporated herein by reference thereto as if set forth at length.

Husband continued in response as follows: “In further agreement in the March 19, 2019 conference, disposition of items in the home was to occur on May 25, 2019. Husband and Wife met on that date and resolved the disposition of the items in the house. However, Wife asserted in court papers (the pretrial statement of June 2, 2019) that Husband had threatened her life at the marital home on May 25, 2019, by threatening to bury her in the backyard at that location. Based on such purport of threat, Wife refused to cooperate fully in preparing the house for sale. Of particular note, at the meeting at the marital home on May 25, 2019, Wife and Husband were in the presence of a security agent retained by Husband. The record made during that meeting will provide really strong evidence that Husband never made any such threat against Wife. To the contrary, Wife did not believe as if she had been threatened in any way. Wife repeatedly offered to return to handle and estate sale of remaining items which she has posed on May 25. Husband is highly concerned that Wife’s false statements to the Court could have led the divorce master to believe she had to impose a new agreement in which Husband is to grant a Power of Attorney to sell the house to Wife.” *See* Defendant’s Answer to Plaintiff’s Petition for Civil Contempt filed on November 27, 2019, which is incorporated herein by reference thereto as if set forth at length.

Husband notes that such false claims Wife made were intended as part of an effort to prejudice the trier of fact by creating a purported need for the removal of Husband’s

constitutional rights against unreasonable seizure of his property, as Husband believes subsequently occurred in this case and to which Husband takes exception by way of demand for additional hearing. As Husband's response is verified as to the facts he expressed in his response to pretrial statement filed on June 21, 2019, which is incorporated herein at length, Wife had an opportunity to challenge such claims at trial on October 17, 2019, Husband asserts that such testimony was an important part of the record for consideration by the Court.

Thus, again in this matter, as in other aspects of the case, Husband has taken exception to the master's findings regarding the credibility of the parties. Furthermore, with respect to exceptions made here with respect to failure to reimburse Husband for expenses he made to sell the marital home, he notes that during the pendency of the case, Husband found that the real estate agent Husband and Wife had previously worked with, Joan May, ceased to communicate with him to prepare the home for sale (Husband suspects she was told that Husband had threatened Wife's life). The master's action of directing the Power of Attorney led to a great expenditure of legal fees, and were it not for the assistance of another real estate agent, Sandra Pharmer, at the time a colleague of Joan May, Husband would not have been able to timely and cost effectively prepare the home for sale. Had Husband not been able to prepare the home for sale, but rather Wife had been given the control to sell it "as is," which she had consistently claimed was her intention, it was anticipated that many tens of thousands of dollars in gains would have been lost. Despite Wife, herself, not following any of the requirements which the master's order had imposed on her, such as paying for the mortgage and utilities and holding a sale of the items remaining in the home (the latter of which was Wife's idea in the first place), Wife filed for contempt. The basis claimed for doing so was that Husband had not turned over the Power of Attorney. Husband indeed did not do so, despite his successfully preparing the

house for the seeming joint financial benefit of the parties, because Wife refused to compensate real estate agent Pharmer for her work to prepare the house. Husband considered this an obvious injustice, and he resolved to address it.

At all times, Husband was in the belief that a Power of Attorney was revocable if Wife failed to act in good faith and honor the October 23, 2019 Order. No hearings were ever held on the two contempt petitions filed by Wife. After an initial telephone conference with the attorneys, Husband did release the Power of Attorney, but once Husband learned Wife would not compensate Ms. Pharmer for her work, and Wife failed to comply with the October 23, 2019 Order, Husband sent revocation of his Power of Attorney to Coldwell Banker of Hershey. Again, without confirming whether Husband would cooperate with the sale, Wife filed a petition for contempt. Husband filed his own petition for civil contempt and special relief. Husband takes exceptions to these outcomes, especially the failure to pay Ms. Pharmer

F. THE MASTER ERRED IN HER OVERALL CREDIBILITY DETERMINATIONS BY FINDING WIFE DID NOT INTENTIONALLY FAIL TO DISCLOSE ASSETS ON HER VERIFIED INVENTORY AND IN HER VERIFIED DISCOVERY RESPONSES, DESPITE CLEAR EVIDENCE TO THE CONTRARY, AND FINDING THAT HUSBAND WAS EVASIVE IN HIS TESTIMONY CONCERNING THE WHISTLEBLOWER LAWSUIT AND THAT HE TOOK ACTIVE STEPS TO FOREGO EMPLOYMENT DURING MARRIAGE. (DEF.'S EX. 8, 9, 10, 11, 20).

In addressing Husband's claim that Wife sought to secret more \$1,000,000 in marital assets by intentionally failing to disclose assets, the master said it was clear Husband oversaw the party's investments, Husband had Wife's check registers, and that Husband, himself, had failed to disclose information about the various savings bonds held by the parties. In reviewing the

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ANN M. ROGERS, : IN THE COURT OF COMMON PLEAS OF
 Plaintiff/Wife : DAUPHIN COUNTY, PENNSYLVANIA
 :
 v. :
 : NO. 2017-CV-6699-DV
 ROBERT P. BAUCHWITZ, :
 Defendant/Husband : CIVIL ACTION – LAW
 : DIVORCE

OPINION

PROCEDURAL HISTORY

Before this Court are the Exceptions to the Master's Report filed by Ann M. Rogers (hereinafter "Wife") and Robert P. Bauchwitz (hereinafter "Husband"). The instant matter was commenced on September 20, 2017, when Wife filed a Complaint in Divorce raising claims for either a Section 3301 (c) or Section 3301 (d) no-fault divorce and Equitable Distribution.¹ On September 26, 2017, Husband filed an Answer to Wife's Divorce Complaint denying that the marriage was irretrievably broken and raised claims for alimony, alimony pendente lite, counsel fees, costs and expenses. Wife filed an Amended Complaint on October 3, 2017. On October 5, 2017, Husband's attorney accepted service of the Amended Complaint and proof of service was filed on October 12, 2017.

¹ An Order was issued non-entertaining Wife's Divorce Complaint for failure to adhere to Dauphin County Local Rules 1920.1 and 1920.1(3). Wife was directed to file an Amended Complaint within 20 days.

Wife filed a Motion for Appointment of Divorce Master on November 6, 2018. Cindy Conley, Esquire was appointed as Master on November 20, 2018. A Preliminary Conference was scheduled for January 30, 2019; at the request of both parties, it was re-scheduled for February 6, 2019. At Husband's request and over Wife's objection, the February 6, 2019 Preliminary Conference was re-scheduled to March 19, 2019.

On March 21, 2019, Wife filed an Affidavit pursuant to § 3301(d) of the Divorce Code in which she averred that the parties had separated in August, 2017, had been separated in excess of one year and that the marriage was irretrievably broken. On April 17, 2019, Husband filed a counter-affidavit pursuant to § 3301 (d) of the Divorce Code in which he averred that the parties had not been separated in excess of two years, that the marriage was not irretrievably broken and that he wished to claim economic relief.

A Settlement Conference was held on June 28, 2019. A hearing was scheduled for October 17 and 18, 2019 to address all remaining issues. On October 11, 2019, Husband filed a request for a continuance of the hearing and that discovery be extended. This request was denied. Both parties were present with counsel at the October 17, 2019 hearing and offered testimony. The record was closed on October 17, 2019 at the conclusion of the hearing and after the parties waived the preparation and filing of the transcript. Both parties timely filed post hearing memoranda.

On March 13, 2020, Master Conley issued her Report and Recommendation of the Master. She recommended that Husband's request for alimony be denied. She also denied Husband's request for attorney's fees; however, she did determine that Wife should reimburse Husband \$600.00 that he paid for the valuation of the parties' defined benefit pensions. Master Conley awarded Wife attorney's fees in the amount of \$900.00;

when offset with the \$600.00 awarded to Husband, Wife was entitled to \$300.00 in attorney's fees.

Both Husband and Wife filed exceptions to the Master's Report. An Order was issued on May 20, 2020, setting forth briefing deadlines, as well as scheduling oral argument for July 16, 2020. Thereafter, the case was assigned to this Court and oral argument was re-scheduled for August 6, 2020; briefs were due no later than July 27, 2020. Oral argument was held before this Court on August 6, 2020.

DISCUSSION

Wife first argues that the Divorce Master erred in recommending that Husband receive 60% of the total value of the marital assets and that Wife receive 40%. It is Wife's position that the statutory equitable distribution factors support a distribution of 55% to Husband and 45% to Wife.

When reviewing divorce exceptions, the evidence must be considered *de novo* at every stage of review. Coxe v. Coxe, 369 A.2d 1297, 1297 (Pa. Super. 1976). The reviewing court must consider the evidence, its weight, and the credibility of the witnesses, *de novo*. Arcure v. Arcure, 281 A.2d 694, 695 (Pa. Super. 1971).

The report of the master is entitled to great consideration in that the master has heard and seen the witnesses, and it should not be lightly disregarded. Id. at 694. However, the master's report is advisory only, and the reviewing court is not bound by it and it does not come to the court with any preponderate weight or authority which must be overcome. Id.

Section 3502(a) of the Pennsylvania Divorce Code sets forth eleven (11) factors to be considered by a court when determining the equitable distribution of marital assets pursuant to a divorce decree. 23 Pa. C.S.A. § 3502(a).

In the present matter, the Divorce Master analyzed the eleven equitable distribution factors enumerated in 23 Pa. C.S.A. § 3502(a). In so doing, the Divorce Master concluded that the majority of the factors favored Husband and that equity demanded Husband receive a greater portion of the marital estate. The Divorce Master ultimately recommended that Husband receive 60% of the marital assets while Wife received 40%.

The application of the criteria found in 23 Pa. C.S.A. § 3502(a) is meant to effectuate economic justice between parties and insure a fair and just determination and settlement of their property rights. Smith v. Smith, 653 A.2d 1259, 1264, 439 Pa. Super. 283, 294 (1995). There is no simple formula by which to divide marital property. Id. The method of distribution derives from the facts of the individual case. Id. The list of factors serves as a guideline for consideration, although the list is neither exhaustive nor specific as to the weight to be given the various factors. Id.

The Divorce Master found several statutory factors weighing in favor of Husband receiving 60% of the marital assets. Specifically, the age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; the opportunity of each party for future acquisitions of capital assets and income; the standard of living of the parties established during the marriage; and the economic circumstances of each party at the time the division of property is to become effective. Wife argues that the Divorce Master erred by considering the disparity between

the parties' incomes in these four separate factors. While Wife acknowledges her income is greater than Husband's, she contends that it does not justify a 60% distribution to Husband.

As noted by the court in Smith, there is no formula to determine the division of marital property. Here, based on the facts and application of the factors, the Divorce Master determined that Husband was entitled to receive 60% of the marital assets. Wife argues that the Divorce Master failed to consider that, in some of the factors, Husband benefitted from Wife's contributions and that, therefore, Husband's percentage should be less. The Divorce Master reasoned that given his impressive education, Husband should be able to obtain employment that at least meets, if not exceeds, his earning capacity of \$72,000.00 annually. Nevertheless, Wife's income will most likely always exceed Husband's income many times over. For this reason, the Divorce Master noted that equity demanded that Husband receive a greater portion of the marital estate. Because the Divorce Master thoroughly considered the relevant factors in fashioning the equitable distribution award, and provided her analysis in reaching her determination, we reject Wife's argument. The Master's conclusions are supported by the evidence and will not be disturbed.

In the same vein, Wife argues that the Divorce Master erred in determining that Husband should receive 60% of the marital home sale proceeds and Wife receive 40%. Wife posits that a more equitable distribution under the factors would be 55% to Husband and 45% to Wife. In support of her argument, Wife contends that the four factors the Divorce Master decided supported a larger distribution to Husband were based on the difference in the parties' income. Wife argues that the Divorce Master did not thoroughly

analyze the extent to which the difference in the parties' income balanced against the factors that weighed in favor of Wife, such as her contributions to Husband's education throughout the marriage. While the Divorce Master found that Husband had an earning capacity, the disparity between Husband and Wife's earning capacity justified a greater award of the marital assets to Husband. The Divorce Master's analysis of the factors supports Husband receiving a larger share from the sale of the marital home, as such, we reject Wife's argument.

Finally, Wife argues that the Divorce Master erred in finding that the standard of living established by the parties during their marriage favors a larger distribution of marital assets to Husband. Wife maintains that it is not equitable to use the difference in the parties' incomes to justify Husband receiving a greater percentage of the marital assets. Specifically, Wife posits that just because she can enjoy a higher standard of living than the parties enjoyed during their marriage, that does not mean she intends to do so. Wife maintains that because she will continue to live modestly, and it was found that Husband can maintain a modest lifestyle based on his earning potential, it was inequitable to award Husband a greater percentage of the marital estate.

The Divorce Master noted that the parties had established an upper middle class standard of living throughout their marriage. While in the later years of the marriage Wife's income was substantial, the parties lived well within their means while contributing the maximum to their retirement accounts. The parties lived in a nice home, took regular vacations and owned nice, but not luxury, cars. The Divorce Master noted that with an earning capacity of \$72,000.00 annually, Husband could maintain a middle-class standard of living. The Divorce Master further noted that Wife's earning capacity would

allow her to easily surpass the standard of living the parties became accustomed to during their marriage. For this reason, the Divorce Master indicated a larger distribution to Husband was appropriate. In assessing this factor, it is necessary to look at the parties' earning capacity. Spousal incomes are what establishes a standard of living throughout a marriage; therefore, it is certainly reasonable that the Divorce Master considered and analyzed the incomes of both Husband and Wife. Because Wife's earning potential will continue to far surpass Husband's, it was equitable to award Husband a greater share of the marital estate.

Husband filed exceptions to several of the Divorce Master's recommendations. First, Husband maintains that the Divorce Master erred in not awarding him alimony. Husband asserts that he does not have sufficient funds to meet his needs and the majority of the marital assets awarded to him are retirement funds. Husband argues that because of Wife's earning capacity and her ability to continue to amass substantial assets, she will be able to rebuild her retirement assets, whereas Husband will have to deplete the retirement assets awarded to him in order to meet his daily needs.

Section 3701 of the Divorce Code provides that "[w]here a divorce decree has been entered, the court may allow alimony, as it deems reasonable, to either party *only if it finds that alimony is necessary.*" 23 Pa.C.S.A. §3701(a). The Superior Court has provided the following explanation with regard to the purpose and intent of alimony:

...[t]he purpose of alimony is not to reward one party and to punish the other, but rather to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met. Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor's ability to pay. Moreover, [a]limony following a divorce is a *secondary remedy* and is available only where economic justice and the reasonable needs of the parties cannot be

achieved by way of an equitable distribution award and development of an appropriate employable skill.

Teodorski v. Teodorski, 857 A.2d 194, 200 (Pa. Super. 2004) (citing Moran v. Moran, 839 A.2d 1091, 1096-97 (Pa. Super. 2003)) (emphasis and alterations in original) (quotation marks omitted). The Divorce Code lists seventeen factors that a Court must consider in making a recommendation for alimony.

The Divorce Master noted that only three of the seventeen alimony factors favored an award of alimony to Husband. The three factors that favored an award of alimony were also contained within the equitable distribution factors that favored Husband receiving a larger marital property distribution. The Divorce Master explained that if a recommendation of alimony were to be made, a recommendation of a 50% distribution of marital assets, as opposed to the 60%-40% split, would be more appropriate. In so reasoning, the Divorce Master noted that, based on the circumstances, Husband would not be guaranteed receipt of the entire alimony award. By recommending that Husband not be awarded alimony and, instead, receive 60% of the marital assets in equitable distribution, the Divorce Master noted that Husband will be motivated to find employment close to his earning capacity and will not be discouraged from entering into another relationship, which could potentially jeopardize his income.

Husband maintains that because he and Wife mutually decided during the course of their marriage that he would sacrifice his earning potential and subordinate his career for Wife's, he is entitled to alimony. While Husband pursued career choices during the marriage where he would earn less than Wife, that choice does not prevent Husband from now pursuing work which earnings would maintain his basic daily needs. Husband highlights the fact that during the last eight years of the marriage, he had no earnings;

however, he earned \$90,046 in 2005. Therefore, Husband's argument implying that he requires alimony because he is incapable of earning wages sufficient to support his daily needs is disingenuous.

Further, if Husband decides not to work again, the extra funds received through the equitable distribution should permit him to provide for his reasonable needs. Here, while Husband's income has been significantly less than Wife's, with appropriate employment, in addition to the money he will receive through equitable distribution of the marital assets, he should be able to meet his daily needs. An award of alimony shall be made to either party only if it is necessary to provide the receiving spouse with sufficient income to obtain the necessities of life. Stamerro v. Stamerro, 889 A.2d 1251, 1259 (Pa. Super. 2005). Taking this into consideration, it was equitable to deny Husband's request for alimony.

In support of his argument that he is entitled to an award of alimony, Husband also cites to a whistleblower lawsuit he was involved in which he believes precluded him from obtaining a job in the medical research field. He also cites to the fact that when the family decided to move from New York to Pennsylvania, he did not have a job lined up. Finally, Husband posits that as a result of certain medical conditions, he is physically unable to work, specifically, in the medical research field. As was addressed previously, while certain circumstances might have prevented Husband from obtaining lucrative employment during the marriage, he is not precluded from earning any wages. While his physical condition may have diminished, Husband provided no medical evidence which suggested that he was unable to earn any wages. To the contrary, Husband testified that

he was considering restarting a research business he had initially started during the marriage and running it as a not-for-profit entity.

Finally, Husband maintains that he is entitled to an award of alimony based on marital fault. In this regard he cites to instances throughout the marriage where Wife acted abusively towards Husband. Based on the testimony, the Divorce Master found that Husband and Wife engaged in infrequent physical altercations during the marriage. Because it was determined that both parties participated in this behavior, we reject Husband's argument.

Nevertheless, Husband argues that here, there is no economic justice since he will be required to use proceeds that were saved for retirement in order to meet his daily needs. Based on Husband's earning capacity of \$72,000.00, the Divorce Master found that he had a potential net monthly income of \$4,423.00. The Divorce Master further found that Husband had reasonable monthly expenses totaling \$4,881.00. The Divorce Master's recommendation would also give Husband approximately \$200,000.00 in cash assets, proceeds from the sale of the marital home totaling approximately \$140,000.00, and retirement assets totaling over \$1.4 million. Husband will also be eligible to collect Social Security retirement benefits when he reaches the age of 67. It seems disingenuous for Husband to argue that he will need to deplete the entire amount of funds he will receive through equitable distribution to meet his daily needs. By his own admission during these divorce proceedings, Husband was largely in charge of the parties' finances, allowing them to amass such a large retirement portfolio. Because Husband can meet his reasonable needs through his earning capacity, and the funds he will receive through the

equitable distribution of the marital assets the Divorce Master recommended, there was no error.

Husband alternatively argues that the Divorce Master erred in determining that he had a \$72,000.00 earning capacity. In analyzing Husband's earning capacity, the Divorce Master noted that in December, 2017, the Dauphin County Domestic Relations Office calculated Husband's gross earning capacity as a Certified Fraud Examiner as \$72,000.00. In addition to this earning capacity, the Divorce Master considered that Husband had a bachelor of science degree in biochemistry from Harvard College and medical and doctorate degrees from Cornell University. Husband also obtained a paralegal certificate from Delaware Law School in 2016 in addition to his certified fraud examiner certification. During the parties' marriage, the highest income Husband earned was \$90,000.00. While the Divorce Master noted that Husband's health has deteriorated since 2017, aside from lifting restrictions, there was no medical evidence offered to suggest Husband was prohibited from obtaining employment as a Certified Fraud Examiner, a paralegal, or employment that utilizes his medical education. While Husband challenges the determination of earning capacity that the Dauphin County Domestic Relations Office calculated in 2017, it is noteworthy that he withdrew his request for a de novo hearing. To now challenge the Divorce Master's reliance on that figure is misplaced. Furthermore, the Divorce Master not only relied on the determination made by Domestic Relations, she also cited Husband's impressive education and training in arriving at her determination. Accordingly, there was no error.

Husband next argues that the Divorce Master erred and abused her discretion in failing to direct that Husband should be reimbursed for the costs that he paid to get the

home ready for sale and to maintain the home pending sale. He contends that these costs should be given to him from the proceeds of the marital home sale. Husband seeks reimbursement for monies paid to a second real estate agent he employed in an effort to prepare the marital residence for sale. The Divorce Master noted that Husband should be reimbursed for the cost of replacing the basement door of the marital residence upon submitting the appropriate documentation evidencing the cost. Wife acknowledges that Husband should be reimbursed for mutually- agreed upon expenses he incurred to prepare the property for sale. Here, it was agreed that Husband should be reimbursed for expenses he and Wife agreed to for purposes of maintaining the home and preparing it for sale. However, Husband chose to enlist the services of a second realtor without assent from Wife. Therefore, it was not error to determine that Wife was not responsible for reimbursing Husband for costs associated with the hiring of a second realtor.

Next, Husband contends that by finding Wife did not intentionally withhold assets, the Divorce Master erred in her overall credibility determinations. Husband contends there were other additional areas in which the Divorce Master erred in her credibility determinations regarding Husband's testimony. The Divorce Master specifically noted that throughout the proceedings, Husband argued that Wife intentionally failed to disclose marital assets in an attempt to deprive him of his equitable share of the marital assets. The Divorce Master outright rejected Husband's argument in this regard as disingenuous. In so finding, the Divorce Master noted that Husband testified that he oversaw the parties' investments to a very detailed and exhaustive knowledge of the parties' finances; specifically, Wife's accounts. Wife also credibly testified that she was confused regarding the number of retirement accounts she possessed. While a master's report and

recommendation is only advisory, it is to be given the fullest consideration, particularly on the question of credibility of witnesses, because the master has the opportunity to observe and assess the behavior and demeanor of the parties. Moran v. Moran, 839 A.2d 1091, 1095 (Pa. Super. 2003). While the Divorce Master specifically noted that the discrepancies between the testimony of parties were due to a difference in the parties' perspectives and not due to an intent to deceive the fact-finder, she did find Wife, overall, to be slightly more credible than Husband. However, the Divorce Master specifically found that Husband's testimony regarding Wife's intentional failure to disclose marital assets to be not credible. The Divorce Master also found Husband to be evasive and referenced his embellishments. Because the Divorce Master is in the best position to address matters of credibility, we reject Husband's argument regarding the Divorce Master's credibility determinations.

Husband also argues that the Divorce Master erred in denying Husband's claims for counsel fees, costs and expenses.

The Superior Court has held that in a divorce action, "[c]ounsel fees are awarded only upon a showing of need." Teodorski, 857 A.2d at 201 (quoting Harasym v. Harasym, 614 A.2d 742, 747 (Pa. Super. 1992)). Therefore, "[i]n most cases, each party's financial considerations will ultimately dictate whether an award of counsel fees is appropriate." Plitka v. Plitka, 714 A.2d 1067, 1070 (Pa. Super. 1998). The factors to be considered in determining whether to award counsel fees in a divorce action include "the payor's ability to pay, the requesting party's financial resources, the value of the services rendered, and the property received in equitable distribution." Busse v. Busse, 921 A.2d 1248, 1258 (Pa. Super. 2007) (citing Teodorski, 857 A.2d at 201). Moreover, 42 Pa.C.S.A. §2503(7) also

authorizes an award of counsel fees for dilatory, obdurate, or vexatious conduct during the pendency of litigation.

Husband specifically requested an attorney's fee award of \$20,000.00. The Divorce Master found that Husband failed to demonstrate an actual need for counsel fees and further noted that an award for counsel fees was not appropriate. In so finding, the Divorce Master indicated that Husband's own actions caused a rise in his attorney's fees. Specifically, the Divorce Master noted that Husband employed the services of five different law firms during the pendency of the divorce proceedings, sometimes simultaneously. The Divorce Master also found that Husband, through his various attorneys, filed redundant and unnecessary pleadings during the proceedings.

In the same vein, Husband argues he is entitled to an award of counsel fees because Wife attempted to conceal more than one million dollars in marital assets, forcing him to incur additional legal fees. The Divorce Master rejected Husband's argument in this regard, finding that there was no evidence to support Husband's claim that the mistake caused him to incur additional counsel fees. Specifically, the Divorce Master noted that Wife's counsel credibly represented that the error regarding the retirement account was his. Additionally, from the date the parties separated, Husband was receiving statements for all retirement accounts. Based on his testimony, the Divorce Master noted that Husband had exhaustive knowledge of and documentation in regard to Wife's accounts. Most notably, however, the Divorce Master noted that during the parties' marriage, Husband directed Wife in matters relating to the retirement accounts. Wife was also credible in her testimony that she was confused by the number of retirement accounts she held. Because Husband had the information regarding the retirement

1 probably a combination of those. I also do -- I'm a national
2 site surveyor for bariatric programs. And for each of those
3 site surveys, they provide \$2,000 from which you subtract
4 however much it costs to travel and stay there. And so
5 something is left over, that is a payment.

6 Q. And you report that income separately from your
7 Hershey Medical Center income?

8 A. Yeah.

9 Q. Correct?

10 A. Yes.

11 ATTORNEY HOLST: We'll stipulate it's reported
12 as a Schedule C on her tax return. It's right there.

13 ATTORNEY DEMMEL: Thank you.

14 BY ATTORNEY DEMMEL:

15 Q. You're aware that there was a question about your
16 Capital One and Northwest Bank 1099s for 2017 and 2018?

17 A. Yes.

18 Q. Your 2018 tax return didn't reflect any interest
19 from Capital One or Northwest, correct?

20 A. Correct.

21 Q. What happened with both of those accounts as far
22 as tax reporting?

23 A. So I think the system changed. They used to send
24 1099s or some sort of notification of how much interest you
25 had made in a bank account. And generally speaking, if it

1 was less than \$10 it was not something you needed to report.

2 And so I guess they changed over to having those
3 forms available online, but you had to go search it actively
4 to find it. And I had just gotten out of the practice of
5 even listing that because it was usually such a trivial
6 amount that it wasn't useful.

7 So I was contacted by the IRS and told that they
8 had received a 1099 from Capitol One of 900-something
9 dollars. And so I have paid that and had my accountant, you
10 know, file whatever paperwork was necessary. And it's likely
11 that that same thing will have happened in 2018.

12 Q. So that notice you received from the IRS was for
13 your 2017 tax return?

14 A. Correct, correct.

15 Q. Turning to Exhibit 3, can you identify this
16 document, please.

17 A. This looks like my social security statement as of
18 April 2019.

19 Q. And you downloaded this statement from the Social
20 Security website, correct?

21 A. Well, I tried to. I was forced to go there in
22 person here in Harrisburg to get it because I had to prove I
23 was me. But yes.

24 Q. Okay. The page 3 of that exhibit lists your
25 earnings for social security purposes from the time that you

1 It's not something I would have independently
2 chosen to do, and we talked about other people who had been
3 in similar situations in his lab who just decided to chuck it
4 in and give up on a science career and go do something else.
5 There was only so far I could go with that kind of argument
6 because it would lead to pretty intense fighting between us.
7 And so I did not -- I did not push it.

8 BY ATTORNEY DEMMEL:

9 Q. You mentioned the paralegal training that your
10 husband went through. Was that as part of this lawsuit or as
11 part of establishing his business or both?

12 A. Probably both, but I think more about the lawsuit
13 because he wanted to be able to be involved in doing some
14 filings and other paperwork so that he wouldn't be constantly
15 paying a law firm to do it. There would be things that he
16 could do to save money on the lawsuit.

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

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

25 Q. Do you know what the timeline was for that

1 certification or when that happened?

2 A. That was more recently. That might have been 2015
3 or '16. His CompTIA certification happened when our younger
4 son was still in high school, because they did it together.

5 Q. And when you moved to Hershey in 2006, 2007, how
6 old were your children at that point?

7 A. They were 11 and 13.

8 Q. You mentioned your husband starting a business.
9 What was the name of the business?

10 A. Amerandus Research.

11 Q. And did the business ever produce any income?

12 A. I don't believe so.

13 Q. Do you know how long the business was in existence
14 or if it's still in existence?

15 A. It still has a website. He started it, I think,
16 in 2011.

17 MASTER CONLEY: Excuse me.

18 (A discussion was held off the
19 record.)

20 BY ATTORNEY DEMMEL:

21 Q. During your marriage you bought your house in
22 Hershey, you said, for \$307,000, correct?

23 A. I think so.

24 Q. What other kinds of things did you spend your
25 income on? What --

1 A. Wow. Things --

2 Q. Just in general.

3 A. Things that the kids needed. We each had a car
4 because we needed to be able to get around independently,
5 books, you know, Robert's legal fees and consulting whatever,
6 we did vacation periodically.

7 Q. What kind of vacations?

8 A. It depended. They were mostly family vacations.
9 Sometimes we went with big groups of family to go to
10 different places in Europe. These trips were generally a
11 week or two weeks, depending. He and I did not vacation
12 together alone too much except towards the last couple of
13 years that I was with him. And we went on a vacation to Key
14 West for a week, went on a vacation to the British Virgin
15 Islands for a week. And that was about it.

16 Q. Did you pay for your children's college
17 educations?

18 A. Yes.

19 Q. And you saved for retirement, correct?

20 A. Correct.

21 Q. Was saving for retirement a focus for you and/or
22 your husband as far as your finances?

23 A. Well, we were always sure to put the maximum
24 amount in that we could in order to have a retirement fund.

25 Q. And where did the income come from to do these

1 things?

2 A. Well, when I -- when I was making income, my money
3 went into my retirement fund. During the times that he was
4 working, it was his income going into his retirement fund.
5 We also had some IRAs and, you know, those were mostly paid
6 for by me.

7 Q. During your marriage, who handled the finances?

8 A. It was a slight split. We arranged for auto pay
9 as many bills and utilities and things like that as we could
10 legally. So most of the payments were coming out of my
11 accounts. Robert had one or two that he took care of, like,
12 he paid Waste Management to pick up our garbage every week,
13 and I can't remember what else. But the vast majority of our
14 monthly payments were paid by me out of my accounts.

15 Q. And your daily schedule, talk about from when you
16 moved to Hershey, 2006-2007, until 2010 or 2011 or so. What
17 was your daily schedule like?

18 A. So in terms of maintenance of the home and the
19 family --

20 Q. Yes.

21 A. -- I did the vast majority of the food shopping.
22 I was cooking dinner pretty much every night. We didn't eat
23 out hardly ever. I packed lunches for the boys because they
24 didn't want to buy stuff in the school cafeteria; they wanted
25 something that Mom had made. I did the laundry. I'm not a

1 Q. And you are currently 59?

2 A. Yep.

3 Q. And if you turn to your social security statement,
4 which is your exhibit --

5 MASTER CONLEY: 3.

6 BY ATTORNEY HOLST:

7 Q. -- 3, for me. Looking at your statement, your
8 full retirement age is 67, correct?

9 A. I don't know where that is, but I'm willing to --

10 Q. Based on your year of date of birth on page 2, you
11 would agree your full retirement age is 67, would you?

12 A. Where's that?

13 Q. If you look up top, estimate benefits?

14 A. That's what?

15 Q. That's 67?

16 MASTER CONLEY: Let's just stipulate it's 67.

17 THE WITNESS: I see. Okay. Yeah.

18 BY ATTORNEY HOLST:

19 Q. Thank you. And you will receive \$3,053 a month
20 for life from the Social Security Administration if you
21 retire at age 67?

22 A. If it stays solvent.

23 Q. If it stays solvent, correct?

24 A. Yep.

25 Q. And you expect to continue to work as director of

1 the Surgical Weight Loss Program at Hershey Medical Center
2 until age 67?

3 A. I intend to continue working, yeah, at least that
4 long.

5 Q. And looking at your social security earnings, page
6 3, in your current position as director, you are making in
7 excess of \$400,000 a year?

8 A. Yes.

9 Q. And have been making in excess of \$400,000 a year
10 since 2015?

11 A. Yes.

12 Q. And, in fact, looking at your earnings history
13 since -- I should say since 1996, you have made in excess of
14 \$200,000 every year, save for two years, 2006 and 2007?

15 A. Mm-hmm.

16 Q. And you showed your Exhibit 1 was your pay stub.
17 You're paid monthly, so based upon your monthly wages, your
18 salary's \$436,916?

19 A. Something around there.

20 Q. And you got a \$31,500 bonus this year?

21 A. Yes.

22 Q. So this year you're in line to make \$468,000 in
23 your occupation?

24 A. Yep.

25 Q. Okay. And you testified about taking this job in

1 that.

2 Q. Well, let's go back to the 2000s.

3 A. Yeah.

4 Q. You actually did some work for expert witnesses
5 and Robert assisted you with that, correct?

6 A. Could you remind me what it was?

7 Q. I will withdraw that question. But I will say
8 that it is correct that in 2009 -- around 2 --

9 (Sotto voce discussion was held off
10 the record.)

11 BY ATTORNEY HOLST:

12 Q. In 2009 you had a malpractice action?

13 A. Yeah.

14 Q. And during that time, Robert assisted you with the
15 legal defense of that malpractice action?

16 A. Robert assisted me with discussing it and talking
17 over the proceedings. And, you know, he was my husband, so
18 it was not considered a HIPAA violation to talk about what
19 was going on with that patient. And that was an extremely
20 devastating case.

21 Q. But my point is -- I want to make sure I'm
22 clear -- he actively assisted you in that traumatic time of
23 your life.

24 A. I would expect nothing else.

25 Q. And you would agree, would you not, that he did

1 more than what a normal husband would do? He utilized his
2 training to assist you in the legal aspects of the
3 malpractice action?

4 A. I guess. I mean, I don't remember the details,
5 but he -- we -- certainly we discussed the case, more than
6 once.

7 Q. In fact, you would agree, would you not --

8 ATTORNEY HOLST: Court's indulgence for one
9 moment.

10 MASTER CONLEY: Sure.

11 BY ATTORNEY HOLST:

12 Q. You would agree, would you not, that in a text
13 message to Robert you told him that you would be much poorer
14 and not nearly as far along without his assistance.

15 A. I don't have that in front of me. If you say it's
16 mine, it's -- I'm willing to believe it.

17 Q. So what you're saying is you don't recall making
18 that statement?

19 A. No, but it's very possible. I mean, I -- the
20 point here is not that Robert was of no assistance to me in
21 my life. He certainly encouraged us to invest and to pay
22 fully into our retirement funds and so on and so forth.

23 Q. And to that point, you had testified that you
24 funded the IRAs and that your testimony was the majority of
25 the retirement and other assets were funded through your

1 employment?

2 A. I believe so.

3 Q. Well, isn't it correct that when you guys moved
4 from New York to Hershey that Robert brought with him
5 \$250,000 of savings?

6 A. I have no idea how much he had because we had
7 separate bank accounts.

8 Q. So --

9 A. I also had savings and we were living on savings
10 because the payment to a fellow was a severe pay cut compared
11 to what I had been making in New York.

12 Q. So it could be very well possible that he had
13 accumulated savings of \$250,000 during your marriage that he
14 brought down to Pennsylvania with you?

15 A. Anything's possible.

16 Q. And you guys would have utilized that for your
17 care, maintenance, and accumulation of assets?

18 A. If we needed to, except we didn't have a joint
19 account, and when things were paid, they were paid by me.

20 Q. Well, let's go back to early on in your marriage.
21 Isn't it correct that at the beginning of your marriage
22 Robert paid your student debts?

23 A. What?

24 Q. Student loans?

25 A. No.

1 Q. No?

2 A. No. I paid off my student loans during my
3 internship as a general surgery resident. Luckily, I had
4 very little in the way of student loans. I had no loans for
5 my undergraduate education and I had a nominal number of
6 loans for medical school.

7 Q. So let's go back to your testimony about the
8 separation. So you testified that on August 17th you went to
9 California. And you acknowledge at that point in time you
10 didn't tell Robert you weren't coming back.

11 A. I didn't know I wasn't coming back.

12 Q. Then your testimony was on August 20th you decided
13 to leave because of you had a conversation with Robert in
14 that regard?

15 A. Yes.

16 Q. That conversation which you're referencing, isn't
17 it actually correct that that occurred in September?

18 A. No.

19 Q. Well, do you recall having a conversation with
20 Attorney Max Smith on August 30, 2017?

21 A. No.

22 Q. Do you recall in that conversation saying to
23 Attorney Smith that you weren't sure whether the marriage was
24 over?

25 A. I don't remember any -- honestly, until you're

1 saying this, I didn't remember having a conversation with Max
2 Smith. I don't remember what we talked about.

3 Q. So you have no recollection of whether you said
4 those things?

5 A. No.

6 Q. And you would acknowledge, would you not, that you
7 didn't file for divorce until September 20, 2017?

8 A. The filing went in when my lawyer filed it. I
9 didn't choose the date.

10 Q. In the time leading up to you leaving for
11 California on August 17th, you would agree, would you not,
12 that your communications with Robert in no way suggested an
13 intention to end the marriage?

14 A. Incipiently? No.

15 Q. And, in fact, in the days and weeks leading up you
16 had sent him multiple texts with hearts showing what appear
17 to be love for him.

18 A. Whatever you say.

19 Q. Well, is that correct?

20 A. I don't know. You have it in front of you. I
21 don't have your exhibits.

22 Q. Then I will show you, if you don't recall.

23 MASTER CONLEY: Are these on your exhibit list?

24 ATTORNEY HOLST: They're not. They're for
25 rebuttal.

1 you.

2 ATTORNEY HOLST: Let me just write that down --
3 Court's indulgence for one moment -- to mark my Exhibit 31.

4 BY ATTORNEY HOLST:

5 Q. You testified that you believe that Robert has
6 dragged this out and has caused you to incur more in
7 attorney's fees. Is that an accurate statement?

8 A. Yes.

9 Q. And yet you felt this could be done within 90
10 days?

11 A. I would have liked that.

12 Q. Well, let's go back to this time prior to 2019.
13 In fact, you would agree, would you not, that through your
14 counsel you had made an offer of settlement in late 2018?

15 A. I think so.

16 Q. Do you recall that?

17 A. I don't remember when it was exactly but, yeah, we
18 made an offer of settlement.

19 Q. When you made that offer of settlement, did it
20 include nearly a million dollars in your Empower retirement?

21 A. I don't think we talked about numbers. I think we
22 talked about percentages.

23 Q. Had that been disclosed?

24 A. Had what been disclosed.

25 Q. Your Empower retirement?

1 A. I assume that everything was disclosed.

2 Q. Well, let's go back. Do you recall the position
3 taken in this case initially that your TIAA-CREF and your
4 Empower were the same account?

5 A. I had TIAA-CREF in, I think, more than one
6 account.

7 Q. Do you recall filing an inventory in this case?

8 A. Yeah.

9 Q. Do you recall signing that inventory?

10 A. No, but I'm sure I did.

11 Q. Do you recall verifying under oath that the assets
12 that you've identified are all the assets in this case?

13 A. I'm sure I believed they were if I said such a
14 thing.

15 Q. Let's go to -- if you go to my blue binder, number
16 29.

17 ATTORNEY HOLST: And for the record, since we
18 have stipulated to most of the assets, a lot of my exhibits I
19 won't use because we actually had them in there prior to
20 meeting with counsel.

21 MASTER CONLEY: Well, since we're taking a
22 little break here, I also do want to note that I do remember
23 discussions at the preliminary conference regarding the two
24 accounts, whether they were two or one. And I do remember
25 Attorney Demmel indicating that he -- it was his mistake on

1 the inventory, that he is the one who thought they were both
2 one account. So I do recall that. So you can -- you can go
3 ahead, but --

4 ATTORNEY HOLST: Well, I would agree with that,
5 but since --

6 MASTER CONLEY: Okay. No. Go ahead.

7 ATTORNEY HOLST: -- Dr. Rogers is on the stand,
8 I want to confirm that is in fact the case.

9 MASTER CONLEY: Okay. Go ahead.

10 BY ATTORNEY HOLST:

11 Q. Okay. So looking at Exhibit Number 29, which is
12 your inventory, looking at the second page, is that your
13 signature?

14 A. Yep.

15 Q. Okay. Turning one, two, three, four pages in,
16 there is a chart of marital assets. And looking at that
17 chart as to retirement, you would agree that your TIAA-CREF
18 is listed there, right?

19 A. Yes.

20 Q. And had a June 30, 2018, value of roughly
21 \$773,000, right?

22 A. Okay.

23 Q. The Empower retirement is not listed?

24 A. Yep.

25 Q. Okay. And do you recall providing discovery in

1 this case?

2 A. What does that mean?

3 Q. Providing documentation and answers under oath to
4 discovery requests sent by Dr. Bauchwitz' attorney.

5 A. Of statements and whatnot, yeah.

6 Q. And do you recall verifying under oath that the
7 only retirement you had was the TIA-CREF, not your Empower?

8 A. So Empower was a new name. It used to be
9 Discovery Benefits. It's gone under a lot of names. It's
10 changed over from Penn State Health to -- Penn State Hershey
11 to Penn State Health. It's changed in a number of ways. The
12 name of it didn't necessarily mean anything to me. I knew it
13 had components of TIA-CREF and other things.

14 Q. So is it your testimony today that you thought
15 they were the same account?

16 A. Yes.

17 Q. Did you look at the statements?

18 A. Yeah.

19 Q. Did you see that they're different investments in
20 those various accounts?

21 A. I would not have said I went through it in that
22 kind of detail.

23 Q. And you would agree, would you not, that that
24 Empower account, at least currently, has \$1.2 million in it?

25 A. Probably.

1 Q. And at the time of separation it had roughly
2 \$950,000 in it?

3 A. I guess.

4 Q. Okay. Your marital property inventory does not
5 identify the pension that you have at St. Luke's, correct?

6 A. I did not actually know I had a pension. I never
7 actually really believed I had a pension. Robert would talk
8 about pension, and I thought there was some confusion between
9 what was a retirement account and what was a pension. And I
10 thought that they were one and the same.

11 Q. So getting back to your belief that this matter
12 could have been resolved in 90 days, prior to 2019 you would
13 agree, would you not, that over a million dollars of assets
14 in your name was omitted from your view of the marital
15 estate?

16 A. I think that this could have been ended in 90
17 days, and then we could have figured out what the assets were
18 to split.

19 Q. So getting back to your belief under oath, and it
20 is your testimony under oath that you believe the accounts
21 were one and the same. If I told you that in 2012 you wrote
22 a list of your various retirements included as separate
23 entities TIAA-CREF and Empower, would I be incorrect?

24 A. I have no idea. It's possible.

25 Q. It's possible. But you don't recall?

1 A. No.

2 Q. And hand you another document that I'll mark as
3 Exhibit 32. Dr. Rogers, that's your handwriting?

4 A. Yes.

5 Q. And that says AMR -- that's Ann M. Rogers, right?

6 A. Yep.

7 Q. -- retirement funds as of November 21, 2012.

8 Right?

9 A. Oh, yeah. It was called Great West at that time.

10 Q. So --

11 A. It's gone through a number of changes.

12 Q. It has. You're right. It started off at Great
13 West and it's now Empower.

14 A. Mm-hmm.

15 Q. But on this list you list your TIAA-CREF and your
16 Great West/Empower as separate accounts, correct?

17 A. Yes.

18 Q. So let's go back to your testimony about your
19 career. You testified that you received your medical degree
20 in 1987, correct?

21 A. Yes.

22 Q. And so when the two of you married in 1990, as you
23 testified, Robert was finishing up his Ph.D. and his M.D.?

24 A. Right.

25 Q. And so at the time of your marriage you were in

1 house and they often would get themselves in without needing
2 an adult there.

3 Q. So it's your testimony that despite working 12, 13
4 hours a day -- because you testified that you currently work
5 from 6:45 till when the work's done, that might be 6:00
6 o'clock, correct?

7 A. And then when I'm on call.

8 Q. And then when you're on call, and that type of
9 schedule existed during your marriage as well?

10 A. Yep.

11 Q. -- that you were the one primarily responsible for
12 getting the kids to your activities -- to their activities, I
13 should say?

14 A. We both got kids to activities. He was involved
15 in some things with the schools, but I did the vast majority.
16 I -- after 9/11, for example, Robert did not want us on
17 public transportation. So I walked the children to and from
18 school.

19 Q. So when you and Robert were here in Pennsylvania
20 and he began his research companies -- first what was it,
21 Bauchwitz Laboratories and then Amerandus -- he has been
22 involved in those endeavors since 2008?

23 A. Around that time.

24 Q. Around that time. And again, that was a joint
25 decision for him to pursue that business?

1 A. A joint decision, he decided to pursue that
2 business and I certainly did not put my foot down and object
3 and say, no, you may not do that.

4 Q. Okay. And, in fact, he solicited your advice on
5 the website for his businesses?

6 A. Yep.

7 Q. And you provided input in that regard?

8 A. Yeah.

9 Q. And getting back to, you know, Dr. Bauchwitz, you
10 testified about him providing some general assistance during
11 the time that you had that unfortunate malpractice
12 accident -- or incident, I should say. Isn't it also correct
13 that when you were at St. Luke's you asked him to review some
14 financial information that ultimately led to the
15 determination that you were being underpaid for work
16 performed?

17 A. Yes.

18 Q. You testified about your pay stubs, Exhibit 1.
19 And you mentioned that you provide health insurance for you
20 and for Robert at this point in time. Correct?

21 A. Yes.

22 Q. And, in fact, ever since 2006 when you moved here
23 and got this job, you have been providing health insurance on
24 him, correct?

25 A. Are you talking about our Exhibit 1?

1 Q. Yeah, I'm talking about your Exhibit 1, your pay
2 stub.

3 A. Okay.

4 Q. But my question was, isn't it correct that since
5 at least 2006 when you moved here you have been insuring
6 Robert?

7 A. Yes.

8 Q. Looking at your Exhibit 2, which was the 2018 tax
9 return -- and you've acknowledged on the stand that you
10 didn't report the interest from Capital One in 2017 and 2018
11 and that you've gotten notification from the IRS for the
12 failure to do so, at least as to '17?

13 A. Yes.

14 Q. And if I heard your testimony correct, you said
15 that the interest was such a trivial amount that you
16 basically didn't realize or forgot that you didn't get a
17 1099, and you didn't search it out because you had to
18 actually physically locate it; it wasn't sent to you?

19 A. Correct.

20 Q. And if I told you that in 2016 the interest from
21 that account was \$1,200, would that be incorrect?

22 A. I have no idea.

23 Q. And you would call that insignificant?

24 A. I don't know what you mean. I mean, if I made
25 \$1,600 and it was reported, it was reported.

1 Q. I said \$1,200 in interest from Capital One.

2 A. Okay. I believe it.

3 Q. And it was just shy of a thousand dollars in '17?

4 A. Mm-hmm.

5 Q. Okay. So your gross per month at your employment
6 is \$36,409?

7 A. Approximately.

8 Q. Approximately. And that doesn't include the bonus
9 that you received for this year, which was --

10 A. Correct.

11 Q. -- 31,000. And so that plus your consulting
12 income, that's the income that you have to support yourself,
13 correct?

14 A. Correct.

15 Q. And looking at your expense statement, the
16 expenses that you list per month are \$8,447?

17 A. Approximately.

18 Q. Approximately. Well, actually I'll say
19 specifically. It's your Exhibit 4. And that includes a
20 thousand dollars for legal fees.

21 A. It's probably about right.

22 Q. Okay. And you would agree, would you not, that
23 once this case is resolved, those fees will not be ongoing?

24 A. Oh, I hope not.

25 Q. We all do. So if you took the legal fees out,

1 were other political issues that occurred in which my
2 department chairman who had hired me at St. Luke's-Roosevelt
3 was himself terminated, and then there was sort of this
4 housecleaning of everybody he had hired, which would include
5 me. So I was able to stay there because I had grant money
6 and the hospital wanted grant money. But eventually, you
7 know, I knew that that was eventually gonna run out. So I
8 moved to Hershey and, as was stated, I commuted back to work
9 there.

10 Q. So this move to Hershey, you and your wife
11 discussed that before moving?

12 A. Yeah.

13 Q. And it was a mutual decision to move to Hershey?

14 A. Certainly, yeah.

15 Q. Did you have a job lined up in Hershey?

16 A. No. There was no job lined up in Hershey at that
17 point.

18 Q. Okay. Switch over a little bit to your health.
19 Can you briefly describe for the Court your current health?

20 A. Right. So I, since my thirties, was diagnosed
21 with osteopenia, which is a very -- a situation where you
22 have very thin, somewhat brittle bones. And it's progressed
23 over the years, so that I think already before I was in my
24 fifties I had osteoporosis. These are -- it's pretty
25 advanced and unusual because I'm a male. So I got a lot of

1 attention just because of that. So that's number one. I
2 have that.

3 Along with that, we found in the last few years --
4 and I think my doctors told me the research has shown it's
5 true in general -- there's also disc issues. It's not just
6 the bone, but also that you end up with these various disc
7 problems that go along with that.

8 So that's -- that's number one and major issue.
9 So I did end up breaking my back on a couple of occasions.

10 Q. When was that?

11 A. That was 2000 -- well, there was an earlier event
12 at the T-7 level of the spine, which we don't know. They
13 found that out just by imaging. But the big one, the big
14 event was at the T-12 level, I believe. And that was --
15 occurred in 2015. And it involved two different fractures in
16 that particular bone. And so I -- you know, that's what
17 happened.

18 Q. At some point in time were you diagnosed with
19 cancer?

20 A. Yes, I was.

21 Q. When was that?

22 A. That was in 2018.

23 Q. And can you briefly describe the type of cancer
24 that you were diagnosed with?

25 A. Yes. It's head and neck cancer. And yeah, so

1 it's a -- really a cancer at the base of the tongue.

2 Q. How was that treated?

3 A. Surgically.

4 Q. Surgically. And currently what's your prognosis?

5 A. As of July of 2019, no further sign of cancer has
6 been found, but I'm under continuing observation.

7 Q. Okay. And when you were diagnosed with this
8 cancer and you were treated for this cancer, can you briefly
9 describe what effect, if anything, the treatment had on your
10 day-to-day functioning?

11 A. I had no real day-to-day functioning for quite
12 some time because through the month -- I mean, I was being
13 operated on. It was two different operations, big
14 operations. A neck, by the way, because I did have a
15 metastasis to the neck, and so that involved -- so I have the
16 beard now -- that involved cutting all the lymph nodes out of
17 my neck, including the cancerous lymph node. Then a few
18 weeks later, I had another cancer, would have been primary
19 cancer, let's say, removed from the base of the tongue.
20 After that, I had to come back for -- three times for
21 complications. And those complications involved bleeding
22 from the operative site in the tongue. So I was spewing out
23 blood and I had to go back to the hospital to be operated on
24 one of those times and observed two other times.

25 And after that I had to go through rehabilitation.

1 Because of all the cutting and all the amount of tissue they
2 removed in the mouth, it was very difficult to swallow. So
3 there's a whole problem called dysphagia. It was difficult
4 to eat, difficult to drink. I had a tube down in my stomach.
5 That caused various issues, reflux issues and other ones.
6 But anyway, basically you have to go through a
7 rehabilitation, they say, to learn how to swallow again and
8 partly just let your nervous system recover, let the tissues
9 recover so that you can swallow so they can act in unison.
10 So that went on until the fall of 2018.

11 Q. Do you continue to have any effects in your mouth
12 or your tongue from the cancer treatment?

13 A. It did. Initially I was very concerned because of
14 the ability to speak and because what they had to do. Even
15 though I bled, which is unusual, they did clip off a variety
16 of arteries in my -- the right side of my face. And it was
17 impacting my ability to speak without fatiguing. So I was
18 like, oh, my goodness, how am I gonna lecture.

19 But for the most part over the next year that
20 largely resolved. And yes, I still have my issues. I still
21 have issues going on where they're checking me and things are
22 swelling or whatnot, but for the most part, you know, I'm
23 reasonably rehabilitated in the throat.

24 Q. So the osteoarthritis and degenerative disc
25 disease that you were talking about, how, if any, do those

1 diagnoses currently impact you on your day-to-day
2 functioning?

3 A. Well, I didn't mention the osteoarthritis. Thank
4 you for reminding me of that. I mentioned the osteoporosis
5 and degenerative disc disease. Those go together. The
6 osteoarthritis is also an issue. Thank you. That may have
7 occurred because of the treatment for the osteoporosis. The
8 drugs perhaps did that. I have unusual bone outgrowths,
9 which is what the osteoarthritis has to do with. I also
10 subsequently now have this calcification, coronary artery
11 calcification, in my heart. That perhaps too was a result of
12 the medical treatment for the osteoporosis.

13 How they impact me, I think -- I believe we can
14 try and get it in terms of working or --

15 Q. Day-to-day functioning.

16 A. Day-to-day functioning, right. So basically, as I
17 said before -- and I don't know how I'm gonna do here, but
18 I'm really not a sitter anymore. It's very difficult to have
19 any extended period of time where I'm gonna be able to sit.
20 So I do much better standing or reclining. And then I have
21 to continually get up and walk and do rehabilitation
22 exercises. But I can get -- you know, I can get through the
23 day doing those things.

24 But what I think it has limited me to do is just
25 sit for -- you know, hours on end or just with five- or

1 ten-minute breaks every hour and a half that we tried.

2 That's probably beyond my, you know, range at this point.

3 Q. Any limitations on your ability to lift items?

4 A. Yes. Significant. Significant. Well, I mean,
5 you know, the ability to lift items was already, with the
6 diagnosis after the broken back, limited to -- to extended --
7 this is extended, arms like this. So I'll just, for the
8 record, I'm extending my arms directly out -- to eight pounds
9 apiece, which is what they do with people as affected as I
10 am. Actually, it's probably more than that because once this
11 degenerative disc disease occurred, you know, that occurred
12 in part -- can be founded because of my rehabilitation
13 exercises involved weightlifting at the time. It led to
14 damage to my neck and my back, so that was discontinued. So
15 now the limitations are more like five pounds each.

16 I don't remember the exact M standard for the
17 Department of Labor because the expert isn't here to testify
18 on it, but basically --

19 ATTORNEY DEMMEL: Objection.

20 THE WITNESS: Oh, okay.

21 MASTER CONLEY: Sustained.

22 ATTORNEY DEMMEL: Thank you.

23 THE WITNESS: All right.

24 MASTER CONLEY: By the way, if you need to get
25 up every now and then, that's fine.

1 THE WITNESS: Yeah.

2 MASTER CONLEY: I mean stand.

3 THE WITNESS: My body will tell me.

4 MASTER CONLEY: I mean stand there.

5 THE WITNESS: Yeah, I'll stand here as long as

6 I can. My nervous system will let me know. If I can do it,

7 I'll stay as long as I can.

8 BY ATTORNEY HOLST:

9 Q. You mentioned being tested for arterial

10 calcification. What is the current status of that testing?

11 A. Yeah. So they did the coronary artery

12 calcification test. I had a score of 117, which is a

13 moderately affected score.

14 Q. Okay. Do you also have a mass in your chest?

15 A. Yeah. I do have the mediastinal mass, which is

16 under observation. So they're just gonna see if it grows any

17 further.

18 Q. Okay.

19 A. And yeah. I mean, I could go into, you know,

20 speculation, but I'll let you drive that bus.

21 Q. Right now it's under observation, you said?

22 A. Yes, it is.

23 Q. Are you currently employed?

24 A. I'm employed by the ESS Corporation.

25 Q. What is the ESS Corporation?

1 prior to separation?

2 A. No, it started after separation.

3 Q. Well, the company that it merged with, if you were
4 working in 2017, did you do any work at ESS or the merged
5 company prior to separation?

6 A. No. No, I did not, nothing.

7 Q. Looking at your earnings history, in 2017 can you
8 tell the Court how much you made in gross Medicare earnings?

9 A. Can I revise the statement? I just made a
10 mistake.

11 Q. Sure. You may absolutely.

12 A. I made a mistake. I'm sorry. The 2017 earnings
13 actually were a different job. I -- I didn't get the ESS
14 job, which is at the time Source For Teachers, until March of
15 2018. So to get something quickly, this job was with the JFC
16 company in Harrisburg.

17 Q. So this was a temp agency?

18 A. It's -- right. So I was hired by two other
19 different divisions, one of which got this job. So this is
20 basically a kind of a clerical job at the Hershey Medical
21 Center. They also were marketing me to their clients for
22 medical positions or -- and over -- quality assurance
23 positions and that in a different division.

24 Q. So again, looking at your pay -- you still have to
25 answer my question -- in 2017 can you tell me what your gross

1 A. Correct.

2 Q. And that was in 2007, you said?

3 A. I believe so.

4 Q. Okay.

5 A. I'll stand by what the record is. I'm going by
6 memory, yeah.

7 Q. Ultimately, what happened to this case?

8 A. As I just started, first of all, we -- meaning the
9 attorneys, the U.S. government, Department of Justice -- it
10 was dismissed, a large -- largely in bulk under summary
11 judgment in December 2009 based on statute of limitations.
12 Although nobody agreed with that interpretation, that's what
13 the judge did.

14 Q. So the case was ultimately dismissed in large
15 part?

16 A. Yeah. Well, ultimately completely dismissed.

17 Q. Exactly. I'm talking about right now in 2010.

18 A. Yeah.

19 Q. And since it was dismissed, you obviously didn't
20 receive any recovery --

21 A. Right.

22 Q. -- in the action, correct?

23 A. Correct.

24 Q. So that did not pan out.

25 A. No.

1 Q. What happened -- strike that for a second. Let's
2 go back.

3 This action gets dismissed in 2009-2010 time
4 frame. What impact, if any, did this action have on your
5 ability to continue to work in the research field that you
6 had up until 2007 engaged in?

7 A. I think it was very large but for --

8 Q. Go ahead.

9 A. Number one, which was shocking, my academic title,
10 which came through Columbia University -- and I should
11 explain here that St. Luke's-Roosevelt, where I joined my
12 wife who was already working there, is an affiliate of
13 Columbia University.

14 Q. Right.

15 A. So while I was a director and she -- we were both
16 director level people actually at a hospital, our academic
17 titles still came through Columbia University by affiliation.
18 Now, the academic title is what -- when you say you're a
19 professor or not, so assistant professor, right, so assistant
20 professor of neurology. That academic title, not the
21 director title, is what you actually need to show your career
22 progress and to go move on to the next job.

23 So when we filed in June, within, I believe, six
24 weeks I began to hear from outsiders that they could no
25 longer find me listed on the Columbia University human

1 resources website. So people, whoever might want talk to
2 me -- parents, journalists, colleagues, whoever it might
3 be -- started bringing notice to me. So I looked into it.
4 And I had been removed from the affiliation without any
5 notice to myself, without any notice to my department
6 chairman. And so as far as -- and we did, you know, address
7 this with the dean, the general counsel of Columbia. They
8 were very nonresponsive. But basically we believed that was
9 retaliatory action, that in response to filing that case,
10 they found out about it -- which we believe we can show --
11 and they removed my academic title.

12 Q. Now, after the dismissal -- this was an action
13 against specific institutions --

14 A. Mm-hmm.

15 Q. -- but it was a public action?

16 A. Yes, it became.

17 Q. Were other institutions aware of this *qui tam*
18 lawsuit?

19 A. Other -- other entities, anyone could see it,
20 yeah, on the Internet too.

21 Q. Were you able to obtain a research position at any
22 institution after this lawsuit?

23 A. No.

24 Q. Did you make efforts to try to obtain research
25 positions?

1 A. I did.

2 Q. Can you talk to me about those efforts that you
3 undertook at the time.

4 A. Well, I --

5 MASTER CONLEY: And when? Please be specific.

6 BY ATTORNEY HOLST:

7 Q. Yeah, and when. Yeah.

8 A. Okay. So I'll defer to the record. She might be
9 able to help.

10 I applied to -- maybe this actually occurred
11 earlier -- Baylor. I think my wife was being attracted
12 there. That might have actually happened earlier. So I
13 don't recall what efforts there were, what the exact places I
14 might have looked at for research after the *qui tam* suit. I
15 probably do not after the *qui tam* suit, no.

16 I'm gonna take -- I'm gonna retract that. I don't
17 think I did, because I'm thinking I'm getting my dates
18 confused.

19 Q. But the efforts that you undertook were prior to
20 the dismissal of the action?

21 A. The efforts that we undertook were earlier, yeah.

22 Q. And --

23 A. I didn't try to leave once the action had started.
24 I stayed, so we were caught by surprise by the action. So it
25 was only after that that we decided mutually that there was

1 no hope to try to get another position, that this wouldn't
2 work and, therefore, something else had to be done.

3 Q. Well, any efforts you undertook prior to the
4 dismissal of the action, did you get any takers to move?

5 A. No.

6 Q. After the action was dismissed, do you believe you
7 had any ability to obtain employment in your chosen field?

8 A. I think our discussions were very clear that that
9 was very, very unlikely for the following reason: They won
10 the case, and this was a grant-based business. Okay. So
11 they won, even though we believe it -- my wife and I refer to
12 it as a positive control case. It was an extremely strong
13 case on the merits; however, appearances are what they are.
14 You know, Cornell was saying it won. This is in the record.
15 And it's a grant-based business. So the defendants continue
16 to get the grants, and we thought it was extremely unlikely
17 that I would be getting -- continuing to get the grants as a
18 result of this case. So what we really did was decide that's
19 not gonna work and we need to do something else.

20 Q. And what did you do?

21 A. Well, at that time -- well, before that already --
22 let me just say that during the period I was doing the *qui*
23 *tam* case, I had already -- we had had these discussions
24 earlier. I had already set up a sole proprietorship by the
25 name of Bauchwitz Laboratory in Pennsylvania. And the

1 purpose of that was, as my wife already stated -- I agree
2 with her -- that it was to finish up various publications I
3 had been doing as a professor while I was in New York. And I
4 did that.

5 And in addition to that, it was to develop -- so
6 we -- the mice in a profit basis to be able to get these mice
7 to be salable. And so that was another line of potential
8 avenue. It wasn't solely, as was stated earlier, just
9 whatever we made or not made in the *qui tam* business. But
10 the idea was that the genetically modified mice that have
11 already been worked on for years by my laboratory would
12 continue -- would and were continue to be worked on in
13 Bauchwitz Laboratories for subsequent commercial sale.

14 Q. So these modified mice --

15 A. Yeah.

16 Q. -- to whom were they sold?

17 A. Well, it's an interesting -- so we tried a number
18 of -- of -- of large distributors. And there's a lot of
19 conten -- consolidation, that's the word I'm looking for --
20 consolidation in the field. So the main company we
21 approached -- approached many -- Charles River -- a large
22 number -- Jackson Laboratory. But the biggest one was
23 Taconic Laboratories, so long negotiations with Taconic
24 Laboratories to buy these mice. And we felt they were very
25 valuable and we had -- we had mouse legal experts who felt

1 they were very valuable.

2 And unfortunately as part of dotting our Is and
3 crossing our Ts, I, I guess foolishly, did approach the IP
4 department at Columbia University or we did -- I guess maybe
5 my counsel did -- because I had once been there and earlier
6 iterations of these mice had long ago been at Columbia
7 University proper.

8 Q. So let me stop you there for a second. So this
9 decision to pursue Bauchwitz Laboratory --

10 A. Yeah.

11 Q. -- was that a mutual decision that you and your
12 wife made?

13 A. Definitely, yeah.

14 Q. Did the two of you have discussions about trying
15 to get back into the grant-funded research field?

16 A. Both of us agreed, and she had many examples with
17 people she knew, didn't feel that was realistic for the
18 reasons I said, that to get back into grant research
19 funding -- in addition to having to explain why you didn't
20 have a title, what happened? So you have these history
21 questions that go into any grant. One of the big important
22 parts of a grant, if you ever reviewed a grant, is, what's
23 this guy's history? And they have another section is, what's
24 his continuing set of accomplishments? So once you have a
25 broken history and you have a problem with your titles and

1 your continuing ability -- you know, your continuing
2 publications and progress like that, once you have something
3 occur, you're really damaged. You are really harmed in the
4 grant process.

5 Q. Okay.

6 A. Significantly so.

7 Q. So there was a decision to pursue Bauchwitz -- or
8 Bauchwitz Laboratories?

9 A. Yes.

10 Q. Ultimately, did that morph into another entity?

11 A. It did.

12 Q. What was that?

13 A. Amerandus Research.

14 Q. And can you describe for the Court what Amerandus
15 Research did?

16 A. Yes.

17 Q. Does.

18 A. Well, it continued -- so it dropped -- of course I
19 had no *qui tam* activity. It continued the development and
20 attempted sale, more the attempted sale -- well,
21 development -- development and attempted sale of the modified
22 mice is one.

23 But now its goal -- our thinking was, as was
24 mentioned, was to make it basically a business to try to
25 assist the investigation of scientific grant misconduct,

1 research fraud, assist people who needed the kind of
2 assistance, frankly, that I had seen that would have been
3 valuable, and people that we knew about. There were people
4 that I had come into contact with who had been similarly
5 situated -- other professors all the way down to graduate
6 students, all the different ranks of people had -- who had
7 these issues. And so the idea was to assist them in a
8 variety of ways, which I felt I had some special insights and
9 expertise to be able to do.

10 Q. Okay. And Amerandus Research, did it ever make or
11 turn a profit?

12 A. No, but almost in two ways. Almost but not. No,
13 it did not.

14 Q. Well, "almost in two ways," go ahead and describe
15 that for us.

16 A. Well, I was gonna say the mouse -- so the mouse
17 sales failed, and they failed for an interesting reason,
18 which is Columbia University, even though they did not have
19 intellectual property rights and we knew it, managed to --
20 for want a better term, and we're amongst lawyers --
21 tortiously interfere with our ability to get the sale,
22 Taconic researchers to buy those strain of mice. And we were
23 actually, you know -- there was a lot of effort through
24 2000 -- through the summer of 2017, my wife was kept aware
25 literally as it was ongoing with the mouse legal experts, you

1 know, trying to get around that, trying to find what we could
2 do to get -- because a lot of money involved. That was
3 expected -- like the *qui tam* suit itself, this was another
4 investment of a lot of resources and we expected a return on
5 that investment. We wanted the profit from all the effort in
6 the mice.

7 But it wasn't to be. There wasn't a place on
8 Earth -- we went overseas. I mean, it was very consolidated.
9 And I'm sorry to say, you know, we have e-mails that we got
10 of what the Columbia general counsel said to Taconic. And
11 it's sad to say, basically pretty much what they told me, You
12 know, they made us an offer we couldn't refuse. They wanted
13 a huge amount of profit even though they didn't have any
14 intellectual property rights to it, as far as anyone could
15 tell. And when we said no, Taconic suddenly got cold feet.
16 No one would deal with us. No one would buy the mice, and
17 that's what happened.

18 Q. So how were you able to run Amerandus Research
19 during the latter part of your marriage?

20 A. That was all done with marital funds.

21 Q. Marital funds?

22 A. Mm-hmm.

23 Q. And so when the two of you separated in late 2017,
24 what effect, if any, did it have on Amerandus Research?

25 A. Huge. I mean, we had committed to many contracts

1 like LexisNexis, the lease on the office in Philadelphia, a
2 number of things. There were, you know, a contract employees
3 to pay, lots of costs. Many meetings that I was going to in
4 September and October, training, business meetings, all that
5 stuff contributed to draining my cash reserves. So that was
6 the main impact.

7 Q. After the entity crash landed, for want of a
8 better term --

9 A. Yeah.

10 Q. -- did you take any -- or did you undertake any
11 efforts to obtain replacement employment?

12 A. Yeah. That's when I started looking around and
13 came up with this company, JFC, and a number of others. So I
14 ended up going to seven different recruiting firms and I
15 did --

16 Q. You went to recruiting firms, seven recruiting
17 firms?

18 A. Seven recruiting firms, but I was in -- some of
19 them -- three of them I had two different divisions in each.
20 So sometimes the firm decided we're going to try to market
21 you as one thing and also another, so I would have, let's
22 say, two interviews with that firm. So there were -- I
23 really had ten different recruiters working with me at seven
24 firms.

25 Q. Were they successful in finding employment for

1 you?

2 A. Other than the clerical-type work at the Hershey
3 Medical Center -- I would rate it as clerical-type -- no.
4 Nothing that was medical, laboratory, a quality assurance,
5 none of that.

6 Q. What about a job as an inspector for the FDA?

7 A. Yeah, so I was very interested in the FDA.
8 Because of my training, the thought process was, what can I
9 do to extract the value of what I know from Amerandus
10 Research and do it as a job? Could it be good laboratory
11 practice-type job, good clinical practice, what have you?
12 And FDA, I also knew someone senior there, seemed like it did
13 it all; it would be a good choice; it would be great. So I
14 did look and look and, you know, kept monitoring FDA.

15 And finally there were some opportunities in the
16 Harrisburg area, what they called the Harrisburg resident
17 host, I believe is the term. And I made some applications.
18 Not that I'm claiming I would have necessarily got it,
19 because I did have some shortcomings. And I do know from
20 inside information that, you know, those qualifications I
21 might -- wasn't clear I would have gotten it anyway. But I
22 did get rejected from all of the applications.

23 Q. And you got rejected on what basis?

24 A. Well, they claimed I wasn't eligible. So there's
25 eligibility and then it's qualification. I wasn't eligible

1 because I did not have -- meet their physical strength
2 requirements.

3 Q. Is that because of the osteoarthritis and
4 osteoporosis?

5 A. The osteoporosis.

6 Q. The ailments that you have?

7 A. Yes.

8 Q. So did they have a certain level of lifting
9 requirements that you failed to meet?

10 A. They did.

11 Q. Were there other jobs that you sought out that you
12 never heard back from?

13 A. Yeah. Many.

14 Q. Many?

15 A. Yes, many.

16 Q. And so would you -- how would you reach out to
17 those companies to seek to obtain employment?

18 A. So in addition to the recruiting companies, I have
19 large numbers, probably 30 different kind of Indeed,
20 Glassdoor -- there's a variety of these services now that
21 feed you -- and I use this to this day -- large numbers of
22 job openings. You get pretty good coverage, so I would also
23 look on websites. But I learned that these -- if you have
24 enough of these, you get very good notice of -- it's better
25 than trying to look at the websites. I still do look at

1 website by hand. Like, I know this company, I'll look. But
2 mostly I'm relying on a large number of these employment
3 engines where they are -- they're the ones scraping, so to
4 speak, the sites, industrial sites, for example. And then
5 you get an e-mail that says: Hey, this job's open or this
6 lectureship, whatever it may be. And so then I would look to
7 see, you know, what my qualifications were relative to the
8 job.

9 Q. What about pharmaceutical companies? Have you
10 sought employment there?

11 A. Yeah. Never heard back. I mean, it's a little
12 more dicey with pharmaceutical companies because, again, what
13 you learn as you go through this process is you have to be
14 very cognizant of the qualifications. And in research, it's
15 a very specialized field. So, for example, just the other
16 day I'm looking at a company -- you know, company's in
17 Delaware. And they want, like, your biologist. That's
18 general. Let's look at it. But they want someone with
19 experience in flow cytometry, and you have to have a certain
20 number of years. This, that, so it gets extremely
21 specialized. That's assuming I could even do those jobs
22 because for, you know, to get a laboratory job is probably
23 not appropriate for me to begin with. But I'm just giving
24 you the hypotheticals.

25 Q. So going back to the laboratory work that you were

1 doing at -- from home, Bauchwitz Laboratory --

2 A. Yeah.

3 Q. -- Amerandus Research, were you working that
4 business from home?

5 A. Yes, I was.

6 Q. And did that allow you to -- or strike that. Did
7 working from home give you some accommodations that you
8 otherwise don't have in an office?

9 A. Yeah, tremendous, yeah.

10 Q. So how would you work?

11 A. Well, I --

12 Q. Strike that. Would you sit constantly?

13 A. Well, I would say that when it was Bauchwitz
14 Laboratories I was able to do more work. I had progressively
15 declined, let's put it that way.

16 Q. Okay.

17 A. So by the time you're talking about Amerandus
18 Research, it became more significant. I also was doing less
19 and less and less laboratory work. We did have my sons
20 involved. As I sometimes jokingly tell people, you could
21 have called it Bauchwitz and Sons. My boys did -- our boys
22 did a lot of -- you know, they took over a lot of manual
23 labor.

24 Q. But getting back to the question in hand, were
25 there times that you would work while lying down in bed?

1 A. Yeah. I mean, the value of working from home, as
2 this disease progresses, is accommodations. So you can get
3 up and rehab when you want; you can go recline and work on
4 your laptop as you want. You can stand; you can do whatever
5 you need to do. So definitely I think it was beneficial.

6 Q. Are you able to stand for eight to ten hours over
7 a microscope or other lab equipment?

8 A. No, not at all.

9 Q. How does -- or in your opinion how does your age
10 limit your ability to get employment?

11 A. Yeah, that's been also an interesting
12 consideration. So I think a lot of jobs -- let's say you do
13 find they're qualified. The problems with the jobs that are
14 qualified is they tend to be, for me, if I'm not gonna be a
15 professor -- which I can't be and I've been out of the field
16 also a long time, so I don't have that subject matter or
17 technical expertise anymore. And as I told you also, the
18 grants you have to bring, you don't have the history, so all
19 that's broken in.

20 Now, if you do look at jobs, like quality
21 assurance, let's say, or investigation, whatever it may be
22 where it's more entry level, I find these people, they're
23 beginning to want -- what is a man in his late fifties
24 doing -- these are jobs we would give to people in their
25 twenties. You know, what's going on here?

1 So I think there's a question about what's the
2 story, what -- why is this man applying, and sort of just
3 their -- their custom -- they're used to people like my
4 niece, my -- our own sons, my nieces. You know, those people
5 are the ones who get these jobs, even though I would think,
6 you know, I would be valuable just being, obviously, I think,
7 more experienced than them. But that's not the way it goes.

8 Third thing is I would say risk management. I'm
9 guessing now, with regard to that, but I would say, you know,
10 maybe they don't -- you know, think that an older person
11 maybe is more of a risk.

12 I will say I did get some feedback, so I did try
13 to get some information more direct as to what's going on.
14 So I did contact some employers, why -- so, for example, I
15 would get triaged out. This is now not where I didn't hear
16 back but where they said you were rejected. So I call HR.
17 Why did I get rejected so quickly too?

18 ATTORNEY DEMMEL: Objection. Hearsay.

19 ATTORNEY HOLST: He hasn't said anything yet
20 about that's hearsay. He just said he contacted them.

21 THE WITNESS: Yeah. I contacted them.

22 MASTER CONLEY: Well, if he's gonna say what
23 they told him.

24 ATTORNEY HOLST: No --

25 THE WITNESS: Oh, I can't say what they told

1 me?

2 BY ATTORNEY HOLST:

3 Q. No. But you can say what was your understanding
4 based on those conversations.

5 A. That you needed to be able to hit the ground
6 running and you weren't. For high income, yeah.

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

10 A. Correct.

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

12 A. Yeah. So she stated correctly, except I was paid
13 less than she said. But I was at Lebanon Valley College as
14 an adjunct professor teaching two courses, about 3700 or
15 \$4,000 apiece.

16 And they then wanted me in 2011, you know, I
17 start -- create a new textbook, teach this, and there was a
18 lot of hassle, cutting the income at the same time asking for
19 a lot more and all sorts of trouble. And so I had these
20 discussions with my wife and, you know, this is redic -- she
21 said, correct, we thought: This is not worth it; this is a
22 lot of effort for very little money and not much advancement.
23 What else can you be doing?

24 My -- at that point it was I, I believe, who three
25 times raised the issue, why not just become a clinical

1 psychiatrist. And, you know, that's a more stable situation.
2 You don't have to worry about grants; you don't have to worry
3 about, you know, any of these issues that are ongoing, become
4 a clinical psychiatrist.

5 And so that was discussed three times in early
6 2011. And at that time -- do you want me to continue?

7 Q. Yeah, keep going. Absolutely.

8 A. At the time my wife said some of what she said,
9 and she said in addition to what -- so what she said I'll
10 repeat. You know, that you're getting older, there is -- you
11 know, it's going to be very, very arduous for a person of
12 fifties. You would be completing this by the time you're 57.
13 You would just be starting as an attending, that -- you know,
14 it turned out that those concerns were more than true.

15 I had medical issues beginning at the age of 53,
16 every year since, including this year. As I said, I was --
17 broke my back. I was in a TLSO brace -- that's a
18 thoracolumbosacral orthotic brace, I believe. And so -- for
19 four months. So there were a number of issues, medical
20 issues that arose. So I think there was -- and I can't say
21 how arduous otherwise it would have been. I don't know that
22 she was forecasting medical issues, but just physically
23 arduous.

24 So -- and she said also that we don't need another
25 clinical income. That's been sort of her statement all

1 along. That's why we had the division of labor. Go ahead;
2 do research; do what you're gonna do. I'd rather you do a
3 company that succeeds so I can retire early. Make some big
4 money, you know, even if it's a venture, an entrepreneurial
5 venture. It's not a small business. It's an entrepreneur
6 venture. See if you can -- she had confidence in me, make
7 something of it, make some money and that would be great.
8 That would be better, because we don't need the immediate --
9 we were living well. We didn't need -- we didn't have
10 financial needs. We didn't need the additional income. What
11 we needed was something like that. So she was not -- she
12 dissuaded me and through discussions from being a clinical
13 psychiatrist.

14 Q. So you talked about your efforts to obtain
15 employment post-separation. Have you undertaken any efforts
16 to get Amerandus Research back off the ground?

17 A. Oh, yes, substantial. So as I said, I obliquely
18 referred to the ESS, the substitute teaching sort of as my
19 parachute. So based on all the applications I've done, it
20 seems to me that what's better than being a clerk would be to
21 be a teacher, because there's an emergency situation that
22 exists in the United States, and in particular as well
23 Delaware and Pennsylvania both, where they really need
24 teachers. And the reasons, sadly, that they need them is
25 probably because they are underpaid. But it makes an

1 opportunity for me.

2 So they are much more willing to do that. So the
3 idea there is this is something I can do. I like teaching.
4 I have taught before, obviously, as a professor. This is
5 something I can do.

6 So that's why the substitute teaching. I want to
7 keep my hand in the game so that if necessary I can get a
8 certificate and teaching. But back to your point. Yes, the
9 most interesting thing I want to do is I'm self-employed. I
10 mean, I decided, hey, this is what I was doing for ten years
11 in one form or another, whether you call it Bauchwitz
12 Laboratories or you call it -- really Amerandus Research,
13 which is the oversight component. It's an oversight venture.
14 That's what I want to do.

15 And I have to say, quite frankly, this case
16 reignited that in many ways. There are many things ongoing
17 here. So we -- the idea of myself and sort of my colleagues,
18 I've been getting back together for months and months. We
19 put the website back together, which had been very heavily
20 damaged by hacking. Took us much longer than we thought.
21 We've taken a number of actions on business development. How
22 can we change the funding approach? What can we market so we
23 no longer, for example, want to be focussing just on
24 scientists and scientific misconduct, a small market, that
25 already has a federal agency -- while people don't believe

1 it's appropriate, quite working the way it should be, it's
2 there -- and go into, you know, maybe a bigger market with
3 some newer tools.

4 So I spent -- you know, I spent -- I basically,
5 the truth is, as we now announced on the website -- and it
6 sounds like my wife has seen it. She says it's still there.
7 That's true. We did get it back up and running. You know,
8 we are sort of transitioning to expand it and see if we can
9 get it to become a not-for-profit.

10 Q. So if it's -- operates successfully as a
11 not-for-profit, in your opinion what can you earn off that
12 not-for-profit entity?

13 A. I believe that for that size entity for not for
14 profit, that typically you either draw nothing, which
15 wouldn't be appropriate in this case, or you would draw
16 something like \$60,000 a year.

17 Q. And you now have a residence in Delaware with your
18 mom?

19 A. Correct.

20 Q. At the conclusion of your case, do you intend to
21 live there full time?

22 A. I do.

23 Q. Do you have a teaching certificate in -- or
24 license, I should say, to teach in Delaware?

25 A. No. These are all just emergency permits that

1 they're -- as part of being employed by ESS.

2 Q. So if you obtained a license to teach in Delaware,
3 do you have any idea what you would be able to make annually
4 as a teacher?

5 A. Yeah, with a master's or Ph.D. -- they don't
6 distinguish for some reason in Delaware -- we start out
7 making \$42,000 a year.

8 Q. And without the teaching license, what could you
9 make?

10 A. Well, then you're just doing ESS full time, let's
11 say, so you're gonna make 37,500, whatever it is.

12 Q. So would it be fair to say that throughout your
13 marriage your wife has earned more money than you did?

14 A. Oh, sure, I think that's fair to say.

15 Q. Now, she was asked a question on cross about
16 whether you assisted in repayment of her student loans and
17 she said no. Is that true?

18 A. I don't think that's true. I think it was marital
19 funds, you know, my funds and hers that went to repaying the
20 loans. That was my understanding.

21 Q. So at that point in time were you earning some
22 income as well?

23 A. Yeah.

24 Q. And when you moved to Hershey from St. Luke's --
25 and there was testimony that her income, it funded the

1 retirements and IRAs -- did you bring any assets with you
2 from New York?

3 A. Yeah.

4 Q. What did you bring?

5 A. I brought almost \$250,000.

6 Q. In a cash account?

7 A. Yes.

8 Q. I want to move towards any efforts that you
9 undertook to assist your wife in her profession during the
10 marriage. And I'll ask you this question. Do you believe
11 that you provided her with assistance in her career?

12 A. Very significant.

13 Q. How so?

14 A. Well, I would say early on with her income. So my
15 wife was concerned and aggrieved to some extent -- and
16 rightfully so -- that early on she wasn't -- she wasn't paid
17 as well as her colleagues. And part of that was she was the
18 low woman on the totem pole and getting the Medicare/Medicaid
19 cases, I guess. But there were also some very unfortunate or
20 unreasonable, maybe is a better term, points the way her
21 contract was set up. So there were a number of other
22 concerns that she had.

23 So one day she -- and I agreed with her. So I
24 considered some of the stories she told me about the
25 Medicaid. And I felt it was not only a problem for her as a

1 doctor, but I felt it was actually jeopardizing the health of
2 Medicaid patients. Because really it was disincentivizing
3 the other surgeon. She was very good. She would go in and
4 take care of them. But most -- because it was costing her
5 money, they were actually saying to her, You're not billing
6 enough to meet what we are holding you against. So it was
7 actually harming her. And I felt that was unfair, but she
8 would at least do the work.

9 So she was complaining about that. And I agreed
10 with her that this was not just a situation of doctors not
11 being -- her being paid properly, or other doctors too. But
12 the patient -- it was a bad incentive.

13 So one day, in the mid 1990s, she came to me with
14 a big -- and she was looking into this on her own as well --
15 a big ream of these printouts of recoveries. She's
16 investigating why it is. And she wanted to know what was
17 going on, could I look at the numbers in this case.

18 And so I did. And I started crunching her numbers
19 and I made a, you know, SK Invoice, a customized program
20 called SK Invoice. And I did all this work. And I had
21 already become involved -- just because of when she had
22 earlier told me about these issues, I had already gotten
23 involved maybe with her, but both those -- you know, at the
24 level of the New York state medical society, the Medical
25 Society of the State of New York -- I'm sorry --

1 ATTORNEY DEMMEL: Objection. Relevance. We
2 have heard five minutes of testimony with no answer to the
3 question that was asked.

4 MASTER CONLEY: Well, and I do -- I do think
5 that wife already testified that she -- I mean, she agreed
6 that he helped her.

7 ATTORNEY HOLST: She did.

8 ATTORNEY DEMMEL: She did.

9 ATTORNEY HOLST: And I will cut to the chase.

10 BY ATTORNEY HOLST:

11 Q. Specifically, what you were talking about this, in
12 the 1990s, what exactly did you do?

13 A. Yeah, that's good.

14 Q. Specifically.

15 A. Yeah, specifically, so having analyzed these
16 numbers, and I found hundreds and hundreds of thousands of
17 dollars that were being not properly collected by her
18 department, not only on her behalf but other colleagues. And
19 so what I did was I -- she in part, but I also -- approached
20 her department chairman, a woman by the name of Susie
21 Windamin (phonetic), and said, hey, there's a problem. Your
22 collections, really there's a problem here. It looks
23 terrible. I mean, there's a huge -- you know, it's leading
24 not only to my wife being underpaid but department, the
25 hospital, there's all kinds of problems here. So --

1 Q. And what was the end result of this assistance?

2 A. There were a number of episodes, but there were
3 improvements to her contract. Her contract was substantially
4 improved.

5 Q. Okay. And there was testimony about involvement
6 in a malpractice action. What assistance, if any, did you
7 provide her in that?

8 A. I assisted her in some, like, the Abbot Ball, I
9 mean, had big bankers boxes I found of them. But the most, I
10 think, obviously one on a page was this 2009 one. So what I
11 would do, which is what I did on a daily basis, I -- she
12 would come home, and it was nice to be spouse -- have an --
13 you know, you went to medical school with this guy -- just
14 shoot -- you know, go over medical complications and talk to
15 me. It kept me fresh in medicine and was good for her.

16 Well, in this case it was very helpful because I
17 actually wrote up the medically oriented rebuttal point by
18 point as to what it is -- because they -- the other side had
19 retired -- retained an expert, so I was given the expert
20 report. How do we rebut the expert report?

21 So I'm the guy that went boom chicka boom chicka
22 boom chicka boom. So I think that was very helpful, I think.

23 Q. Now let's turn to the time during your marriage,
24 your children were younger. We heard that when you moved to
25 Hershey your kids were 11 and 13 respectively. And you heard

1 testimony from Dr. Rogers that she did the lion's share of
2 the day-to-day care and household maintenance during your
3 marriage. Do you agree with that?

4 A. No.

5 Q. Tell me what your opinion is of what transpired?

6 A. Well, first of all, I don't disagree that she made
7 the dinners, as she said. I don't disagree that she went
8 shopping for food, as she said. So I don't necessarily
9 disagree with the details. I disagree with this idea that I
10 had -- I, who had insomnia, severe insomnia, wasn't awake in
11 the morning. I was awake at all times at night, as I am now.
12 So that was a little bit off. So -- but I did a lot of other
13 stuff. So we had a natural division of labor that was very
14 beneficial to both of us and our children, that's the way I
15 would put it.

16 So while -- you know, and I didn't really start
17 cooking until our boys were gone. So I cooked for my wife
18 and myself once they were gone, but largely before that I
19 think it's fair to say that she tended to cook dinners.

20 But I did a lot of stuff. I also took the
21 afternoons to carpool the boys to swimming, for example. I
22 was the one -- I became USA swimming official, so I was not
23 only at all the meets, I became an officiant. You know,
24 that's an extra level parental involvement. I -- so just an
25 enormous amount in the swimming. Soccer, I was an assistant

1 coach and became the acting head coach. We won a
2 championship. You know, that was one of the boys' teams. So
3 the sports were very substantial involvement.

4 One of our sons in particular -- but both of them
5 came to me for, you know, advice. I took them to all of the
6 meets. Again, not to put down my wife. She did -- it was a
7 natural division of labor. But as far as NCAA -- the real
8 championship meets or the U.S. Open, you know, I was the only
9 one there. I took them. But, again, just because that's the
10 way we divided and not because she did anything wrong. But I
11 had a substantial role for sports.

12 Now, in terms of academics, you know, they would
13 come home, they basically had a live -- you know, a guy
14 working -- a self-employed man who's a professor, so they had
15 an in-home professor as their father. And they had a
16 professional laboratory in the house, which was significant
17 in Derry Township because they didn't -- and that medical
18 center was not easy at all to get kids in there to do their
19 internships.

20 So it was very valuable for our kids in a number
21 of ways. So of course we did these projects, a number of
22 projects with the mice. I treated them like any other -- I
23 had had interns in New York City, teenage interns, so I was
24 used to it. But by the time the boys were done high school,
25 I mean, they were like graduate schools. And it showed.

1 They got into excellent -- I mean, they were very
2 accomplished. They won a lot of major awards, okay, as a
3 result of that work.

4 One boy an intel -- international final performer,
5 he also went on to publish that work. We went to a meeting
6 in Rome. That was one of our trips to Rome, Italy. My wife
7 used it as vacation, but I and my son presented that work
8 there. So it was truly an international importance. It
9 wasn't rinky-dink. It wasn't little stuff. They were
10 winning big awards. Capital Area Science and Engineering
11 Fair, the younger boy a grand champion. He won multiple
12 statistical awards. Both of them won category first places.
13 They won first place in the Pennsylvania Junior Academy of
14 Science many years. So --

15 Q. Sounds like they're very well accomplished.

16 A. They did pretty well.

17 Q. And it sounds like it's a testament to both
18 parents.

19 A. Yeah.

20 Q. I want to turn your attention to Exhibit D4.

21 A. D4.

22 Q. D4. D4. Let me know when you get there.

23 A. Yeah.

24 Q. Can you identify this multipage document for me
25 and the Court?

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2 accomplished. They won a lot of major awards, okay, as a
3 result of that work.

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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
<u>Defendant</u>	)	IN SUPPORT

**FIRST DECLARATION OF ROBERT P. BAUCHWITZ
IN RESPONSE TO CLAIMS MADE
IN DEFENDANT’S PETITION TO TERMINATE APL¹**

ROBERT P. BAUCHWITZ, M.D., PH.D., being of legal age, declares:

1. I, Robert P. Bauchwitz, who henceforth in this document will refer to myself as “Plaintiff-Husband” or “Husband”, make this declaration of specific, detailed, evidence-based responses to claims raised by Ex-Wife, Ann Marie Rogers, M.D. of Hershey, PA, and her counsel, James R. Demmel, Esq. of Camp Hill, PA, in her Motion for Termination of Alimony Pendente Lite. of December 8, 2020.

2. I have personal knowledge of the facts set forth herein, and am willing to testify under oath to them.

3. I reside at 23 Harlech Drive, Wilmington, Delaware, 19807.

Financial prejudice

4. Wife at point 29 in her motion claims: “Maintaining the APL order until Plaintiff’s Superior Court is resolved will prejudice Defendant financially.”

5. Husband agrees with his counsel in the associated response filed by him that the law on provision of APL is clear, as stated in the primary filing to which this Declaration is attached:

“It is axiomatic that APL continues until the economic issues are fully and finally resolved. *See DeMasi v. DeMasi*, 597 A.2d 101 (Pa. Super. 1991). Economic claims are not fully and finally resolved until an appeal as of right is exhausted. *See, Id.* The law is clear and unequivocal on this point.”

¹ Corrections to the original version filed on January 4, 2021, are shown in red type.

6. Husband further notes that Defendant Wife Ann Rogers has not presented any evidence of a reduction in her income from any time preceding the date of a hearing before this court on August 6, 2020, or thereafter, including not in **her** document requesting termination of APL to her former Husband.

7. Just as important a question is whether it will prejudice Plaintiff-Husband financially not to receive APL. As the evidence to be presented below is intended to demonstrate, the answer is very clearly that it would. Furthermore, such prejudice to Husband would vastly outweigh any prejudice to Wife.

8. Husband notes the following about marital income and **standard of living**:

a. The Social Security Statements of the parties were entered into the record.

b. This Court noted in its opinion of October 9, 2020, that it is marital income that determines the standard of living in a Pennsylvania marriage.²

c. The United States Census Bureau publishes income information that allows a comparison of incomes in the United States. (See attachment 1_.)

d. A table of marital income relative to U.S. incomes for the years of the marriage is shown in the second page of attachment 1_.³ During the marriage the marital income fell into the following Census Bureau percentiles:

For 1991, the marital income was in the second quintile from the top (the top 40%).

In 1992, the marital income was in the top 20%.

From 1993 through the end of the marriage, the marital income was never outside of the top 5% of U.S. incomes.

e. Consistent with a high marital income, while living in New York City from 1990 through mid-2006, the marital couple lived for most of their time in a

² “Spousal incomes are what establishes a standard of living throughout a marriage” Marsico, Edward, M., Judge, Opinion of October 9, 2020 in Rogers v. Bauchwitz 2017-cv-6699-div, p.7. [**“Quality of life” is used interchangeably in this document with standard of living.**]

³ It was noted during the Master’s hearing of October 9, 2019, that Husband’s academic fellowship incomes in the 1990’s often did not show up on Social Security statements due to agreements between the U.S. government and employing institutions, whereby employees paid an income from fellowships were considered exempt from paying Social Security and Medicare taxes. During the period from September 1991 through part of 1995 during which Husband was paid from fellowship funds and such did not get taxed, an estimate is shown in brackets and summed to produce a marital income, as shown in attachment 1_.

high-end apartment building one block from Central Park and Lincoln Center at 124 W. 60th Street in Manhattan, New York, NY (aka “South Park Tower”). The building had a pool, garage, doorman, and concierge as well as maintenance staff. The couple’s time in the building included many years in a 52nd floor penthouse apartment costing several thousands of dollars per month in rent.⁴

f. The marital couple was able to send one child to an exclusive private secondary school (The Dalton School) in New York City costing tens of thousands of dollars per year. Their sons then attended two of the most expensive private universities in the country: MIT and Johns Hopkins.

g. Husband, Wife, and their families continued to take very expensive vacations throughout the marriage.⁵

h. Husband disputes the Master’s assertions in support of what she purports to be their middle class lifestyle⁶ that the couple drove “nice but not luxury cars”.⁷ Importantly, Husband asserts that judicial notice could have been

⁴ Even before moving into a penthouse apartment, the marital couple’s bedroom in the same building during the 1990s was directly above the bedroom of child actor Maccaulay Culkin, who was believed at the time to have had a \$55 million trust fund. The radio personality Rush Limbaugh also lived in the building, as did numerous Wall Street financial people and business owners. Husband and Wife could not move into the building until they could demonstrate a minimum income of [-] over \$100,000 (in the very early 1990’s).

⁵ These vacations cost up to tens of thousands of dollars per trip, including \$20,000 for a family trip to Spain and Portugal arranged by Husband, other trips throughout Europe (Austria, Germany, Italy, Sweden, **Denmark**, Ireland). Even in 2017, just months before Wife would unexpectedly abandon the marriage, the couple spent many thousands of dollars for a vacation in the British Virgin Islands, including travel throughout Virgin Gordo and an extended stay at the Marriott Hotel on **Scrub** Island, BVI. Three months after that, in late May and early June 2017, the marital couple paid a significant portion of over \$60,000 in expenses for a family trip to England, including over \$5000 for first class round trip tickets for Wife to and from London. (These expenses exclude Husband’s own simultaneous travel costs to Amsterdam, the Netherlands, for a business meeting). Husband further paid from marital funds for drivers and a British NHS nurse to travel with the family in England to care for Husband’s recently critically ill father-in-law. In addition the marital couple took vacations on South Beach, Florida, the Florida Keys, multiple trips to Copacabana Beach, Brazil, as well as numerous vacations associated with the business travel of each spouse.

⁶ 68. The parties established a middle-class lifestyle during the marriage. Master’s report of March 13, 2020. N.B. the inconsistent, undefined use of the terms “middle class”, “upper middle class” and “upper class” in the Master’s report.

⁷ “the parties lived in a nice home, went on vacations, sometimes to Europe, and **drove nice, but not luxury, vehicles such as Volkos and Acuras.**” Husband testified that upon buying cars in Pennsylvania in 2006 upon moving from New York City to benefit Wife’s career

taken that the Acura and Volvo car brands, shown in the Inventories of Assets and Liabilities of Husband and Wife filed with the Court are by description of the manufacturers as well as wide acceptance deemed luxury.⁸ Husband also notes that the modifications they made to their house in Hershey, PA, was of the top quality and not necessarily consistent **with** a “middle class home”.⁹

i. After Husband and Wife felt that his career prospects had been harmed by involvement in a scientific misconduct *qui tam* case¹⁰, and whose participation was initiated by the federal Office of Research Integrity (ORI) requests for Husband’s assistance with a related investigation¹¹, Husband, with Wife’s consent, started his own business ventures. (See attachment 2a_.)

goals, he outright bought Wife’s car for \$30,000 from his cash funds. Along with that, he drove an Acura MDX leased in his Wife’s name, which they later bought after the lease ended. Furthermore, Husband researched and obtained for Wife a Platinum Package Volvo S80, which they financed for \$50,050. (Wife would claim in her Inventory of Assets and Liabilities that the Volvo had been “leased”.)

⁸ Husband never owned nor drove any other car than an Acura MDX 2006 Touring model during the marriage. Acura and Volvo are considered luxury car brands as revealed by simple Internet search, including from the manufacturers’ sites, encyclopedia sites, and review sites. For example: “Official Acura Site - Luxury Sedans and SUVs” (www.acura.com); **Acura** is the luxury vehicle division of Japanese automaker Honda. <https://en.wikipedia.org/wiki/Acura>; “**Volvo Cars** (Swedish: *Volvo personvagnar*), stylized as **VOLVO**, is a Swedish luxury automobile marque.” https://en.wikipedia.org/wiki/Volvo_Cars; “**U.S. News’ Best Luxury Car Brands Zach Doell** | January 22, 2019”.

⁹ Every improvement made to the home was of the highest quality and cost. Just before she left, Husband had \$8000 of top quality carpeting installed. He also had the master bathroom remodeled with a Jacuzzi and **custom-ordered**, hand painted tile imported from Portugal. The mahogany toilet seat alone cost over \$400. There was also installation of a walk-in closet completely covered with cedar wood, and custom oak shelving for over \$2000. Several pieces of custom wood furniture were made for the couple. Top of the line wooden Roman shades, Lennox HVAC, and Briggs and Stratton whole home generator are a few more of a long list.

¹⁰ See especially comments on the use of this publically available case material by the Master in her purported “judicial notice”, as discussed below.

¹¹ See attachment 2a_ for a description of how Husband became involved in the case, and see the link at healthsci.org for additional evidence of Husband’s work on the case. The ORI’s actual approach of Husband in 2002, and their repeated contacts of him thereafter, was neither spontaneous nor initiated by contact from Husband: ORI first acted in response to notice from a journalist as to Husband’s potential value as a former member of a laboratory in common with that of the target of an existing investigation of theirs.

j. Husband denies completely that Wife ever tried to get him “gainfully” employed or that she ever thought he was not “working”, either as an academic or as self-employed. Husband has testified that the marital couple not only had profit motives (in part) from his participation in the *qui tam* case (likely worth well over \$1 million to them), but also from the work he did to study, breed, and license genetically modified mice and related control mice in his business venture (Bauchwitz Laboratories later dba Amerandus Research). Although it became clear that the scientific misconduct venture would take investment of marital funds, it, too, had long-term profit goals, and in fact just weeks before Wife abandoned the marriage without notice, she was involved in Husband’s discussions by a similar German company that was considering buying Husband’s firm. Additional evidence is presented here that Wife was well informed of and supportive of Husband’s entrepreneurial attempts. (See documents 2a_ and 3a_, attached).

k. Husband further denies that he was in any way “evasive”, as the Master claimed, when he stated that he did not agree with Wife’s counsel continually premising his questions at hearing and in filings as if Husband had in fact not been “working” after he left academia. (See documents 3a_ and 3b_, attached.)

l. Husband asserts that the repeated claims by opposing counsel, apparently with the on-going knowledge of Wife, that not making profit is equivalent to having been “unemployed” or not “working”, is manifestly improper. (See “Basis for high legal costs” section, below).

m. Therefore, Husband, based on high marital income, was able to self-fund work from his laboratory. That self-employed work resulted in useful published scientific results, and also valuable genetically modified mice, which as he testified would have been expected to be profitable were it not for tortuous interference from a party which had retaliated against him during the *qui tam* case. (See 3b_, attached.) Husband therefore asserts it was incorrect for the Master to remove valuation of such wealth from his financial needs to maintain his quality of life.

n. Husband’s work on the *qui tam* case and on the mice alone were fully intended to be very profitable (“gainful”) to the couple, and it was through no wrongdoing or lack of motivation by Husband that these efforts were not financially fruitful.¹²

o. On the contrary, because of his work on the *qui tam* case, Husband has been subjected to improper negative effects that reach beyond the tortuous interference discussed above. Husband therefore objects to the Master’s

¹² The quality of Husband’s work on the *qui tam* case can be assessed from the document at healthsci.org.

assertions that merely being highly educated makes high income likely, or that questioning this claim of hers makes him “disingenuous”. (The use of such terms as have been used against Husband in this case might also violate the Pennsylvania Code of Civility for judges and lawyers.)

p. Wife also testified that Husband was very helpful to the advancement of her career and income: “I’d be much poorer and not nearly as far along without that [your] help”. (From text message introduced at the Master’s hearing of October 17, 2019.)

9. The preceding facts support a contention by Husband that the marital couple’s high-income status had a large impact on the marital quality of life/standard of living. Husband directly contributed to Wife’s high income and also made serious efforts to bring in additional profit through his ventures. A high quality of life, including on personal and business levels was achieved for extended periods because of high marital income.

Post-separation incomes and quality of life prospects; the prejudiced party

10. The Master has stated in her report of March 13, 2020 that the economic quality of life Wife enjoys is likely to increase after removal of her Husband.¹³

11. In stark contrast, Husband’s life and financial circumstances have become greatly diminished, as even predicted by the Master in the same report.

“With his earning capacity alone, Husband will not be able to *maintain* an upper-class standard of living. This favors an award of alimony to Husband.”

12. Consistent with the Master’s claims on the relative post-marital living standard of the ex-spouses, even if Husband could achieve the income ascribed to him by the Court, that potential income would be over 600% (6-fold) less than Wife’s existing income.

13. The results of Husband’s job searches since separation have made it clear to Husband and his vocational expert¹⁴ that he does not have the income potential ascribed to him.

¹³ “**8. The standard of living of the parties established during the marriage.** The parties established an upper-middle class standard of living during the marriage. Given Wife’s superior income, she will have no problem maintaining and perhaps even exceeding the marital standard of living. With his earning capacity alone, Husband will not be able to maintain an upper-class standard of living. This favors an award of alimony to Husband.” Master’s report of March 13, 2020.

¹⁴ According to his report, which was provided to the opposing party in the fall of 2018.

14. Husband denies that any hearing of evidence about his earning capacity was ever conducted by Dauphin Domestic Relations. The Support Conference officer was simply given competing claims of what a Certified Fraud Examiner (C.F.E.) could earn, and then chose a point between the two estimates. However, Husband argued in his subsequent report to Wife's vocational expert that he would for several reasons be highly unlikely to get high income employment as a C.F.E. (See attachment 6b_.)

15. Husband also denies that the withdrawal of the request for a *de novo* hearing has any bearing on the merits of his desire to have such information appropriately assessed. As he notes below (in the section on how the case costs have risen), it was Husband's Support Attorney, Wendy Chan of Lancaster, PA, who unexpectedly changed her strategy for the *de novo* support hearing to one that Husband felt was completely untenable: namely, that upon having been treated for cancer, Husband would have had a zero earning capacity.¹⁵

16. Of note, it was Wife who then motioned the court to insist that the *de novo* Support hearing occur. This was granted. Husband then obtained an employment attorney who was willing to proceed with the *de novo* Support hearing. However, upon his sending the report of Husband's vocational expert to Wife, it was she and her counsel who asked to withdraw from the *de novo* hearing.¹⁶

15. The Master nevertheless assumed, because he was "highly educated", that Husband could achieve new employment at relatively high income despite his having been out of relevant areas of employment for over a decade, being of advanced age, and having during that last decade dealing with several challenging medical issues such as osteoporosis and back fractures, osteoarthritis, and cancer. Husband testified to his medical conditions, against which no dispute was raised by Wife, a physician who lived with him and was highly informed about his medical conditions. Perhaps most important of all the factors to which he testified has been the negative impact from the *qui tam* legal action with which he was involved.

¹⁵ Attorney Chan asked that the request for a *de novo* Support hearing be withdrawn immediately upon learning that Husband would be out for some months for cancer treatment.

¹⁶ Husband was ready, willing, and able to proceed with the *de novo* support hearing, but his counsel, as well as numerous others, raised a concern to him that the judge who would be handling the case purportedly had a history of not treating well husbands who claimed to have difficulties finding **work**. Upon reading some articles describing the treatment of litigants before the judge at issue, Husband agreed that it would be more prudent to bring the support issues before the master or judge later in the proceedings, as in fact was done.

16. Statements made about Husband during this divorce case by court officers, including remarkably the Master¹⁷, affirm what he has argued and is well known in the literature on “whistleblowers”: any published negative statements about a “whistleblower”, no matter how unjustified, enhances the severity of career injury. Remarkably, the Master herself chose to introduce, *sua sponte* and extensively, such incomplete and damaging material into her Master’s report of March 13, 2020.

17. At least as important as reputational damage is the existence of former opponents with a motive to keep the whistleblower reputationally and fiscally injured, as Husband has testified in this case, such as concerning what he and his business attorneys felt was tortious interference in the licensing of genetically modified mice produced by Husband’s businesses.

Baseless claim by Wife and her counsel; Husband’s post-separation income

18. At point 30, Defendant Wife further claims that “[-] Plaintiff has not established regular employment since the parties separated”.

19. Husband asserts to the contrary that Wife’s statement regarding establishment of employment is false.

20. Husband has obtained his certification as Direct Care Staff in Pennsylvania (Certificate number 91B5829D6D3749338490E03D5AF15121541291), and upon so doing, Husband has been employed since June 2020 as Direct Care Staff in Delaware, where he is the full time, primary caretaker for a disabled relative who lives with him.¹⁸ This arrangement is permitted under the laws of his state of residence (Delaware).

21. Although it is not particularly clear exactly what Wife’s counsel means by “regular” employment, Husband notes that he works as “regularly” paid direct care staff seven days a week for at least four hours a day (averaging 225 hours per month September – November). Husband further spends time searching for work, such as the substantial time it took to prepare a test lecture this past November of 2020 for a position as an adjunct lecturer – a position which he did not get. He also spends time to continue reorienting his business, a point he considers vital for many reasons, not least of which is that it probably is the most likely¹⁹ means by which he might make more than a teaching income, as he also has testified.

¹⁷ In her purported extensive “judicial notice” which Husband asserts was likely an ex parte investigation.

¹⁸ He also cares for a second disabled relative for whom the first formerly cared.

¹⁹ Though *unlikely* given the time/SVP needed to establish new ventures, and Husband’s lack of investment funds and the aforementioned reputational issues.

22. There has never been any evidence presented to controvert Husband's assertions that perhaps the most he could make would be about \$22/hour as a teacher. He has never received a request for an interview for any position offering more lucrative income, such as in the range of \$36/hr, as was ascribed by Domestic Relations to Husband. For evidence against Husband's ability to obtain high income employment, see the Table of Applications and related material, below.

23. Importantly, there is no evidence in the record whatsoever to support the Master's assertion, as cited by the judge, that merely having "high" or "impressive" education necessarily correlates with high income. Husband noted that in the Settlement Conference of June 26, 2019, on the basis of such education, the Master first told him that "This is not an alimony case, it just is not", a declaration she made *before* she had heard any in court testimony (see letter of Husband to counsel attached as document 4_). She made a similar statement about Husband's education in her Master's report.

24. Husband responded at the Settlement Conference by inquiring of the Master whether, if he can show that merely having high education does not necessarily produce high income, would he get alimony? Her answer was that he could appeal.²⁰ By way of demonstrating that there is credible evidence for Husband's position, he attaches excerpts from a report about the American Association for the Advancement of Science's 2017 report, "Addressing Biomedical Science's Ph.D. problem. (See 6a_.)

25. On April 17, 2018, Husband provided to Wife's vocational expert a report detailing his employment searches from separation to that date. Subsequently, in September 2018, prior to a de novo support hearing, Husband's counsel provided to Wife's counsel an updated version of the same report, including with specific responses to claims made by Wife's vocational expert. In that report, Husband specifically addressed the erroneous assumptions made, repeated by the Master, that Husband would likely be hired as a Certified Fraud Examiner (C.F.E.), merely because he obtained a certificate. (See 6b_, attached.)²¹

²⁰ And so Husband is now appealing – spending APL and his own funds all the while. See section below on raising litigation costs and unjust enrichment.

²¹ Husband's experience in applying for paralegal jobs has also not been consistent with claims made by the Master in her report that Husband would be hired to perform clinical chart reviews. That is actually what Wife, a clinician, has done, in part, to obtain ancillary income, (by which effort alone she would make more than a quarter of the annual income ascribed to Husband). The Master's assertions in this instance are again baseless. It is Wife and not Husband who would be qualified to make, and does make, such clinical chart reviews. (Nurses are hired to do so as well.) It is important to note that not a single law firm has ever given Husband an interview for a position as a paralegal. Similarly, a recruiting firm has never generated any such interest on his behalf from firms looking for paralegals.

26. Husband here provides an update on employment searches since the last provided to the opposing party.

Table of Applications 12/19/20

category	applications	interviewed	rejected prior to interview	rejected after interview	hired	type hired	income as hired
RTW (1)	24	3	21	1 (2)	2 (3)	K-12 substitute teaching	\$100/day
OvInv (4)	23	2	23	0	2 (5)	clerical; healthcare	\$15/hr; \$10.57/hr
recruiters (6)	11	(7)	9	0	(7)	clerical	(\$15/hr)
total	56 (6,7)	5	53 (min)	1	4	teaching, clerical, healthcare	\$10/hr - \$15/hr

(1) RTW: **research, teaching, writing**; sub-categories: research administration and editing; research laboratory worker; non-laboratory research; teaching, lecturer and secondary

(2) Healthsciences and Biotechnology program adjunct lecturer; \$2300/mo; \$14.40/hr.

(3) Secondary Guest Teacher (Biology and Paraprofessional) Source4Teachers, (DerryTownship School District, PA); Secondary Guest Teacher (General and Paraprofessional) ESS (Red Clay School district, DE)

(4) **oversight investigation inspection QA admin-related**; sub-categories: investigator non-research; clinical knowledge leveraged (Clin); clerical paralegal

(5) (a) JFC Workforce marketed by the clerical division for positions offered by clients. I-9 processing for HMC temp position taken; \$15/hr.

(b) **Right at Home - paid caregiver (HHA) for mother with Alzheimer's upon suggestion of the DE Div of Aging; \$10/hr M-F, \$12 Sat and Sun.**

(6) 11 divisions; 9 firms (+ 9 not shown in the first two rows of the table; an *underestimate* of job applications since it accounts for only a single marketing attempt by each recruiter)

(7) The one hire by recruiters was for the clerical job within the category OvInv, already shown in the prior row.

(9) income range to which applied: \$10/hr - ~\$53/hr; income range for interviews and hires: \$10/hr - \$15/hr. Accepted skews low, but is consistent with average WB income of \$13.x/hr.

(10) **jobs assessed but ineligible** by experience or physical requirements: NUMBER.

category **research teaching writing (RTW)**

sub-categories **research admin and editing; research laboratory worker; non-laboratory research; teaching, lecturer and secondary**

applications 24

interviewed 3

rejected prior to interview 21

rejected after interview 1

[Healthsciences and Biotechnology program adjunct lecturer; applied 7/21/20; \$2043/mo if full time]

hired 2

[Secondary Guest Teacher (Biology and Paraprofessional)Source4Teachers (DerryTownship School District, PA); \$100/day]

[Secondary Guest Teacher (General and Paraprofessional) ESS (Red Clay School district, DE); \$100/day]

type hired K-12 teaching

annual income if full year:

category **oversight investigation inspection QA admin-rel (OvInv)**

sub-categories **investigator non-research; clinical knowledge leveraged (Clin);**

clerical paralegal

applications 23

interviewed 2

rejected prior to interview 21

rejected after interview 0

hired 2

[JFC Workforce Marketed by the clerical division for positions offered by clients. I-9 processing for HMC temp position taken; \$15/hr]

[Right at Home be a paid caregiver HHA for MHB upon sugg DE Div Aging; \$10-12/hr]

type hired: clerical; healthcare

recruiters 11 divisions; 9 firms [+ 9 not shown in table]; AT LEAST

Updated totals:

total employment ELIGIBLE applications - at least 56

total employment offers 4

total accepted 4

exclusions SVP > 1yr; \$40,000+; ineligible [hundreds reviewed]

bases for ineligibilities:

Positions examined in which Husband could not apply due to explicit ineligibility, or when Husband did apply but was subsequently notified of ineligibility (esp FDA)

physical and research SVP appear to be primary, along with lack of undergraduate degree background or experience

NQUAL = not qualified by specific job requirements.

Numbers harvested back to March 16, 2019. (This would have been for the Preliminary Conference.)

27. The evidence presented here supports Husband's contention that there is no reason to believe that employment or income chances will improve at his relatively advanced age, and with his work and medical history. He has obtained zero *interviews* for higher paying positions.²²

[There was no point 28 in the original.]

²² The likely significance of his history as a "whistleblower" has been dealt with in more detail elsewhere in this document.

Expenditures and unjust enrichment

29. At points 27 and 31, Defendant Wife and her counsel without any presentation of evidence a claim that Plaintiff-Husband would be rewarded financially for receiving APL while appealing the case, and that APL has resulted in “**unjust enrichment**” to Husband.

30. In the following table, a basic overview of Husband’s expenditure of funds is provided since the time Wife left the marital home without notice on August 28, 2017, “to think and process”, and then left the marriage itself by written notice on September 9, 2017. (See attachment 7_.)

31. Table I. Expenditures by Plaintiff-Husband Sept. 2017 – Oct. 2020

	fixed/mo living expenses excl ins	legal	business - \$515/mo already in fixed as filed	healthcare out-of-pocket	health, car, umb, life insurance premiums
2017	\$6000 x 4mo	\$7,371.94	\$11,402.94/4mo	\$1668.34	\$2398.74
2018	\$6000	\$14,215	\$2890.49	\$8050.20	\$3133.62
2019	\$6000	\$40,775	\$3454.90	\$3378.54	\$3518.42
2020	[\$6000] x 10	\$58,359.63	TBD	TBD	\$3518.42
	\$168,000 [\$228,000]	\$120,721.57	\$17,748 – 38 x \$515 (\$19,570)	\$13,097	\$12,569.20

1) Fixed monthly costs were taken from the Income and Expenses statement filed with the Court: \$7500/mo - \$1470 legal/mo = ~\$6000/mo. Insurance costs were not included in the filing and are shown here separately listed. \$515/mo business costs as declared in the filing are retained in the fixed monthly costs; actual business costs are broken down by year in a separate column.

2) Legal costs include CDFA, vocational and related medical experts. These legal costs extend through November 2020 billings.

3) Business costs are for illustrative purposes; \$515/mo remains included in the fixed expenses as declared in the Income and Expense statement.

4) Out of pocket healthcare costs have been substantial due to illnesses noted in the court record.

5) Insurance premium expenditures include health (supplemental, vision, and dental), auto, umbrella, and life. These numbers do not include any accounting for expected COBRA premiums.

Health and life insurances premiums through employers: Supplemental: \$13.94/wk = \$724.88/yr. Vision and dental: \$7.40/wk = \$384.80/yr. => \$1109.68/yr total; \$1510.00 life annual.

Car and umbrella: \$898.74 -> +\$74.90/mo.

6) Tax payments of about \$14,000 in 2019 are not shown. Some current expenses are still to be **determined** (TBD). **Also not shown are moving costs for Husband and his older son, as well as expenses expended to resolve seeming misconduct by Wife with respect to taking over Husband's EZ Pass, TD Ameritrade and related matters (health insurance).**

7) Estimated total expenses are summed here as greater than \$328,600, of which \$121,000 were legal and expert costs, while \$207,600 were relatively living costs.

8) APL to date is calculated here as $\$7409 \times 24 = \$177,816 + \$6735 \times 10 = \$67,350 = \mathbf{\$245,166}$.

32. Therefore, the APL of \$245,000 paid through October 2020 has been used for the \$121,000 in legal expenses almost entirely inflicted by the Wife's abandonment of the marriage under highly suspicious circumstances and without recourse. (See document 5_.) It has also covered \$124,000 of the estimated \$207,000 in living, healthcare, and business expenses.

33. As there was an apparent shortfall of approximately \$83,000, according to the methods of estimate presented in the table of expenditures, above, it cannot be claimed that this APL represented an enrichment of any sort, unjust or otherwise.

34. The data supports Husband's previous claim that he has lost about \$42,000 in cash, as well as all employment income.²³

35. To the extent Husband's expenditures were unjust, that injustice stemmed from the clearly huge financial damage to a man who had worked hard to support his wife in her career advancement and earning potential which put them for most of the marriage at or near the top 1% of income earners in the country. Husband also worked to provide a highly beneficial upbringing for their children while Wife worked as a physician.

36. Husband also was motivated, and supported by Wife, with the expectation of earning well over \$1 million in *qui tam* relator's fees and in excess of \$100,000 in genetically engineered and bred mouse licensing fees. (Husband also managed rental properties in Hummelstown, PA and Rio de Janeiro, Brazil for his mother in law and mother from which he made income).

Basis for high legal costs

37. With respect to the legal costs in this case, paid from by APL as intended by Pennsylvania law, Husband responds here in more detail to what he alleged by objection in his Exceptions to the Master's report was her error and abuse of

²³ Except that put into an IRA on a regular basis (\$500/month).

discretion in finding that **Husband “chose” to be represented by five different law firms throughout this divorce action “for no discernable reason”.**

38. The Master’s conclusion was baselessly made, particularly since under such circumstances any decision maker such as the Master could and should have ***inquired*** as to reasons for multiple counsel, rather than simply conclude there were none. In other words, of course she could “discern” no reasons, because she did not try to do so. Husband simply testified in response to opposing counsel that he had several counsel.²⁴ Husband was never asked why.

Multiple law firms

39. To help alleviate any further misapprehensions and thereby provide for a better discernment, Husband notes the following:

a. As noted above, Husband’s support attorney, **Wendy Chan**, unexpectedly changed her approach to the *de novo* support hearing she was to handle for Husband after Husband’s treatment for cancer in the summer of 2018. Her novel claim that Husband’s having been treated for cancer would render his earning capacity to be zero remains unexplained to this day. Nevertheless, she was allowed out of the support case at the last minute by the Judge handling the support matter (Turgeon) without a show cause hearing. This was very much *against* Husband’s wishes; he repeatedly asked Chan to remain and handle the case presentation as originally agreed and in cooperation with their vocational expert (who also disagreed with her reasoning).

b. Divorce attorney **John F. King** then declined to take on the support matter in Chan’s place, citing inadequate time to fully prepare. Employment attorney **Ira Weinstock** did agree to take on both the support and divorce matters at the last minute, but he was then rebuffed in his attempts to get Wife’s counsel, James R. Demmel, to concede the existence of two ***distinct*** large retirement accounts held by his client, in particular in a meeting with Wife’s counsel on **November 12, 2018**, in which Wife’s counsel averred to Husband’s counsel that he had checked “*thoroughly*” that such accounts were the “same”. (See email of November 12, 2018, attached at 8_, from Husband to his counsel, Weinstock, for a memorialization of what transpired during the meeting.)

c. Despite the Master’s false and erroneous claims to the contrary, Husband did NOT have Wife’s retirement account statements, which were in Wife’s

²⁴ Opposing counsel has repeatedly used the multiple counsel of Husband as if this were per se an indication that it was Husband’s behavior that was somehow inappropriate. The facts tell a different story, one that Husband believes from his extensive discussions, will ring true to many other members of the American public.

sole name and which she took from her own file cabinet upon leaving the marital home without notice on August 28, 2017. Husband immediately brought notice of this claim by Master, made in her Settlement Conference Memorandum, to the attention of his counsel (see document 4_, attached), who thereafter repeatedly noted it in filings. Yet the Master has persisted with this claim, and the Court did not address it upon de novo review. The need for Husband to correct the Master's false statements has greatly elevated his costs of litigation.

d. Husband was sufficiently concerned by the resistance of Wife's counsel to acknowledging that the funds branded "TIAA" in each of the accounts were distinct (see 8_), that he retained an attorney specializing in family law, Darren Holst, who, after further costly efforts, including a *second* meeting with Wife's counsel, Demmel, **four months** after the first with Weinstock, did obtain such concession from Wife's counsel.

e. Wife also failed to note her pension from their earlier work (at St. Luke's Roosevelt), and she also resisted for months acknowledging that she had made a double payment to an insurance company worth almost \$12,000.

f. With this history, which has been repeatedly stated by and testified to by Husband during this case, it is somewhat remarkable that it was possible to conclude that Husband initiated any improper conduct in this matter, particularly since Wife and her counsel did not even correct their verified Inventory of Assets and Liabilities filed with the Court until more than four months [if ever] after being given notice of concerns by Husband's attorney, Weinstock. It is also of note that Wife did not present to Husband a revised/corrected settlement offer, **including at the "Settlement Conference" of June 28, 2019** that would have incorporated acknowledgement of the extra \$1 million in marital assets. □ Thus, there is no basis to conclude any good faith interest in a legitimate settlement offer by Wife.

In hopes of resolving the parties' divorce and all related financial issues, Dr. Rogers has authorized me to make the following settlement proposal:

1. Dr. Bauchwitz will keep the property located at 324 Candlewyck Lane. He will refinance the existing mortgage into his name alone or otherwise remove Dr. Rogers from liability for the loan. At that time, the deed will be transferred to his name. As you know, we are in the process of having Scott Archibald appraise the property. Pending the appraisal, Dr. Rogers estimates the value at \$400,000.
2. Dr. Bauchwitz will keep his 2006 Acura MDX and Dr. Rogers will keep her leased 2016 Volvo S80.
3. Dr. Rogers will keep the jointly titled Vanguard investment account #8869.
4. Each party will keep his or her respective bank accounts.
5. Dr. Bauchwitz will keep Amerandus Research.
6. Dr. Bauchwitz will keep his retirement accounts.
7. Dr. Rogers will transfer \$375,000 from her TIAA-CREF account to a retirement account for Dr. Bauchwitz. She will keep the remaining balances of her retirement accounts.
8. Spousal support will end and there will be no alimony.

Based on the values Dr. Rogers has for her bank and retirement accounts and estimated values for the house (\$400,000), the Acura and Dr. Bauchwitz's bank accounts and retirement accounts (\$50,000), Dr. Rogers believes this offer provides Dr. Bauchwitz with more than 50% of the total value of the marital assets. This offer is contingent on receiving the marital home appraisal report confirming Dr. Rogers' estimated value and Dr. Bauchwitz providing full and complete answers to our discovery requests so we can confirm the identity and values of Dr.

g. With respect to other counsel, Husband avers that though he actually was the one to act by dismissing Attorneys Weinstock and Smith, as was not the case with Chan and King who left against Husband's wishes, he did so to *save* money. As Attorney Holst took over the handling of the case as lead counsel, Husband no longer saw a need to compensate Weinstock for following the same matters, particularly as Holst had the added benefit of having more expertise with alimony in high income cases. Finally, at the very start of the case, the delays and costs in getting support had dragged on for so long, and so depleted his savings in large part because of on-going business expenses, as Husband testified, that he felt it was in his best interests to change to an attorney (King from Smith) who might act more expeditiously and at lower cost.

40. Therefore, changing attorneys was either not Husband's doing, or it was done to save costs.

41. The same cannot be said about the huge legal costs generated by having to repeatedly respond to a litany of false assertions made by Wife through her counsel, as well as their failures to reasonably comply with discovery requests.

Claims by Wife and her counsel

42. “The Domestic Relations Office properly considered the evidence regarding Husband’s education, training, physical and mental abilities and work experience to determine his earning capacity.” (BRIEF IN OPPOSITION TO DEFENDANT’S EXCEPTIONS TO THE DIVORCE MASTER’S REPORT AND RECOMMENDATION of July 27, 2020.)

a. Denied. What evidence was considered at the 2017 Domestic Relations Support Conference other than each side’s claims of what income a C.F.E. could make? (Of note, Husband has never had a job which used the C.F.E. designation.)

b. Additional consideration of this claim is presented in the subsequent section on testimony in the court transcript, upon which the master apparently relied. Despite the remarkable number and nature of flaws in what is purported to be an accurate transcription of Husband’s testimony by a professional court reporter, Husband nevertheless concluded that:

“There is easily obtainable primary evidence that it was opposing counsel who received the medical and vocational evidence and expert reports which were being referenced by Husband’s testimony. Therefore, it seems problematic that it is opposing counsel himself who seems to assert what he ought to know is not true.”²⁵

43. “Husband also instructed his counsel to prepare and file unnecessary documents, such as a response to Wife’s pretrial statement.”

a. In her pretrial statement, Wife made a remarkably false and serious accusation against Husband - namely that he had threatened her life on May 25, 2019 - which absolutely could not stand in the record without response.

b. Wife clearly stated in her filing that her allegation had led her to conclude that she could not work with Husband to sell the marital residence.²⁶

c. Husband made a response to Wife’s allegation timely in his response to her statement. As Husband and his counsel responded to the master in their exceptions, while the master claimed that the law does not “envision” such a response, neither does it disallow such. They noted that this is particularly the case when a significant fraud was potentially involved.

²⁵ If this is a basis for the claims of Wife and her counsel, then they must fail. Demand for records and testimony from Domestic Relations regarding the support conference leading to a calculation of APL is made.

²⁶ Unsurprisingly, he was subsequently coerced to file what was purported to be a POA giving Wife the power to sell the house on her own.

d. Without having made a response in the record, the Wife and Master could ultimately point to Husband's unanswered alleged egregious behavior as good basis that he should be removed from having influence on the sale of the home. (It is also such an allegation which Husband posits may have significantly contributed to the first real estate agent, Joan May, becoming non-responsive to Husband in August of 2019.)

e. Husband notes that in addition to the information he provided in his filings to counter Wife's very serious false allegations that he had threatened her, including by notice of witnesses such as a security agent hired by his attorney who was present along with other witnesses, Husband also presents here the following additional evidence.

f. Immediately following the Settlement Conference on June 28, 2019, Husband was present outside the marital home with Wife and her counsel. At that time, Husband, explicitly on the record, questioned Wife as follows:

Husband: Did I threaten to bury you in the backyard, Ann? I'm just wondering where that came from. [Silence] On May 25th.

Wife responded: ***We're not going to talk about that.***

Husband: You're not going to talk about it? OK. You know what? There's been a lot of dishonesty that's outrageous. There's going to be some consequences.²⁷, ²⁸

44. Wife and her counsel also sent numerous email to Husband's various counsel making baseless allegations that compelled Husband to spend time and money to make responses. Examples of the preceding are:

a. Early in the case at the 2017 support conference, Demmel seemingly falsely testified on behalf of his client, who was not present:

²⁷ Detectives, fraud examiners, and many other investigators in related fields study "discourse analysis". It will not be hard to discern that Wife is likely not a person who was actually threatened and then told the truth about what the purported assailant did.

²⁸ With respect to witnesses and another false claim repeatedly asserted by Wife and her counsel as to Husband's having Wife's retirement account statements after August 28, 2017, when she left the marital home without notice, Husband was on that day in the presence of a retired detective at the marital home. They were awaiting Wife's arrival according to written messages that she had sent to Husband asserting that she would meet him at the home on that date. As the retired detective subsequently wrote in a report, Wife claims were "deceptive". Furthermore, the detective was a witness to Wife having taken many records from the home. In short, there is no shortage of evidence with which to assess Wife's credibility.

On Wed, Dec 20, 2017 at 11:07 AM, John F. King, Esq.
<john@johnfkinglaw.com> wrote [to client RPBauchwitz]:

[RPB:] With respect to Mr. Demmel, I want to point out that when I spoke to my wife on December 7 of this year and told her that he had claimed in the support conference that she had not been in support of my discontinuing Ph.D. laboratory head-type work, she disavowed his statement, noted she was not present, and called it a “*shenanigan*”.

[JFK:] Well, if Mr. Demmel is, in fact, misrepresenting his client's position, she needs to address that with Mr. Demmel. Please note: I have seen instances in which a party tells one thing to their attorney, and another thing to their spouse.

b. On January 10, 2018, Wife’s counsel sent a letter to Husband’s attorney in which he made several false allegations against Husband:

“Please advise Dr. Bauchwitz not to come to Ann's residence and not to access her mailbox. Although she has requested numerous times that he not come to her residence, he recently left an unwelcome note in her mailbox. Additionally, please have him forward any mail received at the marital home addressed to Ann from her friends to her instead of opening it and inappropriately responding to her friends. He recently opened mail from one of Ann's friends, sent that individual an email and has refused to forward the letter to Ann. **His behavior is not helping this situation.**”

c. In addition to false allegations on behalf of his client, which were investigated in detail at great cost of time and money by Husband (see 9_ attached), Wife’s counsel also showed what would be a continuing penchant to level personal conclusory claims against Husband: “**His** behavior is not helping this situation.” Counsel appears to simply arrogate that he is in a position to make a judgment, as if whatever he and his client claim is truthful.²⁹

Wife’s counsel would go on to send letters making numerous false claims, including:

d. That Husband had delivered a bicycle to Wife’s residence without permission and that they would press charges for trespassing. Husband had to pay his counsel to respond that the evidence showed that Wife’s claims to

²⁹ Husband is concerned that such statements may violate the professional code of conduct for Pennsylvania attorneys, as well as the Code of Civility that covers the same.

her counsel were false. Clearly at this point, Wife's counsel, Demmel, must have been on notice that his client's claims could not be trusted.

e. Husband's counsel also had to write to threaten a defamation suit against Wife for her false claims about Husband to his relatives and others, which could have impacted his employability in the local area (See attached 9c_).

f. Wife's counsel continued to make unfounded allegations and false claims against Husband to Husband's new attorney (Holst), not only by transmitting the false claim that Husband had threatened his client (see above), but also that a real estate agent had refused to work with Husband as if Husband had done something improper. The claims of Wife and her counsel were not supported when Husband's counsel investigated the matter by contacting the real estate agent involved. In particular, this outcome was precipitated by Wife relentlessly pushing her desire to sell the house "as is", which neither this real estate agent, nor any other – nor Husband – felt was appropriate.

All of these and several more unjustified claims continued to take time and money to make response, and easily could be used as writings to undermine Husband's reputation with others, including court officers.

Additional legal cost inflators

45. As the case continued, costs were also increased by the poor performance of other court officers. Here focus is made of the transcript produced by an official court reporter who transcribed the master's divorce hearing on October 17, 2019.³⁰ The transcript was produced after a substantial delay, and the result appeared to have 120 flaws identified to date. (See attachment 10a_.) The costs in trying to get these flaws corrected further added to the costs of litigation.

46. A sample of some of the errors with the impact claimed is provided below and in an attached document. (See attachment 10b_.)

a. Wife and her counsel claimed in their response brief to Husband's exceptions to the master's report that "Husband also *testified* that he provided information regarding his job search to the Domestic Relations Office in the support matter, which was used in the determination of his earning capacity."

b. Husband had stated in his exceptions filed with this Court: "The master erred and abused her discretion in concluding that Husband had ever presented evidence of job searches or health issues to the Domestic Relations

³⁰ Upon information and belief, Heather L. Artz was at the time the head of court reporters associated with the Dauphin County Court of Common Pleas.

Office and therefore that "the earning capacity determined by the Domestic Relations Office remains appropriate in this matter."

c. From the October 17, 2019 master's hearing transcript it is clear that Husband first stated that he had given the information described by Wife's counsel "to your party".:

T.195: "[Q by Wife's counsel] You said you conducted job searches at least in 2017 and 2018. You haven't provided any evidence of those job searches, correct?

[A by Husband]. I think a lot of evidence [was] presented in the reports **to your party** before the support **conference** last year, so you should have [it].

d. From Husband's testimony, it is further clear that evidence was presented to the opposing party in 2018, the prior year, and not in 2017, the actual date of the only support conference. There was no support conference, nor any de novo hearing, the year prior to the 2019 master's hearing to which any evidence could have been given.

e. There is easily obtainable primary evidence that it was opposing counsel who received the medical and vocational evidence and expert reports which was being referenced by Husband's testimony. Therefore, it seems problematic that it is opposing counsel himself who seems to assert what he ought to know is not true.

f. Nevertheless, the transcript appears to become an issue on the same seemingly settled point in a following portion of Husband's purported testimony:

T.196: 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 [MISSING WORDS] and the vocational expert was made [MISSING WORDS] 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.

g. In this case, the logic and reality, is highly problematic. Husband knew that there had been neither a support conference nor even a de novo conference "last" year, i.e. in 2018. Husband stated, instead, that he was making the "same answer", i.e. that Husband had given the medical information "to your party".

h. Thus, Husband appears to be testifying in 2019 that he submitted information to a “support conference” that he well knew had not been held the prior year in 2018, in the form of reports which he knew DID NOT EXIST in 2017, at the time the actual support conference was held.

i. Regardless, the overall testimony is consistent with the reality: Domestic Relations held a support conference in late 2017, at which time no such vocational or medical evidence existed to present.³¹ An examination of Husband was made by Wife’s vocational expert in the spring of 2018, at which time Husband’s vocational search information was presented to Wife’s expert. An update of the vocational search information, medical reports, and the report of a vocational expert of Husband was presented to the opposing party (“to your party”) before the subsequently cancelled de novo hearing.³² Opposing counsel knew all of this.

47. The master herself noted a problem with the transcript in her report of March 13, 2020:

T.92 Husband: “That was in [WORDS MISSING] -- by e-mail in September of 2019.”

Master: “Given that Husband alleges that the date of separation was September of 2017, Husband either misspoke in identifying the alleged e-mail date as 2019 *or it is a transcribing error.*”

48. There were other obvious problems with the transcription that affected simple things like dates, and which led to further consequences in the master’s report. (See attachment 10b_.)

49. The transcript errors also likely had more serious consequences for Husband as illustrated here:

a. From the master’s report:

“Husband did not have a credible explanation as to why he took this action and thus, the only conclusion is that Husband intended to deprive Wife of items that had sentimental value to her.”

b. The testimony attributed to Husband:

³¹ There was an exchange of claimed incomes for C.F.E.s, as noted elsewhere in these documents.

³² If there is any further question about the reality of the matter, demand for an evidentiary hearing is made.

T. p.176 Those were the ones she specifically identified, which I [MISSING WORDS]-- well, six of them, that she [HAD?] identified those six boxes. **And I found a seven[th]. So they were in part of the basement that I had known that we had stored boxes there. So yes, they were brought back.**

Then [MISSING WORDS?]- so there's subsequent [MISSING WORDS?] -- well, there was also the issue that I have to go back to May 25th, our meeting in the house. So at that time my wife identified things that were loose that were there. **And it's very possible that the movers took them, but they weren't identified with [MISSING WORDS: AMR]-- [Husband mostly likely stated, at minimum, "AMR", as would have been consistent with his testimony] as her name. She did also – [MISSING WORDS: Did what?] she said in her letter that there were boxes in a certain section of shelving in the basement that were hers and that's [MISSING WORDS: What?]- I simply deny it. I think it's not true."**

c. Given how unintelligible Husband's testimony appears in the transcript, it is to be wondered how Husband's explanation or denial could be assessed for credibility. Husband contends the lack of intelligibility in the trial transcript at this point and elsewhere seems extensive and specific to his testimony.

50. The totality of errors and flaws in the hearing transcript, apparently specific to Husband's testimony and not Wife's, seriously diminished Husband's ability to present his case. Many of the errors clearly were made by the transcriptionist and not the Husband. [See attachment 10c_.]

51. All of the communications Husband has had on the transcription errors alone have raised his legal costs.

52. More generally, Husband avers that the high costs of legal representation, such as seen in this case, are widely known and not necessarily specific to his case. Rather they are likely much more fundamental to the way in which the legal system in the United States is operated and overseen.³³

I declare under penalty of perjury that the foregoing is true and correct.

[/s/ Robert Bauchwitz]³⁴

Robert P. Bauchwitz

Executed on January 3, 2020
Wilmington, DE
[/s/ M.H. Bauchwitz]

³³ For example, see "rent seeking" in economics.

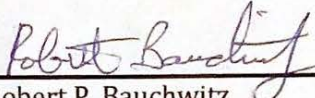
³⁴ See original signature page of January 4, 2021, following.

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I declare under penalty of perjury that the foregoing is true and correct.


Robert P. Bauchwitz

Executed on January 3, 2020
Wilmington, DE

Witnessed: 
Maria Helena Bauchwitz

³² For example, see "rent seeking" in economics.

Attachments

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Historical Income Tables for Households United States Census Bureau

Table H-1. Income Limits for Each Fifth and Top 5 Percent of All Households: 1967 to 2019

(Households as of March of the following year. Income in current and 2019 CPI-U-RS adjusted dollars (28))

Current Dollars

Year	Number (thousands)	Upper limit of each fifth (dollars)				Lower limit of top 5 percent (dollars)
		Lowest	Second	Third	Fourth	
2019	128,451	28,084	53,503	86,488	142,501	270,002
2018	128,579	25,600	50,000	79,542	130,000	248,728
2017 (40)	127,668	24,822	47,218	77,150	126,603	244,088
2017	127,586	24,638	47,110	77,552	126,855	237,034
2016	126,224	24,002	45,600	74,869	121,018	225,251
2015	125,819	22,800	43,511	72,001	117,002	214,462
2014	124,587	21,432	41,186	68,212	112,262	206,568
2013 (39)	123,931	21,000	41,035	67,200	110,232	205,128
2013 (38)	122,952	20,900	40,187	65,501	105,910	196,000
2012	122,459	20,599	39,764	64,582	104,096	191,156
2011	121,084	20,262	38,520	62,434	101,582	186,000
2010 (37)	119,927	20,000	38,000	61,500	100,029	180,485
2009 (36)	117,538	20,453	38,550	61,801	100,000	180,001
2008	117,181	20,712	39,000	62,725	100,240	180,000
2007	118,783	20,291	39,100	62,000	100,000	177,000
2006	116,011	20,035	37,774	60,000	97,032	174,012
2005	114,384	19,178	38,000	57,660	91,705	166,000
2004 (35)	113,343	18,486	34,675	55,230	88,002	157,152
2003	112,000	17,984	34,000	54,453	86,867	154,120
2002	111,278	17,916	33,377	53,162	84,016	150,002
2001	109,297	17,970	33,314	53,000	83,500	150,499
2000 (30)	108,209	17,920	33,000	52,174	81,766	145,220
1999 (29)	106,434	17,136	31,920	50,384	79,232	142,000
1998	103,874	16,116	30,408	48,337	75,000	132,199
1997	102,528	15,400	29,200	46,000	71,500	126,550
1996	101,018	14,768	27,760	44,006	68,015	119,540
1995 (25)	98,627	14,400	26,914	42,002	65,124	113,000
1994 (24)	98,990	13,426	25,200	40,100	62,841	109,821
1993 (23)	97,107	12,967	24,679	38,793	60,300	104,639
1992 (22)	96,426	12,600	24,140	37,900	58,007	99,020
1991	95,669	12,591	24,000	37,070	56,759	96,400

<https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html>

Marital income quintiles per U.S. Census Bureau data

Year	Marital Income	Quintile of U.S. Incomes (from top)
1990	$36,469 + [12,000] = \$48,469$	n.a.
1991	$38,601 + [16,000] = \$54,601$	2nd (top 40%)
1992	$77,290 + [28,000] = \$105,290$	1st (top 20%)
1993	$118,877 + [28,000] = \$146,877$	1st (top 5%)
1994	$166,443 + [28,000] = \$194,443$	1st (top 5%)
1995	$139,391 + [28,000] = \$167,391$	1st (top 5%)
1996	$208,794 + 28,855 = \$237,649$	1st (top 5%)
1997	$214,868 + 0 = \$214,868$	1st (top 5%)
1998	$244,661 + 0 = \$244,661$	1st (top 5%)
1999	$247,589 + 0 = \$247,589$	1st (top 5%)
2000	$242,535 + 0 = \$242,535$	1st (top 5%)
2001	$262,422 + 51,669 = \$314,091$	1st (top 5%)
2002	$338,932 + 58,400 = \$397,332$	1st (top 5%)
2003	$285,536 + 63,356 = \$348,892$	1st (top 5%)
2004	$298,604 + 82,490 = \$381,094$	1st (top 5%)
2005	$274,546 + 90,046 = \$364,592$	1st (top 5%)
2006	$189,147 + 60,021 = \$438,315$	1st (top 5%)
2007	$168,650 + 35,476 = \$204,126$	1st (top 5%)
2008	$309,393 + 7,240 = \$316,663$	1st (top 5%)
2009	$310,302 + 0 = \$310,302$	1st (top 5%)
2010	$328,258 + 0 = \$328,258$	1st (top 5%)
2011	$331,419 + 0 = \$331,419$	1st (top 5%)
2012	$340,120 + 0 = \$340,120$	1st (top 5%)
2013	$344,039 + 0 = \$344,039$	1st (top 5%)
2014	$347,990 + 0 = \$347,990$	1st (top 5%)
2015	$408,443 + 0 = \$408,443$	1st (top 5%)
2016	$427,222 + 0 = \$427,222$	1st (top 5%)
2017	$439,506 + 1,473 = \$440,979$	1st (top 5%)
2018	$437,190 + 1,687 = \$438,877$	1st (top 5%)

1) Estimated fellowship income is shown in brackets; these incomes are not shown in the Social Security statements because they were tax exempt.

2) Husband's 1991 income estimate (bracketed) was calculated as follows:
Jan – Aug $0.75 \times \$12,000$ + Sep – Dec $0.25 \times \$28,000 = \$16,000$

3) Husband's 1995 income was also a combination of fellowship income which transitioned to non-fellowship regular faculty salary.

D-2" Career Background from Job search introductory material RB 041718 to Terry Dailey and Current Efforts 101119

With responsive modifications of June 19, 2018 and September 30, 2019, as highlighted

These notes were created for plaintiff's personal use only. However, at plaintiff attorney's request, they are being provided to defendant's vocational rehabilitation expert. They are CONFIDENTIAL for that expert's use. April 19, 2018

...

I. CAREER BACKGROUND

The whistleblower foundation of my resume and its impact on employment decisions made by me and my wife

In 2000, I was a non-tenure-track assistant professor at Columbia University when I was contacted by journalist investigating research misconduct involving an individual who had headed the laboratory in which I performed my Ph.D. research

I had already reported significant problems with the research integrity in that laboratory to federal officials on two prior occasions without notable effect.¹

I assisted the journalist. He gave my name to federal authorities as someone who had additional and potentially very important information regarding grant fraud.

Federal authorities claimed to have already had an investigation underway involving one of the two alleged persons of interest. They wanted my assistance, which I resisted providing for two years as I did not trust them to follow through given my prior experience. During those two years, I had become a tenure-track assistant professor.

Eventually, I retained attorneys who came to agreement with the federal investigative agency that I would assist them only specifically as to the information about which I had first hand knowledge. We would cooperate as part of a qui tam suit, which would allow me and my attorneys to participate in discovery. The federal agency agreed and recommended that the case be taken in Philadelphia, where they had previously had good results with an Assistant U.S. Attorney there.

The case was filed on June 30, 2004.

My employer at the time was the St. Luke's-Roosevelt Hospital Center (SLRHC), which was an academic affiliate of Columbia University, where I originally had headed a laboratory from 1999 to 2001. When I moved to SLRHC, I was eventually given a **Columbia academic**

¹ N.B. the 2018 Parkland, FL school massacre with the same concerns.

title of tenure-track assistant professor. This was the key point at which a true academic research career started.

The defendant against whom I was to testify was located at Cornell University Medical College. The Cornell and Columbia hospitals in NYC had become affiliated. Probably more importantly, the wife of the Cornell defendant was a much higher level faculty member at Columbia than I.

I was later to learn that the federal investigative agency which had asked me to assist them, provided to the defendants information which revealed my identity during that agency's "investigation". I was later shocked to learn that this was technically allowed under the relevant laws.²

After we had filed the qui tam scientific fraud case in June 2004 and had met for the first time with the federal Office of Research Integrity, **my academic title as a professor was removed.** This action had been taken without notice to me or my direct department chairman at SLRHC.

When Columbia University's General Counsel was queried as to what had occurred with my academic title, she made nothing more than the following response in April 2005:

"Dear Dr. Bauchwitz, I have looked into this matter and it appears you do not have a Columbia appointment, and therefore have no entitlement to an e-mail account on the Columbia server. very truly yours, Patricia Catapano"

Her use of only the present tense was of note to us, since the question had actually been what had happened to the now absent title (i.e. I could no longer be looked up by grantors or others as a Columbia faculty member).

As I would later note to Columbia's Provost:

"[the General Counsel] would not respond as to whether I had ever had an appointment in Neurology, which was the real question. In fact, as I alluded to you in our conversation, I was told by ACIS (Columbia computing) that they had received a **"remove from affiliation CSC2"** on August 23, 2004 (about six weeks [after my attorney and I had first met with the federal Office of Research Integrity to discuss the qui tam case])."

A whistleblower retaliation count was written for addition to the federal qui tam case, but the law firms representing me did not ever amend the complaint to add it because they concluded that Columbia University was not one of the defendants and because we could find no connection of my employment to the State of New Jersey. New York, in which the

² As my case will demonstrate, such laws should be changed.

action had occurred, was an “at will” employment state; thus I was told that Columbia could take such action against me without having to provide any justification.³

> Ms. Dailey appears to have completely missed the following important statement:

Removal of my academic title might not only have been intended to serve to diminish my credibility against the defendants at trial, but **it also served to effectively end my academic career**. Therefore, a decision not to continue in an academic career was not initially made by me or my wife, Ann Rogers, but was in fact **imposed** upon us.⁴

> Ms. Dailey fails to explain what I would show on my resume that would indicate that I have actually had a position as a research professor, not to mention one that has been active in recent years?

As the prospects of gaining employment in my planned career path, as a tenure-track professor, seemed out of the question, it was decided by me and my wife, that I largely spend my time working on the qui tam case. We believed that the evidence of fraud I had uncovered was particularly strong (we called it a “positive control” case). Thereby, we decided that we would have a very good chance of recovering a few million dollars under the federal False Claims Act (FCA), which would at least provide some compensation to the ending of my career.

Between 2008 and 2010, I largely worked at home on the case⁵. I occasionally commuted to Philadelphia to meet with federal and private attorneys. With my wife’s agreement, in 2008

³ In 2011, after the end of the case, I would learn from an expert attorney in Washington, D.C. that the attorneys representing me had been wrong. It was NOT required that retaliation against a qui tam relator or other whistleblower protected under the federal False Claims Act be made directly by the defendants. Unfortunately, this same attorney informed me that the law had been amended in 2010 so that I no longer had a case because of new statute of limitations (SOL). I then brought the case to the Columbia Ombudswoman, who referred me to the Provost’s office. I provided documentation to the Provost’s office. The Columbia Provost’s office never provided any response to me as to the results of any investigation, which they had claimed they would perform. About six months after my complaint to them, the Chairman of the Columbia Department of Neurology, who was the prime suspect of having improperly removed my academic title after it had been approved by the department’s faculty committee, suddenly and unexpectedly left his position. There was never any statement that he left or was removed because of any actions he took in my case. There was never any restoration of my academic title.

⁴ Hence, I believe that I have the cv of a career crippled by retaliation against a person working lawfully with the United States federal government, and not one produced by vicarious choices.

⁵ On April 1, 2017, Ann Rogers told me that she had told her psychiatrist the prior day the following about me:

- 1) “that I was a very good father”;
- 2) “that I did househusband stuff and gets things done around the house”;
- 3) “that you and I were best friends”;

I had created the sole proprietorship, Bauchwitz Laboratories. Although the primary intended profit for this enterprise was expected to be from my acting as a science expert and qui tam relator for the federal government, there were several interesting research findings involving mice I had produced at SLRHC that I wished to follow up.

To our shock, the case was largely dismissed in December 2009 based on statute of limitations grounds. It was settled a few months later in 2010 without our having obtained any financial return whatsoever.⁶

A significant repercussion of this case has been that the judicial opinion dismissing most of the case has been present at the top of Internet search engine results for my name since 2010. Even though since that time we hired two online reputation management firms, the lawsuit has remained highly resistant to being moved from the top results.⁷ Thus, any potential employer could easily see that I had been involved in a civil suit against former employers.

My wife and I realized that any acceptable forward progress in my academic research career would involve getting federal grant funds. This is what university employers want to see when they make faculty hiring decisions. After the end of the lawsuit, we learned that the NIH was continuing to fund the defendants, despite the clear evidence of extensive fraud having been presented to them.⁸ Defendant Cornell argued that the case was res

4) “that we laugh a lot together”;

5) “that we have a shared history”.

I was quite pleased with her assessment of our relationship, even though this would prove to be less than five months before she abandoned the marriage without any prior warning or any sense by me that there was any possibility of separation, much less a divorce. I do not know exactly when she had come to see me as a “househusband”.

⁶ The case was mishandled at many points. We were offered only \$70,000 by the defendants to settle, which my attorneys rejected as not even one-tenth of what the case was worth. The judge then dismissed almost all of the case under summary judgment based on statute of limitation (SOL) claims. The federal Department of Justice disagreed with the judge’s interpretation of the law and asked that my attorneys appeal. My attorneys, who were working on commission, refused to appeal on the grounds that they said we would have to first complete the small remaining case concerning a single grant, and then bring the appealed case back to the same judge, whom they already believed had exhibited inappropriate bias and likely ex parte activity. In 2010, the judge went on to greatly limit the time for discovery to less than we and the defendants had agreed. After this, the case was dropped. I made no money as part of participating extensively in the case.

⁷ Even as of April 16, 2018, it still appears on the first page of the following search engines: Google, Bing, StartPage, and DuckDuckGo.

⁸ Bauchwitz, R. 2012. *Affidavit: Expert Assessment of Evidence Produced in United States of America v. Holloman et. al.* (healthsci.org).

judicata; however, their claims that the evidence could not be used by others such as the NIH and journals was false.⁹

Nevertheless, based on this experience and others my wife had seen in the research area with those with whom she had worked, she noted that the process of grant funding was very political, and that I would have poor prospects against the contrary interests of large institutions. I agreed with that assessment.

Therefore, my wife and I mutually and logically concluded that to attempt to continue as a grant-funded researcher would not be sensible.

After the qui tam case, while I was investigating a potential retaliation claim and university investigation options, I took a paralegal course. I then took a position in the fall of 2010 as an adjunct professor of biology at Lebanon Valley College (LVC). The pay was very low. LVC wanted me to teach a genetics course in 2011 for which I would have had to create a textbook from scratch. But they haggled about funding and other issues. It became clear that this would be a very time-consuming effort for very little pay or advancement opportunities.¹⁰

Therefore, in early 2011, my wife and I again discussed what career path I would take.

We had ruled out being involved in the research field¹¹, as we strongly believed that my reputation as an unsuccessful whistleblower could always be used to harm my prospects.

I proposed to my wife on about three occasions in early 2011 that I become a clinical psychiatrist. I felt this would give me some stability of position that would be much less affected by whistleblower reputational issues.

My wife argued against my trying to become a clinical psychiatrist. She noted that I was already in my 50's and that an internship and residency were very physically grueling experiences that would make it problematic for me to complete such a program. Moreover, she noted that it would take many years to become an attending physician, i.e. I might only about now, at 57 years old, have started to practice.

My wife's assessment regarding the physical issues that someone over 50 might have in trying to complete a residency were very well supported by subsequent developments.

⁹ I would go on to write my own memorandum of law on this point. See Gifford III, B. and Bauchwitz, R. 2013. *Res judicata and the pursuit of scientific misconduct investigations*. (http://healthsci.org/About_AmR/res_jud_memo_120413.htm).

¹⁰ LVC went on to replace me with a graduate student who had not even achieved her Ph.D., confirming for us that these adjunct positions were actually not highly valued in any way, including in the best interests of the students.

¹¹ Including in an industry setting.

Beginning at the age of 53, and continuing to the present, I have had a series of very significant health issues arise including severe osteoporosis with a broken back that put me out of commission in a thoracolumbarsacral orthotic brace for fourth months. Even after having missed considerable work time, I would then, as now, have had significant limitations on lifting and other movements involving my back. I have also had very severe problems arising that seriously impacted my ability to sit. I had two surgeries for that indication, the second of which led to very significant complications. I also have continued to have a deteriorating course with severe insomnia, and surgeries for kidney stones.¹²

> Unfortunate update: In the spring of 2018, I was diagnosed with a head and neck cancer. I am writing these notes between surgeries to remove the tumors.

My wife also noted that she was more than well-enough compensated that we did not need another clinical income in the family.

Instead, we decided that I would try to leverage my experience in research misconduct fraud investigation and whistleblowing to open a business.¹³

If I were able to develop a sufficient reputation by writing and speaking and getting recommendations from others that I had helped, I might be able to monetize such an endeavor. Thus was born in 2011, the entrepreneurial venture¹⁴, Amerandus Research (aka

¹² I am currently being assessed for a cancer of the throat. Thus, every single year since the age of 53 I have had one or more very substantial medical issues arise. 2019 update: I am being followed for a mediastinal mass and have been diagnosed with moderate coronary artery calcification (CAC).

¹³ In addition to the writing and consulting on research misconduct and fraud related work¹³, AmR was also used as a vehicle to try to market strains of mice that had been developed based on findings made by our sons while working with me.

¹⁴ Distinctions between an Entrepreneurial Venture (EV) and Small Business (SB):

[In effect, an EV is high risk/high reward. For example, a solar panel company that is now taking over the global industry spent over \$1 billion and 20 years to develop its novel product. This is a very common approach in the United States. SB's tend to be low risk and lower reward.]

A. Characteristics of an entrepreneurial venture

- 1) limited resources
- 2) covers all risks and rewards
- 3) new innovation, product, or service
- 4) targets high returns with high level of uncertainty
- 5) puts financial security or career at stake
- 6) spends time and capital on uncertain ventures

B. Characteristics of a small business

- 1) known and established products and services
- 2) aims for continued profitability
- 3) known risks
- 4) more limited effects on other sectors of the economy; tend to remain limited to their own domain
- 5) very few SB's become an EV

(Shobhit Seth, Investopedia).

“AmR”, so named in part to show the similarity to my wife and angel investor’s initials, “AMR” - Ann Marie Rogers).

> Ms. Dailey wrote in her report that Amerandus Research was grant funded. At no point did I make such a claim. I do state that wife Ann Rogers agreed to invest in the firm; hence, marital funds were used.

2019: Nevertheless, upon having reopened the business, it may be changed to a not-for-profit, which would possibly involve seeking grants. (See below.)

The business evolved from one primarily producing genetically modified mice to one in which I have acted primarily as a consultant investigator/auditor.

I and my contractor-associates have written several articles, one of which was published in a top journal in the field and is highly cited¹⁵.

After publishing the most recent paper in 2016, I attended a research misconduct meeting in Amsterdam at the end of May of 2017. I spoke out in several sessions, which I believe led to positive attention gained. As a result, I was able to begin establishing a relationship to advise the primary scientific research funding agency of a European nation on experimental data audit. After many months of working with the agency, and their clear approval of our efforts, we were permitted to submit a non-competitive bid to that agency¹⁶.

Unfortunately, under circumstances that arose very unexpectedly last August 20, 2017, without any prior preparation or notice, it will no longer be realistic to try to obtain and risk funds and efforts which could still take considerably more time (years) to become profitable or otherwise valuable.

Therefore, during the latter half of 2017, the Amerandus Research work was being wound down. By December 2017, I had already begun working in a temporary job obtained for me by a regional recruiting firm. (The basis for this position and others like it will be discussed below).

...

¹⁵ Loikith, L., and Bauchwitz, R. 2016. *The Essential Need for Research Misconduct Allegation Audits*. Science and Engineering Ethics, Vol. 22:1027–1049. Springer. DOI 10.1007/s11948-016-9798-6. (<http://link.springer.com/article/10.1007%2Fs11948-016-9798-6>).

¹⁶ However, earlier this year, in 2018, we learned that it was unlikely that the bid would be approved. The surprising reversal of interest seemed to be tied to the Irish agency official who was our primary contact contacting the ORI prior to her coming to the U.S. We believe that the ORI may have made some negative statement that undermined the obvious significant interest the Irish agency had prior to contacting ORI. See endnotes i and ii for more detail on the public views that we have made about ORI.

II. Current career plans

The preceding approach [see the original document D-2], however, was not physically tenable as I did not have adequate control over my workplace accommodations. In a December 2017 support staff position which involved sitting most of the day, I was not able to continue after three weeks, even while working in a TLSO brace. Therefore, I conclude that to have an employed position, I must have the necessary control to accommodate my physical conditions in order to have the continuing capacity to work long-term (more than two weeks in the prior example).

Therefore, given the preceding, my income plans are as follows:

September 2019 update: I have resumed my business venture, Amerandus Research. As noted publicly to my colleagues, I intend to expand the focus of the anti-fraud offerings of the business to cover the many circumstances such as those I have faced in this legal case. I strongly believe, as I wrote, that a much larger market should exist for solutions to the various problems emanating from the so-called “self-policing” of the legal field. (I should note that I have been previously involved in related endeavors, such as with support of the attempt to produce legislation to create an Inspector General for the federal judiciary. I have also published on the serious weaknesses of “self-policing” systems and the need to replace them with independent oversight mechanisms.)

Based on my experience since 2015, resuming my own business should also allow me to adequately accommodate my physical limitations (even if more hours or highly customized work environments are expended to accomplish the necessary tasks).

In order to assess business income potential, I have attempted to require payment for consultation through a well-known web portal, but have received no interest. This might not be surprising, as such consultations had always been a pro bono situation in which the whistle-blowers were generally of limited financial means.

As an alternative means to obtain income, the business may be restructured as a not-for-profit. This should allow me and my colleagues to be paid from any grant monies or other fundraising that we perform, thereby allowing us to support of the people who most need such services without their having to increase their often onerous financial burdens. My plan is to spend two years attempting to generate enough income through a new business model.

I have also continued to work for the ESS corporation over the past one and a half years as a teacher. This is intended to be my employment “parachute” should I not be able to generate sufficient income in the business venture through grants, donations, and other services. Teaching at the pre-collegiate level is one clear type of employment that I have been able to obtain post-separation (though the question of physical accommodations has

not been thoroughly assessed). It would take me a single year of full time teaching to obtain a teaching license in the State of Delaware, at which time I would expect to make \$42,000/year in the public school system (with a M.A. or Ph.D.). I would also anticipate a \$2000/year salary increase.



University Hospital of
Columbia University College
of Physicians & Surgeons

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432 West 58th Street, Room 411
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Tel: 212 523 8869
Fax: 212 523 7623
E-mail: Rpb3@columbia.edu
Rbauchwitz@chpnet.org

Robert Bauchwitz, M.D., Ph.D.
Director, Fragile X Research

November 13, 2004

WeHealNewYork.org

Dr. Gerald Fischbach
Dean
Faculties of Health Science and Medicine
Columbia University

Dear Dr. Fischbach,

I am requesting your assistance in resolving concerns I have about the status of my appointment at Columbia University.

I am the Director of the Cognitive Neuroscience Laboratory in the Department of Neurology at the St. Luke's-Roosevelt Center (SLRHC). I transferred my laboratory to SLRHC from the Columbia Department of Genetics and Development on February 1, 2001. Prior to accepting the position in the Department of Neurology at SLRHC, I spoke with the Columbia Neurology Chairman, Dr. Timothy Pedley, in November 2000. He told me that appointment as a tenure-track assistant professor in the department of neurology was "perfunctory" so long as my SLRHC chairman (Dr. Saud Sadiq) indicated that he wanted me. In March of 2001, the Columbia Neurology COAP approved my appointment to the department. My appointment should have started by July 2001.

On May 9, 2002, I was told in a meeting with Caroline Merten, Director of the Faculty of Medicine Administration, that no one at SLRHC could have access to Columbia e-mail or e-journals unless they had a Columbia appointment. Furthermore, as a new human resources system was then being installed, all such appointments would have to go through her office. After continuing controversy as to the status of my appointment and access to Columbia e-mail and e-journals, I did retain all access and appeared on the Columbia University web site listed as an Assistant Professor. This state of affairs persisted through August 2004 (see example from January 2004, attached).

The appearance of my appointment on the Columbia web site has been of continual importance. It has been used by many other scientists and parents to contact me, and also by funders, to establish my credentials. Last Thursday, I contacted the Columbia computing services (ACIS) because it came to my attention that I was no longer listed on the Columbia web site – at all (see attached). I was told that, unbeknownst to me, in August 2004 my listing on the site had been changed to "private", i.e. to a state such that it would not appear on the site. There was no record of who made the change or the reason for it. Nonetheless, I continue to have e-mail and e-journal access, and no one had informed me of any alterations to my listing. It was agreed that such a change could be quite harmful to me.

When I asked who had made the change, there was apparently a lack of any readily accessible records for me prior to November 2003. At that time, I was told, my position had been changed to "Instructor". Again, I was told that there was no indication of who made the changes or why. What I do know is that I was told nothing about any changes to my appointment or listing on the Columbia web site by anyone prior to my call to ACIS last Thursday.

I am asking for an explanation of why my appointment has been seemingly reversed or altered, if that is the case. If what I describe above is simply some sort of error, I would like to have a formal letter of appointment from your office stating that I am a tenure track assistant professor. Thank you.

Sincerely,



Robert Bauchwitz M.D., Ph.D.

Director, Cognitive Neuroscience Laboratory
Department of Neurology
St. Luke's-Roosevelt Institute for Health Sciences
Columbia University
432 W. 58th St., Rm. 411
New York, NY 10019

212-523-8869 (tel)
212-523-7623 (fax)

rbauchwitz@chpnet.org
rpb3@columbia.edu

P.S. I enjoyed your symposium at the Society for Neuroscience on neuregulins. I gave a summary talk on the symposium to my department; the new findings and potential links to schizophrenia were received with significant interest.



SEARCH

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[Read the troubleshooting FAQ](#)

A search for **bauchwitz** produced 0 matching entries.

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Staff, faculty, and students may make changes to their online listings. [Learn more](#)

11/11/04



SEARCH

Name: Department or Title: Use Soundex: [What is Soundex?](#)[Why can't I find the person I'm looking for?](#)A search for **bauchwitz** produced one matching entry:

Name: **Robert Bauchwitz**
Title: Assistant Professor of Neurology
Dept: Neurology, St. Luke's Roosevelt
Mail Addr: 432 W 58th St Rm 411
Phone: +1 212-523-8869
Fax: +1 212-523-8822
UNI: rpb3
EMail: rpb3@columbia.edu

Staff and faculty can make changes to their individual entries via the [Human Resources Faculty and Staff Address Change system](#). Directory information for students -- beyond name, affiliation, and email address -- is listed only for those in Morningside Campus residence halls. Update your address via [Student Services Online](#). Any student wishing to withhold information from the on-line directory may visit the Registrar's Information Center in 205 Kent (x43248). Students at UTS, Barnard, and TC should visit their respective computing support offices. The policy regarding this information may be found in the student handbook [FACETS](#).

1/10/2004

Directory Search Result

A search for **bauchwitz** produced one matching entry:

Name: **Robert Bauchwitz**
Title: Assistant Professor of Neurology
Dept: Neurology, St. Luke's Roosevelt
Mail Addr: 432 W 58th St Rm 411
Phone: +1 212-523-8869
Fax: +1 212-523-8822
UNI: rpb3
EMail: rpb3@columbia.edu

Staff and faculty can make changes to their individual entries via the [Human Resources Faculty and Staff Address Change system](#). Directory information for students--beyond name, affiliation, and email address--is listed only for those in Morningside Campus residence halls. Update your address via [Student Services Online](#). Any student wishing to withhold information from the on-line directory may visit the Registrar's Information Center in 205 Kent (x43248). The policy regarding this information may be found in the student handbook [FACETS](#).

6/28/2002

Rosenblatt
St. Luke's-Roosevelt Hospital Center
Roosevelt Division
1000 Tenth Avenue
New York, NY 10019

**St. Luke's
Roosevelt**

Continuum Health Partners, Inc.

Gerald Fischback
Dean, Faculties of Health Sciences
and Medicine
Columbia University

P+S 2-401
11/15/04

Letter to Fischbacher's ^{11/15/04} Office
~ 11:37AM by hand
in person → given
to "Mark" his asst.

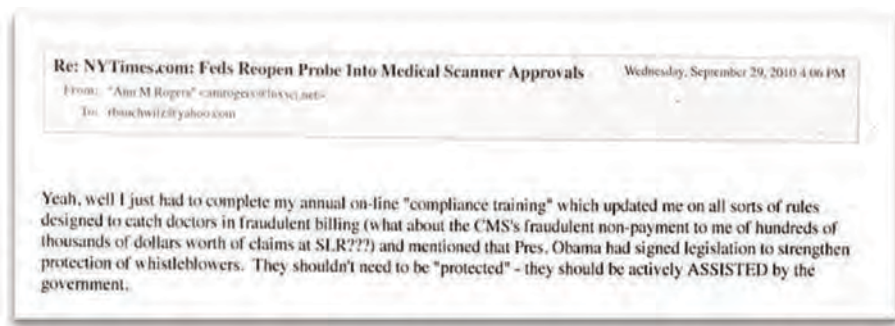
|

Ann Marie Rogers M.D. of Hershey PA supported the Amerandus Research anti-fraud mission and was intimately following its business activities

The intimate knowledge Ann Rogers had of the Amerandus Research business of her husband Robert P. Bauchwitz continued through the summer of 2017, just prior to her unexpected abandonment of the marriage:

Table: Evidence of Mission and Business Support

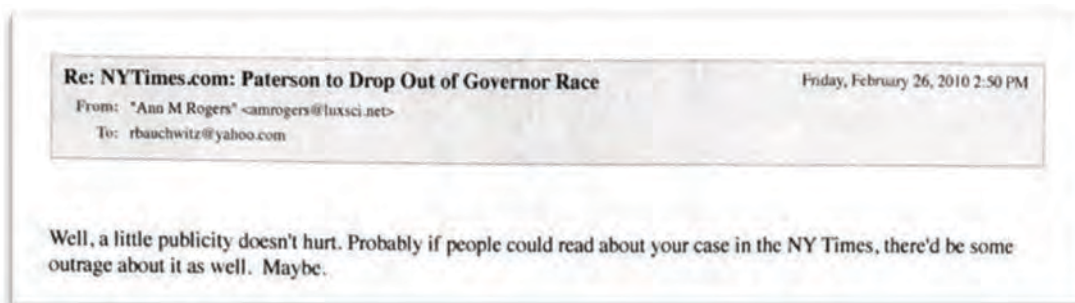
1_ Ann Rogers was very supportive regarding the issue of inadequate whistleblower support by the US government 09/29/10 - citing non-payments to her which Husband was instrumental in curing.



Ann Rogers felt she had suffered fraudulent non-payment of hundreds of thousands of dollars by the federal Centers for Medicare and Medicaid Services (CMS) while at SLRHC in the 1990's.

In the preceding email, which was sent by her to Husband just months after his *qui tam* case ended, she states her view was that **whistleblowers "should be actively ASSISTED by the government"**.

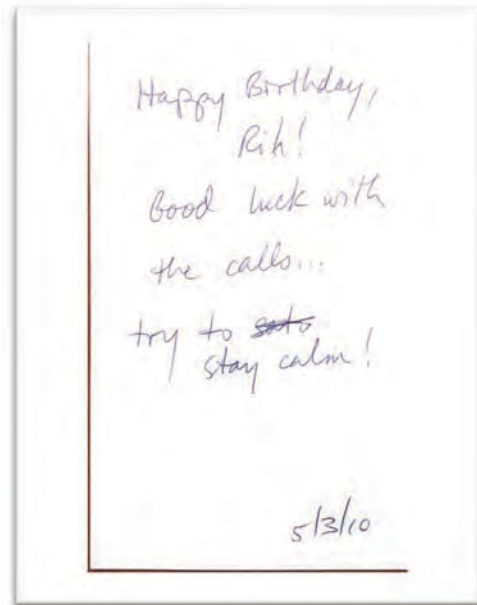
2_ Ann Rogers thought publicity might help Husband's *qui tam* case 02/26/10



Therefore, Ann Rogers was not hiding from Husband's *qui tam* case. Note also that the initials of the business name for Amerandus Research were AmR, which is very similar to the initials by which Husband referred to her throughout the marriage: AMR. The business had a lowercase "m" while the wife had an upper

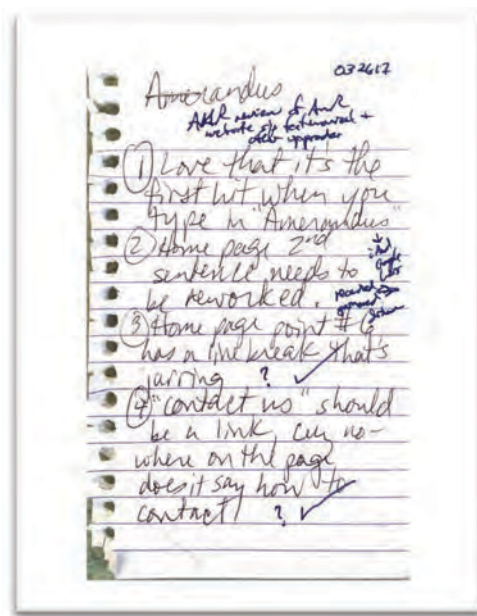
case "M".

3_ Ann Rogers' Happy Birthday To Husband after his *qui tam* case dismissal
05/03/10

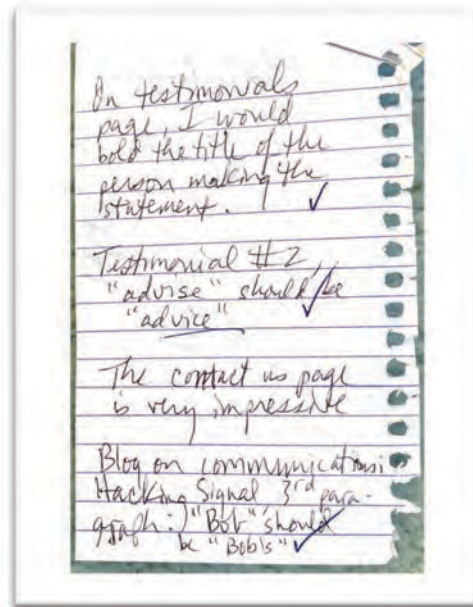


The *qui tam* case had ended without any recovery just over one month earlier, in April 2010. "Rih" was her term of endearment meaning "dear". The calls were to determine how to assess and recover from the matter.

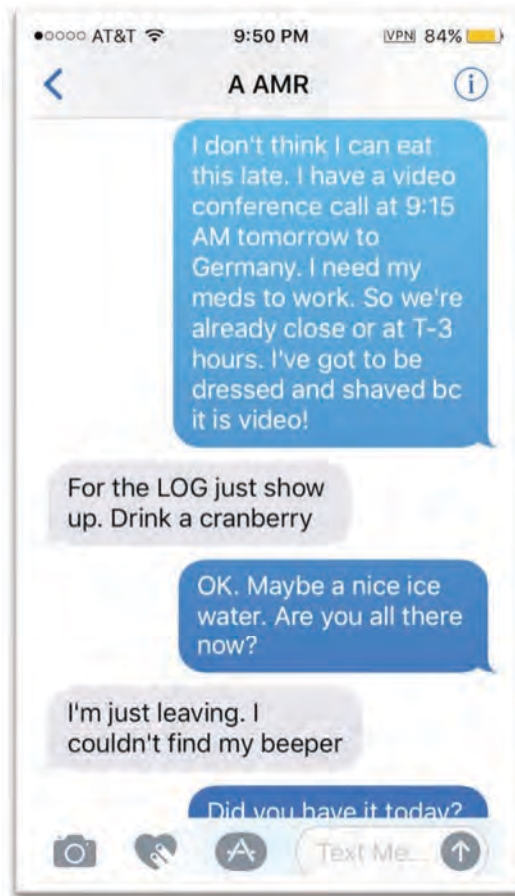
4_ AMR detailed review of Husband's Amerandus Research business website
03/26/17



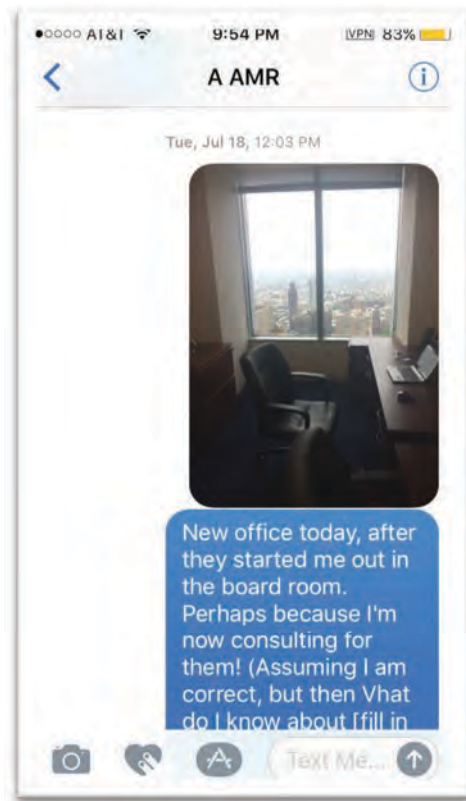
5_ AMR review of AmR website part 2 032617



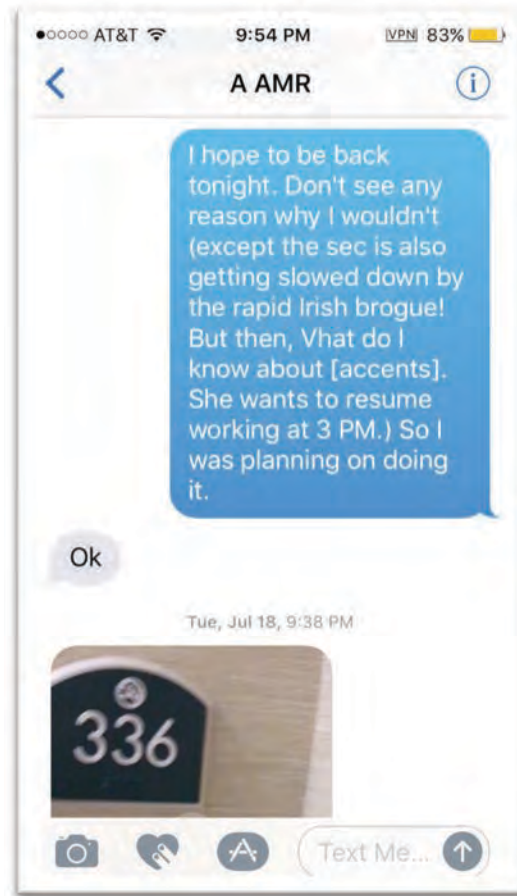
6_ AMR text message to re video conference next day with German company that wanted to explore buying AmR - July 9 2017



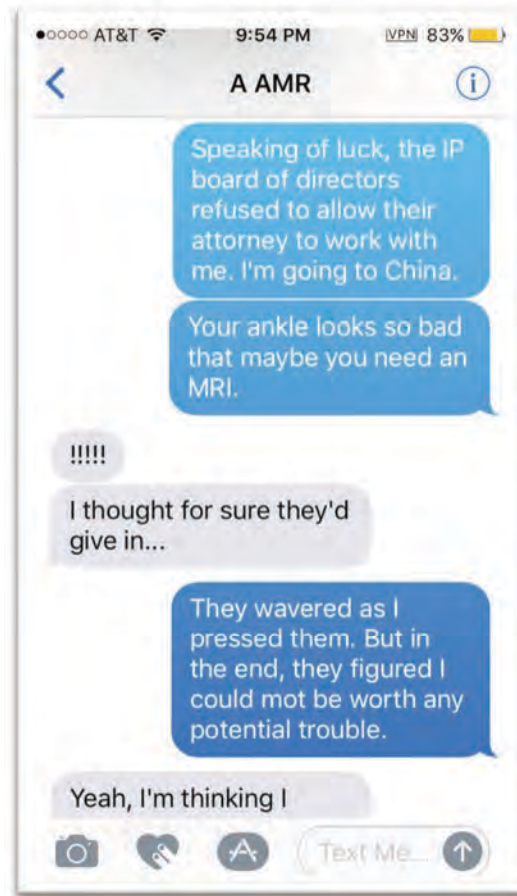
7_ Ann Rogers was often sent images of Husband's Philadelphia office - July 18, 2017



8_ Ann Rogers even knew that a secretary associated with my office at Servcorp was being slowed in her transcription work by the Irish brogue of Husband's prospective client - Jul 18 2017

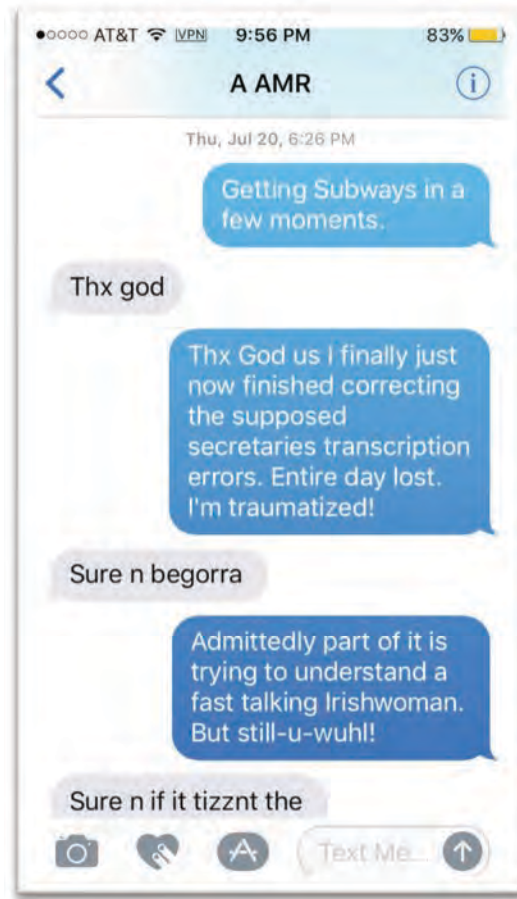


9_ Ann Rogers message to re IP attorney was not allowed to work with Husband in the Columbia case - July 18 2017



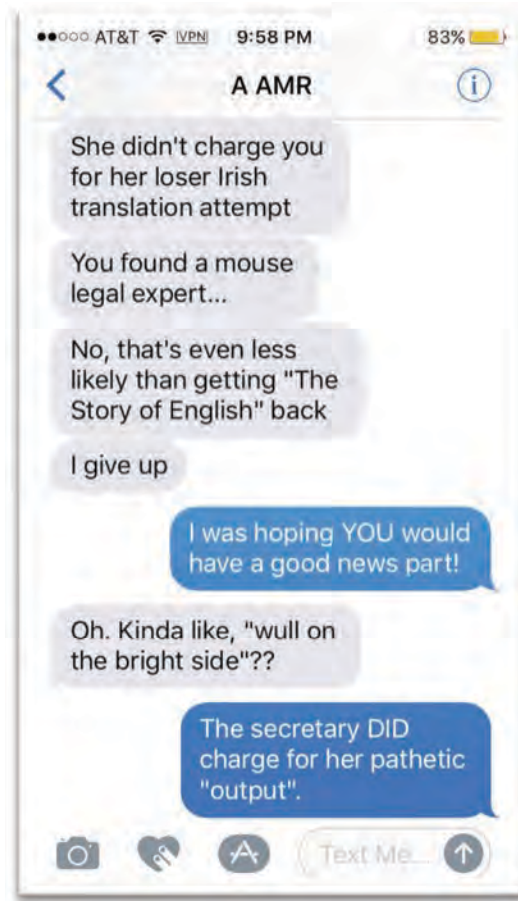
Husband then researched non-U.S. controlled genetically modified mouse distribution options overseas (including extensively in Europe). He also began work with another company to try to obtain a Chinese government contract to consult on handling scientific research misconduct in that country. Due to Wife's leaving the marriage unexpectedly, the latter option collapsed due to lost funding.

10_ Ann Rogers knew about potential agency client Irish official's brogue translation issues - July 20 2017



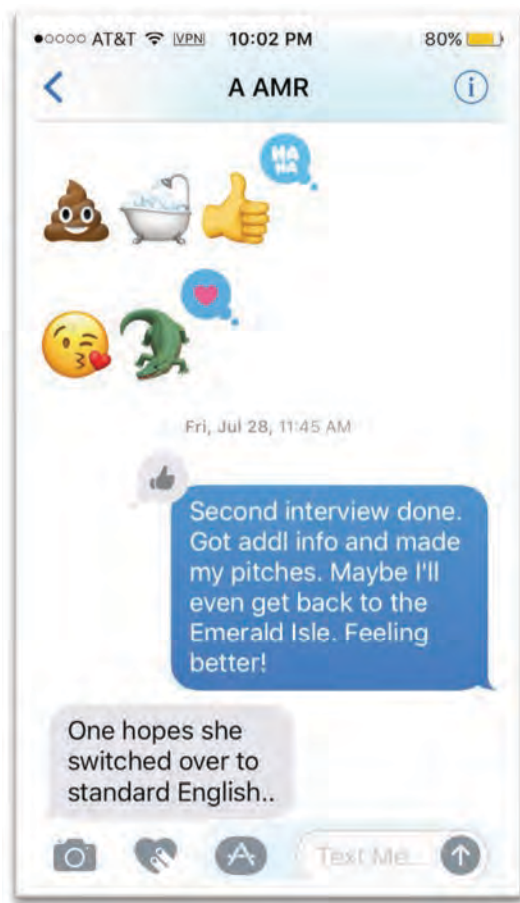
Ann Rogers did not express negativity about Amerandus Research's attempts to make profit in the consulting business by shifting focus from individual whistleblowers to agencies of foreign nations. The expected profits from the latter, however, would not be enough alone to support Husband's business without further investment: the contract offered exclusively by the Irish science agency was to be just under €20,000 (a limit set above which the contract must be advertised to the entire European Union). This income had to cover the payment of Husband's various employee-contractors who were involved with the project. (Husband's projected net business income, had the project proceeded, would have been just over \$8000.)

11_ Ann Rogers refers to Amerandus Research's potential Irish client and a mouse legal expert July 25 2017



Therefore, Ann Rogers had an intimate and day-to-day knowledge of all aspects of the Amerandus Research business: foreign agency clients, business acquisition interest, and mouse IP licensing. These examples were all on-going just weeks before her unexpected abandonment of the marriage (as announced by her in an email to Husband of September 9, 2017.)

12_ Ann Rogers blows Husband a text image kiss July 27, 2017 (as she confirmed at the October 17, 2017 Master's hearing) and Husband responded the next day about a second interview with Irish official possibly leading to his going to the "Emerald Isle" to work.



Therefore, as of July 27, 2017, Ann M. Rogers M.D. of Hershey, PA, remained intimately involved in following the Amerandus Research business, and she had a good relationship with her husband on that topic and in general.

13_ Ann Rogers also had a long history of working with her Husband (and their children) on scientific research matters preceding those presented above, including on the following 2009 scientific manuscript:

Learning curve assessment of rule use provides evidence for spared implicit sequence learning in a mouse model of mental retardation

Cindy Cai, Jeremy Bauchwitz, Janaile Spence, Jeff Chang, Teresa Concha, Sarah Reisberg, Ga Young Lee, Kseniya Barkova, Yvette Wojciechowski, Christina Poopatana, Brian Maitland, Daisy Duan, Diane Mei, Yue Michael Ma, Karina Illescas, Christopher Sikorski, Orellana del Fierro, QiJiang Yan, Ann M. Rogers, and Robert P. Bauchwitz^{1*}

¹St. Luke's-Roosevelt Institute for Health Sciences, Columbia University, New York, NY 10019, USA

*Corresponding author. Tel.: +1 212 523 8869; fax: +1 212 523 7623

In conclusion, Husband Robert P. Bauchwitz is unaware of and has found no negative statements from her about his businesses or work ethic at any time during the marriage, and certainly not at the end of the marriage. On the contrary, she continued to be positive and supportive throughout.

No negative information from Ann Rogers to her husband about her attitudes on the preceding points has been excluded from this presentation.

Amerandus Research <amr@secure.mailbox.org>

7/21/2017 2:25 PM

business matter

To rtt@jsdc.com

Hi Ron,

I would like to get your assistance in a business matter.

My firm has produced two strains of genetically modified mice which we wish to market. We had for several years been working to this end with a U.S. mouse distributor (Taconic Laboratories of Germantown, NY).

Taconic recently gave what some experts in this area believe was a very poor offer to us, i.e. they wished to retain 90% of proceeds and expected we and our partners to split the remaining 10%. Common practice for such terms would have been their retaining 20-50%, with perhaps most often 35%. I can provide details and speculations about how this outcome may have transpired, but the important practical point is that we and our partners do not wish to take such a "deal".

Our current IP attorney is just a generalist. He therefore conferred with and asked me to contact an expert, Dan Morath of Trask Britt, in such deals. This is what I wrote to our firm's general IP attorney on May 24, 2017, after having had a discussion with a Morath:

"I managed to get Dan on the phone before [my] leaving the country. He was very experienced. With respect to the transgenic strain [and Columbia University], he asked me to drop the term "laches" to you.

I scribbled down a few other comments as he spoke:

After listening to me describe the mice and then the split, he started:

"Just no. No. That's completely unreasonable". That was pretty much the same reaction from the university IP attorney earlier this week. [A retired university IP attorney I had contacted.]

Dan went on: "30, 35, 40%, that's kinda where the industry is" ... Maybe 50% if it's not patented.

He then continued to ask questions to get more details.

He said they [Taconic] could want to not be held liable, but then we should get a larger share in order to take on the liability. He also said it would be very unlikely to be worth it to Columbia to take us to court, even if they had some rights, which it does not sound as though he believes they do, e.g. laches.

He said there were many other distributors and that maybe we should threaten to pull the line from them [Taconic]. "We can come to a better number than 90%. ... Shop it around ... it doesn't sound like a fair price to me".

We might be able to patent, he noted, but added that it would be a "long and costly process". [Neither my firm nor our partners are interested in pursuing patents.]

In the end, he said, "It doesn't sound like they are negotiating with you in good faith." I agreed."

Columbia has never made an explicit and clear statement of why they believe they have any IP rights to mice they declined to patent in 2000. We had contacted them in the first place last year, since we are more than happy to honor anyone's rights to IP. Even without an extant IP right, we offered and others have accepted goodwill agreements with us. But Columbia operates on different principles. I can go into the details later.

The reality is that Columbia's implied claims to rights to the IP were beyond specious. Please see the attached pdf for the "argument" made by the Columbia General Counsel. Rather than accept a goodwill agreement from us,

instead, Columbia fabricated a completely unsubstantiated claim that we had stored cryopreserved sperm of a precursor strain with them and that by so doing, they had IP rights to the derivative strain we wished to market. Naturally, we stated in no uncertain terms that no such cryopreservation had ever occurred. That exchange occurred last December (see pdf).

We also have some evidence that it was Columbia who contacted our original distributor, Taconic, to influence the unacceptable deal we were offered. After having not responded further to us for five months, Columbia's General Counsel in May of 2017 sent us a bizarre, negative argument that "We looked into this issue and we do not have any information on our end that would confirm that your information is correct", i.e. that we never stored any sperm of the precursor strain with them. (See pdf.) But of course, they are not showing any documentation that we *did* store such material with them. To me, it was like their saying, "You claim that you did not hijack a Cuban jetliner in 1973, but we cannot find any evidence that your claim is correct. Therefore, we still believe we have rights to act against your interests." (Too bad I did not make a YouTube video of the reactions of various attorneys to whom I have shown Columbia's "reasoning". But that is Columbia - I was associated with them for 17 years.)

That email sent by Columbia's General Counsel in May 2017 was coincident with Taconic's about face in dealing with us. Indeed, Taconic not only offered us only 10% for the line of mice that did *not* involve Columbia, but they *completely removed* any mention of the line that purportedly did involve Columbia. You will not be surprised to hear that the term, "tortious interference" leapt to our minds. (By the way, that is all consistent with my experience of the way Columbia operates. You take their deal or you are going to get no deal. IP and legal issues are often completely beside the point. Basically, they tend to make you an offer you can't refuse. They carry a lot of clout with firms like Taconic.)

The bottom line is that we and our partners felt it would be very wise to engage Dan Morath to represent us in find distributors would give us more reasonable licensing terms, i.e. consistent with customary practices. He and his firm agreed to do just that. Until two days ago, that is, when he wrote to me that the "board" of his firm had refused to represent us. I have no idea why.

At this point, I am at a loss. I do not seem to be able to engage in any successful business practice at this time with respect to these mice.

Therefore, I would like your assistance on a few points to help resolve this problem and to find a way to allow us to market our mice under customary and reasonable terms.

My suggestions for how you could help would include:

- 1) Contact attorney Morath and try to find out what the problem was that caused their firm to back out.
- 2) More importantly, please try to get a list of other firms from him, or by your research of firms like his, which are expert in negotiating distribution agreements for genetically modified mice.

Quite frankly, we would be very willing at the point to use non-US IP firms and/or distributors located anywhere in the world, so long as we get reasonable terms and the distributors have a sufficient reach. With non-exclusive distribution agreements, we would be willing to have a Chinese/Asian distributor, for example, a South American distributor, a EU/Eastern European distributor, etc.

We have expended considerable time, money, and effort on this project, and have obtained agreements from several partners who either have an IP interest in the mice or to whom we offered good will agreements for their past support. I very much want to conclude this matter successfully. At this point, I do not believe that I can adequately represent myself or find the appropriate experts to do so. I believe that you could probably find such representatives and perhaps be helpful in maintaining their cooperation in support of our interests.

I look forward to your thoughts on this matter.

Thanks.

Robert

Robert Bauchwitz CFE, PhD, MD

Amerandus Research



BNY Mellon Center

1735 Market Street, Suite 3750

Philadelphia, PA 19103

717-395-6313 (c.)

These communications are privileged and confidential. They are intended for the party specified in the "To" address field and by salutation. The email address used to send this message is intended to meet current European information security standards.

-
- Columbia GC may be tortiously interfering w my business 051017 - Amerandus Research and Dr. Bauchwitz (dragged).pdf (58 KB)
 - Part_1.2.2.png (66 KB)

III. Ann M. Rogers M.D. of the Hershey Medical Center referencing what she termed her “outbursts” at work and against her husband, as well as possibly increasing substance abuse issues

“After a time, I stopped seeing her [psychiatrist [Kuhlenge](#)]. Then more recently (2 years now?) I started seeing her again because of my angry outbursts at work and with you.

Perhaps you noticed I started spending more time in my office. Perhaps you noticed I was drinking more, sometimes to excess, and sometimes taking sedatives. I was sleeping a lot more.

From: [AnnRogers\(amrogers@luxsci.net\)](#) To: [rbauchwitz@yahoo.com](#)
Date: Saturday, September 9, 2017, 8:52 PM EDT

“I will tell you that I did not spend much time talking to her [psychiatrist [Kuhlenge](#)] about you because first of all, she is not really a “therapist.” She mostly does medication management for diagnoses that are made based upon symptoms.

What I described to her were my outbursts at work, my severe anguish about Linda’s death (ongoing), extreme fatigue, hopelessness, near-suicidal agony both about Linda but more recently about the Jeremy situation muscle pains of unclear origin, and regular feelings of anxiety.”

From: [AnnMRogers\(amrogers@luxsci.net\)](#) To: [rbauchwitz@yahoo.com](#)
Date: Monday, September 18, 2017, 7:13 PM EDT

“Linda” was a patient at the HMC who was also a nurse at the Hershey Medical Center. Linda died during surgery by Ann Rogers in 2009. This appeared to be a significant precipitating factor for the descent into psychiatric illness by Ann Rogers.

“Jeremy” or “J” is our younger son, Jeremy Rogers Bauchwitz, who seemed to have a serious behavioral/psychiatric breakdown at the start of his junior year at Johns Hopkins University.

Appendix

A. What Ann Rogers acknowledges that she did tell her psychiatrist, Kuhlengel about her husband was:

On Sep 16, 2017, at 3:41 PM, Robert [Bauchwitz](mailto:rbauchwitz@yahoo.com) <rbauchwitz@yahoo.com> wrote to Ann Rogers <amrogers@luxsci.net>:

"I found some notes I made about your telling me (on April 1, 2017) of one of your visits to [psychiatrist] Dr. [Kuhlengel](#). You said that you had given her a list of what was valuable about me to you:

- 1) [that](#) I was a very good father;
- 2) [that](#) I get things done around the house and did househusband stuff;
- 3) [that](#) you and I were best friends;
- 4) [that](#) you and I laugh a lot together;
- 5) [and](#) that we have a shared history.

Your complaints were that I was unhappy that you were not apparently helping me to emotionally regulate (the instance at that time apparently had something to do with our accountant, Gina [DeFlavia](#)). You said that you told [Kuhlengel](#) that I had a "tendency to plan" and that you had a "tendency to escape", at least at home. You were "overwhelmed" sometimes by my "loudness". I get that. But I am the same somewhat loud man you married. Nevertheless, I want to adjust with the circumstances".

To the preceding, Ann Rogers replied on Monday, September 18, 2017, 7:13 PM EDT:

"Your report of what I told [Kuhlengel](#) about you was accurate."

Response to Master's Memorandum of July 2, 2019 and Affidavits of Consent and Waivers 070819

Daniel,

I make the following response to the documents you just sent to me:

Settlement Conference Memorandum and Affidavits of Consent and Waiver

1. I am being tested for findings made incidental to cancer treatment. Those findings were a) coronary artery calcification with mild cardiomegaly, and 2) mediastinal mass. Please request correction of the errors in the memorandum.

2. I object again to the Master's denying me my right under law to present my case to make a 3301(d) marriage retrievability record.

I presented to your firm my detailed arguments for doing so and I continue to think that they are important. What I see of my wife's behavior continues to be very disturbing.

Yet despite the Master's offering to hold such a hearing in the March preliminary conference, at the June 28 settlement conference, she stated to me that she was "**very troubled**" that I would try to assert my right to the prospect that the marriage was retrievable by, for instance, getting to question my wife and assessing her psychiatric status, or to further assess the impact of her father's passing and her mother's response to the testing issue. These issues can be corrected and treated, and this should have happened long ago, when I requested counseling.¹

I want it made completely clear that I felt coerced on-the-spot to "agree" to waiving my rights, which I have repeatedly stated I wished to assert, including in writing. I may reconsider such upon careful consideration (see following), but definitely not by just having myself feel I was being given no other choice than to look "even worse" in the Master's eyes, as Darren recently put it. It is literally prejudicial.

This ties in well with the discovery requested of what happened to Ann's father and therefore, temporally at the very least, precipitated the divorce. **If so, then let's drop the retrievability matter and push for a discovery hearing on why the fate of my father-in-law is very much connected to fault for disruption of the marital relationship.**

¹ A lot of what my wife wrote after leaving the marriage without notice is bizarre, e.g. how much she loves me and how having to abandon the marriage was like throwing decades of or lives away. I have presented some of this information to you. I feel the same way she does. So something other than dislike for each other must have contributed significantly to the break.

I was shocked that Master Conley told me that my expressing concern over my mother-in-law's resistance to performing the tests my wife had offered would have been "**offensive**" to her too. I cannot imagine how she could have had a reasonable basis in evidence to make such a determination, in particular as to the influence of my wife's violent acts and threats against me and her father on my consideration of the testing dispute, neither of which I had time to mention. I insist on litigating this matter, including to have the opportunity to have the Master reconsider her judgment in the full light of the evidence.

3. I further was given no information about the meaning of waiving my rights to notice of divorce. Therefore, **I retract any such on-the-spot signature as if it showed any informed consent on my part about waiving my rights to notice of divorce.**

4. **I ask again that Master Conley make a statement as to whether she has had any ex parte information about this case presented to her** by opposing counsel or others. I found her comment to me that she would not award alimony to me even if I had been beaten (?) and/or "**bruised**"/black and blue unless I were left incapacitated/disabled², to be of major concern given that images purporting to show "bruising" were distributed as "exhibits" by opposing counsel just before the conference.

If there are **court orders or law that specify what can be stated ex parte** to the Master, then please have those brought to my attention. Perhaps working on financial details might make some sense, if that is allowed and intended to make the process more efficient, but **ex parte presentations of allegations cannot be tolerated.** In the case of Mr. Demmel, I want to prevent any ex parte communications that the law prohibits; he has proven to be brazenly and persistently dishonest in my experience.

5. With respect to the basement door, I do not recall agreeing to share **a few** estimates with my wife. I only stated that I would go to Lowes **or** Home Depot to get such an estimate. If my wife has a problem with the Lowe's price, she can act to challenge it. Despite what the Master may have been told, I do not have the time to run around. I do not spend my days sitting around on a couch. Furthermore, as I noted, the door will need to be painted, as will other areas of the house such the effervescence of the basement walls and the basement floor (as also noted by the real estate agent). The house will not be saleable otherwise.

My notes show that I was to share estimates to "remediate the water flow problem in front of the house". It surprises me that the Master did not make record in her Memorandum of that major issue affecting salability, which is the algae-infested

² Please inform me as to whether any audio recording or other official transcript was made of the settlement conference – even if I could not get access to it.

water flow in front of the house. This was shown to both parties' counsel after the settlement hearing.

By the way, my wife seriously damaged the basement door on one of the entries into the house her counsel asserted at the settlement conference that she did not make after August 28, 2017, such as the one shown on police records of September 27, 2017.

I do not agree that I should be cleaning carpets at my own cost. Some areas of carpets which need to be "cleaned" were covered by furniture wife took on May 25 and actually probably need to be repaired. (See photo attached.)

I do not agree that only two ash trees need to be cut down. I stand by the accuracy of the list I presented from the real estate agent, Joan May, and I largely agree with what she advised. Joan May is widely considered the preeminent real estate agent in our area and she has worked with me and my wife before without incident.

I emphasize that this Master noted **in the Preliminary Conference that the parties were in agreement to use Joan May as the real estate agent and that her recommendations were to be followed.** I further note that opposing counsel made **repeated false claims in letters and filings (PTS) that it was I who did not want to work with May, or that May "refused" to work with me.** As we now see, it is opposing counsel and his client who do not want to work with May.

I want to be very clear that **I refuse to bear the loss of potentially tens of thousands of dollars to sell the house "as is",** the current demand of opposing party essentially taken up in whole by the Master, particularly as this represents a change in the original agreement to use Ms. May.

I do agree with Darren's suggestion that two of three among May, myself, and my wife, shall determine what actually is to be done and the costs split. If that requires a hearing to achieve, then do it.

6. **I object to the purported stipulation of the value of the Volvo.** The mileage alone used by opposing party and her counsel is **almost certainly fraudulent,** as you and I have discussed.

In general, I must again emphasize that the repeated and often highly material untruthfulness by the opposing party and her counsel with respect to financial and other information leads me to ask again that **we motion to obtain authorizations to obtain financial information independently.** I am willing to first discuss this with a forensic accountant, the one mentioned by Darren to start. Let's get this going next week at the latest.

7. I note that it was I who voluntarily disclosed the Savings Bonds and Bitcoin, in stark contrast to the many false statements made in this case by my wife, and not

only with respect to the seven figure one in violation of section 4904 regarding false statements to authorities. The Master at some point has to use evidence to determine **who is credible and who is not**, certainly with respect to financial matters at the very least.

8. The claim that it was I who was to provide any financial documents to wife is completely backwards and **MUST BE CORRECTED**. As I noted to the Master, **my wife took essentially ALL of our financial documents on August 28, 2017 without notice to me**. When I asked my wife on May 25 in person why she has not provided the marital financial documents to us (I believe that not having done so assisted with the attempted fraud against me with respect to the retirement accounts) my wife responded in front of a witness (the security agent) and for the record that she had given all our financial documents to her counsel and thought he had provided all of them to us.

My wife did leave behind two check registers. However, as wife should recall, **she requested those after she left and was given the ORIGINALS in 2017**. Our questions in discovery have been based on PHOTOGRAPHS that I took of those registers. Furthermore, I do not recall such discussion of check registers occurring at the conference on June 28. If such a discussion had happened, I would with 100% certainty made the same correction as I have here: Wife already has the original registers she specified.

Therefore, **please advise the Master that I insist on all our financial documents held by my wife be turned over to us for copying**. These are **to include the "PSU Checks" folder and its complete contents**.

9. Please note that **I am requesting that you follow the non-employee payments claimed in my wife's Schedule C filings for the 2016 tax year to see where those checks were deposited in her accounts**.

10. **Something may be seriously wrong with the stated balance of Wife's "Empower Plan"**. I believe that it was well over \$1 million dollars in value after separation. It was nearly \$950,000 in September 2017. Please check and let me know.

I also must be told how we can be sure that manipulations of wife's retirement funds have not occurred since separation. In particular, **how would we know other than by trusting her that another account was not opened to receive some of her retirement funds?** This is **VERY IMPORTANT**.

10. As to distribution of personal property items, the Master's statement is in error. These have not all been distributed. Wife and Husband have previously made copies of memorabilia (primarily photographs but also some documents) and **in the presence of counsel on June 28, 2019, agreed to continue this process reciprocally in the future**. (This is not a major concern and should not be a top

priority at this time. Except that Wife may wish to doctor some additional photographs?

11. I wish to correct the record regarding discovery as to the Master's claim that the father's autopsy and toxicology reports might "*prove*" that Wife committed marital fault. I never stated what such records might prove, only that they were certainly a major component of *examining* fault. The case with respect to those records is more complex and involves other individuals, not just my wife and myself.

Furthermore, those testing records are not the only claims relevant to fault for deterioration of the marital relationship. Should we ever get to present evidence in an actual legal proceeding, it will be made clear that **wife's violent outbursts, threats, and assaults were at fault**. I believe the record will show that I was acting responsively and with as much support for my wife as possible under very disturbing circumstances.

On the other hand, **I welcome the Master's agreement that I should have the right to file a motion and brief with exhibits to compel discovery of the documents regarding my father-in-law's treatment**, as I assert that it clearly impacted my own relationship with my wife.

12. Before memories weaken any further, please contact Lisa Hardy and ask her for her recollections (open narrative) of what was said on May 25, 2017 about burying pets in the backyard at 324 Candlewyck Lane.

Off to Lowe's now.

Thanks.

Robert Bauchwitz

Statement by Robert P. Bauchwitz M.D., Ph.D., C.F.E. relevant to fault and the death of Charles T. Rogers of Santa Rosa, CA for use in Pennsylvania divorce hearing Rogers v. Bauchwitz 2017-cv-6699-div of August 6, 2020

I assert that my good faith, productive, hard work in the ventures to which my wife had agreed, and in which her actions demonstrate she had continuing involvement, were severely injured by her abandoning the marriage without notice or recourse to me.

Furthermore, I allege that the circumstances under which my wife left the marriage might raise an issue as to the limits of a no-fault divorce.

Consider the general case of a husband physically attacked by his wife – for example being hit with a baseball bat or strangled - then ending up in an ICU and there being served with purported “no fault” divorce papers by his wife. Is that really “no-fault”?

Next consider a spouse who made threats against her husband's life, as well as that of another family member. The wife then physically attacks her husband, who does not end up in ICU, but the other family member shortly thereafter dies under possibly suspicious circumstances involving a seeming conspirator of the wife. Husband expresses concern about the family member's death, and wife, without recourse to husband, serves divorce papers. Might this be something other than a “no fault” divorce? What if the wife was actually involved in the family member's death? Does the husband have a right to investigate such circumstance under Pennsylvania divorce laws?

Based on similarities with the preceding example, I continue to assert my right under Pennsylvania discovery law to examine exculpatory documents Ann Rogers has claimed to have, and which she seemingly showed a son of ours in the summer of 2018.

These purportedly exculpatory documents would inform me and the Court as to whether my financial and other life prospects have been unreasonably injured.

This is particularly so as such documents address the possibility of a crime against the life of another member of the family **under circumstances with a direct correspondence to the threats and violence to which I had been subjected by my wife**, as I testified previously on October 17, 2019. (It is quite possible that under such circumstances, a fault divorce might have been filed by me.)

As I have testified, my life was threatened verbally and through violence by my wife, Ann M. Rogers of Hershey, PA, particularly at the end of the marriage in 2016 and 2017. This involved assaulting me with a baseball bat, or “Louisville Slugger” as she

termed it, on August 9, 2016, and then strangling, or “throttling” me as she put it, on July 3, 2017. I acknowledge that I nevertheless wished to support her with the hope of treatment.

However, I further claim that her unexpected arguments in June of 2017 which involved threats against the life of her father, followed by circumstances, including a text message, that suggested that such threats to remove his medications may have actually occurred, caused me to express concern in a telephone conversation with her on August 20, 2017. This claim is consistent with prior testimony by both parties at the master’s hearing of October 17, 2019.

On August 17, 2017, my wife, Ann Rogers, did spontaneously offer to perform autopsy and toxicology tests, apparently to assuage any concerns that I or others might have had that her father’s medications might have been removed as she had previously argued would have been appropriate, given what she claimed was his low quality of life.

The results of such tests constitute the core of what are referenced here as the “exculpatory documents”, since Ann would go on to state to me and others that she had indeed produced and was in possession of such documents.

However, instead of producing such documents to me as she had offered on August 17, 2017, she told me on August 20, 2017 that her mother took my interest in such documents as an implication that her mother had harmed her husband – despite its having been her daughter, my wife, Ann, who had offered such tests in the first place.

Furthermore, when Ann’s counsel raised my having expressed concerns about the demise of her father as a basis for divorce to my counsel in the spring of 2019, I investigated further and learned that an amended death certificate had been produced for my father-in-law at the end of February 2018. Unlike the original death certificate of August 17, 2017, the amended death certificate indicated a cause of death consistent with the withdrawal of the medications at issue in this case.

Upon learning of the amended death certificate (1), I contacted relevant law enforcement in California. I noted that I did not want to bring a false or frivolous accusation against my wife or mother-in-law, particularly since my wife claimed that she was in possession of exculpatory documents. Furthermore, I noted that I believed I had a right under Pennsylvania law to obtain such documents should she not provide them upon demand during discovery, ultimately by my making such request before a judge, which I hereby do again with this statement today, August 6, 2020.

I therefore ask that Ann Rogers make a statement in this hearing, on the record, about whether she will release certified and verifiable toxicology and all other reports examining the medication levels and cause of death of her father, Charles T.

Rogers, for my independent review and if not, why not.

Although Ann testified at the master's hearing on October 17, 2019, that there had been no incipient thinking about separation or divorce on her part or mine before the telephone conversation on August 20, 2017 in which I expressed my concerns about her mother's resistance to conducting the tests Ann had offered, Ann then testified that this conversation led her to consider separation and divorce. (2)

I argue again that taking such a unilateral and extreme action, without recourse to me, even if it was deemed that the spouse had become "mentally ill" as she and her mother would go on to assert to others, was well within reasonable suspicion that they were not merely responding to a family member's onset of mental illness.

Rather, it suggests the behavior of conspirators who have become defensive against a potential complainant.

I therefore continue to argue that these questions and circumstances clearly go to fault for the divorce.

Perhaps Ann has a no-fault right, no matter how callous, to immediately drop a purportedly mentally ill spouse, despite that spouse having put up with seriously fear-inducing living circumstances in dealing with her known, serious behavioral issues.

But it is also possible that what has been dressed up as a no-fault divorce, in fact involves a great deal of fault which thereby could make this action, in effect, an abuse of the no-fault process. In this view, a seeming no-fault divorce could be the cover for witness tampering, for example under Ca. PC 136.1, as I suggested to the master at the settlement conference on June 28, 2019.


More specifically, if Ann Rogers does not produce such exculpatory documents as she has claimed to have, then I would take adverse inference that she does not have them, as producing them would clearly benefit her. I would then recommend that this Court consider her credibility and character, and that law enforcement and others interested in investigating this case do so. I argue that I have a right to obtain such evidence and that the Court should order its release, if it actually exists, so that the reality of the matter at the core of this case can be determined.

(1) Based on an autopsy upon information and belief conducted by the county coroner while performing work at a private autopsy company.

(2) I also note here that I am unaware of anything but positive interactions between me and my mother-in-law, Phyllis C. Rogers, for the approximately 30 years prior to August 20, 2017 that I knew her.

“Ph.D. degrees aren’t what they used to be” – The Scientist 2017

the-scientist.com



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PhD degrees aren't what they used to be. In 1973, more than half of doctoral degree graduates in biological sciences landed a tenure-track position within [six years](#). Three decades later, that fraction had dropped to 15 percent. Demand has not kept pace with supply, says [Bruce Alberts](#), a professor of biochemistry at the University of California, San Francisco (UCSF), and cofounder of the nonprofit organization [Rescuing Biomedical Research](#) (RBR). “The real world for [biomedical PhD students] is that maybe a fifth will ever get academic jobs,” he says. And it’s not just academia that’s overpopulated,

“There aren’t even enough jobs currently in the private sector to make it possible for them all to get research jobs”:

says. And it’s not just academia that’s overpopulated, he adds. “There aren’t even enough jobs currently in the private sector to make it possible for all of them to get research jobs.”

As a result, trainees spend more and more time in [postdoctoral positions](#), and even then, their chances of landing a tenure-track position are in decline. Several years of [survey data](#) collected by the American Association for the Advancement of Science (AAAS) show that, although the percentage of postdocs expecting to land a tenure-track faculty position stayed above 50 percent from 2010 to 2012, the percentage who actually do so fell from 37 percent to 21 percent. Unemployment following a

Only 21% will get academic jobs.

percent to 21 percent. Unemployment following a postdoc position, meanwhile, rose from 2 percent to 10 percent over the same time period.

Over 10% are unemployed.

A third of Ph.D. holders in the U.S. reported themselves underemployed.

Data on PhD-holders' career outcomes are thin, but there are hints that underemployment may be an issue. A [2014 report](#) from the American Institutes for Research found that a third of PhD holders in the U.S. reported themselves underemployed, and a [study](#) published last year as part of UMETRICS—a University of Michigan project that collects data on scientists' employment—found that the average salary for biology PhDs was [just \\$36,000](#) in their

It is a hypercompetitive climate for Ph.D.s:

The resulting situation for today's PhDs—a hypercompetitive climate during graduate school and limited research-focused career prospects afterward—represents what many see as a systemic flaw in biomedical education that is impractical and **unethical** to maintain. It's a problem that a growing number of students, researchers, universities, and companies are now attempting to address, some through initiatives to inform and better prepare current students for nonacademic and potentially nonresearch career paths, others through longer-term efforts to modernize PhD admissions and education. Given the current job climate, Alberts says, "we have an obligation to tailor our graduate programs differently."

Addressing Biomedical Science's PhD Problem

Researchers and institutions seek to bridge the gap between emerging life science professionals and available positions.

Jan 1, 2017

CATHERINE OFFORD

<https://www.google.com/amp/s/www.the-scientist.com/careers/addressing-biomedical-sciences-phd-problem-32258/amp>

Job search material to Wife's Vocational Expert Terry Dailey 04/17/18 - introductory and CFE excerpts

These notes were created for plaintiff's personal use only. However, at plaintiff attorney's request, they are being provided to defendant's vocational rehabilitation expert. They are CONFIDENTIAL for that expert's use. April 19, 2018

OVERVIEW

I focused my employment searches in the areas in which I have been most recently active: **scientific research quality assurance, compliance, and fraud investigation.**

I additionally assessed a broader range of positions such as **laboratory-based or clinical research**, as well as more "general" **fraud investigation**, which in reality has meant financial, background, and surveillance. I also examined some **lecturer** positions.

I attempted to keep my searching as **local** as I could, but at times I ventured further away in order to obtain information about the **competitiveness of my cv** (e.g. PwC and Convince, the latter in Chantilly, VA); however, most national searching was left to the various **recruiting firms** which have worked with me.

The jobs specifically presented in the associated documents were mostly from the period of January 2018 to present.

I looked at well over 1000 jobs obtained through over **20 search engines** and **7 recruiting firms**, two of which used two independent divisions to market me to clients.

Furthermore, I have had three different recruiters work with me at a large, regional recruiting firm. Hence, **a total of 10 professional recruiters** have worked with me, beginning in October-November of 2017.

> Dailey wrote in her report that [Bauchwitz] "has been sabotaging/aborting efforts of recruiters and human resource staff in job placement/hiring efforts".

For the preceding claim she cites page 4 of undisclosed information provided by opposing counsel (who has a significant track record himself of false and erroneous claim in this case). She also cites pages 20-25 of the original version of this document as provided to her.

On June 19, 2018, Bauchwitz spoke with his original hiring and most senior medical recruiter at the firm which employs him in the Harrisburg area.

Bauchwitz asked his supervisor:

“Is there anything else I can do? Do you guys feel that I have been adequately helpful with my resume or keeping track?”

To which the supervisor replied:

“Oh, yes. Oh, yes.”¹

The written record of our communications will support her statement, i.e. that I have been totally invested and cooperative in working with these medical recruiters to obtain a relevant position in compliance, quality assurance, or even as a research technician.

...

Fraud investigator, “general”

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”**.)

¹ She continued: “Just shoot an email if something changes on your end, your interests, or what you are looking for. In the meantime we’re going to keep doing what we’re doing, and you keep doing what you’re doing on your end. But if anything changes in terms of your availability and interests, please let us know.”

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.

Data:

Commonwealth of PA - Regulatory Enforcement Inspector and Supervisor (February 6, 2018; 3>):

The Supervisor position "requires two years as a Regulatory Enforcement Inspector, Mortuary Inspector, Drug Program Specialist 1, or Professional

Conduct Investigator 1; or five years of experience conducting inspections for compliance with rules and regulations.”

I spoke about the Enforcement Inspector position with the Department of State’s Civil Service Commission (717-787-7811). They stated that pay would be \$18.95/hr [\$37,066/yr], but that it was not an entry-level position. At least “one-year’s experience inspecting for compliance with rules and regulations” was required.

Commonwealth of PA - Welfare Fraud Investigator (4>)

In the OIG in the Bureau of Fraud Prevention and Prosecution. \$41,956/year but required “one year of experience in responsible criminal investigative work; a bachelor’s degree; OR any combination of experience and training.” Contact was Sarah Davis at 717-703-2857. I have nothing that would be considered “criminal investigative work” experience.

INA Inc. (104>)

A private investigative firm who know me personally. I applied for any type of part-time, fill-in or other position for which they might need my expertise. Again, they know my abilities well from years of working with me and their founder (no longer running the firm) likes me quite well, too. Yet I have not yet had any offer from them after having submitted my cv to them on December 11, 2017.

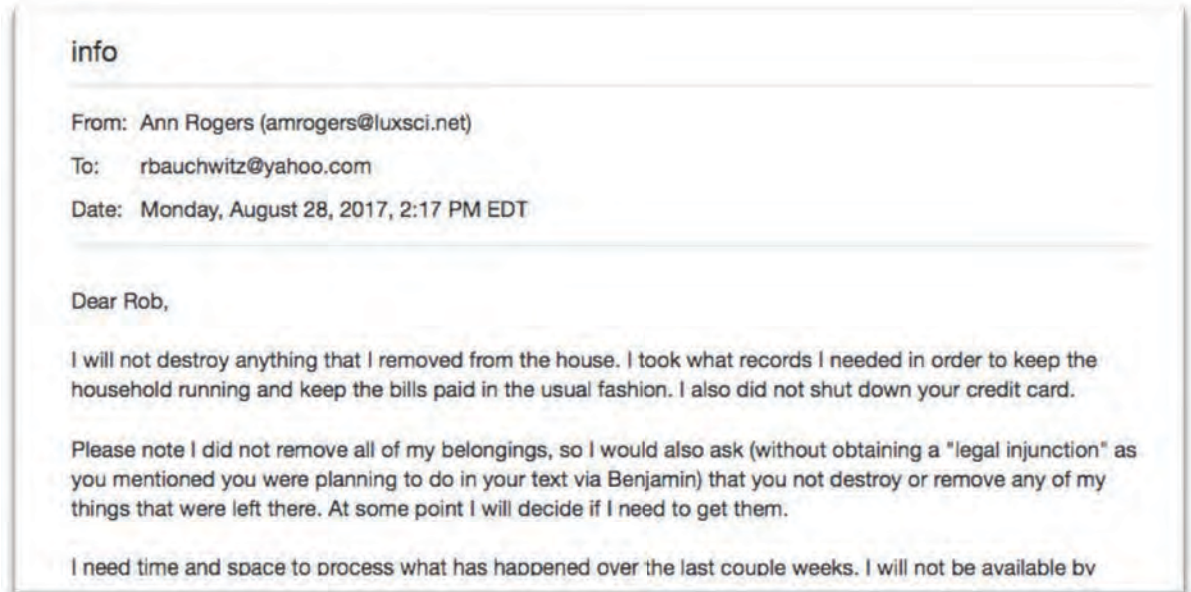
That suggests that they see my expertise as so specialized that they do not envision me as a routine “fraud investigator”. Apparently, the cv just looks too “unusual”, as does the request from a 57 year old that they assume has been self-employed for the decade that they have know me.

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.

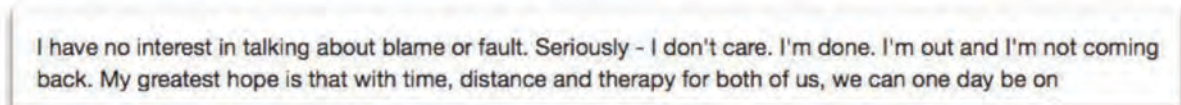
Date of Separation review

1_ On August 28, 2017, Ann Rogers wrote to her Husband that she needed “time and space” to think about the events surrounding her father’s death (and the impact it had on her relationship with her Husband.) She did not reference any desire to leave the marital home permanently.



With respect to another important issue in the case, Ann Rogers clearly refers to taking financial records, consistent with Husband’s claims that such records included the entire contents of her file cabinet, including her retirement account statements.

2_ On September 9, 2017, Ann Rogers communicated to Husband for the first time that she was done with the marriage and not coming back.



Email of September 9 2017 from Ann Rogers to Robert Bauchwitz

3_ According to Ann Rogers’ claim that she had decided in a call on August 20, 2017, that she was divorcing, as Husband’s attorney pointed out when questioning her, it seems that if so, she then waited a month to file for divorce.

"Yes, I have filed a divorce petition. You will probably receive it this week through Max."

From: Ann M Rogers <amrogers@luxsci.net> **To:** rbauchwitz@yahoo.com **Sent:** Monday, September 18, 2017 7:13 PM **Subject:** Re: Did you speak with Attorney Smith today?

(Max Smith was an attorney representing Husband.)

4_ At the divorce master's hearing on October 17, 2019, Ann Rogers claimed that she could not recall telling Husband's counsel, "Max", that she had left because she wanted to think ... i.e. to "process" as she had written to Husband ten days after she had actually spoken to the attorney (see 1_, above).

In the following, Q are questions asked by Husband's counsel at the hearing. A are the answers provided by Ann Rogers:

T. p.56

Q. So let's go back to your testimony about the separation. So you testified that on August 17th you went to California. And you acknowledge at that point in time you didn't tell Robert you weren't coming back.

A. I didn't know I wasn't coming back.

Q. Then your testimony was on August 20th you decided to leave because of you had a conversation with Robert in that regard?

A. Yes.

Q. That conversation which you're referencing, isn't it actually correct that that occurred in September?

A. No.

Q. Well, do you recall having a conversation with Attorney Max Smith on August 30, 2017?

A. No.

Q. Do you recall in that conversation saying to Attorney Smith that you weren't sure whether the marriage was over?

A. I don't remember any -- honestly, until you're saying this, I didn't remember having a conversation with Max Smith. I don't remember what we talked about.

Q. So you have no recollection of whether you said those things?

A. No.

Q. And you would acknowledge, would you not, that you didn't file for divorce until September 20, 2017?

A. The filing went in when my lawyer filed it. I didn't choose the date.

Q. In the time leading up to you leaving for California on August 17th, you would agree, would you not, that your communications with Robert in no way suggested an intention to end the marriage?

A. Incipiently? No.

Q. And, in fact, in the days and weeks leading up you had sent him multiple texts with hearts showing what appear to be love for him.

A. Whatever you say.

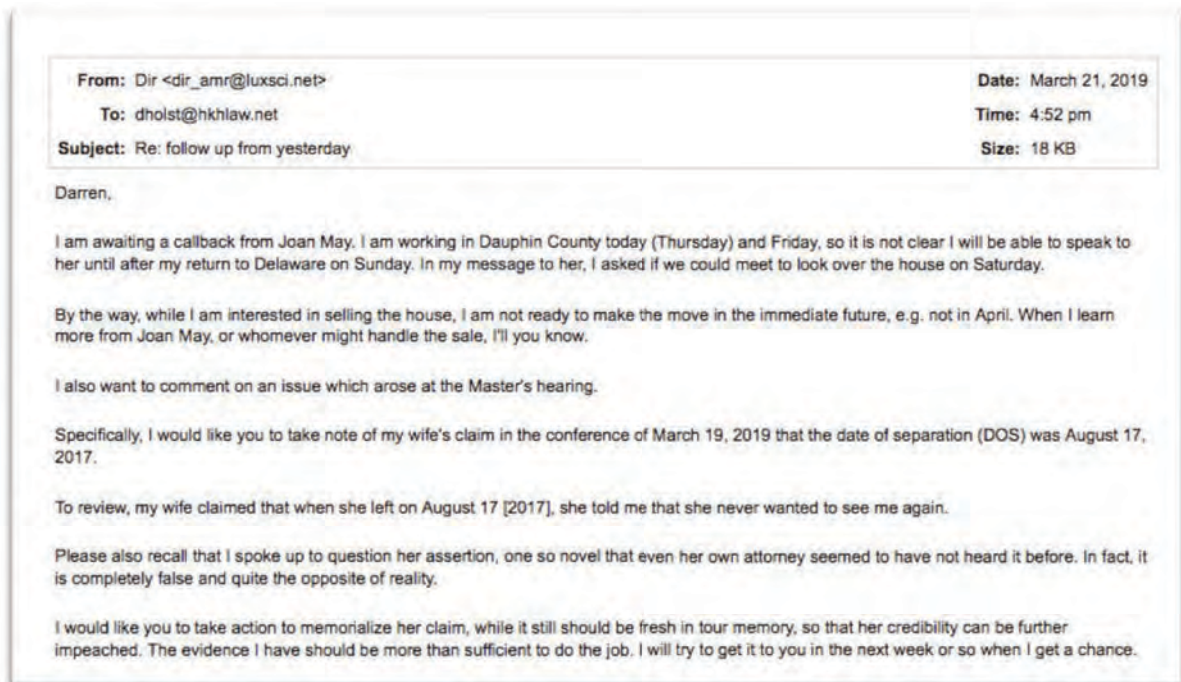
Q. Well, is that correct?

A. I don't know. You have it in front of you. I don't have your exhibits.

Q. Then I will show you, if you don't recall.

(Attachment 3a_, point 12, shows an example of heart emoticons texted by Wife to Husband.)

5_ Ann Rogers dishonestly attempted to claim at a preliminary conference on March 19, 2017, that she had told Husband she was not coming back to the marriage the day her father passed away and she left for California on August 17, 2019, as Husband memorialized in emails to his attorneys Holst and Weinstock. Husband's email is referenced here as "Dir" (for "Director", of Amerandus Research).

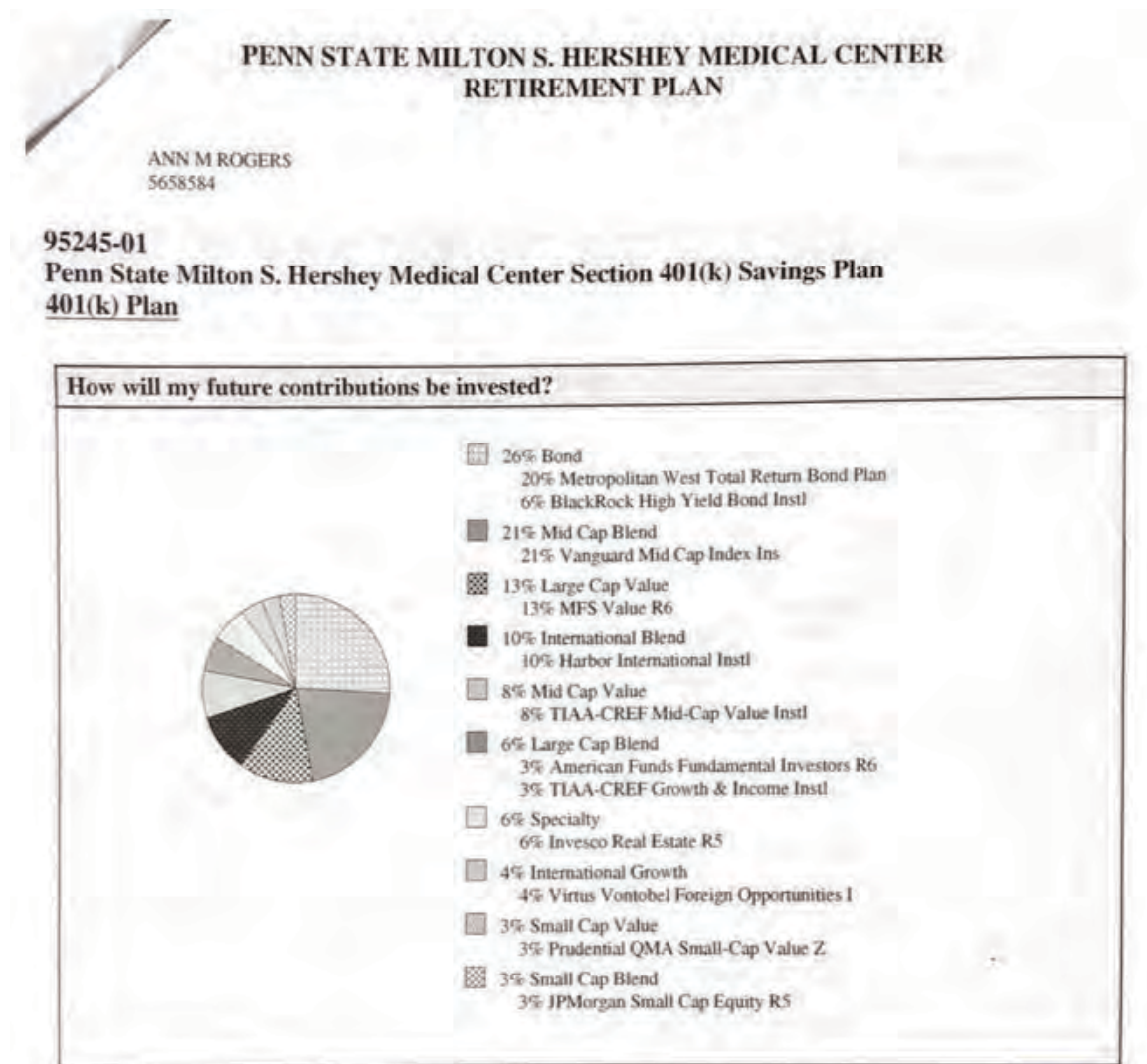


Re: Attny Demmel claiming that the TIAA and MSHMC retirement accounts are “the same”.

Response: Bauchwitz’s investigation to date has indicated that the employer and TIAA accounts and their contents are COMPLETELY DISTINCT.

After getting off the phone with you, I called TIAA again at 800-842-2776 (on a recorded line – so I recorded the conversation as well). I spoke with Tom Reigling of the TIAA Retirement Division.

We first discussed the two TIAA funds held in the Milton S. Hershey Medical Center (MSHMC) retirement account of my wife, Ann Rogers, specifically, “TIAA-CREF Mid-Cap Value Instl” and “TIAA-CREF Growth and Income Instl” (see following image):



“Instl” is short for “Institutional”, which means that an institution can offer such funds from their own institutional accounts.

Importantly, he stated that such **TIAA funds that appeared in the a retirement account managed by an institution**, as is the case for my wife's MSHMC retirement account, **would NOT also appear in a TIAA account held by the same employee**, as is the case for my wife.

Mr. Reigling of TIAA noted that if there were to be duplicate appearance of such funds, the result would be high fees and a "recordkeeping nightmare". This is exactly the nightmare from which I intend to awaken us.

Therefore, **only funds in accounts managed by TIAA would appear in a statement from TIAA. The funds reported in the MSHMC statements are COMPLETELY separate.**

Therefore, Mr. Demmel has not done any sort of "thorough" job, but in effect seems to be engaged in trying to defraud me of a rather substantial amount of money, i.e. close to my at least half of \$1 million in just this instance.

As to intent, please note that he and my wife did not choose the value of about \$950,000 (MSHMC 9/30/18), but rather the much lower about \$740,000 (TIAA 9/30/18) to present to us and file with the court. These numbers are quite obviously not "the same", as he told you today. In addition, any implied claim of overlap would not obviate their need to report the higher number. More importantly, Mr. Demmel, in his thoroughness, would be obligated to determine exactly what, if any, overlap actually exists between these accounts – as it turns out I am now quite certain I have done. I strongly believe the answer is ZERO.

This does not begin to address many other issues such as the actual pensions – not 403(b)'s - that my wife and I have from a prior employer, the lack of responsiveness with money transfers and expenditures, the failure to reveal life and other insurance, and even the claim that my wife's new car was leased rather than financed.

The above is not my first rodeo with Mr. Demmel. I hope now you can better appreciate why I have such a jaundiced view of his performance.

Our estate is probably going to come out to be more like about \$3 million rather than about \$1 million, which makes sense for a spouse who makes \$1 million in under two and a half years.

I think it is clear that my wife and her counsel's statements cannot be taken at face value. For that reason, as well as others, I have no interest whatsoever in entertaining any reduction in my current support amount. I have much more faith in my own analysis than the claims of Demmel.

Thanks.

Rob

From: Robert Bauchwitz
To: Ira Weinstock
Date: November 12, 2018

February 26, 2018

To: Attorney Wendy Chan

Wendy,

Below and attached is information I referenced in an earlier phone conversation with you concerning statements Mr. Demmel, my wife's counsel, has made that I contend are not reasonably supported by facts or by information he should have obtained before making such claims. Also demonstrated is his willingness to make such claims to court officials and those representing me in this case.

Because of such activity, as I noted to you, I believe we would be well within our rights to inquire of Ms. Dailey and other members of her firm whether any claims were transmitted to them by Mr. Demmel about me, other than the most basic of scheduling information such as my identity.

1. My wife termed Mr. Demmel's claims on her behalf "shenanigans"

Mr. Demmel claimed in the support conference of November 29, 2017 that my wife was not in agreement with my not continuing with my research science career. I disputed the accuracy of Mr. Demmel's claim to the conference officer, and my attorney inquired as to whether Mr. Demmel should be in a position to testify on behalf of his client, who was not present. I subsequently questioned my wife about this issue and later noted her response to my attorney:

On Wed, Dec 20, 2017 at 11:07 AM, John F. King, Esq. <john@johnfkinglaw.com> wrote [to client RPBauchwitz]:

[RPB:] With respect to Mr. Demmel, I want to point out that when I spoke to my wife on December 7 of this year and told her that he had claimed in the support conference that she had not been in support of my discontinuing Ph.D. laboratory head-type work, she disavowed his statement, noted she was not present, and called it a "shenanigan".

[JFK:] Well, if Mr. Demmel is, in fact, misrepresenting his client's position, she needs to address that with Mr. Demmel. Please note: I have seen instances in which a party tells one thing to their attorney, and another thing to their spouse.

2. defamatory letter to prior counsel [Demmel letter to Husband's attorney JFKing of January 10, 2018]

Subsequently, I delivered a letter to my wife's mailbox relaying information from my 91-year-old mother. My wife apparently was upset by the message of the letter, and it would seem made some note of it to her counsel, Mr. Demmel. Mr. Demmel subsequently wrote a letter to my counsel (see attachment 1) that referenced that message from my mother, as well as making what I contend were additional seriously erroneous and false claims.

An excerpt relevant to this situation, taken from the Demmel's letter (see attachment 1), is presented again in the following:

"Please advise Dr. Bauchwitz not to come to Ann's residence and not to access her mailbox. Although she has requested numerous times that he not come to her residence, he recently left an unwelcome note in her mailbox. Additionally, please have him forward any mail received at the marital home addressed to Ann from her friends to her instead of opening it and inappropriately responding to her friends. He recently opened mail from one of Ann's friends, sent that individual an email and has refused to forward the letter to Ann. His behavior is not helping this situation."

I address my responses in the following lettered sections.

A. Demmel: "Although she has requested numerous times that he not come to her residence"

I then wrote the following to my wife.

1) "Can you show me "**numerous**" requests you made to me to not come to your residence?"

It is my contention that I have been remarkably disciplined in NOT approaching you or your residence without your consent. But please do identify any email that makes such a claim. I do not believe we have communicated for a very long time in any other fashion."ⁱ

She made no response to this request, which I take as a concession such evidence does not exist.

By way of positive evidence that there was no prior prohibition by my wife against leaving mail or other items at her new home [see attachment 3]:

Subject: Re: Portrait
From: rbauchwitz@yahoo.com;
To: Ann Rogers (amrogers@luxsci.net)
Date: Thursday, December 7, 2017 5:01 PM

[Ann M. Rogers:] Sure. **Please hang it on my door**; I have 2 mtgs here today that will keep me past 7. I appreciate your doing this. I'm still waiting for the mouse to be completed. [Emphasis added.]

> On Dec 7, 2017, at 2:51 PM, Robert Bauchwitz <rbauchwitz@yahoo.com> wrote: > >

I have the digital image of your portrait. If you want it, I can give it to you today on a CD before 7 PM. (It is 50 MB.) If not, let me know after you get back in town next week. I will not be available Friday - Sunday at 1 PM. Rob

On Wednesday, December 27, 2017, I had the following text exchange (excerpted for the relevant material) with our older son, who was in Hershey for the winter break:

RPB: I have mail for your mother. I'd like to deliver it to her with you so I can say hello. Very brief.

...

Son: Unfortunately moms response is "***leave them in the mailbox.***" That's why god made them" [Emphasis added.]

So there was a long pattern over the past half year of my taking mostly "junk" mail or other loose items she wanted to her home with her consent so I would not have to readdress it. She also explicitly allowed me twice to meet her there to give more significant items to her, e.g. a guitar.

As quoted below, I review here how I have been handling my wife's mail for the months since she abandoned our home and marriage:

I did attempt to send her card to you, as I have done with *all* the other mail I get addressed to you. If it is a single letter that looks important, I write forward on it and place it back into the 324 mailbox with the flag up. If it seems like routine or "junk" mailings, then I place them in a bag which I have for months delivered to your mailboxⁱⁱ, as you allowed if not requested.

B. Demmel: "Additionally, please have him forward any mail received at the marital home ***addressed to Ann*** from her friends to her instead of opening it and inappropriately responding to her friends." [Emphasis added.]

I then noted the following to my wife in my email to her of January 14, 2018. Her own statements in her prior email of the same day actually answer several of the questions:

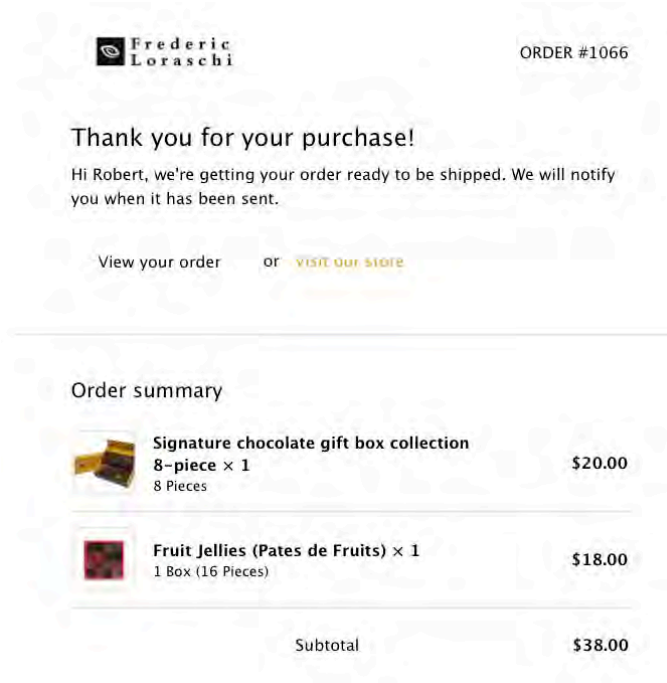
2) Did you tell Demmel that Andrea Malon, or any friend of yours, had sent a letter ***addressed to you*** to 324 Candelwyck Lane that I opened? He recently opened mail from one of Ann's friends, ***sent that individual an email*** and has ***refused*** to forward the letter to Ann."

Since your email touches upon that prior point, I will include your statements again here:

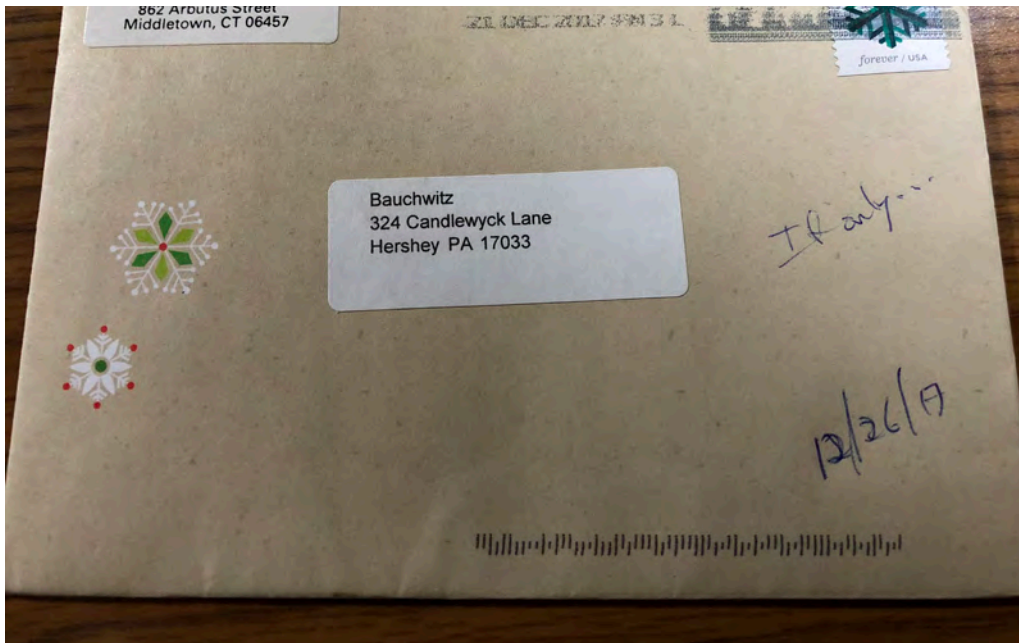
“Finally, I heard from Andrea Malon that **you wrote to her** after receiving a holiday card which ***I suppose*** was addressed **to both of us or to our "family"**. She was of course confused and troubled not to know what was going on.”

So the answer is almost certainly, ***No, you did not make such a claim*** to Mr. Demmel. Therefore, I have to conclude that he fabricated his accusation that the Malon Christmas card was addressed to you. **If you DID communicate to Demmel that the letter was addressed to “you”**, then you might want to let me know right now so that he is not unjustly accused.ⁱⁱⁱ

I sent Andrea Malon a box of **Frederic Loraschi chocolates**. Along with that delivery was some short text comment, which they include for free. I cannot find the contents of whatever was on the note included with the candy, but I tend to believe it would have been fairly innocuous.



I have opened Christmas letters from her numerous years in the past, for the simply reason that, as you can see in the attached photo [see attachment 4], she has the good graces to address the letter to, in effect, “The Bauchwitz Family”. At least you guessed or recalled that correctly. Actually, as the attached photo attached shows, it is actually specifically addressed only to “Bauchwitz”, a name you have so notably not used. Correct, Dr. Rogers?



Mr. Demmel's accusation that the letter was addressed to you could well **represent a claim that I committed a federal crime and *under no circumstances will be tolerated***. This is no longer what you previously termed a "shenanigan".

Therefore, to be explicit, the letter was NOT addressed to you. It was more rightly addressed to "Bauchwitz", which as of the last time I checked, was MY name.

3) Did you state to Demmel that I ever sent an "***email***" to that same friend whose letter I had opened?

No "email" was sent to Malon, contrary to the claims of Demmel. I have to conclude from what you wrote that he simply fabricated that detail, too. I state this with reasonable certainty since I did not know nor did I provide to Frederic Loraschi Andrea Malon's email address, nor can I imagine Frederic would have sent a note intended to arrive with chocolates in that manner.

4) Please show me in what communications we had that I "***refused***" to send the Malon card to you?

You wrote: "**You have not forwarded that card on to me**, which was clearly intended for ME, as we were co-interns together and she was MY FRIEND. I want that forwarded to me immediately."

Again, as you do so often in the rest of your letter (to be addressed later), you make declarative statements which are more likely than not false. **I did attempt to send her card to you, as I have done with *all* the other mail I get addressed to you.** If it is a single letter that looks important, I write forward on it and place it back into the 324 mailbox with the flag up. If it seems like routine or “junk” mailings, then I place them in a bag which I have for months delivered to your mailbox, as you allowed if not requested.

In this case, since Ben stated that he was going over to your place anyway, I put the card in a bag with other (junk) mail with your name on it and gave it to him. He stated to me that he placed the mail I gave him on a “table” in your apartment.

I have today done a pretty comprehensive search of my files for her card. I do not find it and I doubt it was not sent over to you on or about Saturday, December 30, 2017 with Ben. Please search for the mail that he left on your table and let me know if you found *any* of it. If you found that mail without the cards, then I will then look again here, though I seriously doubt I would have missed it and I am pretty certain I do recall putting it in the bag he took. It is of some concern that you could have seen the bag as filled with junk mailers, among which was the card, and tossed the whole thing. (If it makes you feel any better, I recently did the same thing to an alimony debit card which I interpreted to be another credit card offer!)

Until notice from you today, I was not aware that you had not received the card. If in fact you truly have not, then it was an unintended oversight on my part. But I do not find the card and you are welcome to come over on one of your inspection visits and look for it. I also state for the record that I did not discard it, shred it, or damage it in any way.^{iv}

We’ll see if your statement that I “have not forwarded that card” to you will be enough for cover Mr. Demmel for his obviously more defamatory claim that I “**refused**” to forward mail addressed to you.

C. Demmel: “His behavior is not helping this situation.” [Demmel letter to Husband’s attorney JFKing of January 10, 2018]

No. It is Demmel’s behavior that is not helping this situation. His claim is unacceptable to me. He seems to be doing everything he can to prosecute this divorce in as expensive and aggressive a manner as he can, despite numerous statements of ambivalence about the divorce from my wife. I would be happy to review those statements in a separate communication if you feel it would be worth consideration.

In short, I have done everything in my power to restore this marriage, which was ended without any prior notice to me, nor with my even having been given a single chance at counseling after my wife abandoned the home on August 28, 2017. I

would also be willing to review the events which prompted such a precipitous divorce, a topic which had not been discussed previously between us.

Finally, as my attorney had previously suggested with respect to a claim Demmel had made in the support conference, a claim which my wife acknowledged was inaccurate, I wrote to my wife to put her on notice that she was responsible for addressing the claims made by her attorney on her behalf in his letter to my counsel:

Subject: Ann Rogers to further response to her email of 011418 - Demand for Retraction - Pt I
From: Robert Bauchwitz (rbauchwitz@yahoo.com)
To: amrogers@luxsci.net;
Date: Saturday, January 27, 2018 6:49 PM

Dear Ann,

I haven't had a chance to respond to the remainder of your prior email until now. You covered many topics.

I already sent you an email (dated January 14, 2018) in response to allegations made against me concerning the Malon Christmas card in a letter from your attorney to my attorney. We must get some resolution of that situation, since the dishonest and defamatory behavior of your attorney, Demmel, is unacceptable.

It is of concern to me that he might continue to use such a letter against me; just sending such unfounded allegations to my counsel could be seen as undermining my ability to obtain effective representation. You have a responsibility for controlling your attorney's performance made in your name. Therefore, **I hereby demand that you have your attorney make a formal written retraction and correction** of what he wrote in his letter dated January 10, 2018.

No response has been forthcoming.

Although I am sending you this information to provide a basis for questioning what Demmel might have said to parties purported to be "independent" that have been chosen by him as experts, I would also appreciate any other advice you have as to what more I should do with respect to the issues raised here.

Thank you.

Rob

Robert Bauchwitz

ⁱ **Subject:** Ann Rogers questions to re Demmel claims in response to her email today 011418
From: Robert Bauchwitz (rbauchwitz@yahoo.com)
To: amrogers@luxsci.net;
Bcc: bbauchwitz@gmail.com; mhbauchwitz@gmail.com;
Date: bauchwitz@gmail.com; mhbauchwitz@gmail.com;

ⁱⁱ Actually, I did not put the bags or anything else into her mailbox. I hung the double-bagged mail (top and bottom to protect against rain) on her front doorknob.)

ⁱⁱⁱ Since you also stated in your letter that you are filtering out emails from me so that you do not need to see them when they arrive, I will feel forced to ask [our older son] Benjamin to inform you that you must look at this email and respond without delay. It would be unfair to Demmel to have him unjustly accused, though I very seriously doubt that would be the case here.

^{iv} I also do not like or agree with your claiming that it is not possible that I could have been friendly with people with whom you worked even though you are well aware that I socialized with her and you on many occasions. I just do not see your ownership rights here.

For example, I also sent the same chocolates to [her brother and his wife] Chuck and Sue Sue. I also included some text message or note with those chocolates. (I actually do not know how Frederic adds the notes; one friend contacted me saying she had to guess who had sent the chocolates since there was not much identifying information on it other than it was from "Rob" and I am only one of three people she knows with that name). I just received from Chuck and Sue Sue, by the way, a nice letter thanking me for the chocolates.

If I badmouthed you in whatever I wrote to Andrea, then you would have some grounds for complaint. But I very seriously doubt I wrote anything of such magnitude. Anyway, she certainly should be able to send to you whatever came with the chocolates. I can ask Frederic if he has retained the same information as well.

From: Wendy Chan <wendy@ccalancaster.com>	Date: June 20, 2018
To: jdemmel@newcumberlandlawyer.com, dir_amr@luxsci.net, lori@ccalancaster.com	Time: 2:45 pm
Cc: hcuomo@newcumberlandlawyer.com	Size: 13 KB
Subject: Re: Rogers/Bauchwitz letter	

Jim:

Is your client not well? You should tell her to review her emails to Robert. How could she forget this extensive discussion about her bike and helmet??? Did she forget that she specifically asked for her bike and helmet several times, always had a reason why she could not pick it up from Robert and Robert was nice enough to drop it off to her.

If she does not have any medical issues that would cause amnesia, then please tell her that we do not care to waste time on these stupid games.

Wendy Chan, Esquire

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On Tue, Jun 19, 2018 at 10:50 AM, Jim Demmel <jdemmel@newcumberlandlawyer.com (<mailto:jdemmel@newcumberlandlawyer.com>)> wrote:

Wendy:

Please see the attached letter on behalf of Dr. Rogers. I'm mailing the hard copy today.

Please contact me with any questions.

Thanks. Jim.

James R. Demmel, Esquire

Demmel Law Office, LLC

1544 Bridge Street

New Cumberland, PA 17070

(717) 695-0705

(717) 695-0770 Fax


www.newcumberlandlawyer.com (<http://www.newcumberlandlawyer.com>)

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Please visit my website to learn more about the Collaborative Process.

Attachments

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 **Message_Section_2.html (HTML, 5.60 KB)**

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From: Wendy Chan <wendy@ccalancaster.com>	Date: April 23, 2018
To: jdemmel@newcumberlandlawyer.com	Time: 1:32 pm
Cc: dir_amr@luxsci.net	Size: 9.0 KB
Subject: Bauchwitz/Rogers Divorce	

Jim:

Wife has been telling Husband's relatives that he has untreated psychiatric issues and has refused to work for the past 10 years. I hope she is not spreading these false rumors at her work place as the Hershey area medical community is very tight knit and small. Rumors like this will ensure that Husband does not get a job in that community. Is this why no one is calling him back when he applies for jobs?

In any event, how is Wife possibly asserting any sort of earning capacity if she is alleging that Husband has these psychiatric issues? Who would hire him in ANY capacity with psychiatric issues???

Please tell Wife she must stop or else there would be a clear defamation claim as she is eliminating all possible job prospects.

Wendy Chan, Esquire


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 **Message_Section_2.html (HTML, 2.75 KB)**

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Trial transcript flaws and errors Bauchwitz v Rogers October 17, 2019

Numerical summary (initial assessment):

1. Missing words making the sense unintelligible: 42 instances
2. Incorrect words making the sense unintelligible: 24
3. Spelling and grammar errors very unlikely or definitely not made by the speaker: 15
4. Missing words but still intelligible: 8
5. Incorrect word but still intelligible: 6
6. Incorrect speaker identification: 1
7. total flaws detected on initial assessment: 96
8. primary pages assessed for flaws: pp. 91-202.

Additional, trial transcript flaws identified in the Master's report of March 16, 2020 (received March 16, 2020):

1. Missing words making the sense unintelligible: 11 instances
2. Incorrect words making the sense unintelligible: 1
3. Spelling and grammar errors very unlikely or definitely not made by the speaker: 2
4. Missing words but still intelligible: 2
5. Incorrect word but still intelligible: 6
6. Incorrect and unlikely word use that should be confirmed ("conference" instead of "hearing") 2
7. total flaws detected on further assessment: 24
8. primary pages assessed for flaws: entire master's report.

Total transcript flaws identified to date:

1. Missing words making the sense unintelligible: 53 instances
2. Incorrect words making the sense unintelligible: 25
3. Spelling and grammar errors very unlikely or definitely not made by the speaker: 17
4. Missing words but still intelligible: 10
5. Incorrect word but still intelligible: 12
6. Incorrect speaker identification: 1
7. Incorrect and unlikely word use 2
8. **total flaws reported here: 120**

ANN M. ROGERS,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	DAUPHIN COUNTY, PENNSYLVANIA
	:	
VS.	:	
	:	
ROBERT P. BAUCHWITZ,	:	NO. 2017 CV 6699 DV
Defendant	:	

TRANSCRIPT OF PROCEEDINGS

DIVORCE HEARING

Pages 1 - 208

BEFORE: CINDY CONLEY, DIVORCE MASTER

DATE: THURSDAY, OCTOBER 17, 2019

PLACE: CONFERENCE ROOM
JUVENILE JUSTICE CENTER
HARRISBURG, PENNSYLVANIA

APPEARANCES:

JAMES R. DEMMEL, ESQUIRE

For - Plaintiff

DARREN J. HOLST, ESQUIRE

For - Defendant

DAUPHIN COUNTY COURT REPORTERS

Reported by: Heather L. Artz
RMR, CRR, CRC

A. Trial transcript flaws first identified December 10, 2019 and reported December 11, 2019 by Husband upon release and receipt of the trial transcript by the court on December 9 2019.

Questions and corrections below are shown in brackets as capitalized and highlighted text in which the following incorrect word, if present, is crossed out.

1) p.22

THE DEFENDANT: I have my communications with her, so this is [A] bone of contention.

2) p.75

BY ATTORNEY [HOLST] DEMMEL:

Q. So regarding your Exhibit 8 which was your list of personal property, just so I'm clear, and I am correct, in September of 2017 you went back into the marital residence without Robert there and took a significant amount of personal property out of the home at that time? A. Yeah.

3) p.95

your responsibilities were?

A. They were very similar to the ones that had existed, [WHICH] I just mentioned, [WHEN] where I was head of [THE] laboratory.

4) p.95

Except in the academic path, I was shifted from [UNINTELLIGIBLE START] doctor, what's called [UNINTELLIGIBLE END], non-tenure track to a tenure track, supposedly. So that's just a difference in academic title at that point. But I [WAS] still supervising other people and doing lab work.

5) p.95

Q. So on the tenure track, that's a track -- teaching track?

A. Not really [AT] Columbia so much. There was very little teaching. It was really just an implication that you weren't, [UNINTELLIGIBLE; POSSIBLY: WORKING ON A] year by year [WORD MISSING; PROBABLY: CONTRACT], but that you would potentially -- have the potential to be promoted up the professorial ranks. To get tenure basically is what it means, yeah.

6) p.95

Q. What precipitated your leaving St. Luke's?

A. Well, two things. Number one, my wife, as she stated, was looking to go into bariatrics and got a job -- got a fellowship [FOR] herself in Hershey, Pennsylvania. So the family was [GOING TO¹] gonna move there.

7) p.98

¹ As I wrote to counsel on December 13, 2019: 'I never say "gonna". I do sometimes say "going ta" rather than the "ew" sound at the end of the word "to". Therefore, I argue that "gonna" should be in all cases replaced with going to, as going ta is an unnecessarily minimal detail. Regardless, I state the term going as an independent word. The sloppy work by this court reporter makes me appear much less educated than I am.'

A. I had no real day-to-day functioning for quite some time because through the [UNINTELLIGIBLE – MISSING WORDS] month -- I mean, I was being operated on. It was two different operations, big operations. A neck [WORD MISSING: DISSECTION], by the way, because I did have a metastasis to the neck,

8) p.98

Q. Do you continue to have any effects in your mouth or your tongue from the cancer treatment?

A. [I] ~~it~~ did.

9) p.101

Q. Any limitations on your ability to lift items?

A. Yes. Significant. Significant. Well, I mean, you know, the ability to lift items was already, with the diagnosis after the broken back, limited to -- [WORDS MISSING] to extended -- [WORDS MISSING] this is extended, arms like this. So I'll just, for the record, I'm extending my arms directly out -- to eight pounds apiece, which is what they do with people as affected as I am. Actually, it's probably more than that because once this degenerative disc disease occurred, you know, that occurred in part [WORDS MISSING] -- can be founded because of my rehabilitation exercises involved weightlifting at the time. It led to damage to my neck and my back, so that was discontinued. So now the limitations are more like five pounds each.

10) p.107

Q. So this was a temp agency?

A. It's [WORDS MISSING] -- right. So I was hired by two other different divisions, one of which got this job. So this is basically a kind of a clerical job at the Hershey Medical Center. They also were marketing me to their clients for medical positions or [WORDS MISSING] -- and over [WORDS MISSING] -- quality assurance positions and that [WORD MISSING; POSSIBLY: WAS] in a different division.

11) p.112

A. I was formally called a [SPELLING: RELATOR] ~~relater~~.²

12) p.115

Q. Ultimately, what happened to this case?

A. As I just [STATED] ~~started~~, first of all, we -- meaning the

13) p.117

Q. -- but it was a public action?

A. Yes, it became [ONE].

14) p.120

² The master in her report of March 13, 2020, picked up this error by the court reporter, as well as others obvious such as involving illogical dates, but importantly, not some of significance upon which she relied.

And in addition to that, it was to develop [WORDS MISSING] -- so we [WORDS MISSING] -- the mice in a [PROFITABLE] profit basis to be able to get these mice to be salable. And so that was another line of potential [REVENUE] avenue. It wasn't solely, as was stated earlier, just whatever we made or not made in the qui tam business. But the idea was that the genetically modified mice that have already been worked on for years by my laboratory would continue -- would and were [CONTINUED] continue to be worked on in Bauchwitz Laboratories for subsequent commercial sale.

15) p.120

Well, it's an interesting [WORDS SEEM MISSING] -- so we tried a number of large distributors. And there's a lot of [UNINTELLIGIBLE] ~~conten~~ -- consolidation, that's the word I'm looking for -- consolidation in the field. So the main company we approached -- [WORD MISSING: WE] approached many -- Charles River -- [WORDS SEEM MISSING: AND] a large number -- [WORDS SEEM MISSING; OF OTHER ONES SUCH AS] Jackson Laboratory. But the biggest one was Taconic Laboratories, [UNINTELLIGIBLE; PROBABLY: THERE WERE] so long negotiations with Taconic Laboratories to buy these mice. And we felt they were very valuable and we had -- we had mouse legal experts who felt

16) p.124

know, trying to get around that, trying to find what we could do to get [WORDS SEEM MISSING] -- because a lot of money [WAS] involved. That [WORDS SEEM MISSING; POSSIBLY: A PROFIT] was expected -- like the qui tam suit itself, this was another investment

17) p.125

There were, you know, [NO "A"] a contract employees to pay, lots of costs.

18) p.126

A. Other than the clerical-type work at the Hershey Medical Center -- I would rate it as clerical-type -- no. Nothing that was medical, laboratory, [NO "A"] a quality assurance, none of that.

19) p.126

what they called the Harrisburg resident [POST] host,

20) p.128

So, for example, just the other day [I WAS] I'm looking at a company -- [WORDS SEEM MISSING] you know, [WORD MISSING] company's in Delaware. And they want, [UNINTELLIGIBLE START] like, [INCORRECT WORD; POSSIBLY: A] your biologist. That's general. Let's look at it. [UNINTELLIGIBLE END] But they want someone with experience in flow cytometry, and you have to have a certain number of years. This, that, so it gets extremely specialized.

21) p.130

Yeah, that's been also an interesting consideration. So I think a lot of jobs -- let's say you do find [YOU'RE] they're qualified. The problems with the jobs that are qualified is they tend to be, for me, if I'm not [going to] gonna be a professor -- which I can't be and I've been out of the field also a long time, so I don't have that subject matter or technical expertise anymore. And as I told you also, the grants you have to bring, you don't have the history, so all that's [UNINTELLIGIBLE] broken in. Now, if you do look at jobs, like quality assurance, let's say, or investigation, whatever it may be where it's more entry level, I find these people, they're beginning to want [WORDS SEEM MISSING; POSSIBLY: TO ASK] -- what is a man in his late fifties doing [WORDS SEEM MISSING; POSSIBLY: APPLYING] -- these are jobs we would give to people in their twenties. You know, what's going on here?

22) p.131

so I did try to get some information more [DIRECTLY] direct as to [WHAT WAS] what's going on. So I did contact some employers, [WORDS MISSING; PROBABLY: TO ASK] why -- so, for example, I would get triaged out. This is now not where I didn't hear back but where they said you were rejected. So I [WOULD] call HR. Why did I get rejected so quickly too?

23) p.132

And they then wanted me in 2011, you know, I [UNINTELLIGIBLE; WORDS SEEMS MISSING. POSSIBLY: WAS TO] start [TO] -- create a new textbook, teach [UNINTELLIGIBLE] this, and there was a lot of hassle, cutting the income at the same time [WORD SEEMS MISSING: AS] asking for a lot more [WORDS SEEMS MISSING] and [UNINTELLIGIBLE] all sorts of trouble. And so I had these discussions with my wife and, you know, this is [UNINTELLIGIBLE NON-WORD SOUND FRAGMENT - SUGGESTS MACHINE TRANSCRIPTION] redic -- she said, correct, we thought:

24) p.133

At the time my wife said some of what she said, and she said in addition to what -- so 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] of fifties.

25) p.134

It's not a small business. It's an [ENTREPRENEURIAL] entrepreneur venture.

26) p.134

So she was not [WORDS SEEM MISSING] -- she dissuaded me [UNINTELLIGIBLE START] and through [UNINTELLIGIBLE END] discussions from being a clinical psychiatrist.

27) p.135

so that if necessary I can get a certificate and [TEACH] teaching.

28) p.138

But there were also some very unfortunate or unreasonable, maybe is a better term, [UNINTELLIGIBLE: WRONG WORD OR WORDS MISSING] points the way her contract was set up.

29) p.139

Because really it was disincentivizing the other [SURGEONS] surgeon. She was very good. She would go in and take care of them. But most [WORDS MISSING] -- because it was costing [THEM] her money, they were actually saying to her, You're not billing enough to meet what we are holding you against. So it was actually harming her. And I felt that was unfair, but she would at least do the work. So she was complaining about that. And I agreed with her that this was not just a situation of doctors not being [WORDS MISSING]-- her being paid properly, or other doctors too. But the patient [WORDS MISSING] -- it was a bad incentive.

30) p.140

approached her department [ADMINISTRATOR³] chairman, a woman by the name of Susie [WINDEMUTH] Windamin [N.B. PHONETIC IS SPECIFIED AS IN USE] (phonetic)

31) p.141

I assisted her in some, like, the [ABITBOL CASE] Abbot Ball,

32) p.141

[UNINTELLIGIBLE GIBBERISH; VERY LIKELY WORDS MISSING START] But the most, I think, obviously one on a page was this 2009 one. So what I would do, which is what I did on a daily basis, I -- she would come home, and it was nice to be spouse -- have an -- you know, you went to medical school with this guy -- just shoot -- you know, go over medical complications and talk to me. UNINTELLIGIBLE GIBBERISH; VERY LIKELY WORDS MISSING END] It kept me fresh in medicine and was good for her.

33) p.141

So I'm the guy that went [NOT AT ALL LIKELY THAT I WOULD HAVE SAID THE REMAINDER OF THIS PUPORED SENTENCE AT TRIAL⁴.] boom chicka boom chicka boom chicka boom.

34) p.143

just because that's the way we divided [IT] and not because she did anything wrong.

³ I did not say "chairman". It was "administrator". And those words are so different that I have to wonder: what happened? What was the process that produced this excessively flawed material? Were more words left out?

⁴ Given the massive number of flaws in transcribing my actual testimony, why should we believe this?

35) p.143

which was significant in Derry Township because they didn't [WORDS APPEAR MISSING] -- and that medical center was not easy at all to get kids in there to do their internships.

So it was very valuable for our kids in a number of ways. So of course we did these projects, a number of projects with the mice. I treated them like any other [WORDS SEEM MISSING; POSSIBLY: STUDENTS OF MINE]-- I had had interns in New York City, teenage interns, so I was used to it. But by the time the boys were done high school, I mean, they were like graduate [STUDENTS] schools.

36) p.144

They got into excellent [WORDS SEEM MISSING; POSSIBLY: UNIVERSITIES] -- I mean, they were very accomplished.

37) p.144

One boy [WAS] an [CAPITALIZED NAME: Intel] intel -- international [WORDS MISSING: SCIENCE FAIR] [FINALS] final performer,⁵

38) p.144

he also went on to publish that work. We went to a meeting in Rome. That was one of our trips to Rome, Italy. My wife used it as vacation, but I and my son presented that work there. So it was truly [OF] an international importance.

39) p.146

he made no money and there was hundreds of thousands of people in Rio de Janeiro, she was upset [AND] ; said, Robert,

40) p.172

so we've had people in there looking at this house, professionals. And [UNINTELLIGIBLE; POSSIBLY: THEY UNIVERSALLY] the University believed that these -- at least those two rugs in the first floor are not cleanable

41) p.172

the most important thing is just to do what we agreed, that we, being my wife and I, [ON] in May 25th, which is she proposed four different times in that meeting that an estate sale be held.

42) p.172

can you take it? No. She had nowhere to put it; [HE - referring to son Jeremy] she had nowhere to put it.

⁵ This is UNACCEPTABLE gibberish. It is denying my rights to have a reasonable record made of my testimony. "One boy was an Intel international science fair finals performer". It is a statement that is supportive of my having been active in parenting our children in positive and successful ways.

43) p.172

So she proposed, [SPONTANEOUSLY] spontaneous on her own, to have an estate sale.

44) p.176

she identified those six boxes. And I found a [SEVENTH] seven.

45) p.177

Q. Have you removed everything --

A. Except my tools. I [HAVE] had tools there.

46) p.184

I'm amenable to her plan with the exception -- the addition that we have [A] security agent and on the record as well.

47) p.182

Q. Do you have those [ITEMS] item?

A. No. I mean, some of these

48) p.193

Well, I think, [TO BE] quite fair -- frankly, the mice should have already made a large amount of income. And also the job with the [IRISH] IRS agency could have made income.

49) p.195

I think a lot of evidence [WAS] presented in the reports to your party before the support conference [de novo HEARING] last year, so you should have [IT].

50) p.196

all the same as in the support conference [de novo HEARING]. I presented -- we [PRESENTED] represented all of that information

51) p.196

She was supposed to come back on the [28th] 20th of August and speak to me. Never happened.

52) p.197

[MANAGED] manage her mother's apartment.

53) p.201

I was [PAID] pick -- even though there are zeros here

54) p.202

Q. But you were running Bauchwitz Laboratories at the time?

A. Yes, [I] it was.

Based on the preceding, Husband wrote that he strongly disputed the certification that the transcription was reasonably accurate.

B. Husband did not detect reliance of the opposing party's brief on the trial transcript. However, the master's report did cite to the trial transcript. Some of the flaws had already been noted above (one of which is material and reproduced below). Others had not been recorded previously.

Trial transcript flaws in the master's report:

55) T. p.142 Husband testified: "One of our sons in particular -- but both of them came to me for, you know, advice. I took them to all of the meets. Again, not to put down my wife. She did [WORDS MISSING] -- it was a natural division of labor."

The missing words of the witness apparently **allowed the master to claim that the witness, Husband, had not credited the Wife**. But it clearly was his recollection and the likely meaning of what remains of the testimony that he did just that.

T.196	"Husband testified that he anticipated that Wife would return from California on August 20, 2017 and talk to him presumably about the telephone conversation they had that day. There is no dispute that Wife did not return to the former marital residence on August 20, 2017."	Q. When your wife moved out of the house in August and told you that she was not returning, did you infer that you were separating at that point? A. Absolutely not. I didn't know what was really going on. We have a lot of text messages and so on to that effect. I don't know that she knew. Q. You just knew that she was living elsewhere? A. I knew that after the 28th of [August]-- well, I knew it in the beginning of September because I didn't know what was going on. I didn't know when it happened. She was supposed to come back on the 20th [28th]	MATERIALLY FLAWED TRANSCRIPT	The witness stated August 28 th , yet the date is written as 20 th in the same paragraph. This would have consequences in the master's report. [This error appears in the original list by Husband of December 11, 2019.]
-------	---	---	------------------------------------	--

		of August and speak to me. Never happened.”		
--	--	---	--	--

56) T.92 A: “That was in [WORDS MISSING] -- by e-mail in September of 2019.”

Consequence in the master’s report: “Given that Husband alleges that the date of separation was September of 2017, Husband either misspoke in identifying the alleged e-mail date as 2019 or it is a transcribing error.”

57) T.176 “BY ATTORNEY HOLST: Q. So, Dr. Bauchwitz, before we broke for a small break, we were talking about the house and things like that. I want to switch over to the issue of the personal property that was brought up by Ann earlier today. She had that list of items that she says were not provided to her. So I want to go back a little bit and make sure you advised the Court as to what has transpired with respect to the personal property. We met on June 28th, and were several boxes exchanged at that point in time?

A. Those were the ones she specifically identified, which I [MISSING WORDS]-- well, six of them, that she [HAD?] identified those six boxes. **And I found a seven[th]. So they were in part of the basement that I had known that we had stored boxes there. So yes, they were brought back.**

Then [MISSING WORDS?]-- so there's subsequent [MISSING WORDS?] -- well, there was also the issue that I have to go back to May 25th, our meeting in the house. So at that time my wife identified things that were loose that were there. **And it's very possible that the movers took them, but they weren't identified with [MISSING WORDS: AMR]-- [Husband mostly likely stated, at minimum, “AMR”, as would have been consistent with his testimony]** as her name. She did also – [MISSING WORDS: Did what?] she said in her letter that there were boxes in a certain section of shelving in the basement that were hers and that's [MISSING WORDS: What?]-- **I simply deny it. I think it's not true.”**

Consequence in the master’s report:

“Husband did not have a credible explanation as to why he took this action and thus, the only conclusion is that Husband intended to deprive Wife of items that had sentimental value to her.”

[How could Husband’s explanation be “credible”? It was not intelligible. Husband contends the lack of intelligibility in the trial transcript at this point and elsewhere seems extensive and specific to his testimony.]

58) T.201 A. Yeah, yeah. **And earlier too, but not just St. Luke's.** I was pick [MISSING WORDS] -- even though there are zeros here, remember, I was paid those years where there was zeros. I was paid fellowship money.”

Testimony unintelligible due to seriously flawed transcript
[Not identified in the December 2019 list of flaws.]

59) T.163 So I went with an electrician to do a repair on [MISSING WORDS] -- and he changed an electrical panel. And this [MISSING WORDS] -- yeah. Okay.

Testimony unintelligible due to seriously flawed transcript. Not identified in the December 2019 list of flaws.

60) T164 A. It was pretty consistently Ann [WHO] instigates[d] and escalated, both.

[Not identified in the December 2019 list of flaws.]

Additional comments on October 17, 2019 hearing transcript flaws and impacts

The master was not so conclusive about the possibility that Husband did not state what was attributed to him in the following point of the hearing:

Master: "Husband testified that he anticipated that Wife would return from California on August 20, 2017 and talk to him presumably about the telephone conversation they had that day. There is no dispute that Wife did not return to the former marital residence on August 20, 2017."

There is no possibility that Husband could have so testified. There was never any idea that Wife would return on August 20, 2017. That was the date of a phone conversation that Wife testified led her to consider separating or ending the marriage. Wife was in California and Husband in Pennsylvania on that date.

Husband well knew and so testified that he expected Wife to return on August 28, 2017. It is another transcription error that purports Husband spoke the 20th. Indeed, Husband refers to the 28th of August just prior in his testimony:

Q. When your wife moved out of the house in August and told you that she was not returning, did you infer that you were separating at that point?

A. **Absolutely not.** I didn't know what was really going on. We have a lot of text messages and so on to that effect. **I don't know that she knew.**

Q. You just knew that she was living elsewhere?

A. I knew that after the 28th of [August]-- well, I knew it in the beginning of September because I didn't know what was going on. I didn't know when it happened. She was supposed to come back on the **20th [28th]** of August and speak to me. Never happened."

The master also made numerous negative assertions about Husband in her March 13, 2020 report based on her claim that he was unwilling to take fault and did not credit Wife. Leaving aside that Husband may not have had fault for whatever issue was under discussion, her claims are not consistent with the testimony, though the very low quality of the court reporter's work could have reduced the master's willingness to decipher what was produced.

In one case, in which master seemed to complain that Husband was taking credit for the efforts he made to successfully enrich the lives of the couple's children, he clearly did not try to put down the Wife for her own efforts by citing that there had been a division of labor:

T. p.142 Husband testified: "One of our sons in particular -- but both of them came to me for, you know, advice. I took them to all of the meets. Again, not to put down my wife. She did [**WORDS MISSING**] -- it was a natural division of labor."

T. p.143 "just because that's the way we divided [**IT**] and not because she did anything wrong."

Did the missing words of the witness **allow the master to claim that the witness, Husband, had not credited the Wife**

In another example, Husband was clearly crediting Wife's work ethic and helping her in her complaints that she and, in his view others surgeons, were being cheated at work:

T. p.139

Because really it was disincentivizing the other [SURGEONS] surgeon. **She was very good. She would go in and take care of them.** But most [WORDS MISSING] -- because it was costing [THEM] her money, they were actually saying to her, You're not billing enough to meet what we are holding you against. So it was actually harming her. And I felt that was unfair, but she would at least do the work. So she was complaining about that. **And I agreed with her** that this was not just a situation of doctors not being [WORDS MISSING]-- her being paid properly, or other doctors too. But the patient [WORDS MISSING] -- it was a bad incentive.

In the latter case, the transcription flaw might not be so great as to explain what might possibly be a reflection of a bias or agenda of the interpreter.

In addition to the observations made above and in the attached documents (XX_ and XX_), Husband would not have stated things he knew to be true and which were inconsistent with what he had just stated.

Also note other signs that it was the court reporter and not Husband who introduced errors, or perhaps more likely did not remove them by checking the accuracy of whatever automatic transcription appears to have been used to initially process the testimony. For example: the transcript states that:

p.193 "Well, I think, -- quite fair -- frankly, the mice should have already made a large amount of income. And also the job with the IRS agency could have made income."

What Husband asserts very likely was the actual testimony is:

T. p.193

Well, I think, -- [TO BE] quite fair -- frankly, the mice should have already made a large amount of income. And also the job with the IRS [IRISH] agency could have made income.

It is a factual falsehood that Husband ever worked for or stated that he worked for an "IRS agency". The actual testimony, which Husband knows is what he said, is that he worked for an IRISH agency.

The large number of words of Husband's that are missing from his testimony seem hard to believe, since the court reporter stopped him when she felt she could not understand something he had said. (As did the master.) The stenographer was actually the head of court reporting. She was not shy towards stopping Husband while he spoke to get clarification. Therefore, an explanation of how such a person could have certified such an error-filled transcript is needed.

One explanation is that what was presented in the transcript was an early mechanical output. For example:

T. p.132

And so I had these discussions with my wife and, you know, this is
 [UNINTELLIGIBLE NON-WORD SOUND FRAGMENT - SUGGESTS MACHINE
 TRANSCRIPTION] redic -- she said, correct, we thought".

"Redic"? Why would a human transcriptionist enter such a meaningless word?

A partial answer may appear later in the transcript, in which a note that the attempt to produce the last name of a person as spoken by Husband was "phonetic":

T. p.140 "approached her department [ADMINISTRATOR¹] chairman, a woman by the name of Susie [WINDEMUTH] Windamin [N.B. PHONETIC IS SPECIFIED AS IN USE] (phonetic)

Yet it seems unlikely that all or even most errors can be ascribed to reliance on mechanical transcription. First, Husband observed the court reporter seemingly using her stenographic input device. Second, there are several cases in which Husband is asserted to have stated a word that he strongly knew was highly inaccurate and would never have done. For example, in the following example he is purported to have called a person he knew to be a departmental administrator a chairman:

T. p.140

approached her department [ADMINISTRATOR] chairman, a woman by the name of Susie [WINDEMUTH] Windamin [N.B. PHONETIC IS SPECIFIED AS IN USE] (phonetic)"

I did not say "chairman". It was "administrator". And those words are so different that I have to wonder: what happened? What was the process that produced this excessively flawed material? Were more words left out? Husband's recollection is that he did mention the chairman in association with this discussion, but those comments appear to be missing.

What Husband contends is not credible is that the transcription represents a professional attempt by the head of court reporting to produce a document certified as accurate. (For a more complete list of concerns, see attachment 10a_).

¹ I did not say "chairman". It was "administrator". And those words are so different that I have to wonder: what happened? What was the process that produced this excessively flawed material? Were more words left out?

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


PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the **DEMAND FOR HEARING RE TRANSCRIPT ERRATA** upon the persons and in the manner indicated below:

Service and Filing

By Overnight Service 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: 4/30/21



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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

**MOTION TO VACATE ORDER RESUMING EQUITABLE DISTRIBUTION
 TRANSFERS**

The parties agreed to suspend equitable distribution transfers pending resolution of Husband's appeals

1. On April 28, 2021, an order was filed by this trial court vacating its order of January 7, 2021, which had suspended equitable distribution (ED) transfers in the above-captioned case. (The April 28 order is referred henceforth as the Order Resuming ED)
2. The Order Resuming ED was filed in the companion Dauphin County Domestic Relations support docket No. 01336-DR-17, PACSES No. 640116732.
3. No explicit motion was made by the parties in either companion case to resume ED.
4. Wife Ann M. Rogers (Plaintiff in the civil action, Defendant in the support action, and Appellee in the Superior Court action) filed a motion on December 8, 2020, to suspend ED (Motion to Suspend ED). Wife's filing was made while Husband,

Robert P. Bauchwitz, had filed an appeal of the final order of October 9, 2020, involving ED in the above captioned case.

5. Husband did not file any motion against suspending ED because, as he explained in his March 30, 2021, Response to Wife's Motion to Reconsider Suspension or Termination of APL:

"It is important to note that equitable distribution (ED) and alimony have been appealed by us on the grounds that they are fungible in terms of economic justice, which is the basis of one part of the appeal." (Second Declaration of March 30, 2021, at page 8).

6. Thus, given Husband's existing appeal that includes the possibility of an increase of ED to him in addition to, or in lieu of, alimony, should economic justice so warrant it, allowing ED to continue now would prejudice Husband in just the same way that Wife claimed it would have done when she motioned to suspend ED transfers on December 8, 2020. Specifically, in Wife's December 8 Motion to Suspend Equitable Distribution Transfers, she wrote:

"If Defendant's [Husband's] appeal to the Superior Court of Pennsylvania results in changes to the Divorce Master's recommendation and this Honorable Court's order regarding equitable distribution, the parties will be required to take the necessary steps to reverse the pending equitable distribution transfers and implement the revised order from the Superior Court."

"If the assets are transferred pending Defendant's appeal and the Superior Court changes the equitable distribution decision, it may be impossible or financially burdensome to revise the asset distribution to comply with the Superior Court's decision.

7. On January 7, 2021, Wife motioned to make the Rule to Suspend ED transfer absolute, citing a letter of January 4, 2021 from Husband in which his counsel wrote:

"After consideration, Dr. Bauchwitz decided not to file a response in opposition to your motion to suspend equitable distribution transfers and allow the remaining equitable distribution transfers to be suspended pending resolution of the appeal." [With underlining added for emphasis.]

8. Later on January, 7, 2021, the trial court issued an order making the unopposed rule suspending ED absolute.

APL was terminated without required time for response by Husband; ED transfer was resumed without motion from either party

9. On February 25, 2021, the trial court issued an order denying Wife's December 8, 2020, Motion to Terminate or Suspend APL.

10. 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 in his Response and Second Declaration of March 30, 2021, attached here as Exhibit A, at Section B, pages 2 – 7.)

11. 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.

12. Upon receiving Wife's MFR by mail on March 25, 2021, Husband immediately began writing 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.

13. 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 assert 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 is 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, *DiMasi* 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)

14. 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); quoted below.)

15. As noted above, on March 30, 2021, Husband filed his detailed Response to Wife’s MFR with substantial 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.

16. 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. ...”.

17. Similar failure by the trial court to provide time for party response before judgment has occurred on several prior occasions in this case:

a. On February 11, 2020, Plaintiff Wife filed a Petition for Civil Contempt and Special Relief to Establish Sole Authority to Sell Marital Home. Wife’s filing was based on Husband having notarized a revocation of a POA. The divorce master had ordered the POA be given by Husband to Wife despite his protestations that 1) Wife had made seriously false allegations in order to fabricate a basis for excluding Husband from participating the sale of his joint property, and 2) that Wife was persisting in her bad faith insistence on selling the home “as is” without repairs, contrary to recommendations by all real estate agents consulted and against Husband’s financial interests. More

specifically, Husband's revocation was a response to Wife's failure to allow payment to the real estate agent who had made repairs to the home, which ultimately produced tens of thousands of dollars in profit above the "as is" price expected. Of note, Wife insisted on fully sharing in the profits made by those she did not wish to compensate.

b. Two days later, on February 13, 2020, Judge Marsico granted Wife's petition and awarded her sole authority to sell the marital home without any notice or opportunity to Husband to respond to Wife's petition. There was no citation to any law that Husband had violated that would prevent his revoking a POA in the Commonwealth of Pennsylvania.

c. On March 10, 2020, Husband filed a Petition for Contempt and Special Relief against Wife for the acts against his interests and those of innocent third parties such as the real estate agent Wife refused to allow be compensated.

d. On March 11, 2020, Judge Marsico issued a Rule to Show Cause providing to Wife 20 days to respond to Husband's Petition for Contempt and Special Relief. Therefore, the trial court was aware of procedures to provide time to respond and provided such expected opportunity to one of the parties.

e. On April 28, 2021, the trial court acted to dismiss and terminate remand from the Superior Court concerning what Husband alleged was a significantly flawed hearing transcript upon which the Superior Court would have to rely in assessing his appeal. The trial court acted within nine days of receiving a filing of errata by the court reporter on April 19, 2021, despite the admission that the errata supported Husband's assertions that uncorrected errors had remained in the transcript.

18. Also as noted in this filing, 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.

19. The numerous instances in which the trial court has quickly issued orders without providing time for response by Husband, even when in several such instances Husband has noted in filings law that requires such opportunity, has repeatedly crippled and prejudiced Husband's ability to conduct litigation on the basis of evidence and law.

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

20. 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).

21. As part of his April 9 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.

22. 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.

23. Of particular import, Husband's 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.

24. Consistent with the *DiMasi* Court's ruling, Husband notes that it is implicit that living expenses and litigation costs are fungible if APL has a function of allowing a litigant to maintain a living standard during litigation in Pennsylvania divorce actions.

25. Nevertheless, Wife and her counsel have shown a persistent behavior in making baseless financial claims against Husband in this action, including with respect to APL. In her filing of December 8, 2020, Wife made claims without citation

to any source or evidence that Husband was, in effect, making money from APL (citing “unjust enrichment”). Husband presented detailed assessment of his living and legal expenses in the case in his response of January 4, 2021. In the latter filing, he demonstrated that, even with APL, he had spent all his income and tens of thousands of dollars of his savings to pay for legal and expert fees, living expenses, and other divorce-related costs such as related to sale of the marital home and moving from Hershey, PA.

26. Despite the preceding evidence presented by Husband on January 4, 2021, and the order of court just weeks later denying Wife’s motion to terminate or suspend APL, on March 17, 2021, Wife filed, almost entirely by copy and paste, her MFR. It must be wondered what new information was presented in Wife’s MFR that was so persuasive of a change in Husband’s circumstances that a termination of APL was warranted, and that the purported change in Husband’s circumstances was such an urgent prejudice against surgeon Wife, who states she has an income of nearly one-half million dollars per year, that Husband could not be given time to respond.

27. As noted above, 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.

28. Therefore, given that 1) Husband has had no change in living expenses (nor material change of income), 2) that he has continued to have legal expenses including directly related to his appeal, and 3) that in net he has been spending his

savings to pursue his legal actions including appeal, Husband asserts that there is no justification for having terminated APL.

29. Furthermore, as Wife and her counsel having raised the question as to where exactly the APL funds ultimately ended up, and given Husband's testimony that such were not accruing in his own savings accounts, this important issue is addressed below.

Frivolous and vexatious filings not only permit financial warfare against a weaker party that has been denied APL, but in the absence of any attempt by the court to enforce due diligence requirements over its court officers, also permit operation of a racket that can enrich all counsel to the detriment of litigants throughout its jurisdiction

30. Husband has several times demonstrated with detailed evidence that Wife and her counsel have shown a pattern of making baseless and outright false claims. (See Husband's Declaration of January 4, 2021, in the support case, re-filed on May 3, 2021, in the above captioned case as the First Declaration, and his Second Declaration of March 30, 2021 in the support case, also attached here.) This emphasizes why it is essential to any legal system that opposing parties be given a right to respond.

31. Just as importantly, the ability of Wife's counsel to file at will in bad faith and without due diligence, and apparently without fear of sanction, clearly could be expected to force Husband to expend substantial sums in legal fees (not to mention providing a distraction from writing his appeal.) Husband asserts that permitting this form of financial warfare undermines the legal system in the United States.

32. To permit these sorts of unsubstantiated and material false claims in filings not only prejudices a party not given opportunity to respond before an order is issued in favor the movant, but more generally it allows a form of what can be seen as racketeering, in which counsel simply grants himself, and his opposing colleague, billings in the case, each in return for "protecting" their clients' interests. This

behavior is particularly egregious when it is repetitive, even on the very same points already answered.

33. Thus, Husband avers that it is vital that the courts prevent what could be seen as racketeering by its court officers through failure to police repetitive, frivolous claims. While federal courts have Rule 11 due diligence requirements, as far as Husband is aware only the Pennsylvania Code of Professional Conduct addresses such behavior, without any true mandate. Litigants alone are in no position to provide the oversight necessary to address such systemic flaws that can influence all counsel involved.

Termination of APL before response of affected party or hearing is not cured by resuming ED transfers against the wishes of the parties

34. With respect to Husband's noting that most of his ED is made up of retirement funds, he further points out that even the divorce master noted that Husband should not be "raiding" his retirement funds before he retires:

"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.

35. Therefore, as the vast majority of funds expected from ED are retirement funds, Husband would be greatly prejudiced by being compelled to use/"raid" his funds to pursue a legal case for which there has been no change in his economic circumstances that would justify a loss of APL. This is particularly egregious when Husband's appeal in part is based on his assertion that the amount of ED does not comport with economic justice.

36. Consequently, given that the difference in financial ability to pursue the legal matters at hand is almost entirely a function of income, and Wife's income has been established at this time as well over 600% greater than Husband's, (though Husband is challenging his earning capacity determination as too high), then it is remains reasonable that APL be allowed to continue to perform its function under

Pennsylvania law to allow Husband to pursue this litigation, initiated by Wife, with the assistance to him of counsel and other experts.

37. Therefore, given that one significant purpose of Husband's appeals to the Superior Court is an economic justice case that involves ED, it is improper to now compel him to spend such funds in place of APL, which was terminated without hearing or even opportunity for response before judgment.

38. With respect to increasing legal expenses, Husband may now be compelled to add appeals on the issue of APL termination, as well as the failure to permit a hearing on disputes over evidence in the transcript errata case. If the present motion is also denied, the resumption of ED transfer may also be appealed.

39. Under such circumstances in which opposing counsel can inflate Husband's legal costs by repetitive frivolous filings without sanction or other penalty, and indeed Husband further asserts without his being given fair hearing in the record, then he concludes that it would be highly unreasonable to expect him, or any litigant, to risk funds from his ED, which he already appeals as insufficient, to be expended on a course of vexatious, bad faith financial warfare being permitted to the court officer acting as Wife's legal counsel. All these acts could be seen as a means to force Husband to give up his case, without regard to merit.

40. Consequently, Husband motions for vacatur of the order of April 28, 2021, which resumed ED transfers, and he repeats his requests for immediate restoration of APL and back payments of amounts which would have been paid during the suspension and termination of APL.

Date: 5/11/21

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Telephone: (717) 395-6313
pro se

Attachments

no.	title	pages
1	Certification Of Compliance	(1)
2	Exhibit A Response of March 30, 2021 and Second Declaration	1-54
3	Proof of Service	(1)

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: 5/11/21



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IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

ROBERT P. BAUCHWITZ,
Plaintiff

v.

ANN M. ROGERS,
Defendant

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)
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)
)
)

NO. 01336-DR-17
PACSES Case No. 640116732

CIVIL ACTION - LAW
IN SUPPORT

DAUPHIN COUNTY
PROthonary
2021 JUN 22 10 14 AM '21
R

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR RECONSIDERATION
OF PETITION TO TERMINATE OR SUSPEND ALIMONY PENDENTE LITE**

AND NOW, comes Plaintiff, Robert P. Bauchwitz, by and through his counsel, Howett, Kissinger & Holst, P.C., who hereby files the instant Response to Defendant's Motion for Reconsideration of Petition to Terminate or Suspend Alimony *Pendente Lite* and in support thereof states as follows:

1. Admitted. Hereafter, Defendant is referred to as "Wife."
2. Admitted. Hereafter, Plaintiff is referred to as "Husband."
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. Said paragraph constitutes Wife's belief to which Husband lacks

independent knowledge or information. To the extent that a response is required, it is denied.

Husband denies he has intentionally delayed the divorce proceedings to extend receipt of APL, which denial is set forth more fully in Husband's Response to Wife's petition to terminate or suspend alimony *pendente lite*, filed on January 4, 2021. Husband incorporates herein by reference thereto said Response.

7. Admitted.

8. Admitted in part; denied in part. As of writing, Husband's exceptions speak for itself. Husband denies his exceptions focus exclusively on errors committed by the divorce master regarding alimony, but he acknowledges a component of his exceptions did address that subject.

9. Admitted with clarification. It is noted that in the divorce action Wife is the "Plaintiff" and Husband is the "Defendant." Thus, in the opinion associated with the Court's Order of October 9, 2020 in the divorce action, the divorce Plaintiff's (i.e. Wife's) exceptions were denied, and the divorce Defendant's (i.e. Husband's) exceptions were denied except for the grant of Husband's exceptions relating to the divorce master's award of counsel fees to Wife without an evidentiary hearing.

10. Admitted. By way of further response, on November 25, 2020, Husband filed an appeal as of right to the Superior Court of Pennsylvania.

11. Admitted. By way of further response, on November 25, 2020, Husband filed a demand for hearing *de novo* from the administrative order dated November 5, 2020 terminating the APL order. In response to Husband's demand for hearing *de novo*, and in light of the filed appeal, the Domestic Relations Office reinstated the APL order and vacated the November 5, 2020 order terminating support.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted in part; denied in part. Husband admits a component of his appeal to the Superior Court centers on the trial court's denial of alimony. Husband denies his appeal centers solely on the issue of alimony.

17. Denied. Said paragraph constitutes Wife's opinion to which Husband lacks independent knowledge or information. To the extent that a response is required, it is denied. Husband denies Wife's categorization of his appeal to the Superior Court. A litigant has a right to take an appeal to the Superior Court from a final order entered by a trial court. A litigant has the right to seek a review by the Superior Court on determinations made by a trial court with which the litigant respectfully disagrees. Husband has properly taken a legitimate appeal to the Superior Court, and Husband denies that the fact that he has done so in any way supports Wife's position that APL should be terminated or suspended. It is axiomatic that APL continues until the economic issues are fully and finally resolved. *See DeMasi v. DeMasi*, 597 A.2d 101 (Pa.Super. 1991). Economic claims are not fully and finally resolved until an appeal as of right is exhausted. *See Id.* The law is clear and unequivocal on this point.

18. Denied. Said paragraph constitutes Wife's opinion to which no response is required. To the extent that a response is necessary, it is denied. Husband denies Wife's claim that Husband will be "rewarded financially" by continuing to receive APL while he pursues his appeal as of right to the Superior Court. The law unequivocally provides that APL continues until the economic issues are fully and finally resolved, and that does not incur until an appeal as of right has been exhausted. By way of further response, please see Husband's Second Declaration in response to Wife's claims, which Second Declaration is attached hereto as Exhibit "A" and is incorporated herein by reference thereto.

19. Denied. Said paragraph constitutes Wife's opinion to which Husband lacks independent knowledge or information. To the extent a response is required, it is denied. Husband denies that an order terminating or suspending the APL order will not prejudice him, and he further denies Wife's apparent belief that there is a legal basis to terminate the APL order even though the economic issues are not fully and finally resolved and there have been no changes in circumstances. Moreover, terminating the APL order at this time is inappropriate inasmuch as the divorce court has entered an order suspending equitable distribution transfers pending the determination of the appeal. Therefore, Husband has not received the vast majority of the marital assets awarded to him in equitable distribution. Without those assets, Husband most certainly has a need for APL to meet his needs. If the Court were to suspend or terminate the APL obligation, while at the same time suspending the equitable distribution transfers, Husband would be irreparably prejudiced.

20. Denied. Said paragraph constitutes Wife's opinion to which Husband lacks independent knowledge or information. To the extent that a response is required, it is denied. Given the substantial income disparity between the parties, Wife has been ordered to pay Husband APL, and her obligation to pay APL continues until the economic issues are fully and finally resolved. There have been no substantial and continuing changes in circumstances. At this time, there has not been a full and final resolution of the pending economic claims inasmuch as Husband has taken an appeal as of right to the Superior Court. Moreover, as stated above, the divorce court has entered an order suspending equitable distribution transfers pending the determination of the appeal. Therefore, Husband has not received the vast majority of assets awarded to him in equitable distribution. For example, Husband has yet to receive in excess of \$1.1 million in retirement rollovers from Wife which, because of the order, has not occurred.

21. Denied. Husband denies Wife's claim that, if his appeal to the Superior Court is denied, and the appellate court affirms the trial court, he would be obligated to reimburse Wife for APL payments made during the pendency of the appeal. The law unequivocally provides that APL continue until the economic issues are fully and finally resolved, and that does not occur until an appeal as of right is exhausted. There is nothing in the law that says that if an appeal to the Superior Court is unsuccessful, a litigant must reimburse the other party APL payments made during the pendency of the appeal. That is not how the support law works. Please see Husband's Second Declaration, which is attached hereto as Exhibit "A" and is incorporated herein by reference thereto.

22. Denied. Said paragraph constitutes a legal opinion to which no response is required. To the extent that a response is necessary, it is denied. Husband denies he will be unjustly enriched if he continued to receive APL payments during the pendency of his appeal, and the appellate court affirms the trial court. Again, the law unequivocally provides that APL continues until the economic issues are fully and finally resolved, and that does not occur until an appeal as of right has been exhausted. *See DeMasi*, 597 A.2d at 104. As stated previously, the divorce court has entered an order suspending the equitable distribution transfers pending the appeal, so Husband has not received the vast majority of the assets awarded to him in equitable distribution. Please see Husband's Second Declaration, which is attached hereto as Exhibit "A" and is incorporated herein by reference thereto.

23. Admitted in part; denied in part. Husband admits APL generally continues until the divorce litigation has concluded, including an appeal to the Superior Court. *See Demasi*, 597 A.2d at 104. Husband denies there are "numerous" established exceptions to that general

rule. However, Husband admits that the underlying predicate for APL is need, and there have been instances where the Superior Court has affirmed a trial court's termination of APL while a case is on appeal where it has been established that there is no longer a need for APL. In other words, where there has been a substantial and continuing change in circumstances. Husband denies that there has been finding that there is no longer a need for APL. In fact, inasmuch as the divorce court has entered an order suspending the equitable distribution transfers, there clearly remains a need for APL while this case is on appeal.

24. Denied. Said paragraph constitutes a prayer for relief to which no response is required. To the extent a response is necessary, Husband denies there is a basis to terminate or suspend the APL obligation. As stated above, Husband established a need therefor at the time the order was entered, and now this case is on an appeal there remains an ongoing need for APL. There have been no substantial and continuing changes in circumstances to justify the termination of the APL order. Furthermore, Husband denies Wife's claim that the instant matter warrants an exception to the general rule that APL continues until the economic issues are fully and finally resolved, which includes an appeal to the Superior Court.

25. Denied. Said paragraph constitutes Wife's legal opinion to which no response is required. To the extent a response is required, it is denied. Husband admits APL is intended to be temporary in nature, but Husband denies there has been a finding that Husband is no longer in need of APL.

By way of further response, in *Schenk*, the Superior Court affirmed the trial court's denial of APL during the time that the APL obligee cohabited with her boyfriend because the record established that the boyfriend was paying all of the household expenses while the two of them lived together. As such, the trial court found a lack of need for APL during that time. The

decision is consistent with the general premise that one must establish need for APL. Herein, Husband established a need for APL when the order was first entered, and there have been no substantial and continuing changes in circumstances to show that need is no longer present. In fact, inasmuch as the divorce court has entered an order suspending the equitable distribution transfers, it is unequivocal that there remains a need for Husband to receive APL during the pendency of the appeal.

26. Denied. Said paragraph constitutes Wife's opinion to which Husband lacks independent knowledge or information. To the extent a response is required, it is denied. Husband denies that this Court has determined Husband is no longer in need of APL. Quite the opposite. It was established that Husband was in need of APL at the time the order was entered, and there have been no substantial and continuing changes in circumstances to establish that that is no longer the case. The trial court's denial of Husband's alimony is not a determination that Husband is no longer in need of APL while the litigation continues. Husband remains in need of APL to meet his monthly living expenses, including legal expenses related to this case and his appeal and medical expenses including COBRA, particularly where the divorce court has entered an order suspending the equitable distribution transfers while this matter is on appeal. Husband has not received the assets awarded to him in equitable distribution, and those assets are not available to assist Husband in meeting his needs. Even with limited discretionary spending, Husband has not accrued funds after filing of his appeal and the resumption of APL. As such, the need for APL remains.

27. Denied. Said paragraph constitutes a legal opinion to which no response is required. To the extent a response is necessary, it is denied. In both *Nemoto* and *Spink*, the Superior Court affirmed the trial court's termination of APL while a case was on appeal based on

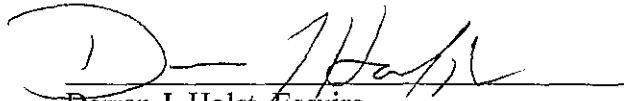
the finding that, as a result of the assets awarded to the spouse in equitable distribution, there was no longer a need for APL because those assets were available to meet the spouse's needs. Herein, Husband has not received the vast majority equitable distributions awarded to him by the trial court inasmuch as the trial court entered an order at Wife's request, suspending the equitable distribution transfers pending appeal. 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.

28. Denied. Said paragraph constitutes Wife's legal opinion to which no response is required. To the extent a response is necessary, it is denied. Husband denies he is capable of meeting his own reasonable needs while this case is on appeal, particularly since there have been no changes in Husband's earning capacity (both the Domestic Relations Office and the Divorce Master used the same earning capacity), nor has there been any change with respect to Husband's current circumstances (as to employment or liquid asset available to him). Husband has not received a vast majority of the marital assets awarded to him in light of the order entered by the divorce court suspending those transfers pending the appeal. Quite simply, there have been no substantial and continuing changes in circumstances relevant to Husband, nor can Wife meet her burden proof in establishing that Husband no longer has a need for APL. A need therefor remains, and the trial court properly denied Wife's petition to terminate or suspend alimony *pendente lite*. As such, this Honorable Court must deny Wife's motion for reconsideration.

WHEREFORE, Plaintiff respectfully requests this Honorable Court deny Defendant's Motion for Reconsideration.

Respectfully Submitted,

Date: 3/30/2021

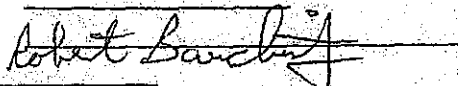


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Counsel for Plaintiff, Robert P. Bauchwitz

VERIFICATION

I, Robert P. Bauchwitz, hereby swear and affirm that the facts contained in the foregoing Plaintiff's Response to Defendant's Motion for Reconsideration of Petition to Terminate or Suspend Alimony Pendente Lite 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: 03/30/21



ROBERT P. BAUCHWITZ

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,
Defendant)) CIVIL ACTION - LAW
)) IN SUPPORT

**SECOND DECLARATION OF ROBERT P. BAUCHWITZ
IN RESPONSE TO CLAIMS MADE
IN DEFENDANT'S MOTION TO RECONSIDER PETITION TO
TERMINATE OR SUSPEND APL**

ROBERT P. BAUCHWITZ, M.D., PH.D., being of legal age, declares:

1. I, Robert P. Bauchwitz, who henceforth in this document will refer to myself as "Plaintiff-Husband" or "Husband", make this declaration of specific, detailed, evidence-based responses to claims raised by Ex-Wife, Ann Marie Rogers, M.D. of Hershey, PA, and her counsel, James R. Demmel, Esq. of Camp Hill, PA, in her Motion for Reconsideration of Petition to Terminate or Suspend Alimony Pendente Lite of March 17, 2021 (the "Motion for Reconsideration").

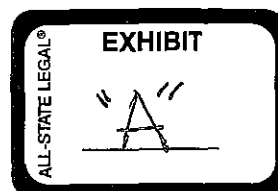
2. I have personal knowledge of the facts set forth herein, and am willing to testify under oath to them.

3. I reside at 23 Harlech Drive, Wilmington, Delaware, 19807.

A. Outline of counterclaims

1. Wife and her counsel in their Motion for Reconsideration repeat the same baseless claims they made in their December 8, 2020 Petition to Terminate or Suspend Alimony Pendente Lite (the "Petition to Terminate or Suspend APL"), again without any evidence.

2. Defendant Wife's assertions made in the Petition to Terminate or Suspend APL were previously answered by Husband in great detail, and at substantial cost, in his filings of January 4, 2021, i.e. in his "Plaintiff's Response to Defendant's Motion to Terminate or Suspend Alimony Pendente Lite" (the "Original Response of January 4, 2021"). The latter included an extensive attached declaration, which is now termed



the “First Declaration” in recognition that this “Second Declaration” has been produced. (The First Declaration is attached here.)

3. The allegations in Wife’s original Petition to Suspend or Terminate APL concerned claims of financial prejudice to Wife, failure of Husband to obtain regular employment, unjust enrichment, lack of expenses to justify APL including legal expenses related to appeal, and a purportedly improper focusing of Husband’s appeal on alimony.

4. Each of these claims was not only false and without any evidentiary support when first presented, but upon now repeating such claims in their Motion to Reconsider, there is no citation to the evidence which was previously presented against these same claims by Husband in his Original Response of January 4 and his First Declaration.

5. Here again, Husband is compelled to make substantial expenditures for legal assistance in order to answer what go beyond frivolous claims by Wife and her counsel.

6. In this declaration, Husband will make note of Pennsylvania Code that might shed further light on the injuries which continue to be inflicted by Wife’s bad faith, obdurate and vexatious filings, such as those under review here.

7. Furthermore, upon addressing Wife’s redundant claims in detail, Husband will note the high relevance of Wife’s filings to the portion of his appeal which addresses the need for counsels fees due to frivolous and vexatious behavior by Wife and her counsel.

8. Thus, Husband repeats here his request, made to the Superior Court as remanded to this trial court on March 4, 2021, that the complete Domestic Relations Docket 01336-DR-17 and its contents, including these filings, be transferred to the Superior Court so that it might make a more full assessment of Husband’s claims.

9. Finally, Husband will again further respond to Wife and her counsel regarding aspects of his appeal which they continue to assert essentially deals only with, or “focuses” upon, alimony.¹

B. Wife’s repetition of false and baseless claims without reference to prior answers

10. Husband’s appeal purportedly “focuses” on alimony

a. At point 25 of her Petition to Terminate or Suspend APL, Wife claimed: “Based on Plaintiffs exceptions to the Divorce Master’s report and

¹ As if an appeal concerning alimony would in any way be improper.

recommendation, Defendant expects that Plaintiffs issues on appeal to the Superior Court will focus on the denial of his alimony claim.”

b. Husband’s Original Response of January 4, 2021, to the preceding claim included at point 17: “Husband denies his exceptions focused exclusively on errors committed by the divorce master regarding alimony, but he acknowledges a component of his exceptions did address that subject.”

c. Furthermore, examination of the Exceptions filed by Husband would easily reveal that “alimony” is mentioned in only TWO (2) of the TWENTY (20) exceptions filed by Husband. Thus, there is no basis given such numbers to reasonably claim from the exceptions that an appeal might “focus” on alimony would be “expected”.

d. Yet in her Motion to Reconsider, Wife makes the same claim again – twice. At point 8: “On April 29, 2020, Plaintiffs counsel filed exceptions to the divorce master's report and recommendation, focusing on Plaintiffs position that Defendant should be required to pay him alimony”, and again at point 16: Plaintiffs issues on appeal to the Superior Court focus on the denial of his alimony claim.

e. Additional evidence that Wife’s claims are baseless and unreasonable was available in the court record: A Statement of Matters Complained of on Appeal (per R.A.P. 1925(b) which outlining the bases for appeal) was filed by Husband on December 31, 2020. Only ONE (1) of the THREE (3) bases for appeal mentions alimony.

f. Therefore, from this existing filed document, it is manifest that the claims made regarding a focus on alimony are FALSE and without any unreasonable attention to the record.²

11. Financial prejudice against Wife

a. In her Petition to Terminate or Suspend APL, Wife claimed at point 28 that: “Terminating or suspending the APL order will not prejudice Plaintiff financially because if his appeal is granted, the court may award alimony to Plaintiff, which Defendant will be required to pay from her income or from the APL payments that are collected but not disbursed” and at point 29 she asserted “Maintaining the APL order until Plaintiffs Superior Court appeal is resolved will prejudice Defendant financially.”

² This obdurate and vexatious repetition of a manifestly improper assertion by Wife in her filings goes directly to a major basis of the third section of the appeal, namely the de novo review of evidence with respect to credibility and its impact on the awarding of attorneys fees.

b. To the preceding, Husband's First Declaration (attached) made a response in multiple sections, including those titled "Financial Prejudice" which had 6 points and 16 sub-points covering five pages, and "Post-separation incomes and quality of life prospects; the prejudiced party" which had 10 points covering approximately two pages of text.

c. The preceding information presented in his First Declaration stated *inter alia* that Wife's annual income approaches one-half million dollars per year, which would place her in the "top 5% of U.S. incomes" according to United States Census Bureau information presented in the First Declaration. Indeed, other assessments of Wife's income would place it in the top 1% (see for example <https://dqydj.com/income-percentile-calculator/>).

d. Wife would remain in the top 5% of U.S. incomes even if Wife paid the APL amount of approximately \$6700/month and paid a 35% maximum marginal tax rate on such funds. After so doing, she would still be more than \$100,000 above the lower limit for the top 5% of U.S. incomes. (Indeed, using the same calculations, even without any outside income and paying a maximal tax rate on alimony – which tax she does not pay at all for APL - she would remain in the top 2% of U.S. income earners.)

e. Thus, as previously asserted, there would be no expected change from her marital standard of living. This ability to pay is consistent with recently published findings that almost all of the highest paid employed incomes in the United States in 2020 were held by physicians. More specifically, CNBC citing U.S. News and World Report noted:

"Doctors are more likely than any other profession to be in the [top 1% of earners](#), according to Brookings Institution research. In all, more than half of the jobs on the list — 14 — require a doctorate degree, and all but one are within the medical field."
<https://www.cnbc.com/2020/01/06/the-best-paying-jobs-of-2020-from-us-news-and-world-report.html>

f. Thus, there is no conceivable financial prejudice to Wife. It is notable that not one single number has ever been presented to support the cries of financial harm repeatedly made by millionaire Wife and her counsel.

g. The financial situation is far different for Husband, as noted in his First Declaration in which he cited the Master herself:

"10. The Master has stated in her report of March 13, 2020 that the economic quality of life Wife enjoys is likely to increase after removal of her Husband.

11. In stark contrast, Husband's life and financial circumstances have become greatly diminished, as even predicted by the Master in the same report.

'With his earning capacity alone, Husband will not be able to ***maintain*** an upper-class standard of living. This favors an award of alimony to Husband.'

h. Husband's actual incomes since separation have never been above the bottom one-third of U.S. incomes, and even if he made the income ascribed to him (which remains disputed), he would be in the bottom three-quarters of income earners. (See for example results from the calculator cited above.) This would represent a substantial difference in standard of living, consistent with the Master claims.

i. Yet without providing any evidence in her Motion to Reconsider, Wife through her counsel asserts at point 19 that "Terminating or suspending the APL order will not prejudice Plaintiff financially because if his appeal is granted, the court may award alimony to Plaintiff, which Defendant will be required to pay from her income or from the APL payments that are collected but not disbursed." This of course fails to recognize that Husband needs and is permitted by law to receive APL in order to pursue his legal defense against Wife.

j. Furthermore, at point 20 of the Motion to Reconsider Wife and counsel simply repeat the same baseless and brazen assertion that: "Maintaining the APL order until Plaintiffs Superior Court appeal is resolved will prejudice Defendant financially." (See the preceding points in this Declaration for a consideration of some numbers arguing to the contrary.)³

12. Regular employment

a. At point 30 of their original Petition to Terminate or Suspend APL, Wife asserts that "Plaintiff has not established regular employment since the parties separated".

b. Husband answered this claim in another section of his First Declaration titled "Baseless claim by Wife and her counsel; Husband's post-separation income" which contained 10 points, a table, and covered three and a half pages.

³ Husband notes the following definition of vexatious: "(Of conduct) without reasonable or probable cause or excuse". (Black's Law Dictionary 9TH Ed., 2009).

c. Husband clearly stated that he did have “regular employment” by identifying said employer as follows:

“19. Husband asserts to the contrary that Wife’s statement regarding establishment of employment is false.

20. Husband has obtained his certification as Direct Care Staff in Pennsylvania (Certificate number 91B5829D6D3749338490E03D5AF15121541291), and upon so doing, Husband has been employed since June 2020 as Direct Care Staff in Delaware”. Furthermore, Husband specifically identified the employer in at point 5(b) of the table.

d. Yet Wife not only repeated the above false claim in her Motion to Reconsider at point 21, but also repeated her assertion that without purportedly having “regular employment” Husband “will have no realistic means to compensate Defendant for those APL payments if he is required to do so.”

e. Wife and her counsel thus ignored the response made by Husband’s counsel, for which Husband has had to expend legal costs, and provided no law to counter the following statement by Husband’s averring that there is no such law requiring Husband to repay Wife:

“There is nothing in the law that says that if an appeal to the Superior Court is unsuccessful, a litigant must reimburse the other party APL payments made during the pendency of the appeal. That is not how the support law works”. (Husband’s Original Response of January 4, 2021, at point 30.)

f. Thus, despite Husband’s detailed answers with clear evidentiary support, Wife’s counsel appears to have simply copied and pasted his baseless assertions made in the Petition to Terminate or Suspend APL into his Motion for Reconsideration at point 30 to the Motion to Reconsider at point 21.⁴

13. Unjust enrichment

a. At point 31 in her Petition to Terminate or Suspend APL, Wife and her counsel asserted: “Allowing Plaintiff to continue to receive APL payments while his appeal to the Superior Court is pending results in unjust enrichment to Plaintiff, allowing him to substitute the APL payments for the alimony payments that this Honorable Court denied.”

⁴ Husband notes here a definition of obdurate: “stubbornly persistent in wrongdoing”. (Merriam-Webster Dictionary).

b. Husband's First Declaration with respect to a claim of unjust enrichment has a section titled "Expenditures and unjust enrichment" with 7 points and table of expenses spanning 2 pages of text. Yet again, Wife and her counsel have apparently chosen to ignore all of the information presented. For example:

"33. As there was an apparent shortfall of approximately \$83,000, according to the methods of estimate presented in the table of expenditures, above, it cannot be claimed that this APL represented an enrichment of any sort, unjust or otherwise.

34. The data supports Husband's previous claim that he has lost about \$42,000 in cash, as well as all employment income.⁵

35. To the extent Husband's expenditures were unjust, that injustice stemmed from the clearly huge financial damage to a man who had worked hard to support his wife in her career advancement and earning potential which put them for most of the marriage at or near the top 1% of income earners in the country. Husband also worked to provide a highly beneficial upbringing for their children while Wife worked as a physician."

c. Furthermore, once again it appears that all Wife's counsel did, and she approved by verification under section 4904, was to simply copy her claim from her petition to her Motion to Reconsider.

d. Thus Wife's claims are yet again presented without a single number or any evidence at all in support, or by citation to any law.

e. It is not surprising that no numbers or evidence were presented by Wife, given that her income of nearly half a million dollars per year has been in the top 1-5% of U.S. incomes. The loud, persistent claims by Wife through her counsel that she would suffer financial harms and injustice from the man she dismissed precipitously without recourse under potentially criminal circumstances (see more below), and thereby whose financial future was manifestly and irreparably damaged, requires us to note yet another term which has repeatedly surfaced with respect to claims of Wife: bad faith:

"Dishonesty of belief or purpose <the lawyer filed the pleading in bad faith>. – Also termed mala fides." (Black's Law Dictionary 9TH Ed., 2009).

⁵ Except that put into an IRA on a regular basis (\$500/month).

C. Husband has few expenses, asserts Wife in her Motion to Reconsider

14. In their first novel statement in the Motion to Reconsider, Wife through her counsel assert 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 is 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, *DiMasi* 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)

18. It is important to note that equitable distribution (ED) and alimony have been appealed by us on the grounds that they are fungible in terms of economic justice, which is the basis of one part of the appeal.⁶

19. The following information is presented to demonstrate that Wife and her counsel made **another material false claim** by asserting without any cited basis that Plaintiff is not incurring counsel fees to pursue his appeal to the Superior Court.⁷

⁶ Consistent with our appeal including ED as fungible with alimony, the distribution of ED has been suspended by our agreement.

⁷ Given concerns expressed earlier about *ex parte* communications by Wife’s counsel, as noted in documentary evidence shown in the First Declaration, Husband now has reason to again have concern that such “evidence” was delivered in an *ex parte* fashion, or without anything that could be called an evidentiary review. Of particular note, without ever issuing

- a. The Notice of Appeal was filed by Husband's counsel on November 25, 2020. The first expensed work on that filing began on October 28, 2020. To keep accounting simple, Husband next presents his expenses for the period from November 1, 2020 through February 28, 2021, though he notes that substantial legal expenses have already been expended during March 2021.
- b. Between November 1, 2020, and February 28, 2021, Husband has spent \$15,407 in attorney's fees directly related to his appeal to the Superior Court.
- c. During that same period, Husband spent an additional \$10,578.25 on the divorce aspects of the case, almost all of that induced by Wife's baseless and bad faith filings to halt APL.
- d. In addition, Husband has spent \$610.41 on legal utilities and mailing fees.⁸

a show cause rule or any other deadline to respond, and within five 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.

Nevertheless, Husband intends to submit this response, on which he has been working diligently, to the trial court in the Domestic Relations case. 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, as was 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. ..."

Again, Husband asserts that all documents concerning the companion actions of this divorce and support case must be made available to the Superior Court as part of a complete and highly relevant record.

⁸ Husband also spent a further \$25.00 during that time on continued EZ Pass misconduct by Wife Rogers in which she *again* took over his account to allow her to use her own EZ Pass, but she then left the account credit card information unchanged as billable to Husband. The total of such charges has come to at least \$100.00.

e. Thus, the total of all case-related fees from November 1, 2020 to February 21, 2021, has been \$26,620.66.⁹

f. Husband's medical expenses during the period of note, including new COBRA health insurance costs, were \$3641.80.

g. Husband's costs to repair his automobile, purchase gasoline, and pay for transportation to medical appointments came to \$1379.91.

h. Husband's business utility and professional expenses during the period noted were \$1696.10.

i. Husband also contributed to his IRA during that period in his customary amounts for a total of \$2000.00.

j. Husband has previously testified that he earns his room and board by work at a set hourly rates. However, his mother is very close to the end of her life. According to case law, Husband's attempts at (required) frugality should not be held against his standard of living.¹⁰ Indeed, Husband has not gone on a single vacation or similar type of trip, except one weekend to New York City, since Wife abandoned the marriage without prior notice or discussion upon her father's demise in 2017.

k. Thus, 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.

⁹ Needless to say, the legal fees for March 2021 due to this further vexatious and bad faith filing by Wife will be even higher. It is not hard to imagine that Wife and her counsel hope to cripple Husband financially in sufficient measure to prevent his making a defense against her/their numerous improper acts throughout this case.

¹⁰ "The cases which support the proposition that the standard of living after separation, if possible, should reflect the conditions existing before separation, turn on the available income and lifestyle that income would support. To live during the marriage in a fashion dedicated to reducing expenditures and accumulating wealth, thereby living far below the standard one would expect of persons in that position, cannot be a basis for depressing the living standard of the wife, while permitting the husband to continue to amass large financial assets after separation. The standard of living to which she is entitled is one reasonably supportable by the income and station in life of the parties, irrespective of the frugal inclinations of the husband. *Edelstein v. Edelstein*, 399 Pa.Super. 536, 542, 582 A.2d 1074, 1077 (1990)."

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.

o. All of these baseless, bad faith filings by Wife and her counsel, have led to a material waste of resources (of Husband's, if not the court's).¹¹

D. The appeal involves several important legal issues, not only alimony

20. To provide further support of our counterclaim (above) that several issues are on appeal that do not involve an attempt to get alimony, in the following Husband provides additional evidence of topics addressed in his appeal which go to credibility and its assessment, which in turn impact discovery of potential frauds and fees.

21. To review some of the points covered in the First Declaration, and in other earlier filings, the many bad faith behaviors of Wife in this case included:

- a) insistence by Wife to sell the marital home "as is" against the advice of all real estate agents who worked with us, and at great risk of unnecessary significant financial loss that would harm Husband far more than wealthy Wife;
- b) the egregiously false claims by Wife that Husband purportedly had made statements about burying Wife in the backyard of the marital home on May 25, 2019, and which Wife claimed in court filings she took to be threatening to her life;
- c) the resulting attempt by the divorce master in this case to coerce Husband into handing over a so-called power of attorney (POA) to Wife alone to sell the marital home, thereby denying Husband his right to equally participate in the sale of his property, including in particular to repair it in order to sell it for substantially more than an "as is" price;
- d) Wife's bad faith unwillingness to agree to use the real estate agent (Sandra Pharmer) chosen by Husband to repair the house, which Pharmer and Husband did successfully at substantial financial benefit to both parties;

¹¹ Wife's counsel failed to correct a party identification error by the trial court in his original Petition, even though the court itself had corrected it by order. Husband made note of this error of Wife' counsel in his Original Response, which was nevertheless repeated at point 9 of the Motion to Reconsider.

e) Wife's refusal to work with the actual real estate agent who did the work to improve the home for sale, was highly unjust and would cheat Husband by forcing him alone to pay almost \$4000 for Pharmer's work. Thus, Husband did revoke the purported POA, as clearly Wife was not reasonably representing his interests;

f) As a result of revoking the POA – without impacting the sale of the home but only to require payment of Pharmer – nevertheless resulted in legal costs to counter purported “contempt” claims, even though no law whatsoever was cited by the master or the trial court in support of the charge that POA's under Pennsylvania law could not be revoked by the principal.

Thus, legal costs unjustly imposed by Wife's being permitted to impose her manifest bad faith harms on Husband are at issue in the appeal. They do not involve alimony.

23. Additional evidence related to topics on appeal: credibility and financial claims

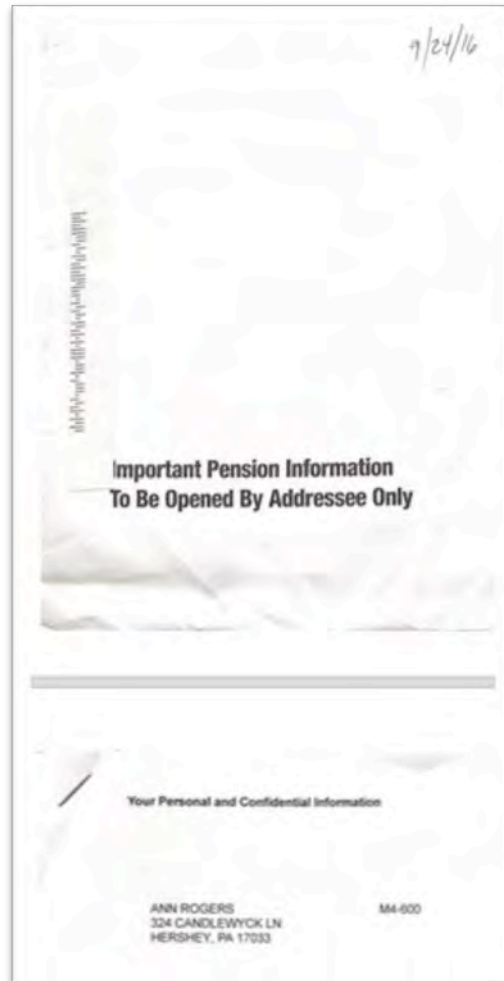
a. Wife testified at times as if she were an ingenue regarding her own finances, and consequently in thrall to Husband on such matters. For example, she claimed that she knew only what Husband told her of her own pension:

Q. How did you learn that you had a pension?

A. From Robert. Robert used to say I had a pension, and I actually denied it because I didn't believe I really had a pension from St. Luke's-Roosevelt. But he had paperwork to that effect. (T. 87)

b. Aside from Husband's assertions that this is yet very likely another bald-faced, non-credible lie¹², if for no other reason than Wife received and filed her own financial records throughout the marriage, Husband provides here evidence that what he found about Wife's pension had her handwriting on it.

¹² Noting no knowledge of potentially relevant neuropsychiatric issues affecting Wife's memory.



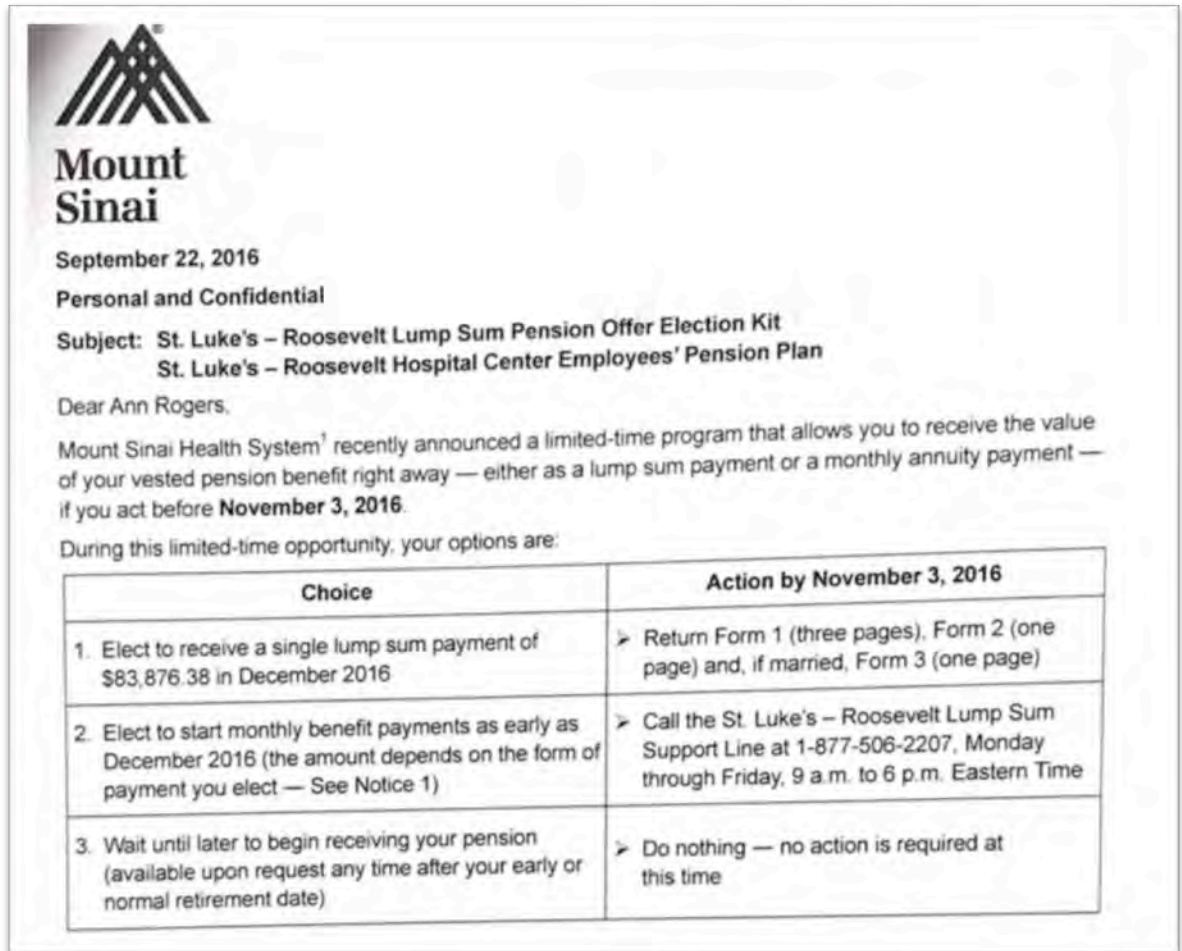
c. The letter is clearly addressed to Wife Ann Rogers at the marital residence and it concerns "Important Pension Information to be Opened by Addressee Only".

d. This document has a date on it of 9/26/16. The date is written in the handwriting of Wife Ann Rogers. Thus, this pension document had been received by Ann Rogers about one year prior to the sudden abandonment of the marriage.

e. This envelope had been left behind when Wife Ann Rogers took all her other financial records from her filing cabinets on August 28, 2017. It was left behind apparently because it had been on a second desk she used in an upstairs room, on a different floor from her other financial documents.

f. The envelope had already been opened by the time Husband found it in 2018. Therefore, it had undoubtedly been read by Wife.


g. The contents of Wife's pension mailing began as follows:



h. Husband received the same pension mailing from the same hospital in New York City where he and Wife had worked. He recalls discussing the offer with Wife, after which both decided not to act on it.

i. Thus, Wife's implied claims during testimony at hearing that she never had any idea that she had a pension from St. Luke's Roosevelt Hospital Center are completely false.

j. Also going to various claims of financial misconduct are that Wife claimed that her car was leased and thereby had no value, even through the following document shows that she was regularly receiving financing charges for it (the handwriting is Wife's):



Auto Account Information Summary


Vehicle Description: 2016 VOLVO S80 PREMIE

Principal Balance as of 10-28-17	\$26,766.13
Current Payment Due on 11-16-17	\$621.49
Amount Past Due as of 10-28-17	\$0.00
Fees and Charges	\$0.00
Total Payment Due On 11-16-17	\$621.49

July 29, 2017 through October 28, 2017
 Loan Account: 11528911311007

Visit our Website: Chase.com/AutoServicing
 Payment by Phone: 1-800-346-9127
 Account Information: 1-800-336-6675
 TTY: 1-800-524-9765

AMR
VOLVO
#2



00003722 ALQ Z1 30117-11100000000 59
 ROBERT P BAUCHWITZ
 ANN M ROGERS
 13 KILLARNEY BUILDING
 HERSHEY, PA 17033-2264

10/24/17

Important Messages About Your Auto Account

- This Quarterly Statement will be mailed to you every three months. Please retain the remittance coupon page to make your next three payments. The Principal Balance and Total Payment Due are accurate as of the end date of this statement.
- The principal balance displayed above is not your payoff. For a current payoff quote, please visit our website at Chase.com/AutoServicing.
- See reverse of statement for important information pertaining to your loan.

Activity Since Your Last Statement


Transaction Date	Transaction Description	Transaction Total
08-16-17	PAYMENT - THANK YOU (PRINCIPAL \$572.14) (INTEREST \$49.35)	(\$621.49)
09-15-17	PAYMENT - THANK YOU (PRINCIPAL \$577.48) (INTEREST \$44.01)	(\$621.49)
10-16-17	PAYMENT - THANK YOU (PRINCIPAL \$576.87) (INTEREST \$44.62)	(\$621.49)

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Visit Chase.com/AutoServicing for all your auto financing needs. You can view your account details, check your payment history, request a payoff quote, pay your bill and change your address 24/7. You can also set up account alerts to your mobile phone or e-mail. Plus, you'll have access to information about special offers for Chase customers.

**SIMPLIFY YOUR LIFE
 WITH THESE ACCOUNT RESOURCES**

SIGN IN OR ENROLL AT CHASE.COM TO USE THESE GREAT SERVICES



We offer several ways to conveniently manage your auto account online. Sign in or enroll at chase.com where you can:

- Make your payment — Schedule a one-time payment or sign up for repeating payments from any checking or savings account.
- Go paperless — You'll receive an email when your statement is available online.
- View your account history — See your payment history and up to 7

k. Wife also made numerous false and shifting statements about her double insurance payments, while at the same time challenging why Husband “had” two of her check registers, which she had apparently accidentally left behind when she took almost all of her other financial documents on August 28, 2017. The connection between the registers and the double insurance payments is shown in the image following, which Husband took before returning the original registers to Wife at the end of 2017 via a son:

DC Debit Card	ATM Teller Withdrawal	AD Automatic Deposit	AP Automatic Payment	BP Onlr Bill P
NUMBER OR CODE	DATE	TRANSACTION DESCRIPTION	PAYMENT, FEE WITHDRAWAL 1-1	✓ FEE
251	3/16	MSTMG D anal test	\$ 49.30	
252	3/18	AT+T Mobility	494.25	
253	4/8	MSPR VOID	600.00	
254	4/16	PA Dept of Revenue	500.00	
255	4/30	Northwestern Mutual disability mo	11,995.71	
256	5/13	RPB	20,000 ⁰⁰	
257	5/20	Nicki Johnson hairstylist	100 ⁰⁰	
258	5/22	MSPR	9515.30	
259	5/22	AT+T Mobility	370.77	
260	5/26	Matt's Lawn Svc Invoices 203, 218	293 ⁰⁰	
261	5/18	Northwestern Mutual Acct # 8204569	11,995.71	
262	6/14	The Sun	28.00	
263	6/27	Keystone Collections 2016 local tax	94.00	
264	7/9	US Bank VOID recurring cc payment	198.00	
265	7/9	Derry Township Tax Collector school tax	245.00	

Memo _____

For enhanced security your account number will not be printed on this copy

l. As in several instances before in the case, after Husband's expending a large amount of legal fees, Wife claimed that, yet again, she had made a "mistake" about the identical \$11,995.71 insurance payments:

Darren J. Holst, Esquire
P.O. Box 810
Harrisburg, PA 17108
dholst@khklaw.net

Re: Ann Rogers v. Robert Bauchwitz

Dear Darren:

I am writing to address several issues as follow-up from the settlement conference.

Dr. Rogers contacted Northwestern Mutual. Their office confirmed that she accidentally made duplicate payments for the disability insurance premium in April and May 2017. The extra payment will be applied to her 2020 premium.

m. Evidence that the most material financial “mistake” was also knowing was previously entered into evidence. (See also following.) It shows a note written by Wife Ann Rogers to her Husband in which she clearly lists the two large retirement accounts at issue (TIAA and Great West/Empower) as separate:

AMR Retirement Funds
as of 11/21/12

SLR Prudential
Tax-Sheltered Annuity
\$ 6,892.04
no acct #

*paid over 1/12
with amount of \$12
\$2,704.00*

TIAA-CREF SLR + some WE
\$520,554.34

Great West /GPS # 5658584
Plan # 95245
\$ 301,378.83

Vanguard
Wellington 09956332616 \$28,377.99
Star 09956332616 \$26,761.72

n. More generally, the master, Cindy S. Conley, repeatedly fabricated claims during the pendency of this case that Husband had all of Wife's financial records, apparently as if that would have justified Wife's failures to report her own financial assets to the Court, as well as to cast Husband's claims that Wife and her counsel were trying to deceive him by their actions as "disingenuous".

24. Additional evidence related to topics on appeal: credibility and testimonial claims

a. It is not just Wife Ann Rogers' credibility and the assessment thereof (including by de novo review) that is at issue in Husband's appeal. The following evidence illustrates one of numerous instances in which master Cindy S. Conley created novel claims and conclusions out of testimony.

b. Upon questioning by Husband's counsel at a hearing on October 17, 2019, Wife testified to Husband's counsel:

"Q. So going back to your Exhibit 9, the photographs that you say you took. You did not go to the police after this alleged incident, correct?

A. No, I did not.

Q. You did not make a report to the police after this alleged incident, correct?

A. Did not.

Q. And you are aware, are you not, that your husband has, in fact, made reports to the police of your violence towards him?

A. **I am aware that he filed something a year and a half afterwards** –“.

c. Wife never actually made a statement that she knew Husband had not filed a report before or at the time of separation.¹³

d. Yet citing Wife's testimony, master Conley concluded in her report of March 13, 2020 that:

"Husband testified that he reported at least one of the physical altercations to the police. Wife's testimony made it **clear** that

¹³ Depending on the decision as to that date; in the First Declaration, Husband presented documentary evidence that the date of separation as announced by Wife was September 9, 2017.

Husband's report **was made** after the parties' separation leading Wife to surmise that the report was made the bolster Husband's position in the divorce action." [Font emphasis added.]

e. So at issue is the transformation of Wife's actual testimony by the divorce master, Cindy S. Conley, into a markedly different claim. It was Conley who, Husband asserts, fabricated "clarity" from the statement.¹⁴ Husband, further notes that such evidence is very important in assessing the credibility and bias of this master. Multiple such examples affect more than alimony.¹⁵

f. To provide further evidence to help get to the truth of the matter as to when Husband first "reported" Wife's violence to the police, he attaches here an exhibit of his final reports to the police, made within the statute of limitations, which reference his initial report/statement. ("Written Statements to DTPD"; page numbers for each exhibit are found in a table at the end of this Declaration.)

g. Furthermore, Husband also attaches as an exhibit, the written report of a retired detective who was present on August 28, 2017, with Husband. He was present to protect Husband during what Wife claimed would be a meeting with him on her return from California to the marital home in Pennsylvania. Indeed, the retired detective/security officer was witness to Husband's statements of August 28, 2017, to the police and furthermore, he referenced such in his report dated that same day (attached here as "Report of Ret Det Connor").

h. The detective's testimony is also of interest because it supports Husband's repeated claims that Wife took many of her files and electronic media. Yet master Conley would repeatedly and baselessly assert in this case that Husband had Wife's financial files.

i. Master Cindy S. Conley was also apparently willing to make some conclusions on the basis of an absence of questioning of Husband regarding images presented by Wife at hearing. The implied proposition that by not being questioned, or not spontaneously speaking about something presented

¹⁴ Even if Wife had stated that she knew Husband had not "reported" around the time of separation, it would be at best playing a semantic game with the word "report" to imply that a verbal statement is not such. In many instances during the case, it appeared as if master Conley was testifying on behalf of Wife and her counsel.

¹⁵ It is as if the master relentlessly ignores the important issues, such as the indisputable facts that Wife assaulted Husband, including in a potentially felonious manner, to attempt to impeach him for the most questionable of claims. (See also the master's claims about a statement Husband made about the ORI as discussed in the First Declaration.)

to Wife at a hearing, the master would be led to conclude that Husband had made an admission. If so, this is very troubling.

j. Nevertheless, Husband now makes the following comments, which he produced in writing when he was shown the images at issue months before the October 17, 2019 hearing:

a. images purportedly relevant to fault

“a. The images with what appears to be a digital date stamp (“11 8'02”) are very odd with respect to many features: red “stains” on Ann’s right shoulder and a long red “stain” under her left eye that is present in one image but not the other. (Now, *that* is some red eye!). These stains seem artifactual, possibly as a result of image manipulation.

I see no intelligible injuries in one image: just Ann's left arm exposed with some sort of artifact, along with more red “stains” on her right shoulder and lower eye lid, and along the outer edge of her left arm. What is being shown in these pictures?

The second image with a date stamp is similar to the first except it shows Ann lifting her left forearm, again to show nothing intelligible. The dark red liquid(?) or image artifact now appears along the left aspect of her nose.

Who took these images? Where were they taken? What do they show? How were they manipulated? And what do they have to do with me?

b. these undated images also appear to be manipulated.

As above: Who took these images? Where were they taken? What do they show? How were they manipulated? And what do they have to do with me?

Why are the backgrounds so dark? This alone suggests some sort of processing. If they did differential enhancements, which is what I believe I see throughout, that would be the end for them at the federal (grant) level. ...

If these were medical or police images, why was I not questioned?

Answer: Probably because New York law and the NYPD would

have held this to have been "reactive violence" on my part, and assault on Ann's. She was the initiator of physical violence with the flashlight. And she was the major escalator the Cepacol spray into my face and eyes, which was an outrageously reckless act.

The bottom line:

I have acted as a United States federal government grant reviewer. I have caught million dollar fraud before based on less image manipulation than I see here. I've already caught a million [dollar] financial fraud in this case." (Date: June 30, 2019 Time: 7:05 pm).

c. Husband also subsequently noted (also before the hearing) that:

"I do not claim that the images she shows are those that go with the phenol incident. I have a feeling that I took the bruise images. I recall that cut on her deltoid. I believe it occurred as a result of a fall from a bike. The straight line cuts are simply NOT consistent with what would result from a man's fist. I still think the disclosed images appear manipulated". (Date: October 6, 2019 Time: 7:48 pm).

b. Therefore, there is no reasonable basis to conclude that Husband made any specific acknowledgment of the images from 1993 or 2002 or remotely agrees that they are legitimate.

c. It is also of note that Ann Rogers did at hearing confirm at the October 17, 2019 hearing that she had hit Husband with a flashlight and sprayed him with a caustic substance ("phenol").

d. Husband further disagrees with Wife's claims, and is willing to show at further hearing, that it was not any hostile words from him that initiated conflict.¹⁶

¹⁶ Aside from misinterpreting benign comments from Husband, in several cases during the marriage, even when Husband got upset and loud about something *other* than Wife Ann Rogers, the latter would respond as if she had been attacked. This led Husband to note to Wife that she "had a screw loose". She herself commented on her "outbursts" in evidence provided as exhibits to the First Declaration and in the police reports attached here. It was Wife who believed she needed long term psychiatric care during the marriage. Husband did not ever need or receive psychiatric treatment – despite the intensely frightening circumstances Wife's behaviors could create in the home.

e. Regardless, even if there had been an escalation of words, it does not give license to any party – regardless of gender – to initiate physical assaults, particularly using weapons.

f. Husband must note again that in contrast to Wife's behavior towards him, he never used a weapon against her and he never threatened to kill her, including as she did repeatedly by reference to poisoning.

g. Furthermore, even if the Master concluded that Wife only initiated physical violence in 1993 and Husband in 2002, hence that such "went both ways" as she claimed, Husband again asserts, as he did in his exceptions to the master's report, that such remote events are entirely immaterial to a separation occurring in 2017. It ignores testimony that such violence was "rare" and that at least fourteen years went by until the next recorded acts of violence.

h. Of greatest importance, no matter what may have happened in 1993 or 2002, there is no question from the testimony that Wife Ann M. Rogers, M.D., was the initiator and sole employer of physical violence and assault against Husband after 2002, i.e. specifically in 2016 and 2017. Those dates are obviously of material relevance to a separation occurring in 2017.¹⁷

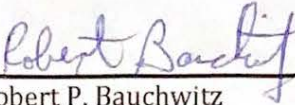
i. Acts of physical violence are relevant for fault considerations under Pennsylvania law with respect to alimony. However, it is important to again point out here that the actual fault Husband asserts as responsible for the separation had to do with a much more serious matter that involved what had happened to his father-in-law at his passing in August 2017.¹⁸

j. The fate of the Husband's father-in-law directly pertained to Husband's interpretation of his safety in remaining with Wife. Therefore, it is hard to imagine how it could possibly be more germane to an issue of fault for this divorce. Husband was precluded from discovery by the master on this topic. Her decision was upheld by the trial court on exception. Neither master nor judge cited law as a basis for denial. Rather, they simply claimed an "irrelevancy" of the issue. Husband disagrees and appeals.

¹⁷ Husband's first concern was whether Wife was having another affair. But it remains unknown to him what motivated her. What is important is that Husband never harmed Wife, even responsively, in 2016 or 2017. Eventually, Husband was persuaded by Wife that her violence towards him, as reported in detail to the Derry Township Police Department, may have been due to mental illness, and in particular mis-medication.

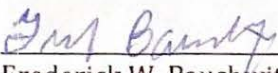
¹⁸ The primary statement of this matter was presented in the exhibits attached to the First Declaration. Here, additional background is provided as to what Husband witnessed in the attachment titled "Background to a statement on the passing of Charles T. Rogers of Santa Rosa, CA").

I declare under penalty of perjury that the foregoing is true and correct.



Robert P. Bauchwitz

Executed on March 29, 2021
Wilmington, DE



Frederick W. Bauchwitz
Witness

Attachments

no.	title	page
1	Written Statements to DTPD	001
2	Report of Ret Det Connor	012
3	Background to a statement on the passing of Charles T. Rogers of Santa Rosa, CA	018

Incident # _____

**DERRY TOWNSHIP POLICE DEPARTMENT
VOLUNTARY STATEMENT**

I, Robert P. Bauchwitz, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Derry Township Police Department (DTPD) in addition to first report of same incident to DTPD on August 28, 2017. I volunteer the following information of my own free will, for whatever purposes it may serve. My date of birth is May 3, 1960, my telephone number is 717-395-6313, and I live at 324 Candlewyck Lane, Hershey, PA 17033 and 23 Harlech Drive, Wilmington, DE 19807.

I report a violent assault by Ann Marie Rogers, then resident at 324 Candlewyck Lane, Hershey, PA and now believed to be resident at 427 Crescent Lane, Hershey, PA, on the evening of August 9, 2016 against me, her husband, Robert P. Bauchwitz at 324 Candlewyck Lane in Hershey, PA. Without warning, Rogers did retrieve a "Louisville Slugger" wooden base ball bat and ran towards me, Bauchwitz, swinging the bat aggressively as a weapon, causing me to flee in fear of my life and producing property damage. This attack was first reported to DTPD on August 28, 2017, as part of a call involving other actions by Rogers. It is now presented by itself for its own record and investigation as appropriate.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I verify that the information contained on this sheet is true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of The Pennsylvania Crimes Code, relating to Unsworn Falsification to Authorities.

Signature of person giving statement: Robert Bauchwitz

Date: 6/17/19 Time: 8:40 AM ET

Witness: [Signature]

Witness: [Signature]

Incident # _____

**DERRY TOWNSHIP POLICE DEPARTMENT
VOLUNTARY STATEMENT**

I, Robert P. Bauchwitz, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Derry Township Police Department (DTPD) in addition to first report of same incident to DTPD on August 28, 2017. I volunteer the following information of my own free will, for whatever purposes it may serve. My date of birth is May 3, 1960, my telephone number is 717-395-6313, and I live at 324 Candlewyck Lane, Hershey, PA 17033 and 23 Harlech Drive, Wilmington, DE 19807.

I report a violent assault by Ann Marie Rogers, then resident at 324 Candlewyck Lane, Hershey, PA and now believed to be resident at 427 Crescent Lane, Hershey, PA, on the evening of July 3, 2017 against me, her husband, Robert P. Bauchwitz at 324 Candlewyck Lane in Hershey, PA. Escalating from an innocent event, Rogers did squeeze my head, slap off my glasses, and then strangle me strongly for several seconds until I broke free. During the strangulation, Rogers stated that she would turn my bones into dust, and immediately after it that it had made her feel good. This attack was first reported to DTPD on August 28, 2017, as part of a call involving other actions by Rogers. It is now presented by itself for its own record and investigation as appropriate.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I verify that the information contained on this sheet is true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of The Pennsylvania Crimes Code, relating to Unsworn Falsification to Authorities.

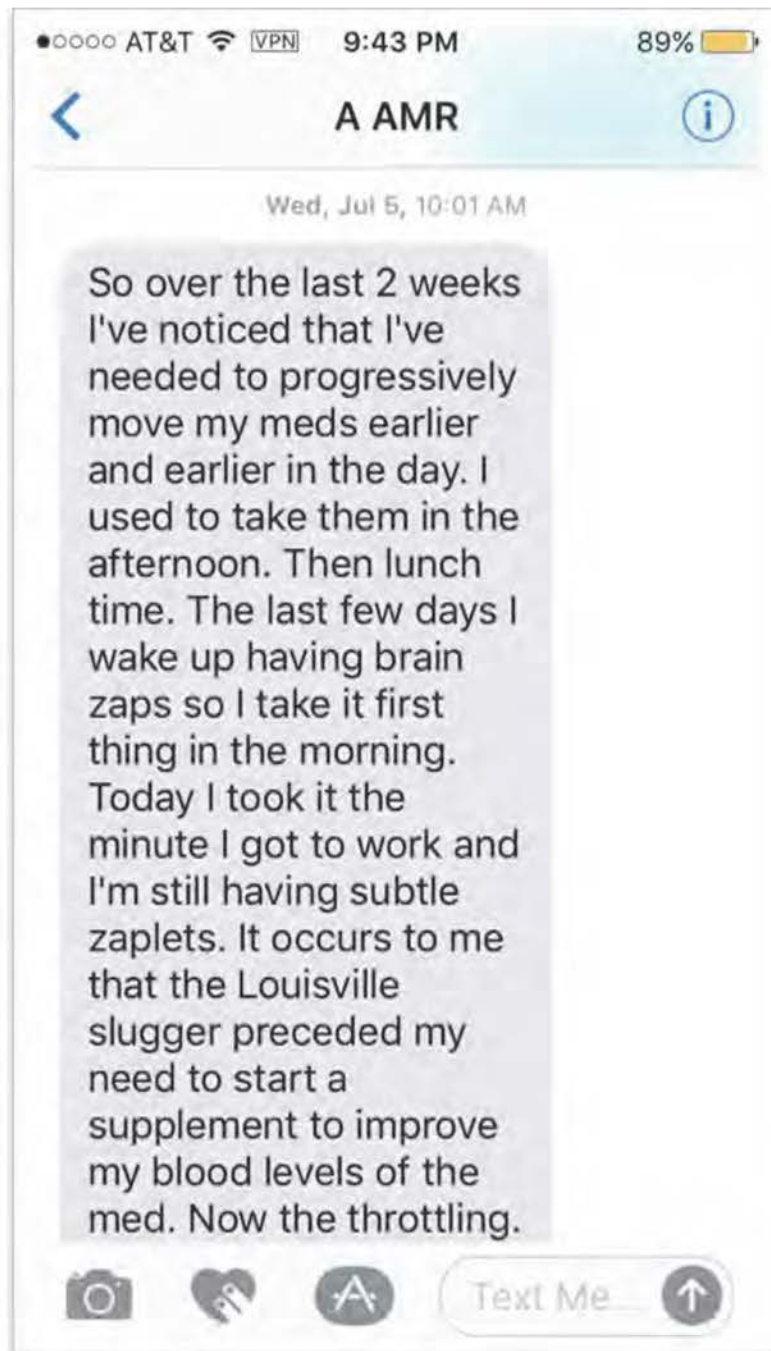
Signature of person giving statement: Robert Bauchwitz

Date: 6/17/19 Time: 8:43 AM ET

Witness: Dei Helena Bauchwitz

Witness: Jim Bandy

I. Ann Rogers admits baseball bat and strangulation attacks and initially attributed them to psychiatric medication failures



med. Now the throttling.
I think the med is
ceasing to work. So I
got an appt w/Kuhlengel
for Monday.

Text message from Ann M. Rogers M.D. of the Hershey Medical Center
to her husband, Robert P. Bauchwitz M.D., Ph.D. of Hershey, PA on July 5, 2017.

II. Ann Rogers acknowledges initiating violent fights with her husband

"I was constantly told not to start fights, not to escalate fights, not to be hypersensitive, not to walk away, not to get physical - in effect, to be only the person you needed me to be..."

From: [AnnRogers\(amrogers@luxsci.net\)](mailto:AnnRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

"And to come back to "emotional modulation" – how reasonable is it that whether or not I actually started an argument, I had to be the one to "de-escalate"??"

From: [AnnMRogers\(amrogers@luxsci.net\)](mailto:AnnMRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Monday, September 18, 2017, 7:13 PM EDT

Very reasonable for a simple reason: because Ann Rogers had a consistent behavior over decades as the initiator and escalator of marital conflict.

But even so, I most often did de-escalate. Even in the extreme cases, e.g. immediately following the baseball bat and strangulation attacks in 2016 and 2017, I de-escalated by not responding violently.

III. Ann M. Rogers M.D. of the Hershey Medical Center referencing what she termed her “outbursts” at work and against her husband, as well as possibly increasing substance abuse issues

“After a time, I stopped seeing her [psychiatrist Kuhlenge]. Then more recently (2 years now?) I started seeing her again because of my angry outbursts at work and with you.

Perhaps you noticed I started spending more time in my office. Perhaps you noticed I was drinking more, sometimes to excess, and sometimes taking sedatives. I was sleeping a lot more.

From: AnnRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

“I will tell you that I did not spend much time talking to her [psychiatrist Kuhlenge] about you because first of all, she is not really a “therapist.” She mostly does medication management for diagnoses that are made based upon symptoms.

What I described to her were my outbursts at work, my severe anguish about Linda’s death (ongoing), extreme fatigue, hopelessness, near-suicidal agony both about Linda but more recently about the Jeremy situation muscle pains of unclear origin, and regular feelings of anxiety.”

From: AnnMRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Monday, September 18, 2017, 7:13 PM EDT

“Linda” was a patient at the HMC who was also a nurse at the Hershey Medical Center. Linda died during surgery by Ann Rogers in 2009. This appeared to be a significant precipitating factor for the descent into psychiatric illness by Ann Rogers.

“Jeremy” or “J” is our younger son, Jeremy Rogers Bauchwitz, who seemed to have a serious behavioral/psychiatric breakdown at the start of his junior year at Johns Hopkins University.

Appendix

A. What Ann Rogers acknowledges that she did tell her psychiatrist, Kuhlengel about her husband was:

On Sep 16, 2017, at 3:41 PM, Robert Bauchwitz <rbauchwitz@yahoo.com> wrote to Ann Rogers <amrogers@luxsci.net>:

"I found some notes I made about your telling me (on April 1, 2017) of one of your visits to [psychiatrist] Dr. Kuhlengel. You said that you had given her a list of what was valuable about me to you:

- 1) that I was a very good father;
- 2) that I get things done around the house and did househusband stuff;
- 3) that you and I were best friends;
- 4) that you and I laugh a lot together;
- 5) and that we have a shared history.

Your complaints were that I was unhappy that you were not apparently helping me to emotionally regulate (the instance at that time apparently had something to do with our accountant, Gina DeFlavia). You said that you told Kuhlengel that I had a "tendency to plan" and that you had a "tendency to escape", at least at home. You were "overwhelmed" sometimes by my "loudness". I get that. But I am the same somewhat loud man you married. Nevertheless, I want to adjust with the circumstances".

To the preceding, Ann Rogers replied on Monday, September 18, 2017, 7:13 PM EDT:

"Your report of what I told Kuhlengel about you was accurate."

IV. Ann Rogers acknowledged that her husband had considered her baseball bat attack potentially lethal

In this later message she also attributes her attack to a generalized loss of self-control, not just sporadic psychiatric medication failures:

“The thought that I brandished a baseball bat for any reason other than your DEMAND that I stay and take it and listen to you shout ... You’re afraid I’m going to kill you?? Why the fuck didn’t you ever modulate YOURSELF”

From: [AnnMRogers \(amrogers@luxsci.net\)](mailto:amrogers@luxsci.net); To: rbauchwitz@yahoo.com;

Date: Monday, September 18, 2017, 7:13 PM EDT

Note: The conversation in which I objected to Ann’s leaving occurred almost a year AFTER the August 2016 baseball bat attack, so she is not correct on this point, nor is she on many other claims, as she has shown herself to be highly dishonest when she wishes to be. I attempt only to present what I believe to be party admissions, e.g. in this case that she did wield a baseball bat and understood that I felt she was serious about trying to kill me.

V. Ann Rogers' defense regarding repeated statements to her husband that she was thinking of poisoning him

"Further, your need for regular reassurance that I wasn't going to poison you or murder you in your sleep was coming more and more often. Is THAT why you started cooking dinner? Hmm... And yes, it did lead me to give sarcastic answers (what Mad Magazine calls "snappy answers to stupid questions.")"

From: [AnnMRogers \(amrogers@luxsci.net\)](mailto:amrogers@luxsci.net); To: rbauchwitz@yahoo.com;

Date: Monday, September 18, 2017, 7:13 PM EDT

Here, the "defense" of Ann Rogers is that her threats were "sarcastic" "snappy answers". They absolutely were not delivered that way.

Given that Ann Rogers' first telling me she had been thinking of poisoning me was made at the same time as she told me of her thoughts of murdering me by baseball bat, which was later shown to be far from an act of sarcasm, it seems highly unreasonable that anyone would not take her other threats seriously. This includes repeated arguments that it would have been appropriate to withdraw her disabled father's medications.

Regardless, even if I were mentally ill, such taunting would be ABUSE. It still shows her violent transgressive nature. How is such behavior consistent with being a doctor?

VI. Transition from weapons attacks by Ann Rogers against her husband to threats against her father

“It makes what has occurred in the last year all the more starkly disturbing. I may have indeed changed and become more suspicious and less trusting, but it is very obvious that all happened after you attacked me with a baseball bat on August 9, 2016 and put me in fear of my life. I then canceled my life insurance, I refused to go on a trip to Puerto Rico with you, I questioned you about Lou DiMarco whom I had never had any concern with before, etc. By January, 2017, I had gone along with your theory that it had been a Cymbalta failure that was at issue. We then had a few more good months, with a wonderful trip to the British Virgin Islands to store in our memories.”

From: RobertBauchwitz(rbauchwitz@yahoo.com) To: amrogers@luxsci.net

Date: Monday, September 18, 2017, 11:35 PM EDT

“I thought that the trip to England [in June of 2017] had also been fantastic, until that fateful morning that you had to bring to my attention your plans or thoughts or decisions about Charlie’s medications and end-of-life treatments. I thought we were on the way back to health, but it was not to be. The strangulation attack on July 3, 2017, was again attributed to a Cymbalta failure. You again showed insight and quickly had the issue addressed. So until August 20, 2017, I still thought things were going to be fine. But that is not the way it worked out, did it.”

From: RobertBauchwitz(rbauchwitz@yahoo.com) To: amrogers@luxsci.net

Date: Monday, September 18, 2017, 11:35 PM EDT

“Here is the reality that you have very clearly confirmed in your August 20 interrogation of me. You explicitly acknowledged that you had stated to me in June in London that you and your mother had “decided”, as I wrote it in my notes, or discussed, or considered - **WHATEVER - withdrawing your father’s meds when he and your mother returned to Santa Rosa.** You and I then argued repeatedly about the ethicality about doing so. ... So for you to sit there and write that I am insane for even considering that Ann Rogers might do what she suggested she was at least not only considering doing but argued repeatedly about the appropriateness of doing is plainly nuts.”

From: [RobertBauchwitz\(rbauchwitz@yahoo.com\)](mailto:rbauchwitz@yahoo.com) To: amrogers@luxsci.net

Date: Monday, September 18, 2017, 11:35 PM EDT

2017-1066 EP
Robert Bauchwitz

August 28th 2017

On Sunday August 27th, 2017, Robert Bauchwitz contacted Signal Zero Executive Protection in regards to a request for a protective detail. Mr. Bauchwitz stated that recent incidents between he and his wife, Ann Rogers, had reached a boiling point due to a death in the family, and there were details surrounding the death that were suspicious. Mr. Bauchwitz also explained that his wife has displayed violence towards him in the past and that he is afraid she would continue with the same. He went on to say that he wanted to preserve items of record inside his home and move them to a storage facility and needed our assistance.

Mr. Bauchwitz stated his wife, Ann Rogers M.D. FACS, Director of Surgical Weight Loss, Penn State, Milton S. Hershey Medical Center was in California and she would be flying home Monday August 28th, 2017 at approximately 9:30 pm, and wanted a protection officer at his home before she returned. Signal Zero drew up a contract and Investigator Conner (hereby referred to as "I") responded to Hershey, PA. arriving at noon on Monday August 28th 2017. Upon arrival, I spoke to Mr. Bauchwitz who said he believed his wife came into the house sometime in the early morning hours and took several of the items he had set aside to be taken to the storage facility. Mr. Bauchwitz believes it had to be the early morning hours because he was up until approximately 2:00am.

He stated these items were important and many contained records, i.e. laptop computer, iPad, paper documents, etc. I asked Mr. Bauchwitz if the surveillance system was working in the house, he stated it did, at which point we went to the basement to observe the video. Mr. Bauchwitz and I watched the video feed and saw that at approximately 6:50 am Monday August 28th 2017, we could clearly see one white male and two white females enter through the front door to the location and begin removing items from Mr. Bauchwitz' home. At first Mr. Bauchwitz could not identify one of the females as his wife, Ann Rogers, but after the video was saved and transferred to a computer, he was able to see that one of the females was his wife. He could not identify the other two individuals.

I suggested to Mr. Bauchwitz that he call the Police to have a Burglary report taken, Mr. Bauchwitz agreed and called the Police. Once the call was placed, approximately 20 minutes later an Officer Walters called back and Mr. Bauchwitz began to explain the situation. Officer Walters cut into the conversation and told Mr. Bauchwitz that his wife Ann Rogers called the station early this morning (08-28-17) and stated that her husband Mr. Bauchwitz would be calling about a Burglary at their home. She went on to tell the officer that she was removing items from the home. Officer Walters told Mr. Bauchwitz that he would take a report, but there wasn't much they could do because it was a civil matter. The officer did make an addition to the report of violent physical attacks by Ann Rogers against him in the past year. The report number is as follows-C17-0005059.

At this point, Mr. Bauchwitz conveyed to me that he realized that his wife had basically used a ruse to gain articles from his home, many of them possibly being articles that could contain records surrounding the facts of his Father-in-Laws death.

Mr. Bauchwitz asked me what else could be done and how to follow up. I told him I could put a report together from his notes but I would need to know in detail what has conveyed to him by everyone in his family and any information he had from the doctors.

My training and experience in Law Enforcement includes 27 years with the Los Angeles County Sheriff's Department where I worked numerous details including Station Detective, Vehicle Theft Detail Detective, Cargo Theft Detective and Counter Terrorism Detail/Joint Terrorism Task Force.

I have reviewed all of Mr. Bauchwitz' notes, texts and emails to and from his wife from Wednesday, August 16, 2018 through today, Monday, August 28, 2017, as he provided them to me. I have also read notes by Mr. Bauchwitz he made in June 2017 based on concerns he had raised with his wife at that time about what he understood from her to be a decision that she and her mother had made to discontinue her ailing father's life-sustaining medications.

It is clear that Mr. Bauchwitz had been in the presence of his father-in-law, Charlie Rogers in May and June. It was Mr. Bauchwitz' strong impression that his father-in-law wanted to live and that Mr. Bauchwitz found him of sufficiently sound mind and ability to socialize that he did not understand how his father-in-law's medications could be removed without his agreement.

After those arguments with his wife in June, his father-in-law's strength and mental function seemed to improve, and text messages indicate that Mr. Bauchwitz had good relations with his wife and in-laws through Saturday, August 19, 2017.

As far as Mr Bauchwitz could tell, and as documented in group emails among the in-laws including Mr Bauchwitz, as well as in family conference calls, all of which Mr Bauchwitz participated, Mr. Rogers' health seemed to generally improve through to the time of a doctor's appointment on August 11, 2017. A text message from his mother-in-law after the August 11, 2017, seemed to indicate favorable progress with Mr. Rogers' health. Mr. Bauchwitz would later (August 20) come to question a comment made in his mother-in-law's August 11 text message: "no more pills". (He was told on August 20 that it meant no "additional" pain pills.)

After that doctor's appointment, Mr. Rogers' health then quickly declined and he passed away at about 4 AM Pacific Time on Thursday, August 17, 2017.

It is clear from their text messages prior to and after the passing of his father-in-law that Mr Bauchwitz had very good relations with his wife and her relatives. He did not harbor any suspicions as far as I could tell from the written record. He reports that he was told by his wife that a "\$9000" autopsy would be performed on his father-in-law in order to determine his cause of death and try to answer some other questions about his medical conditions. Mr Bauchwitz understood that the type of complete autopsy his wife had mentioned would include an examination of his father-in-law's medications ("toxicology"), which he believed was fairly routine in trying to establish cause of death. It seems apparent from the record that Mr Bauchwitz had no concerns with the plans related to him by his wife. He did, however, wonder if the price had to be so high.

Mr Bauchwitz did Internet searches on Saturday, August 19, which led him to learn of an autopsy firm, which would do a complete autopsy with toxicology for less than half the price his wife had mentioned. He relayed the information to her.

It is the events which then followed which led things to rapidly unravel.

On Sunday, August 21, 2017, the record shows that Mr Bauchwitz' wife informed him that the autopsy had been already occurred, rather than as planned for more than a week later, that it had been reduced from a complete autopsy to one only of the chest, and that no toxicology had been performed. Also surprising to him was that the firm that had performed the partial autopsy had been the one that he had found on the Internet and that he had mentioned to her. That firm had told him that they had no records of an autopsy scheduled for his father-in-law and that from the much lower price they had quoted him, he did not believe they were the same "\$9000" firm that his wife had mentioned previously.

At first, his wife, who is a physician, implied that she had not been consulted by her mother before making or changing the autopsy plans. She also claimed in text messages that she could not persuade her mother to do the complete autopsy (and toxicology) as had purportedly been planned. It is clear that Mr Bauchwitz found all of this troubling. His mother-in-law had essentially never, as far as he could remember, argued against the medical instructions of her daughter, and also always sought out her daughter's advise on what to do in medical matters.

Mr Bauchwitz and his wife then had a telephone conversation (8-20-17) from which he made detailed notes. As a professional investigator, I found that conversation very

troubling. At first it seemed that Mr Bauchwitz' wife was still in agreement that the full autopsy with toxicology should be performed, but that she would have to arrange it for the following day.

But immediately after that, his wife declared that Mr Bauchwitz' interest in having a toxicology test had been taken by his mother-in-law as being an accusation that he believed she had "poisoned" her husband. I had to wonder whether an innocent person would take it that way.

Mr. Bauchwitz consistently denied that he made any accusations throughout the conversation. I do not see why the wife had to make such an inflammatory comment rather than just do the test if everything had been above board.

The notes of the phone call show that Mr Bauchwitz' wife then began relentlessly demanding that her husband "vocally" state a "mechanism" by which she or her mother could have stopped her father's medications. Mr Bauchwitz steadfastly refused to provide such a mechanism, stating that he did not know it and that he was not accusing anyone of anything. He did not see why it would be such a problem to perform the test as it only cost \$650.

His wife then told Mr Bauchwitz "If you are not going to come right out and say it, I won't make it happen." It seems very clear that the "it" was the toxicology test. I saw this demand by Ann Rogers as her trying to coerce a potentially false allegation from him.

I was also particularly struck by the outrage of Ann Rogers over a \$650 Toxicology report, which all parties should have wanted for Charlie Rogers, to possibly help determine why he died. I did not see why this request was taken with such outrage, particularly since Ann Rogers, Mr Bauchwitz' wife, seemed to have been supporting this test in the first place.

Ann Rogers hung up on her husband during the call. Since he had resisted throughout the call providing any accusatory "mechanisms", he understood from her statements that she would not request the toxicology test.

I seriously wonder from what I have read that Ann Rogers really ever had any real desire to order the toxicology test. I have to wonder that if Mr Bauchwitz had provided his wife with a mechanism whether she would have used that as an excuse not to perform the test because it would have been so unlikely. She admitted that she thought her husband nearly 100% would not believe whatever mechanism she was trying to coerce from him: "I want

to hear vocally from you what the speculation is, even though you think it is 99.9% not possible.”

After that, Ann Rogers became largely uncommunicative with her husband, though she seemed at times to be acting in a deliberately provocative way, a “prod and run”, by cutting off text and other conversations. Through one of her brother’s interventions as suggested by text messages, she did write a brief email to Mr Bauchwitz on Monday, August 21, 2017, to state that a complete autopsy with toxicology would be performed, but that may have only occurred because after Ann Rogers hung up on her husband on Sunday, he left a voice message for her stating that he was so upset that if the complete autopsy with toxicology were not ordered the next day, he would send his notes from June 2017 of their arguments about withdrawing her father’s medications to the medical examiner.

I was also very troubled by Ann Rogers’ deceptive behavior in which she dishonestly told her husband by text message that she would finally speak to him when she returned to their home today, Monday, August 28, 2017. She stated by text message that she would be arriving about 9:30 PM Eastern Time. As I reported above, review of video evidence indicates that she instead entered the home in the early morning hours that same day and made no attempt to speak with her husband.

In my view, Ann Rogers had used a ruse to gain entry in the home of Mr. Bauchwitz and abscond with items she knows possibly display information that could be damaging to her.

In seeing all the facts, the identifiers I’m picking up are, someone is not being truthful.

I believe that Ann Rogers was not only absconding with potentially important records relevant to her father’s medical treatments and her communications with her mother, but also that she was moving out to end her marriage of 27 years.

Ann Rogers is willing to do all of this at the price of a family and a husband that still loves her. How could that possibly be worth a \$650 toxicology test?

There are too many things pointing in one direction. Maybe Charles Rogers did not need to die when he did. And because Mr. Bauchwitz asked questions and requested a \$650 Toxicology report he is being severely harmed and in my view abused.

It is this Investigator's professional opinion that there is very likely more to this case, the outrage and the responses Mr. Bauchwitz received just don't make sense, unless you're trying to hide something.

There is much that needs follow up; my recommendation is for law enforcement to take a closer look, whether that's the Santa Rosa Police Department or the Sonoma County Coroner.

Zack Conner
NCPPS Lic# 5254

Background to a statement on the passing of

Charles T. Rogers of Santa Rosa, CA

The background presented in this document is associated with an earlier written statement by me, Robert Bauchwitz, which had been intended for court hearing on August 6, 2020, but which was actually filed with the court on January 4, 2021. These documents are filed in PACES Case No. 640116732, docket number 01336-DR-17, which is a companion support case to 2017-cv-6699-dv in Dauphin County, Pennsylvania. The original statement was made to address the passing of my father-in-law, Charles T. Rogers of Santa Rosa, California, on August 17, 2017, and its apparent direct precipitation of an unexpected abandonment of our marriage by Ann M. Rogers, M.D. of the Hershey Medical Center. The background presented here is being added to a Second Declaration of March 2021 in the same case, PACES No. 640116732.

The earlier statement to the court did not specify most of what I witnessed, namely, 1) that Ann had at times during our marriage a significantly hostile attitude towards her father based on what she claimed were negative statements about her he had made (see images, appended), 2) that despite a decline in his health in early 2017, her father (my father-in-law) Charles T. Rogers, clearly stated to me and others in May of 2017 and thereafter his desire to continuing living, 3) that he remained mobile and able to speak with others until near or at the time of his death, 4) that there had been cross- charges of abuse between Ann and her father made to me in late May and early June 2017 and 5) that Ann had further expressed to me a “rage” towards her father in mid-June 2017 after he criticized her in my presence for mistreating him by making him take an international flight from London, England to Hershey, PA. Furthermore, I observed that Ann’s mother, (my mother-in-law and Charles’ wife), Phyllis C. Rogers, also of Santa Rosa, CA, did on multiple occasions after in the spring of 2017, after her husband’s having had major surgery and spent significant time in a surgical intensive care unit, state that he, Charles T. Rogers, was still going on a previously planned, multi-week trip to England “even if he comes home in a box” and that this would be “his last trip”.

Beyond observations and receiving allegations from both sides, I became further

involved in the matter on or about June 11, 2017, when Ann first expressed to me thoughts of or a decision by her and her mother to withhold her father's medications, the sudden reduction or lack of which could have imperiled his life. It was the latter thinking to which I had objected at that time and on two further occasions in June 2017. Elsewhere in the court record, testimony was provided of Ann's on several occasions near the end of the marriage having told me that she was thinking of poisoning me, which given her physical attacks against me as noted in the August 6, 2020/January 4, 2021 statement, had credibility and caused me substantial stress. Upon information and belief, the health of Charles Rogers continued to improve after the trip to England, through the date of a physician's examination on August 11, 2017, after which I and others received a group message from her mother, Phyllis C. Rogers, stating within it the phrase "no more pills". Another message was received on or about the next day, August 12, 2017, indicating that the health of Charles T. Rogers had declined. He passed away just over five days later, early in the morning of August 17, 2017 in Santa Rosa, CA.

Because of Charles Rogers' physical and mental abilities, and his desire to live as he stated it to me, I continue to dispute that this might be reasonably seen as a case of withdrawing medications from a loved one according to their wishes, such as might be expressed in a living will. (Ann referred to discontinuation of her father's medications as "comfort care", which I disputed.) To my knowledge there was no debility of my father-in-law that rose to the level that is normally at issue in living will documents. I also note that the primary medication at issue, the beta-blocker metoprolol, has a form of "black box" warning against its rapid withdrawal, (as death might result within one to seven days from a spike in blood pressure). Such withdrawal could be particularly dangerous in a person who had just nearly died a few months earlier after surgery for an aortic dissection, which itself is associated with hypertension (for which Charles T. Rogers had been treated for years).

It was under these circumstances on August 17, 2017, that Ann Rogers did spontaneously express to me a plan by her mother and herself to get a full autopsy and toxicology performed of her father, who had passed away unexpectedly just hours earlier.

Addendum

Ann Rogers acknowledged that it was she who had significant problems with her father, including on his final trip to England:

"I had a tough time with my father both growing up and as an adult. I also had a tough time on the trip."

From: [AnnRogers\(amrogers@luxsci.net\)](mailto:AnnRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

"My brothers and I (and my mother to be sure) all had complicated relationships with Charlie. ... It was cathartic to have the time in Santa Rosa over those days and weeks after he died to sit and talk about each others' perceptions of things that had happened, how we were treated similarly or differently, and why his treatment of us and my mom was so erratic."

From: [AnnRogers\(amrogers@luxsci.net\)](mailto:AnnRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

Yet she also acknowledges that I had a positive relationship with both of her parents:

"[Our older son] Benjamin read what you had written [eulogizing my father-in-law] and everyone agreed it was very nice. ... I know you've honored and enjoyed my parents, so it was important for me to share all this with you since it didn't work out that you would be there."

From: [AnnRogers\(amrogers@luxsci.net\)](mailto:AnnRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

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

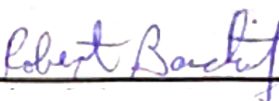
PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the **MOTION TO VACATE ORDER RESUMING EQUITABLE DISTRIBUTION TRANSFERS** 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: 5/11/21



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

Plaintiff Information**Current Income:**

\$4364.37 monthly net based on an average yearly gross of \$72,000.00. Plaintiff has consultant experience as a Fraud Examiner. The average means of a Certified Fraud Examiner is \$100,000/year. *See below.*

Tax Return:

Not used, assessed at married filing separate with one exemption.

Medical Coverage:

None

Child Care/Tuition:

None

Additional Obligations:

None

Defendant Information

\$21,360.06 monthly net based on a monthly gross of \$34,251.10 per pay stuff info plus \$9700.00/year gross from consulting per 2016 joint tax return.

Not used, assessed at married filing separate with one exemption.

Provided by the defendant at a cost of \$749.30/month for four people, two considered. Card info on case.

The defendant has been paying the mortgage at a cost of \$1911.00/month which include taxes and insurance. Parties were going to possibly work out who is going to be responsible to pay mortgage. This was not

considered in the calculations.

Other Information:

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. The guideline calculations amount was \$6734.70/month. The APL recommended amount of support is \$6735.00/month with \$674.00/month for the collection of the arrears, fees & costs. The effective date of the order is 09/20/17. The defendant is to continue to provide medical coverage for the plaintiff. The defendant is responsible for 55% of any uninsured medical after the plaintiff assumes the first \$250.00 per year. Defendant was sent payment instructions & was not at the conference to make a payment. The case will receive a credit in the amount of \$6646.93 per emails from the parties attorneys. *The plaintiff 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

Other Information (continued):

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.

Facts Agreed Upon:

-The plaintiff's earning capacity.

Facts in Dispute and Contentions with Respect to Facts in Dispute:

-The mortgage of the parties marital home, plaintiff resides there, at the conference time, the defendant was paying the mortgage and there was discussion in which party would be paying the mortgage. A mortgage contribution was not assessed to either party for calculations.

Guideline Amount: \$6,734.70 / monthly

DRS Recommended Amount: \$6,735.00 / monthly

DRS Recommended Order Effective Date: 09/20/2017

Parties to be Covered by Recommended Order Amount:

Robert

Guideline Deviation: YES or NO

Reason for Deviation:

Submitted by: TASHA L HERALD

Date Prepared: NOVEMBER 29, 2017



**Email communications with Attorney Wendy Chan
re Change in Approach to De Novo Support Hearing
August 2018**

From: Dir <dir_amr@luxsci.net>	Date: August 7, 2018
To: wendy@ccalancaster.com	Time: 8:56 pm
Subject: Updates - medical and vocational	Size: 2.8 KB
Tags: \$forwarded	

Hi Wendy,

I am writing to let you know of two developments.

First, I met with the radiation oncologists yesterday. After an extensive review of the literature and available data, it was unanimously concluded that I could proceed under observation and would not now need any radiation treatment.

"Observation" means that I will be tested every three months for spread of the disease, both locally in the neck and distantly as metastases (generally to the lungs, they said).

Therefore, the earliest we will likely get any new information on my cancer condition will be after a PET-CT scheduled for October 8. If any spread is detected at that time, my ability to work would change for some time, as you have noted. If this continues to be an important consideration for you, then I recommend that the September 18 hearing be continued until after October 8, if possible.

As it now stands, although I am still spending great effort on rehabilitation (to be able to eat), it seems likely now that I should be able to test my capacity to work at the beginning of September. The idea is that I can bring nutrition shakes to eat for lunch every day. My orthopedic problems might be tested better, too.

The second development is that I have retained a vocational expert. He is a top performer nationally, and as it turns out, probably a reasonable cost considering other pricing I received. In particular, if he is called by my wife for deposition, she will apparently have to pay a very large fee to him. Otherwise, he provides his report for our use. He had reviewed documents I sent to him and stated that he is "comfortable" with the case.

This is as I hoped. We should be ready to argue the case on the vocational merits,

and the disability limitations as doctors have documented it. The latter may require some adjustment to their letters, but we'll see what the expert says. Furthermore, he wants all the cancer records; it will be interesting to hear what he makes of that as well.

I will be interviewed by the expert next week. I will keep you posted.

Best regards,

Rob

P.S. After surgery on my neck, I grew a beard. I will send a photo of how I look now with the beard. Let me know how you prefer I attend the hearing, shaved (electric only) or with a beard.

Also, I would like to schedule a September preparatory meeting with you. Thanks again!

From: Wendy Chan <wendy@ccalancaster.com>	Date: August 8, 2018
To: dir_amr@luxsci.net	Time: 10:47 am
Subject: Re: Updates - medical and vocational	Size: 14 KB

Rob:

I prefer you to not waste your time with a vocational expert right now!!!!!! Please listen to me as it will be a moot point as you are physically incapable of working due to medical reasons regardless of your skills.

If we can get a Dr to testify to your current physical state that needs rehab therapy for eating and your orthopedic problems, it will be sufficient. They will not want to continue this out some more, let's get this over with so that it is not hanging over your head.

Wendy Chan, Esquire
Chan & Associates
 The Griest Building
[8 North Queen Street, 6th Floor](#)
[Lancaster, PA 17603](#)
 T (717) 299-2299

F (717) 299-2822
www.ccalancaster.com

From: Wendy Chan <wendy@ccalancaster.com>	Date: August 21, 2018
To: dir_amr@luxsci.net	Time: 5:06 pm
Cc: lori@ccalancaster.com	Size: 52 KB
Subject: Re: Updates - medical and vocational	

Rob:

We will have our own expert testimony when it becomes necessary in the future.

As of this point, our goal is to show that you have not been able to work since you were diagnosed with cancer until now. My goal is to get you as much money in support as possible. This is how I see is the best way to do so. You should not be expected to work while you are going to dozens to tests/appointments, surgeries, rehabbing, etc. If you are telling me that there is no reason why you should not be working right before and right after your surgery even though you were in the hospital, then I cannot help you.

All of the evaluations we have received in the past from other clients came from their individual medical providers which is exactly what I am requesting for your case. Most of them are primary physicians/family physicians locally in Lancaster. There are a few orthopedic surgeons from Lancaster Orthopedic Associates.

I am not going to compete with others professionals who do not argue support/earning capacities on a daily basis. If you choose to follow the opinions of vocational experts over your own attorney, then that is your choice. I would not be trying to do their job and they should not try to do mine.

I think it is best that we part ways and for you to find another attorney who is willing to follow the recommendations of vocational experts who are not attorneys.

Lori will forward you the proper paperwork for your signature to expedite this.

Wendy Chan, Esquire
Chan & Associates
The Griest Building
8 North Queen Street, 6th Floor

Lancaster, PA 17603
 T (717) 299-2299
 F (717) 299-2822
www.ccalancaster.com

From: Wendy Chan <wendy@ccalancaster.com>	Date: August 22, 2018
To: dir_amr@luxsci.net	Time: 6:03 pm
Cc: lori@ccalancaster.com	Size: 85 KB
Subject: Re: Updates - medical and vocational	

Rob:

We filed your request for a de novo hearing months ago. Therefore, we are challenging your earning capacity from the date of your filing of the initial support action. Everything in the past is what we are focusing on because we do not know what the future holds for you. You may take a month or a year to be back to your healthy state again. We are not going to talk about your future, anticipated earning capacity right now because you are not even healthy enough yet to be working. Our goal is to show that you could not work since the day you found out about your cancer to this point and that your future is currently unknown. That is it. It doesn't matter what any vocational specialist says right now because you cannot physically and could not in the past work.

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From: Director AmR <dir_amr@luxsci.net>	Date: August 28, 2018
To: wendy@ccalancaster.com	Time: 4:38 pm

Subject: Resolution of the expert and cancer issues

Size: 5.5 KB

Dear Wendy,

As I wrote to you on August 21, "I have no interest in replacing my counsel - you - at this late date".

Nevertheless, I feel that I have been placed in a unreasonable position by your unwillingness to work with a vocational expert, as was the plan even after I left the hospital in July. I do not want Ms. Dailey's report to go unchallenged.

I also do not want to show up in court without counsel, but if you cannot work with the expert I have hired (after having waited for you to do so) on a basis that your client can understand, then please motion to the Court to withdraw without delay.

Otherwise, if you do wish to continue, as I hope will be the case, I will provide you with his contact information as soon as you let me know.

My perspective on my goal for this hearing is that my earning capacity does not have to be "0". I just prefer that it more realistically relate to the likelihood of an income I can earn given my work and medical histories, even if some of that medical history, e.g. cancer, is not made as prominent at the moment. There will probably be opportunities to petition the Court for adjustments even after the divorce is finalized. Correct?

In short, this may be just the first of many visits to the Court on this issue. I want to look good even if the outcome at first is less than optimal. Looking good to me includes making a sound record, which includes an expert opinion of our own.

Thank you.

Rob

From: Wendy Chan <wendy@ccalancaster.com>

Date: August 28, 2018

To: dir_amr@luxsci.net, lori@ccalancaster.com

Time: 5:29 pm

Subject: Re: Resolution of the expert and cancer issues

Size: 12 KB

Typically I do not motion the court to withdraw because a new attorney signs on and the new attorney should be able to request a continuance. Please have your new attorney contact me directly.

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Lancaster, PA 17603
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F (717) 299-2822
www.ccalancaster.com

From: Dir <dir_amr@luxsci.net>	Date: August 28, 2018
To: wendy@ccalancaster.com	Time: 5:30 pm
Cc: lori@ccalancaster.com	Size: 10 KB
Bcc: rtt@t-klaw.com	
Subject: Re: Resolution of the expert and cancer issues	

I have no new attorney and seriously doubt I can get one. Even John King would not return.

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
<u>Defendant</u>	)	IN DIVORCE

**DECLARATION OF ROBERT P. BAUCHWITZ
IN RESPONSE TO CLAIMS MADE
IN DEFENDANT’S PETITION TO TERMINATE APL**

ROBERT P. BAUCHWITZ, M.D., PH.D., being of legal age, declares:

1. I, Robert P. Bauchwitz, who henceforth in this document will refer to myself as “Plaintiff-Husband” or “Husband”, make this declaration of specific, detailed, evidence-based responses to claims raised by Ex-Wife, Ann Marie Rogers, M.D. of Hershey, PA, and her counsel, James R. Demmel, Esq. of Camp Hill, PA, in her Motion for Termination of Alimony Pendente Lite. of December 8, 2020.

2. I have personal knowledge of the facts set forth herein, and am willing to testify under oath to them.

3. I reside at 23 Harlech Drive, Wilmington, Delaware, 19807.

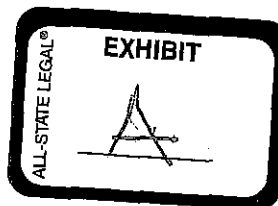
Financial prejudice

4. Wife at point 29 in her motion claims: “Maintaining the APL order until Plaintiff’s Superior Court is resolved will prejudice Defendant financially.”

5. Husband agrees with his counsel in the associated response filed by him that the law on provision of APL is clear, as stated in the primary filing to which this Declaration is attached:

“It is axiomatic that APL continues until the economic issues are fully and finally resolved. *See DeMasi v. DeMasi*, 597 A.2d 101 (Pa. Super. 1991). Economic claims are not fully and finally resolved until an appeal as of right is exhausted. *See, Id.* The law is clear and unequivocal on this point.”

6. Husband further notes that Defendant Wife Ann Rogers has not presented any evidence of a reduction in her income from any time preceding the date of a hearing



before this court on August 6, 2020, or thereafter, including not in this document requesting termination of APL to her former Husband.

7. Just as important a question is whether it will prejudice Plaintiff-Husband financially not to receive APL. As the evidence to be presented below is intended to demonstrate, the answer is very clearly that it would. Furthermore, such prejudice to Husband would vastly outweigh any prejudice to Wife.

8. Husband notes the following about marital income and quality of life:

a. The Social Security Statements of the parties were entered into the record.

b. This Court noted in its opinion of October 9, 2020, that it is marital income that determines the standard of living in a Pennsylvania marriage.¹

c. The United States Census Bureau publishes income information that allows a comparison of incomes in the United States. (See attachment 1_.)

d. A table of marital income relative to U.S. incomes for the years of the marriage is shown in the second page of attachment 1_.² During the marriage the marital income fell into the following Census Bureau percentiles:

For 1991, the marital income was in the second quintile from the top (the top 40%).

In 1992, the marital income was in the top 20%.

From 1993 through the end of the marriage, the marital income was never outside of the top 5% of U.S. incomes.

e. Consistent with a high marital income, while living in New York City from 1990 through mid-2006, the marital couple lived for most of their time in a high-end apartment building one block from Central Park and Lincoln Center at 124 W. 60th Street in Manhattan, New York, NY (aka "South Park Tower"). The building had a pool, garage, doorman, and concierge as well as

¹ "Spousal incomes are what establishes a standard of living throughout a marriage" Marsico, Edward, M., Judge, Opinion of October 9, 2020 in Rogers v. Bauchwitz 2017-cv-6699-div, p.7.

² It was noted during the Master's hearing of October 9, 2019, that Husband's academic fellowship incomes in the 1990's often did not show up on Social Security statements due to agreements between the U.S. government and employing institutions, whereby employees paid an income from fellowships were considered exempt from paying Social Security and Medicare taxes. During the period from September 1991 through part of 1995 during which Husband was paid from fellowship funds and such did not get taxed, an estimate is shown in brackets and summed to produce a marital income, as shown in attachment 1_.

maintenance staff. The couple's time in the building included many years in a 52nd floor penthouse apartment costing several thousands of dollars per month in rent.³

f. The marital couple was able to send one child to an exclusive private secondary school (The Dalton School) in New York City costing tens of thousands of dollars per year. Their sons then attended two of the most expensive private universities in the country: MIT and Johns Hopkins.

g. Husband, Wife, and their families continued to take very expensive vacations throughout the marriage.⁴

h. Husband disputes the Master's assertions in support of what she purports to be their middle class lifestyle⁵ that the couple drove "nice but not luxury cars".⁶ Importantly, Husband asserts that judicial notice could have been

³ Even before moving into a penthouse apartment, the marital couple's bedroom in the same building during the 1990s was directly above the bedroom of child actor Maccaulay Culkin, who was believed at the time to have had a \$55 million trust fund. The radio personality Rush Limbaugh also lived in the building, as did numerous Wall Street financial people and business owners. Husband and Wife could not move into the building until they could demonstrate a minimum income of somewhat over \$100,000 (in the very early 1990's).

⁴ These vacations cost up to tens of thousands of dollars per trip, including \$20,000 for a family trip to Spain and Portugal arranged by Husband, other trips throughout Europe (Austria, Germany, Italy, Sweden, Ireland). Even in 2017, just months before Wife would unexpectedly abandon the marriage, the couple spent many thousands of dollars for a vacation in the British Virgin Islands, including travel throughout Virgin Gordo and an extended stay at the Marriott Hotel on Sand Island, BVI. Three months after that, in late May and early June 2017, the marital couple paid a significant portion of over \$60,000 in expenses for a family trip to England, including over \$5000 for first class round trip tickets for Wife to and from London. (These expenses exclude Husband's own simultaneous travel costs to Amsterdam, the Netherlands, for a business meeting). Husband further paid from marital funds for drivers and a British NHS nurse to travel with the family in England to care for Husband's recently critically ill father-in-law. In addition the marital couple took vacations on South Beach, Florida, the Florida Keys, multiple trips to Copacabana Beach, Brazil, as well as numerous vacations associated with the business travel of each spouse.

⁵ 68. The parties established a middle-class lifestyle during the marriage. Master's report of March 13, 2020. N.B. the inconsistent, undefined use of the terms "middle class", "upper middle class" and "upper class" in the Master's report.

⁶ "the parties lived in a nice home, went on vacations, sometimes to Europe, and **drove nice, but not luxury, vehicles such as Volvos and Acuras.**" Husband testified that upon buying cars in Pennsylvania in 2006 upon moving from New York City to benefit Wife's career goals, he outright bought Wife's car for \$30,000 from his cash funds. Along with that, he drove an Acura MDX leased in his Wife's name, which they later bought after the lease ended. Furthermore, Husband researched and obtained for Wife a Platinum Package Volvo

taken that the Acura and Volvo car brands, shown in the Inventories of Assets and Liabilities of Husband and Wife filed with the Court are by description of the manufacturers as well as wide acceptance deemed luxury.⁷ Husband also notes that the modifications they made to their house in Hershey, PA, was of the top quality and not necessarily consistent a “middle class home”.⁸

i. After Husband and Wife felt that his career prospects had been harmed by involvement in a scientific misconduct *qui tam* case⁹, and whose participation was initiated by the federal Office of Research Integrity (ORI) requests for Husband’s assistance with a related investigation¹⁰, Husband, with Wife’s consent, started his own business ventures. (See attachment 2a_)

j. Husband denies completely that Wife ever tried to get him “gainfully” employed or that she ever thought he was not “working”, either as an academic or as self-employed. Husband has testified that the marital couple not only had profit motives (in part) from his participation in the *qui tam* case (likely worth well over \$1 million to them), but also from the work he

S80, which they financed for \$50,050. (Wife would claim in her Inventory of Assets and Liabilities that the Volvo had been “leased”.)

⁷ Husband never owned nor drove any other car than an Acura MDX 2006 Touring model during the marriage. Acura and Volvo are considered luxury car brands as revealed by simple Internet search, including from the manufacturers’ sites, encyclopedia sites, and review sites. For example: “Official Acura Site - Luxury Sedans and SUVs” (www.acura.com); **Acura** is the luxury vehicle division of Japanese automaker Honda.

<https://en.wikipedia.org/wiki/Acura>; **Volvo Cars** (Swedish: *Volvo personvagnar*), stylized as **VOLVO**, is a Swedish luxury automobile marque.”

https://en.wikipedia.org/wiki/Volvo_Cars; **U.S. News’ Best Luxury Car Brands Zach Doell** | January 22, 2019”.

⁸ Every improvement made to the home was of the highest quality and cost. Just before she left, Husband had \$8000 of top quality carpeting installed. He also had the master bathroom remodeled with a Jacuzzi and hand painted tile imported from Portugal. The mahogany toilet seat alone cost over \$400. There was also installation of a walk-in closet completely covered with cedar wood, and custom oak shelving for over \$2000. Several pieces of custom wood furniture were made for the couple. Top of the line wooden Roman shades, Lennox HVAC, and Briggs and Stratton whole home generator are a few more of a long list.

⁹ See especially comments on the use of this publically available case material by the Master in her purported “judicial notice”, as discussed below.

¹⁰ See attachment 2a_ for a description of how Husband became involved in the case, and see the link at healthsci.org for additional evidence of Husband’s work on the case. The ORI’s actual approach of Husband in 2002, and their repeated contacts of him thereafter, was neither spontaneous nor initiated by contact from Husband; ORI first acted in response to notice from a journalist as to Husband’s potential value as a former member of a laboratory in common with that of the target of an existing investigation of theirs.

did to study, breed, and license genetically modified mice and related control mice in his business venture (Bauchwitz Laboratories later dba Amerandus Research). Although it became clear that the scientific misconduct venture would take investment of marital funds, it, too, had long-term profit goals, and in fact just weeks before Wife abandoned the marriage without notice, she was involved in Husband's discussions by a similar German company that was considering buying Husband's firm. Additional evidence is presented here that Wife was well informed of and supportive of Husband's entrepreneurial attempts. (See documents 2a_ and 3a_, attached).

k. Husband further denies that he was in any way "evasive", as the Master claimed, when he stated that he did not agree with Wife's counsel continually premising his questions at hearing and in filings as if Husband had in fact not been "working" after he left academia. (See documents 3a_ and 3b_, attached.)

l. Husband asserts that the repeated claims by opposing counsel, apparently with the on-going knowledge Wife, that not making profit is equivalent to having been "unemployed" or not "working", is manifestly improper. (See "Basis for high legal costs" section, below).

m. Therefore, Husband, based on high marital income, was able to self-fund work from his laboratory. That self-employed work resulted in useful published scientific results, and also valuable genetically modified mice, which as he testified would have been expected to be profitable were it not for tortuous interference from a party which had retaliated against him during the *qui tam* case. (See 3b_, attached.) Husband therefore asserts it was incorrect for the Master to remove valuation of such wealth from his financial needs to maintain his quality of life.

n. Husband's work on the *qui tam* case and on the mice alone were fully intended to be very profitable ("gainful") to the couple, and it was through no wrongdoing or lack of motivation by Husband that these efforts were not financially fruitful.¹¹

o. On the contrary, because of his work on the *qui tam* case, Husband has been subjected to improper negative effects that reach beyond the tortuous interference discussed above. Husband therefore objects to the Master's assertions that merely being highly educated makes high income likely, or that questioning this claim of hers makes him "disingenuous". (The use of such terms as have been used against Husband in this case might also violate the Pennsylvania Code of Civility for judges and lawyers.)

¹¹ The quality of Husband's work on the *qui tam* case can be assessed from the document at healthsci.org.

p. Wife also testified that Husband was very helpful to the advancement of her career and income: "I'd be much poorer and not nearly as far along without that [your] help". (From text message introduced at the Master's hearing of October 17, 2019.)

9. The preceding facts support a contention by Husband that the marital couple's high-income status had a large impact on the marital quality of life/standard of living. Husband directly contributed to Wife's high income and also made serious efforts to bring in additional profit through his ventures. A high quality of life, including on personal and business levels was achieved for extended periods because of high marital income.

Post-separation incomes and quality of life prospects; the prejudiced party

10. The Master has stated in her report of March 13, 2020 that the economic quality of life Wife enjoys is likely to increase after removal of her Husband.¹²

11. In stark contrast, Husband's life and financial circumstances have become greatly diminished, as even predicted by the Master in the same report.

"With his earning capacity alone, Husband will not be able to *maintain* an upper-class standard of living. This favors an award of alimony to Husband."

12. Consistent with the Master's claims on the relative post-marital living standard of the ex-spouses, even if Husband could achieve the income ascribed to him by the Court, that potential income would be over 600% (6-fold) less than Wife's existing income.

13. The results of Husband's job searches since separation have made it clear to Husband and his vocational expert¹³ that he does not have the income potential ascribed to him.

14. Husband denies that any hearing of evidence about his earning capacity was ever conducted by Dauphin Domestic Relations. The Support Conference officer was simply given competing claims of what a Certified Fraud Examiner (C.F.E.) could earn, and then chose a point between the two estimates. However, Husband argued in his subsequent report to Wife's vocational expert that he would for several

¹² **"8. The standard of living of the parties established during the marriage.** The parties established an upper-middle class standard of living during the marriage. Given Wife's superior income, she will have no problem maintaining and perhaps even exceeding the marital standard of living. With his earning capacity alone, Husband will not be able to maintain an upper-class standard of living. This favors an award of alimony to Husband." Master's report of March 13, 2020.

¹³ According to his report, which was provided to the opposing party in the fall of 2018.

Appendix

A. What Ann Rogers acknowledges that she did tell her psychiatrist, Kuhlengel about her husband was:

On Sep 16, 2017, at 3:41 PM, Robert Bauchwitz <rbauchwitz@yahoo.com> wrote to Ann Rogers <amrogers@luxsci.net>:

"I found some notes I made about your telling me (on April 1, 2017) of one of your visits to [psychiatrist] Dr. Kuhlengel. You said that you had given her a list of what was valuable about me to you:

- 1) that I was a very good father;
- 2) that I get things done around the house and did househusband stuff;
- 3) that you and I were best friends;
- 4) that you and I laugh a lot together;
- 5) and that we have a shared history.

Your complaints were that I was unhappy that you were not apparently helping me to emotionally regulate (the instance at that time apparently had something to do with our accountant, Gina DeFlavia). You said that you told Kuhlengel that I had a "tendency to plan" and that you had a "tendency to escape", at least at home. You were "overwhelmed" sometimes by my "loudness". I get that. But I am the same somewhat loud man you married. Nevertheless, I want to adjust with the circumstances".

To the preceding, Ann Rogers replied on Monday, September 18, 2017, 7:13 PM EDT:

"Your report of what I told Kuhlengel about you was accurate."

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.

o. All of these baseless, bad faith filings by Wife and her counsel, have led to a material waste of resources (of Husband's, if not the court's).¹¹

D. The appeal involves several important legal issues, not only alimony

20. To provide further support of our counterclaim (above) that several issues are on appeal that do not involve an attempt to get alimony, in the following Husband provides additional evidence of topics addressed in his appeal which go to credibility and its assessment, which in turn impact discovery of potential frauds and fees.

21. To review some of the points covered in the First Declaration, and in other earlier filings, the many bad faith behaviors of Wife in this case included:

- a) insistence by Wife to sell the marital home "as is" against the advice of all real estate agents who worked with us, and at great risk of unnecessary significant financial loss that would harm Husband far more than wealthy Wife;
- b) the egregiously false claims by Wife that Husband purportedly had made statements about burying Wife in the backyard of the marital home on May 25, 2019, and which Wife claimed in court filings she took to be threatening to her life;
- c) the resulting attempt by the divorce master in this case to coerce Husband into handing over a so-called power of attorney (POA) to Wife alone to sell the marital home, thereby denying Husband his right to equally participate in the sale of his property, including in particular to repair it in order to sell it for substantially more than an "as is" price;
- d) Wife's bad faith unwillingness to agree to use the real estate agent (Sandra Pharmer) chosen by Husband to repair the house, which Pharmer and Husband did successfully at substantial financial benefit to both parties;

¹¹ Wife's counsel failed to correct a party identification error by the trial court in his original Petition, even though the court itself had corrected it by order. Husband made note of this error of Wife' counsel in his Original Response, which was nevertheless repeated at point 9 of the Motion to Reconsider.

e) Wife's refusal to work with the actual real estate agent who did the work to improve the home for sale, was highly unjust and would cheat Husband by forcing him alone to pay almost \$4000 for Pharmer's work. Thus, Husband did revoke the purported POA, as clearly Wife was not reasonably representing his interests;

f) As a result of revoking the POA – without impacting the sale of the home but only to require payment of Pharmer – nevertheless resulted in legal costs to counter purported “contempt” claims, even though no law whatsoever was cited by the master or the trial court in support of the charge that POA's under Pennsylvania law could not be revoked by the principal.

Thus, legal costs unjustly imposed by Wife's being permitted to impose her manifest bad faith harms on Husband are at issue in the appeal. They do not involve alimony.

23. Additional evidence related to topics on appeal: credibility and financial claims

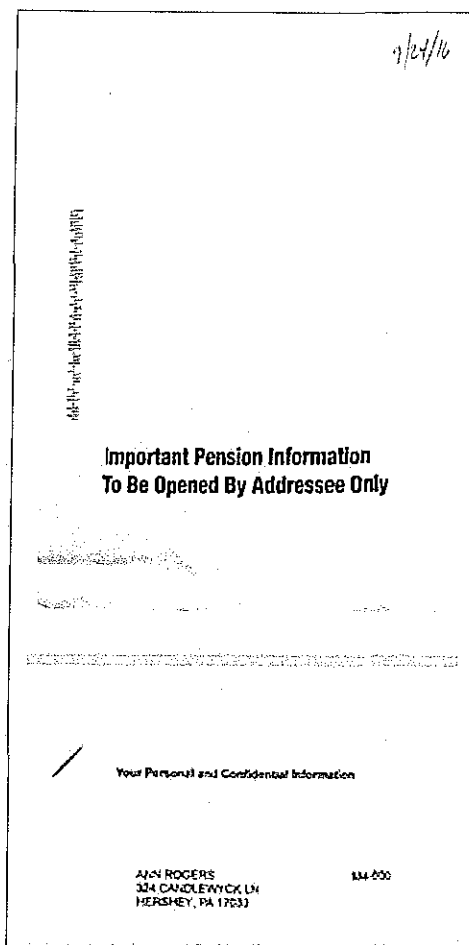
a. Wife testified at times as if she were an ingenue regarding her own finances, and consequently in thrall to Husband on such matters. For example, she claimed that she knew only what Husband told her of her own pension:

Q. How did you learn that you had a pension?

A. From Robert. Robert used to say I had a pension, and I actually denied it because I didn't believe I really had a pension from St. Luke's-Roosevelt. But he had paperwork to that effect. (T. 87)

b. Aside from Husband's assertions that this is yet very likely another bald-faced, non-credible lie¹², if for no other reason than Wife received and filed her own financial records throughout the marriage, Husband provides here evidence that what he found about Wife's pension had her handwriting on it.

¹² Noting no knowledge of potentially relevant neuropsychiatric issues affecting Wife's memory.




c. The letter is clearly addressed to Wife Ann Rogers at the marital residence and it concerns "Important Pension Information to be Opened by Addressee Only".

d. This document has a date on it of 9/26/16. The date is written in the handwriting of Wife Ann Rogers. Thus, this pension document had been received by Ann Rogers about one year prior to the sudden abandonment of the marriage.

e. This envelope had been left behind when Wife Ann Rogers took all her other financial records from her filing cabinets on August 28, 2017. It was left behind apparently because it had been on a second desk she used in an upstairs room, on a different floor from her other financial documents.

f. The envelope had already been opened by the time Husband found it in 2018. Therefore, it had undoubtedly been read by Wife.


g. The contents of Wife's pension mailing began as follows:

 Mount Sinai	
September 22, 2016	
Personal and Confidential	
Subject: St. Luke's – Roosevelt Lump Sum Pension Offer Election Kit St. Luke's – Roosevelt Hospital Center Employees' Pension Plan	
Dear Ann Rogers,	
Mount Sinai Health System ¹ recently announced a limited-time program that allows you to receive the value of your vested pension benefit right away — either as a lump sum payment or a monthly annuity payment — if you act before November 3, 2016 .	
During this limited-time opportunity, your options are:	
Choice	Action by November 3, 2016
1. Elect to receive a single lump sum payment of \$83,876.38 in December 2016	➤ Return Form 1 (three pages), Form 2 (one page) and, if married, Form 3 (one page)
2. Elect to start monthly benefit payments as early as December 2016 (the amount depends on the form of payment you elect — See Notice 1)	➤ Call the St. Luke's – Roosevelt Lump Sum Support Line at 1-877-506-2207, Monday through Friday, 9 a.m. to 6 p.m. Eastern Time
3. Wait until later to begin receiving your pension (available upon request any time after your early or normal retirement date)	➤ Do nothing — no action is required at this time

h. Husband received the same pension mailing from the same hospital in New York City where he and Wife had worked. He recalls discussing the offer with Wife, after which both decided not to act on it.

i. Thus, Wife's implied claims during testimony at hearing that she never had any idea that she had a pension from St. Luke's Roosevelt Hospital Center are completely false.

j. Also going to various claims of financial misconduct are that Wife claimed that her car was leased and thereby had no value, even through the following document shows that she was regularly receiving financing charges for it (the handwriting is Wife's):



Auto Account Information Summary

Vehicle Description: 2016 VOLVO S60 PREMIER
 Vehicle Identification No. (VIN): Y2A76613

Current Payment Due on 11-16-17: \$621.49
 Amount Past Due as of 10-23-17: \$0.00
 Fees and Charges: \$0.00
 Total Payment Due On 11-16-17: \$621.49

303022 A021 2017111000000000 09
 ROBERT P BAUCKWITZ
 ANN M ROGERS
 13 KILLARNEY BUILDING
 HERSHEY, PA 17033-2264

July 28, 2017 through October 28, 2017
 Loan Account: 11628811511007

Visit our Website: Chase.com/AutoServicing
 Payment by Phone: 1-800-348-9127
 Account Information: 1-800-336-8579
 TTY: 1-800-524-9785

AMR
VOLVO
#2

Important Messages About Your Auto Account

This Quarterly Statement will be mailed to you every three months. Please retain the remittance coupon page to make your next three payments. The Principal Balance and Total Payment Due are accurate as of the end date of this statement. The principal balance displayed above is not your payoff. For a current payoff quote, please visit our website at Chase.com/AutoServicing. See reverse of statement for important information pertaining to your loan.

Activity Since Your Last Statement


Transaction Date	Transaction Description	Transaction Total
09-16-17	PAYMENT - THANK YOU (PRINCIPAL \$372.14) (INTEREST \$49.35)	(\$621.49)
09-15-17	PAYMENT - THANK YOU (PRINCIPAL \$377.46) (INTEREST \$44.01)	(\$621.49)
10-16-17	PAYMENT - THANK YOU (PRINCIPAL \$376.87) (INTEREST \$44.62)	(\$621.49)

Go Paperless with Chase today! If you're looking to reduce paper waste, go to Chase.com/PaperlessAuto to learn more and/or sign up for our paperless statement option, which enables you to receive statements online versus in the mail. Going paperless with Chase is secure, convenient and environmentally friendly.

Visit Chase.com/AutoServicing for all your auto financing needs. You can view your account details, check your payment history, request a payoff quote, pay your bill and change your address 24/7. You can also set up account alerts in your mobile phone or e-mail. Plus, you'll have access to information about special offers for Chase customers.

SIMPLIFY YOUR LIFE WITH THESE ACCOUNT RESOURCES

SIGN IN OR ENROLL AT CHASE.COM TO USE THESE GREAT SERVICES



We offer several ways to conveniently manage your auto account online. Sign in or enroll at chase.com where you can:

- Make your payment — Schedule a one-time payment or sign up for repeating payments from any checking or savings account.
- Go paperless — You'll receive an email when your statement is available online.
- View your account history — See your payment history and up to 7

k. Wife also made numerous false and shifting statements about her double insurance payments, while at the same time challenging why Husband “had” two of her check registers, which she had apparently accidentally left behind when she took almost all of her other financial documents on August 28, 2017. The connection between the registers and the double insurance payments is shown in the image following, which Husband took before returning the original registers to Wife at the end of 2017 via a son:

NUMBER OR CODE	DATE	TRANSACTION DESCRIPTION	AMOUNT	DEBIT	CREDIT
251	3/16	MSTHMG (R) anal test	49.70		
252	3/18	AT+T Mobility	494.25		
253	4/8	MSTHMG VOID	600.00		
254	4/10	PA Dept of Revenue	500.00		
255	4/30	Northwestern Mutual Disability Ins	11,995.71		
256	5/13	RFB	20,000.00		
257	5/20	Nicki Johnson hairstylist	100.00		
258	5/22	MSPR	9515.30		
259	5/22	AT+T Mobility	370.77		
260	5/26	Matt's Lawn Svc Invoiced 203, 218	293.00		
261	5/18	Northwestern Mutual Acct # 8204569	11,995.71		
262	6/14	The Sun	28.00		
263	6/28	Keystone Collections 2016 local tax	94.00		
264	7/9	US Bank recurring cc paymt	198.00		
265	7/9	Derry Township Tax Collector school tax	245.00		

Memo

For enhanced security your account number will not be printed on this copy

l. As in several instances before in the case, after Husband's expending a large amount of legal fees, Wife claimed that, yet again, she had made a "mistake" about the identical \$11,995.71 insurance payments:

Darren J. Holst, Esquire
P.O. Box 810
Harrisburg, PA 17108
dholst@khklaw.net

Re: Ann Rogers v. Robert Bauchwitz

Dear Darren:

I am writing to address several issues as follow-up from the settlement conference.

Dr. Rogers contacted Northwestern Mutual. Their office confirmed that she accidentally made duplicate payments for the disability insurance premium in April and May 2017. The extra payment will be applied to her 2020 premium.

m. Evidence that the most material financial "mistake" was also knowing was previously entered into evidence. (See also following.) It shows a note written by Wife Ann Rogers to her Husband in which she clearly lists the two large retirement accounts at issue (TIAA and Great West/Empower) as separate:

AMR Retirement Funds
as of 11/21/12

SLR Prudential
Tax-Sheltered Annuity
\$ 6892.04
no acct #

*per Mr. [unclear]
all [unclear]
[unclear]*

TIAA-CREF SLR + some W/R
\$520,554.34

Great West / GPS # 5658584
Plan # 95245
\$ 301,378.83

Vanguard
Wellington 09956332616 \$28,317.99
Str 09956332616 \$26,161.72

n. More generally, the master, Cindy S. Conley, repeatedly fabricated claims during the pendency of this case that Husband had all of Wife's financial records, apparently as if that would have justified Wife's failures to report her own financial assets to the Court, as well as to cast Husband's claims that Wife and her counsel were trying to deceive him by their actions as "disingenuous".

24. Additional evidence related to topics on appeal: credibility and testimonial claims

a. It is not just Wife Ann Rogers' credibility and the assessment thereof (including by de novo review) that is at issue in Husband's appeal. The following evidence illustrates one of numerous instances in which master Cindy S. Conley created novel claims and conclusions out of testimony.

b. Upon questioning by Husband's counsel at a hearing on October 17, 2019, Wife testified to Husband's counsel:

"Q. So going back to your Exhibit 9, the photographs that you say you took. You did not go to the police after this alleged incident, correct?

A. No, I did not.

Q. You did not make a report to the police after this alleged incident, correct?

A. Did not.

Q. And you are aware, are you not, that your husband has, in fact, made reports to the police of your violence towards him?

A. **I am aware that he filed something a year and a half afterwards** -".

c. Wife never actually made a statement that she knew Husband had not filed a report before or at the time of separation.¹³

d. Yet citing Wife's testimony, master Conley concluded in her report of March 13, 2020 that:

"Husband testified that he reported at least one of the physical altercations to the police. Wife's testimony made it **clear** that

¹³ Depending on the decision as to that date; in the First Declaration, Husband presented documentary evidence that the date of separation as announced by Wife was September 9, 2017.

Husband's report **was made** after the parties' separation leading Wife to surmise that the report was made to bolster Husband's position in the divorce action." [Font emphasis added.]

e. So at issue is the transformation of Wife's actual testimony by the divorce master, Cindy S. Conley, into a markedly different claim. It was Conley who, Husband asserts, fabricated "clarity" from the statement.¹⁴ Husband, further notes that such evidence is very important in assessing the credibility and bias of this master. Multiple such examples affect more than alimony.¹⁵

f. To provide further evidence to help get to the truth of the matter as to when Husband first "reported" Wife's violence to the police, he attaches here an exhibit of his final reports to the police, made within the statute of limitations, which reference his initial report/statement. ("Written Statements to DTPD"; page numbers for each exhibit are found in a table at the end of this Declaration.)

g. Furthermore, Husband also attaches as an exhibit, the written report of a retired detective who was present on August 28, 2017, with Husband. He was present to protect Husband during what Wife claimed would be a meeting with him on her return from California to the marital home in Pennsylvania. Indeed, the retired detective/security officer was witness to Husband's statements of August 28, 2017, to the police and furthermore, he referenced such in his report dated that same day (attached here as "Report of Ret Det Connor").

h. The detective's testimony is also of interest because it supports Husband's repeated claims that Wife took many of her files and electronic media. Yet master Conley would repeatedly and baselessly assert in this case that Husband had Wife's financial files.

i. Master Cindy S. Conley was also apparently willing to make some conclusions on the basis of an absence of questioning of Husband regarding images presented by Wife at hearing. The implied proposition that by not being questioned, or not spontaneously speaking about something presented

¹⁴ Even if Wife had stated that she knew Husband had not "reported" around the time of separation, it would be at best playing a semantic game with the word "report" to imply that a verbal statement is not such. In many instances during the case, it appeared as if master Conley was testifying on behalf of Wife and her counsel.

¹⁵ It is as if the master relentlessly ignores the important issues, such as the indisputable facts that Wife assaulted Husband, including in a potentially felonious manner, to attempt to impeach him for the most questionable of claims. (See also the master's claims about a statement Husband made about the ORI as discussed in the First Declaration.)

to Wife at a hearing, the master would be led to conclude that Husband had made an admission. If so, this is very troubling.

j. Nevertheless, Husband now makes the following comments, which he produced in writing when he was shown the images at issue months before the October 17, 2019 hearing:

a. images purportedly relevant to fault

“a. The images with what appears to be a digital date stamp (“11 8’02”) are very odd with respect to many features: red “stains” on Ann’s right shoulder and a long red “stain” under her left eye that is present in one image but not the other. (Now, *that* is some red eye!). These stains seem artifactual, possibly as a result of image manipulation.

I see no intelligible injuries in one image: just Ann’s left arm exposed with some sort of artifact, along with more red “stains” on her right shoulder and lower eye lid, and along the outer edge of her left arm. What is being shown in these pictures?

The second image with a date stamp is similar to the first except it shows Ann lifting her left forearm, again to show nothing intelligible. The dark red liquid(?) or image artifact now appears along the left aspect of her nose.

Who took these images? Where were they taken? What do they show? How were they manipulated? And what do they have to do with me?

b. these undated images also appear to be manipulated.

As above: Who took these images? Where were they taken? What do they show? How were they manipulated? And what do they have to do with me?

Why are the backgrounds so dark? This alone suggests some sort of processing. If they did differential enhancements, which is what I believe I see throughout, that would be the end for them at the federal (grant) level. ...

If these were medical or police images, why was I not questioned?

Answer: Probably because New York law and the NYPD would

have held this to have been "reactive violence" on my part, and assault on Ann's. She was the initiator of physical violence with the flashlight. And she was the major escalator the Cepacol spray into my face and eyes, which was an outrageously reckless act.

The bottom line:

I have acted as a United States federal government grant reviewer. I have caught million dollar fraud before based on less image manipulation than I see here. I've already caught a million [dollar] financial fraud in this case." (Date: June 30, 2019 Time: 7:05 pm).

c. Husband also subsequently noted (also before the hearing) that:

"I do not claim that the images she shows are those that go with the phenol incident. I have a feeling that I took the bruise images. I recall that cut on her deltoid. I believe it occurred as a result of a fall from a bike. The straight line cuts are simply NOT consistent with what would result from a man's fist. I still think the disclosed images appear manipulated". (Date: October 6, 2019 Time: 7:48 pm).

b. Therefore, there is no reasonable basis to conclude that Husband made any specific acknowledgment of the images from 1993 or 2002 or remotely agrees that they are legitimate.

c. It is also of note that Ann Rogers did at hearing confirm at the October 17, 2019 hearing that she had hit Husband with a flashlight and sprayed him with a caustic substance ("phenol").

d. Husband further disagrees with Wife's claims, and is willing to show at further hearing, that it was not any hostile words from him that initiated conflict.¹⁶

¹⁶ Aside from misinterpreting benign comments from Husband, in several cases during the marriage, even when Husband got upset and loud about something *other* than Wife Ann Rogers, the latter would respond as if she had been attacked. This led Husband to note to Wife that she "had a screw loose". She herself commented on her "outbursts" in evidence provided as exhibits to the First Declaration and in the police reports attached here. It was Wife who believed she needed long term psychiatric care during the marriage. Husband did not ever need or receive psychiatric treatment – despite the intensely frightening circumstances Wife's behaviors could create in the home.

e. Regardless, even if there had been an escalation of words, it does not given license to any party – regardless of gender – to initiate physical assaults, particularly using weapons.

f. Husband must note again that in contrast to Wife's behavior towards him, he never used a weapon against her and he never threatened to kill her, including as she did repeatedly by reference to poisoning.

g. Furthermore, even if the Master concluded that Wife only initiated physical violence in 1993 and Husband in 2002, hence that such “went both ways” as she claimed, Husband again asserts, as he did in his exceptions to the master’s report, that such remote events are entirely immaterial to a separation occurring in 2017. It ignores testimony that such violence was “rare” and that at least fourteen years went by until the next recorded acts of violence.

h. Of greatest importance, no matter what may have happened in 1993 or 2002, there is no question from the testimony that Wife Ann M. Rogers, M.D., was the initiator and sole employer of physical violence and assault against Husband after 2002, i.e. specifically in 2016 and 2017. Those dates are obviously of material relevance to a separation occurring in 2017.¹⁷

i. Acts of physical violence are relevant for fault considerations under Pennsylvania law with respect to alimony. However, it is important to again point out here that the actual fault Husband asserts as responsible for the separation had to do with a much more serious matter that involved what had happened to his father-in-law at his passing in August 2017.¹⁸

j. The fate of the Husband’s father-in-law directly pertained to Husband’s interpretation of his safety in remaining with Wife. Therefore, it is hard to imagine how it could possibly be more germane to an issue of fault for this divorce. Husband was precluded from discovery by the master on this topic. Her decision was upheld by the trial court on exception. Neither master nor judge cited law as a basis for denial. Rather, they simply claimed an “irrelevancy” of the issue. Husband disagrees and appeals.

¹⁷ Husband’s first concern was whether Wife was having another affair. But it remains unknown to him what motivated her. What is important is that Husband never harmed Wife, even responsively, in 2016 or 2017. Eventually, Husband was persuaded by Wife that her violence towards him, as reported in detail to the Derry Township Police Department, may have been due to mental illness, and in particular mis-medication.


¹⁸ The primary statement of this matter was presented in the exhibits attached to the First Declaration. Here, additional background is provided as to what Husband witnessed in the attachment titled “Background to a statement on the passing of Charles T. Rogers of Santa Rosa, CA”).

I declare under penalty of perjury that the foregoing is true and correct.



Robert P. Bauchwitz

Executed on March 29, 2021
Wilmington, DE



Frederick W. Bauchwitz
Witness

Attachments

no.	title	page
1	Written Statements to DTPD	001
2	Report of Ret Det Connor	012
3	Background to a statement on the passing of Charles T. Rogers of Santa Rosa, CA	018

Incident # _____

**DERRY TOWNSHIP POLICE DEPARTMENT
VOLUNTARY STATEMENT**

I, Robert P. Bauchwitz, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Derry Township Police Department (DTPD) in addition to first report of same incident to DTPD on August 28, 2017. I volunteer the following information of my own free will, for whatever purposes it may serve. My date of birth is May 3, 1960, my telephone number is 717-395-6313, and I live at 324 Candlewyck Lane, Hershey, PA 17033 and 23 Harlech Drive, Wilmington, DE 19807.

I report a violent assault by Ann Marie Rogers, then resident at 324 Candlewyck Lane, Hershey, PA and now believed to be resident at 427 Crescent Lane, Hershey, PA, on the evening of August 9, 2016 against me, her husband, Robert P. Bauchwitz at 324 Candlewyck Lane in Hershey, PA. Without warning, Rogers did retrieve a "Louisville Slugger" wooden base ball bat and ran towards me, Bauchwitz, swinging the bat aggressively as a weapon, causing me to flee in fear of my life and producing property damage. This attack was first reported to DTPD on August 28, 2017, as part of a call involving other actions by Rogers. It is now presented by itself for its own record and investigation as appropriate.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I verify that the information contained on this sheet is true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of The Pennsylvania Crimes Code, relating to Unsworn Falsification to Authorities.

Signature of person giving statement: Robert Bauchwitz
Date: 6/17/19 Time: 8:40 AM ET
Witness: Robert Bauchwitz
Witness: Jan B...

Incident # _____

**DERRY TOWNSHIP POLICE DEPARTMENT
VOLUNTARY STATEMENT**

I, Robert P. Bauchwitz, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Derry Township Police Department (DTPD) in addition to first report of same incident to DTPD on August 28, 2017. I volunteer the following information of my own free will, for whatever purposes it may serve. My date of birth is May 3, 1960, my telephone number is 717-395-6313, and I live at 324 Candlewyck Lane, Hershey, PA 17033 and 23 Harlech Drive, Wilmington, DE 19807.

I report a violent assault by Ann Marie Rogers, then resident at 324 Candlewyck Lane, Hershey, PA and now believed to be resident at 427 Crescent Lane, Hershey, PA, on the evening of July 3, 2017 against me, her husband, Robert P. Bauchwitz at 324 Candlewyck Lane in Hershey, PA. Escalating from an innocent event, Rogers did squeeze my head, slap off my glasses, and then strangle me strongly for several seconds until I broke free. During the strangulation, Rogers stated that she would turn my bones into dust, and immediately after it that it had made her feel good. This attack was first reported to DTPD on August 28, 2017, as part of a call involving other actions by Rogers. It is now presented by itself for its own record and investigation as appropriate.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I verify that the information contained on this sheet is true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of The Pennsylvania Crimes Code, relating to Unsworn Falsification to Authorities.

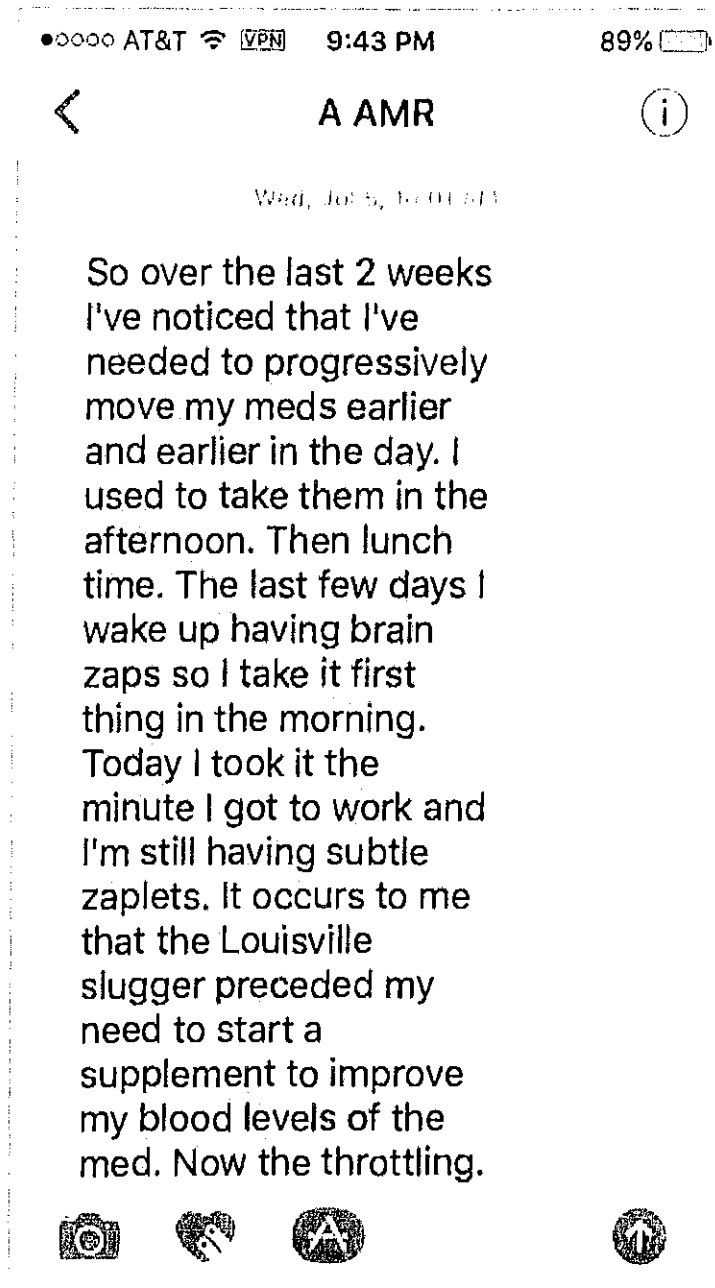
Signature of person giving statement: Robert Bauchwitz

Date: 6/17/19 Time: 8:43 AM ET

Witness: Christina Bauchwitz

Witness: Jim Bandy

I. Ann Rogers admits baseball bat and strangulation attacks and initially attributed them to psychiatric medication failures



med. Now the throttling.
I think the med is
ceasing to work. So I
got an appt w/Kuhlengel
for Monday.

Text message from Ann M. Rogers M.D. of the Hershey Medical Center
to her husband, Robert P. Bauchwitz M.D., Ph.D. of Hershey, PA on July 5, 2017.

II. Ann Rogers acknowledges initiating violent fights with her husband

"I was constantly told not to start fights, not to escalate fights, not to be hypersensitive, not to walk away, not to get physical - in effect, to be only the person you needed me to be..."

From: [AnnRogers\(amrogers@luxsci.net\)](mailto:AnnRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

"And to come back to "emotional modulation" – how reasonable is it that whether or not I actually started an argument, I had to be the one to "de-escalate"??"

From: [AnnMRogers\(amrogers@luxsci.net\)](mailto:AnnMRogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Monday, September 18, 2017, 7:13 PM EDT

Very reasonable for a simple reason: because Ann Rogers had a consistent behavior over decades as the initiator and escalator of marital conflict.

But even so, I most often did de-escalate. Even in the extreme cases, e.g. immediately following the baseball bat and strangulation attacks in 2016 and 2017, I de-escalated by not responding violently.

III. Ann M. Rogers M.D. of the Hershey Medical Center referencing what she termed her "outbursts" at work and against her husband, as well as possibly increasing substance abuse issues

"After a time, I stopped seeing her [psychiatrist Kuhlengel]. Then more recently (2 years now?) I started seeing her again because of my angry outbursts at work and with you.

Perhaps you noticed I started spending more time in my office. Perhaps you noticed I was drinking more, sometimes to excess, and sometimes taking sedatives. I was sleeping a lot more.

From: AnnRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

"I will tell you that I did not spend much time talking to her [psychiatrist Kuhlengel] about you because first of all, she is not really a "therapist." She mostly does medication management for diagnoses that are made based upon symptoms.

What I described to her were my outbursts at work, my severe anguish about Linda's death (ongoing), extreme fatigue, hopelessness, near-suicidal agony both about Linda but more recently about the Jeremy situation muscle pains of unclear origin, and regular feelings of anxiety."

From: AnnRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Monday, September 18, 2017, 7:13 PM EDT

"Linda" was a patient at the HMC who was also a nurse at the Hershey Medical Center. Linda died during surgery by Ann Rogers in 2009. This appeared to be a significant precipitating factor for the descent into psychiatric illness by Ann Rogers.

"Jeremy" or "J" is our younger son, Jeremy Rogers Bauchwitz, who seemed to have a serious behavioral/psychiatric breakdown at the start of his junior year at Johns Hopkins University.

Appendix

A. What Ann Rogers acknowledges that she did tell her psychiatrist, Kuhlengel about her husband was:

On Sep 16, 2017, at 3:41 PM, Robert Bauchwitz <rbauchwitz@yahoo.com> wrote to Ann Rogers <amrogers@luxsci.net>:

"I found some notes I made about your telling me (on April 1, 2017) of one of your visits to [psychiatrist] Dr. Kuhlengel. You said that you had given her a list of what was valuable about me to you:

- 1) that I was a very good father;
- 2) that I get things done around the house and did househusband stuff;
- 3) that you and I were best friends;
- 4) that you and I laugh a lot together;
- 5) and that we have a shared history.

Your complaints were that I was unhappy that you were not apparently helping me to emotionally regulate (the instance at that time apparently had something to do with our accountant, Gina DeFlavia). You said that you told Kuhlengel that I had a "tendency to plan" and that you had a "tendency to escape", at least at home. You were "overwhelmed" sometimes by my "loudness". I get that. But I am the same somewhat loud man you married. Nevertheless, I want to adjust with the circumstances".

To the preceding, Ann Rogers replied on Monday, September 18, 2017, 7:13 PM EDT:

"Your report of what I told Kuhlengel about you was accurate."

IV. Ann Rogers acknowledged that her husband had considered her baseball bat attack potentially lethal

In this later message she also attributes her attack to a generalized loss of self-control, not just sporadic psychiatric medication failures:

“The thought that I brandished a baseball bat for any reason other than your DEMAND that I stay and take it and listen to you shout ... You’re afraid I’m going to kill you?? Why the fuck didn’t you ever modulate YOURSELF”

From: [AnnMRogers \(amrogers@luxsci.net\)](mailto:amrogers@luxsci.net); To: rbauchwitz@yahoo.com;

Date: Monday, September 18, 2017, 7:13 PM EDT

Note: The conversation in which I objected to Ann’s leaving occurred almost a year AFTER the August 2016 baseball bat attack, so she is not correct on this point, nor is she on many other claims, as she has shown herself to be highly dishonest when she wishes to be. I attempt only to present what I believe to be party admissions, e.g. in this case that she did wield a baseball bat and understood that I felt she was serious about trying to kill me.

V. Ann Rogers' defense regarding repeated statements to her husband that she was thinking of poisoning him

"Further, your need for regular reassurance that I wasn't going to poison you or murder you in your sleep was coming more and more often. Is THAT why you started cooking dinner? Hmm... And yes, it did lead me to give sarcastic answers (what Mad Magazine calls "snappy answers to stupid questions.")"

From: [AnnMRogers \(amrogers@luxsci.net\)](mailto:amrogers@luxsci.net); To: rbauchwitz@yahoo.com;

Date: Monday, September 18, 2017, 7:13 PM EDT

Here, the "defense" of Ann Rogers is that her threats were "sarcastic" "snappy answers". They absolutely were not delivered that way.

Given that Ann Rogers' first telling me she had been thinking of poisoning me was made at the same time as she told me of her thoughts of murdering me by baseball bat, which was later shown to be far from an act of sarcasm, it seems highly unreasonable that anyone would not take her other threats seriously. This includes repeated arguments that it would have been appropriate to withdraw her disabled father's medications.

Regardless, even if I were mentally ill, such taunting would be ABUSE. It still shows her violent transgressive nature. How is such behavior consistent with being a doctor?

VI. Transition from weapons attacks by Ann Rogers against her husband to threats against her father

“It makes what has occurred in the last year all the more starkly disturbing. I may have indeed changed and become more suspicious and less trusting, but it is very obvious that all happened after you attacked me with a baseball bat on August 9, 2016 and put me in fear of my life. I then canceled my life insurance, I refused to go on a trip to Puerto Rico with you, I questioned you about Lou DiMarco whom I had never had any concern with before, etc. By January, 2017, I had gone along with your theory that it had been a Cymbalta failure that was at issue. We then had a few more good months, with a wonderful trip to the British Virgin Islands to store in our memories.”

From: [RobertBauchwitz\(rbauchwitz@yahoo.com\)](mailto:rbauchwitz@yahoo.com) To: amrogers@luxsci.net

Date: Monday, September 18, 2017, 11:35 PM EDT

“I thought that the trip to England [in June of 2017] had also been fantastic, until that fateful morning that you had to bring to my attention your plans or thoughts or decisions about Charlie’s medications and end-of-life treatments. I thought we were on the way back to health, but it was not to be. The strangulation attack on July 3, 2017, was again attributed to a Cymbalta failure. You again showed insight and quickly had the issue addressed. So until August 20, 2017, I still thought things were going to be fine. But that is not the way it worked out, did it.”

From: [RobertBauchwitz\(rbauchwitz@yahoo.com\)](mailto:rbauchwitz@yahoo.com) To: amrogers@luxsci.net

Date: Monday, September 18, 2017, 11:35 PM EDT

“Here is the reality that you have very clearly confirmed in your August 20 interrogation of me. You explicitly acknowledged that you had stated to me in June in London that you and your mother had “decided”, as I wrote it in my notes, or discussed, or considered - **WHATEVER - withdrawing your father’s meds when he and your mother returned to Santa Rosa.** You and I then argued repeatedly about the ethicality about doing so. ... So for you to sit there and write that I am insane for even considering that Ann Rogers might do what she suggested she was at least not only considering doing but argued repeatedly about the appropriateness of doing is plainly nuts.”

From: RobertBauchwitz(rbauchwitz@yahoo.com) To: amrogers@luxsci.net

Date: Monday, September 18, 2017, 11:35 PM EDT

2017-1066 EP
Robert Bauchwitz

August 28th 2017

On Sunday August 27th, 2017, Robert Bauchwitz contacted Signal Zero Executive Protection in regards to a request for a protective detail. Mr. Bauchwitz stated that recent incidents between he and his wife, Ann Rogers, had reached a boiling point due to a death in the family, and there were details surrounding the death that were suspicious. Mr. Bauchwitz also explained that his wife has displayed violence towards him in the past and that he is afraid she would continue with the same. He went on to say that he wanted to preserve items of record inside his home and move them to a storage facility and needed our assistance.

Mr. Bauchwitz stated his wife, Ann Rogers M.D. FACS, Director of Surgical Weight Loss, Penn State, Milton S. Hershey Medical Center was in California and she would be flying home Monday August 28th, 2017 at approximately 9:30 pm, and wanted a protection officer at his home before she returned. Signal Zero drew up a contract and Investigator Conner (hereby referred to as "I") responded to Hershey, PA. arriving at noon on Monday August 28th 2017. Upon arrival, I spoke to Mr. Bauchwitz who said he believed his wife came into the house sometime in the early morning hours and took several of the items he had set aside to be taken to the storage facility. Mr. Bauchwitz believes it had to be the early morning hours because he was up until approximately 2:00am.

He stated these items were important and many contained records, i.e. laptop computer, iPad, paper documents, etc. I asked Mr. Bauchwitz if the surveillance system was working in the house, he stated it did, at which point we went to the basement to observe the video. Mr. Bauchwitz and I watched the video feed and saw that at approximately 6:50 am Monday August 28th 2017, we could clearly see one white male and two white females enter through the front door to the location and begin removing items from Mr. Bauchwitz' home. At first Mr. Bauchwitz could not identify one of the females as his wife, Ann Rogers, but after the video was saved and transferred to a computer, he was able to see that one of the females was his wife. He could not identify the other two individuals.

I suggested to Mr. Bauchwitz that he call the Police to have a Burglary report taken, Mr. Bauchwitz agreed and called the Police. Once the call was placed, approximately 20 minutes later an Officer Walters called back and Mr. Bauchwitz began to explain the situation. Officer Walters cut into the conversation and told Mr. Bauchwitz that his wife Ann Rogers called the station early this morning (08-28-17) and stated that her husband Mr. Bauchwitz would be calling about a Burglary at their home. She went on to tell the officer that she was removing items from the home. Officer Walters told Mr. Bauchwitz that he would take a report, but there wasn't much they could do because it was a civil matter. The officer did make an addition to the report of violent physical attacks by Ann Rogers against him in the past year. The report number is as follows-C17-0005059.

At this point, Mr. Bauchwitz conveyed to me that he realized that his wife had basically used a ruse to gain articles from his home, many of them possibly being articles that could contain records surrounding the facts of his Father-in-Laws death.

Mr. Bauchwitz asked me what else could be done and how to follow up. I told him I could put a report together from his notes but I would need to know in detail what has conveyed to him by everyone in his family and any information he had from the doctors.

My training and experience in Law Enforcement includes 27 years with the Los Angeles County Sheriff's Department where I worked numerous details including Station Detective, Vehicle Theft Detail Detective, Cargo Theft Detective and Counter Terrorism Detail/Joint Terrorism Task Force.

I have reviewed all of Mr. Bauchwitz' notes, texts and emails to and from his wife from Wednesday, August 16, 2018 through today, Monday, August 28, 2017, as he provided them to me. I have also read notes by Mr. Bauchwitz he made in June 2017 based on concerns he had raised with his wife at that time about what he understood from her to be a decision that she and her mother had made to discontinue her ailing father's life-sustaining medications.

It is clear that Mr. Bauchwitz had been in the presence of his father-in-law, Charlie Rogers in May and June. It was Mr. Bauchwitz' strong impression that his father-in-law wanted to live and that Mr. Bauchwitz found him of sufficiently sound mind and ability to socialize that he did not understand how his father-in-law's medications could be removed without his agreement.

After those arguments with his wife in June, his father-in-law's strength and mental function seemed to improve, and text messages indicate that Mr. Bauchwitz had good relations with his wife and in-laws through Saturday, August 19, 2017.

As far as Mr Bauchwitz could tell, and as documented in group emails among the in-laws including Mr Bauchwitz, as well as in family conference calls, all of which Mr Bauchwitz participated, Mr. Rogers' health seemed to generally improve through to the time of a doctor's appointment on August 11, 2017. A text message from his mother-in-law after the August 11, 2017, seemed to indicate favorable progress with Mr. Rogers' health. Mr. Bauchwitz would later (August 20) come to question a comment made in his mother-in-law's August 11 text message: "no more pills". (He was told on August 20 that it meant no "additional" pain pills.)

After that doctor's appointment, Mr. Rogers' health then quickly declined and he passed away at about 4 AM Pacific Time on Thursday, August 17, 2017.

It is clear from their text messages prior to and after the passing of his father-in-law that Mr Bauchwitz had very good relations with his wife and her relatives. He did not harbor any suspicions as far as I could tell from the written record. He reports that he was told by his wife that a "\$9000" autopsy would be performed on his father-in-law in order to determine his cause of death and try to answer some other questions about his medical conditions. Mr Bauchwitz understood that the type of complete autopsy his wife had mentioned would include an examination of his father-in-law's medications ("toxicology"), which he believed was fairly routine in trying to establish cause of death. It seems apparent from the record that Mr Bauchwitz had no concerns with the plans related to him by his wife. He did, however, wonder if the price had to be so high.

Mr Bauchwitz did Internet searches on Saturday, August 19, which led him to learn of an autopsy firm, which would do a complete autopsy with toxicology for less than half the price his wife had mentioned. He relayed the information to her.

It is the events which then followed which led things to rapidly unravel.

On Sunday, August 21, 2017, the record shows that Mr Bauchwitz' wife informed him that the autopsy had been already occurred, rather than as planned for more than a week later, that it had been reduced from a complete autopsy to one only of the chest, and that no toxicology had been performed. Also surprising to him was that the firm that had performed the partial autopsy had been the one that he had found on the Internet and that he had mentioned to her. That firm had told him that they had no records of an autopsy scheduled for his father-in-law and that from the much lower price they had quoted him, he did not believe they were the same "\$9000" firm that his wife had mentioned previously.

At first, his wife, who is a physician, implied that she had not been consulted by her mother before making or changing the autopsy plans. She also claimed in text messages that she could not persuade her mother to do the complete autopsy (and toxicology) as had purportedly been planned. It is clear that Mr Bauchwitz found all of this troubling. His mother-in-law had essentially never, as far as he could remember, argued against the medical instructions of her daughter, and also always sought out her daughter's advise on what to do in medical matters.

Mr Bauchwitz and his wife then had a telephone conversation (8-20-17) from which he made detailed notes. As a professional investigator, I found that conversation very

troubling. At first it seemed that Mr Bauchwitz' wife was still in agreement that the full autopsy with toxicology should be performed, but that she would have to arrange it for the following day.

But immediately after that, his wife declared that Mr Bauchwitz' interest in having a toxicology test had been taken by his mother-in-law as being an accusation that he believed she had "poisoned" her husband. I had to wonder whether an innocent person would take it that way.

Mr. Bauchwitz consistently denied that he made any accusations throughout the conversation. I do not see why the wife had to make such an inflammatory comment rather than just do the test if everything had been above board.

The notes of the phone call show that Mr Bauchwitz' wife then began relentlessly demanding that her husband "vocally" state a "mechanism" by which she or her mother could have stopped her father's medications. Mr Bauchwitz steadfastly refused to provide such a mechanism, stating that he did not know it and that he was not accusing anyone of anything. He did not see why it would be such a problem to perform the test as it only cost \$650.

His wife then told Mr Bauchwitz "If you are not going to come right out and say it, I won't make it happen." It seems very clear that the "it" was the toxicology test. I saw this demand by Ann Rogers as her trying to coerce a potentially false allegation from him.

I was also particularly struck by the outrage of Ann Rogers over a \$650 Toxicology report, which all parties should have wanted for Charlie Rogers, to possibly help determine why he died. I did not see why this request was taken with such outrage, particularly since Ann Rogers, Mr Bauchwitz' wife, seemed to have been supporting this test in the first place.

Ann Rogers hung up on her husband during the call. Since he had resisted throughout the call providing any accusatory "mechanisms", he understood from her statements that she would not request the toxicology test.

I seriously wonder from what I have read that Ann Rogers really ever had any real desire to order the toxicology test. I have to wonder that if Mr Bauchwitz had provided his wife with a mechanism whether she would have used that as an excuse not to perform the test because it would have been so unlikely. She admitted that she thought her husband nearly 100% would not believe whatever mechanism she was trying to coerce from him: "I want

to hear vocally from you what the speculation is, even though you think it is 99.9% not possible.”

After that, Ann Rogers became largely uncommunicative with her husband, though she seemed at times to be acting in a deliberately provocative way, a “prod and run”, by cutting off text and other conversations. Through one of her brother’s interventions as suggested by text messages, she did write a brief email to Mr Bauchwitz on Monday, August 21, 2017, to state that a complete autopsy with toxicology would be performed, but that may have only occurred because after Ann Rogers hung up on her husband on Sunday, he left a voice message for her stating that he was so upset that if the complete autopsy with toxicology were not ordered the next day, he would send his notes from June 2017 of their arguments about withdrawing her father’s medications to the medical examiner.

I was also very troubled by Ann Rogers’ deceptive behavior in which she dishonestly told her husband by text message that she would finally speak to him when she returned to their home today, Monday, August 28, 2017. She stated by text message that she would be arriving about 9:30 PM Eastern Time. As I reported above, review of video evidence indicates that she instead entered the home in the early morning hours that same day and made no attempt to speak with her husband.

In my view, Ann Rogers had used a ruse to gain entry in the home of Mr. Bauchwitz and abscond with items she knows possibly display information that could be damaging to her.

In seeing all the facts, the identifiers I’m picking up are, someone is not being truthful.

I believe that Ann Rogers was not only absconding with potentially important records relevant to her father’s medical treatments and her communications with her mother, but also that she was moving out to end her marriage of 27 years.

Ann Rogers is willing to do all of this at the price of a family and a husband that still loves her. How could that possibly be worth a \$650 toxicology test?

There are too many things pointing in one direction. Maybe Charles Rogers did not need to die when he did. And because Mr. Bauchwitz asked questions and requested a \$650 Toxicology report he is being severely harmed and in my view abused.

It is this Investigator's professional opinion that there is very likely more to this case, the outrage and the responses Mr. Bauchwitz received just don't make sense, unless you're trying to hide something.

There is much that needs follow up; my recommendation is for law enforcement to take a closer look, whether that's the Santa Rosa Police Department or the Sonoma County Coroner.

Zack Conner
NCPPS Lic# 5254

Background to a statement on the passing of

Charles T. Rogers of Santa Rosa, CA

The background presented in this document is associated with an earlier written statement by me, Robert Bauchwitz, which had been intended for court hearing on August 6, 2020, but which was actually filed with the court on January 4, 2021. These documents are filed in PACES Case No. 640116732, docket number 01336-DR-17, which is a companion support case to 2017-cv-6699-dv in Dauphin County, Pennsylvania. The original statement was made to address the passing of my father-in-law, Charles T. Rogers of Santa Rosa, California, on August 17, 2017, and its apparent direct precipitation of an unexpected abandonment of our marriage by Ann M. Rogers, M.D. of the Hershey Medical Center. The background presented here is being added to a Second Declaration of March 2021 in the same case, PACES No. 640116732.

The earlier statement to the court did not specify most of what I witnessed, namely, 1) that Ann had at times during our marriage a significantly hostile attitude towards her father based on what she claimed were negative statements about her he had made (see images, appended), 2) that despite a decline in his health in early 2017, her father (my father-in-law) Charles T. Rogers, clearly stated to me and others in May of 2017 and thereafter his desire to continuing living, 3) that he remained mobile and able to speak with others until near or at the time of his death, 4) that there had been cross- charges of abuse between Ann and her father made to me in late May and early June 2017 and 5) that Ann had further expressed to me a “rage” towards her father in mid-June 2017 after he criticized her in my presence for mistreating him by making him take an international flight from London, England to Hershey, PA. Furthermore, I observed that Ann’s mother, (my mother-in-law and Charles’ wife), Phyllis C. Rogers, also of Santa Rosa, CA, did on multiple occasions after in the spring of 2017, after her husband’s having had major surgery and spent significant time in a surgical intensive care unit, state that he, Charles T. Rogers, was still going on a previously planned, multi-week trip to England “even if he comes home in a box” and that this would be “his last trip”.

Beyond observations and receiving allegations from both sides, I became further

involved in the matter on or about June 11, 2017, when Ann first expressed to me thoughts of or a decision by her and her mother to withhold her father's medications, the sudden reduction or lack of which could have imperiled his life. It was the latter thinking to which I had objected at that time and on two further occasions in June 2017. Elsewhere in the court record, testimony was provided of Ann's on several occasions near the end of the marriage having told me that she was thinking of poisoning me, which given her physical attacks against me as noted in the August 6, 2020/January 4, 2021 statement, had credibility and caused me substantial stress. Upon information and belief, the health of Charles Rogers continued to improve after the trip to England, through the date of a physician's examination on August 11, 2017, after which I and others received a group message from her mother, Phyllis C. Rogers, stating within it the phrase "no more pills". Another message was received on or about the next day, August 12, 2017, indicating that the health of Charles T. Rogers had declined. He passed away just over five days later, early in the morning of August 17, 2017 in Santa Rosa, CA.

Because of Charles Rogers' physical and mental abilities, and his desire to live as he stated it to me, I continue to dispute that this might be reasonably seen as a case of withdrawing medications from a loved one according to their wishes, such as might be expressed in a living will. (Ann referred to discontinuation of her father's medications as "comfort care", which I disputed.) To my knowledge there was no debility of my father-in-law that rose to the level that is normally at issue in living will documents. I also note that the primary medication at issue, the beta-blocker metoprolol, has a form of "black box" warning against its rapid withdrawal, (as death might result within one to seven days from a spike in blood pressure). Such withdrawal could be particularly dangerous in a person who had just nearly died a few months earlier after surgery for an aortic dissection, which itself is associated with hypertension (for which Charles T. Rogers had been treated for years).

It was under these circumstances on August 17, 2017, that Ann Rogers did spontaneously express to me a plan by her mother and herself to get a full autopsy and toxicology performed of her father, who had passed away unexpectedly just hours earlier.

Addendum

Ann Rogers acknowledged that it was she who had significant problems with her father, including on his final trip to England:

"I had a tough time with my father both growing up and as an adult. I also had a tough time on the trip."

From: AnnRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

"My brothers and I (and my mother to be sure) all had complicated relationships with Charlie. ... It was cathartic to have the time in Santa Rosa over those days and weeks after he died to sit and talk about each others' perceptions of things that had happened, how we were treated similarly or differently, and why his treatment of us and my mom was so erratic."

From: AnnRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

Yet she also acknowledges that I had a positive relationship with both of her parents:

"[Our older son] Benjamin read what you had written [eulogizing my father-in-law] and everyone agreed it was very nice. ... I know you've honored and enjoyed my parents, so it was important for me to share all this with you since it didn't work out that you would be there."

From: AnnRogers(amrogers@luxsci.net) To: rbauchwitz@yahoo.com
Date: Saturday, September 9, 2017, 8:52 PM EDT

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

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

CERTIFICATE OF SERVICE

I, Darren J. Holst, Esquire, counsel for Robert P. Bauchwitz, Plaintiff in the above-captioned action, hereby certify that a true and correct copy of the foregoing Plaintiff's Response to Defendant's Motion for Reconsideration of Petition to Terminate or Suspend Alimony *Pendente Lite* was served upon James R. Demmel, Esquire, counsel for Plaintiff, Ann M. Rogers, via email and by depositing same in the United States mail, first class, on March 30, 2021, addressed as follows:

VIA E-MAIL:

jdemmel@newcumberlandlawyer.com

AND REGULAR MAIL:

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

Date: 3/30/2021



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 Plaintiff, Robert P. Bauchwitz

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

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.

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

May 14, 2021

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

May 14, 2021

A handwritten signature in black ink, appearing to read '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

May 14, 2021

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.

Re: Robert P. Bauchwitz

May 14, 2021

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

May 14, 2021

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

030417

AMR "I have never
heard anything about
filing a complaint to DATED;
over, over, "

Harp. tells the employees what
studies they not know;
"And it states. The year
they (TIC) is worried about
"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.

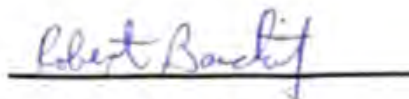
44. Nevertheless, Wife would continue to distort the record on educational payments by claiming that her parents had also paid into 529 funds. Husband followed the children's 529 funds and actually knows of no direct funding to any 529 set up by Wife's parents. These did not exist, to the best of Husband's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



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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.

Employability and Earning Capacity Evaluation on Robert Bauchwitz

September 21, 2018

Page 8

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:

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

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

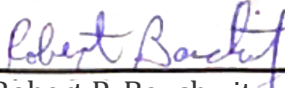
PROOF OF SERVICE

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
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 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

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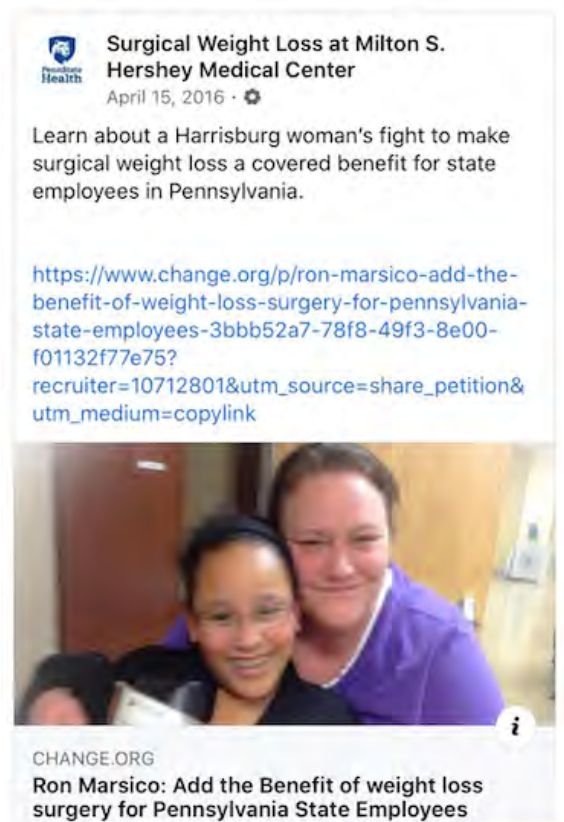
**MOTION OF INQUIRY
 RE
 RELATIONSHIP TO OPPOSING PARTY**

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:



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 ...

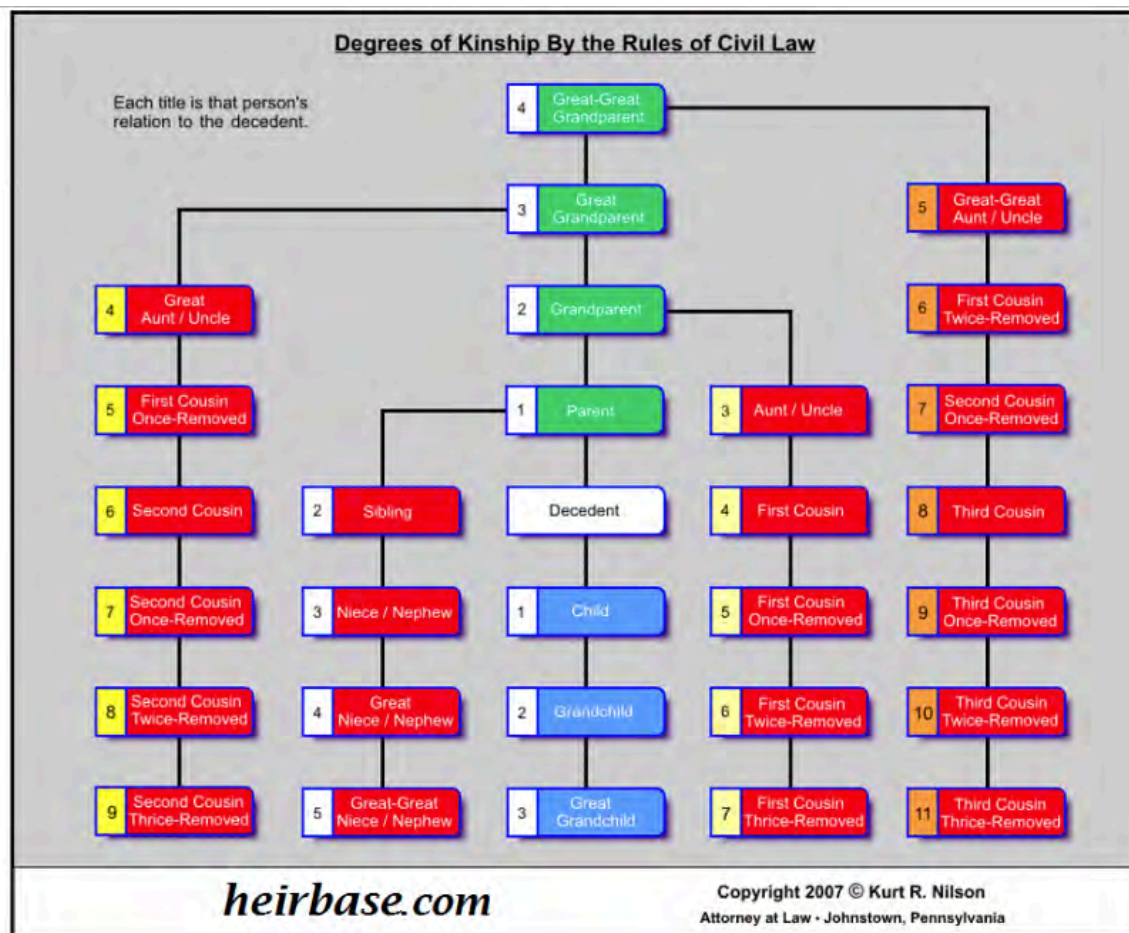
Over the years, Rogers has met with state and national legislators, the physician general of Pennsylvania and Gov. Tom Wolfe. Each year, she makes presentations to the Pennsylvania Employees Benefit Trust Fund [PEBTF] about the safety, effectiveness and health benefits of weight-loss surgery.”

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

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pro se

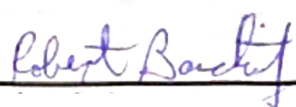
IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ,)	
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)	
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



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