# Transcript of the Testimony of
# **Kristin Kucsma, M.A.**

**Date:** January 27, 2017

**Case:** Jose Bauta v. Greyhound Lines, Inc., et al.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF THE STATE OF NEW YORK

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JOSE BAUTA,

Plaintiff,

-against-

GREYHOUND LINES, INC., SABRINA ANDERSON, AKOS GUBICA, KAROLY GUBICA, CAV ENTERPRISE, LLC, FIRSTGROUP AMERICA, INC. and FIRSTGROUP PLC,

Defendants.

Docket No. 14-3725(FB)(RER)

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88 Pine Street
New York, New York

January 27, 2017
2:54 p.m.

DEPOSITION of KRISTIN KUCSMA, M.A., taken pursuant to Notice, before Toni Freeman Greene, a Notary Public of the State of New York.

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---------- I N D E X ----------

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--------- INFORMATION/DOCUMENT REQUESTS ---------

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---------- E X H I B I T S ----------

| DEFENDANT | DESCRIPTION | FOR I.D. |
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| Exhibit 1 | Ms. Kucsma's File on Jose Bauta | 5 |

(EXHIBITS TO BE PRODUCED)

K R I S T I N K U C S M A , M . A . ,
the witness herein, having been first duly sworn by a Notary Public, was examined and testified as follows:

(Defendant's Exhibit No. 1, Ms. Kucsma's File on Jose Bauta, marked for identification as of this date.)

THE REPORTER: Would you state your full name, spell your last name and state your address for the record, please.

Kristin Kucsma, K-U-C-S-M-A, 293 Eisenhower Parkway, Suite 190, Livingston, New Jersey 07039.

EXAMINATION

BY MR. BARMEN:

Q. Ms. Kucsma, my name is Brad Barmen, we've just met. As you know, I'm one of the lawyers that represent the Defendants in the action brought by Mr. Bauta, currently pending in the federal court in Brooklyn.

We are here to take your deposition today, correct?

A. Yes.

Q. I know from a little bit of research that this isn't your first deposition.

A. That is correct.

Q. So, you know the rules, I'm not going to run through them. But, I do like to tell deponents that, if I ask you a question that's unclear or that you don't understand, please tell me that. Okay?

A. Yes.

Q. And I can assure you that will happen in this deposition. Because, I've been doing this for awhile and I still don't understand this stuff.

The point, though, is, if I ask you a question and you don't understand it, you need to tell me. Okay?

A. Yes.

Q. If you answer my question, I'm going to assume you understood it, I'm going to rely on the answer. Is that fair?

A. Yes.

Q. I'm going to try and move through it as quickly as we can, but I do got to get to what I got to get to.

In the meantime, if you want to take a break for any reason, just let me know and I'm happy to accommodate that. Okay?

A. Sure.
Q. I would just ask that, if there is a question on the table, you answer that question before we break. Is that fair?
A. Yes.
Q. Okay. What did you do in preparation for your deposition today?
A. I briefly reviewed my file.
Q. Which is what Mr. McElfish presented to me when you guys came in, sitting on the table as Exhibit 1?
A. Yes.
Q. Is there any parts of your files that are not contained here in what has been marked as Exhibit 1?
A. The only couple of items that may not be included in Exhibit 1 might be one or two communications between our office and counsel's office and possibly an invoice or two. I bought a statement of compensation with me rather than the individual invoices.
Q. I didn't see that in here, the statement of compensation. Maybe I just missed it.
A. It should have been here. Ah. It

is. Yes.

Q. Oh, okay. Did you meet or speak to Mr. McElfish prior to the deposition today?

A. I did arrive today about 2:20, perhaps, and I did meet with Mr. McElfish.

Q. Did you discuss any issues regarding the deposition of Dr. Lattuga this morning?

A. Not specifically. No. I was aware he was deposed this morning, but that's all.

Q. Have you ever worked for Mr. McElfish or his firm before?

A. I don't believe so. No.

Q. Sobel & Tinari -- or is just Sobel Tinari?

A. Yes. Sobel Tinari.

Q. What is your position there?

A. I am the managing director and senior economist of the group.

Q. How big is the group?

A. At present we have about 16 employees.

Q. And what percentage of the business of Sobel Tinari is serving as consultants in litigation?

A. I would estimate that about 90 to

95 percent of the work we do involves working with attorneys on litigated matters.

Q. And the work that you do specifically, what's the breakdown, plaintiff versus defendant?

A. I would estimate about 30 percent of the work we do involves working with defense attorneys, which means about 70 percent of the work I do involves working with plaintiffs' counsel.

Q. Have you ever been retained by Marshall Dennehey before?

A. It's possible, but I don't recall as I sit here today.

Q. Do you recall ever being retained by Lewis Brisbois?

A. That also is possible, but I don't specifically recall as I sit here today.

Q. How many active cases do you have open currently?

A. I have absolutely no idea.

Q. And that's fine. I should have probably included up front that, if I ask you something like that, where I'm asking for a number, I don't expect you to give me a hard

number. An estimate is fine. Just let me know what's your best estimate.

A. Sure. And that specifically I can't even estimate. I have no idea. I can tell you that I review, on average, 550 to 650 cases each year, but I couldn't tell you, as I sit here today, how many, technically, are open.

Q. Got it. That's fair.

Have you ever actually met Mr. Bauta?

A. No.

Q. Have you ever spoken to Bauta?

A. No.

Q. Is it fair to say that all the information you reviewed in this case came from Mr. McElfish or his office?

A. I believe that is correct. Yes.

Q. Do you have any type of transmittal letter or cover that indicates the initial information that you were sent?

A. I may, but I did not bring it with me today. I apologize.

RQ

Q. Would you please, at some point, get that and provide it to Mr. McElfish to provide

to me?

A. Sure.

Q. Thank you.

What was your assignment in this case?

A. I was retained in this case to calculate and evaluate the economic losses suffered by Mr. Bauta as a result of an injury.

Q. You certainly have no opinion on whether or not Mr. Bauta was actually injured, fair?

A. I'm certainly not here to offer any sort of medical or vocational opinion. That's correct.

Q. Do your ultimate opinions on the losses rely on certain assumptions made by other experts in the case?

A. That I couldn't say. I simply did, in this particular case, rely on the expert opinion of a vocational expert and life care planner. How he arrived at his opinions I couldn't say.

Q. Did you rely on Provder?

A. Yes, I did.

Q. You certainly have no opinion on

whether or not Provder is correct in his opinions?

A. I'm not a life care planner, not a vocational expert, so I cannot offer any opinion about his opinions in that regard. That's correct.

Q. So, the answer to my question, then, is yes, correct?

A. Correct.

Q. Did you have the Defense life care plan to review prior to finalizing your report in this case?

A. I don't believe so. No.

Q. Did you have the Defense vocational report to review prior to finalizing your opinions in this case?

A. I don't believe so. No.

Q. Did you have anything other than the report of Fred Goldman?

A. In terms of documents from the Defense?

Q. Yes, ma'am.

A. I believe Dr. Goldman's report is the only Defense-related document I reviewed.

Q. You are aware, though, that there

was a Defense life care plan?

A. I believe there was reference to that in Dr. Goldman's report. Yes.

Q. And you're aware there was a Defense vocational IME?

A. Yes.

Q. From a Peter Capotosto?

A. Yes.

Q. And there are differing opinions in this case as to whether or not Mr. Bauta is capable of earning a living?

A. My understanding is that the two vocational experts in this matter have different opinions in that regard. Yes.

Q. And certainly you're not in a position to say who's right or who's wrong, relative to the vocational experts?

A. I'm not a vocational expert, not the trier of fact, so, that's correct. I could not say one way or another.

Q. When you are retained as an expert to do an objective evaluation and render an opinion, is it beneficial to have as much information at your disposal as possible?

A. Not necessarily. I certainly need

as much relevant information as is available. Yes.

Q. And honest, truthful and correct information?

A. That's correct.

Q. You reviewed Mr. Bauta's deposition transcript?

A. I did.

Q. After the initial information was provided to you by counsel, did you request any additional information?

A. I don't recall specifically whether I requested the tax returns. We do have a standard inquiry e-mail that we typically send out and one of the things we request in that e-mail is the tax returns.

They certainly were provided to me subsequently to the original packet of documents and I did review them.

Q. As we go through this, especially when we get to your report, please feel free to reference whatever you need to. It's not a memory test.

A. Sure.

Q. Your report is dated February 4,

2016, correct?

A. Yes.

Q. Are there any preliminary drafts of this report prior to the final product being distributed?

A. No.

Q. In your file there's a letter of May 9th, 2016 and it indicates that you reviewed federal income tax returns for Mr. Bauta for the years '09, '10, '11 and '12, right?

A. Yes.

Q. Why did you review the income tax returns after you had already issued your report?

A. It was not necessary for me to review the tax returns in order to issue my original report.

As I indicated a moment ago, the tax returns were provided to me subsequent to my authoring the original report; since they were provided to me I certainly didn't review them. If I had determined that I needed to revise my report, I would have.

Q. Were they provided to you at your

request?

A. Again, I don't believe I specifically requested them. As I said, typically, when we're retained, we have a very standard inquiry e-mail we send out -- it's not customized for any particular plaintiff -- and in that e-mail we do typically do request a variety of documents. And one of those documents is tax returns.

Having said that, those tax returns are not necessarily necessary or relevant for every analysis.

Q. Right. Because you have the W-2s, correct?

A. In this case I had the vocational opinion of Edmond Provder and that ultimately is what I used as a basis for my calculation of lost earnings.

Q. Again, it's possible I missed it. I did not see that initial letter from you, the standard letter you're talking about that goes out to the counsel that retains you saying, "Provide me X, Y and Z." Is that in here?

A. That would be with -- if there was some cover letter that came in from counsel

originally, those two would be together. And I do apologize, I didn't bring them today.

RQ

Q. Okay. You don't have to apologize. But if you would get that, as well, to Mr. McElfish --

A. Sure.

Q. And I'm sure, when this is over, you're going to want to read the transcript and that will be a reminder to get those things to Mr. McElfish.

A. Sure.

MR. BARMEN: And I'll send a follow-up e-mail to you, Counsel.

Q. Let's talk a little bit about your report. Am I correct to understand that your report is your opinion as to the total dollars in economic loss Mr. Bauta has suffered as a result of the accident at issue in this case, separate and apart from pain and suffering, that sort of thing?

A. As of February 4th, 2016 that is correct. Yes.

Q. All out-of-pocket expense reduced to present value?

A. I'm not sure I follow that question.
Q. Okay. Thank you for telling me that.
You've got an opinion as to his past lost wages?
A. Yes.
Q. You've got an opinion as to his future lost wages?
A. Yes.
Q. And you've got an opinion as to the cost of his necessary medical care?
A. Yes.
Q. Where does your understanding of his necessary medical care come from?
A. My calculation of the money needed to fund Mr. Bauta's lifetime care is based on the life care plan that was authored by Edmond Provder.
Q. But, relative to Mr. Provder's life care plan, what did you do to come up with the number?
A. In order for me to calculate the number, I started by examining Mr. Provder's life care plan, and in his life care plan he provided me with three basic sets of

information; an itemized list of the different categories of care that Mr. Bauta will require, how often Mr. Bauta will require each element of care and also how much that care cost in 2015.

What I then did was two things. Number one, I calculated how those costs will increase each year over Mr. Bauta's remaining life expectancy, and then, in each and every year I also reduced the future costs to present value.

I then summed up the present value figures across all the years, all the components of care, to arrive at my single number.

Q. Explain to me the importance -- well, first, what is the discount rate and why is it important to consider when doing this kind of analysis?

A. In this particular case I used a discount rate of 4 percent.

Q. But, what is the discount rate?

A. The discount rate is an interest rate and in particular, for purposes of litigation, when we talk about the discount

rate we are talking about the average interest that a plaintiff, in this case Mr. Bauta, could expect to earn on any lump sum of money he receives and invests.

So, if Mr. Bauta received a lump sum award in this matter, he invested it, the question for me, as the economic expert, is, on average, how much would you earn each year going forward.

The answer to that, in this particular case, is, I would expect Mr. Bauta to earn, on average, 4 percent each year on any lump sum award he may receive and invest.

Q. Did you know Fred Goldman?

A. I have met him once. Yes.

Q. Do you know if you've ever been involved in cases with Mr. Goldman -- or Dr. Goldman?

A. I know that certainly I have worked on matters where he has been the opposing expert and I believe, in both respects, I believe I have been working with plaintiffs' counsel, as in this case, and Dr. Goldman has been working with defense counsel.

I also believe I've reviewed some of

the work he's done for plaintiffs' counsel when I've been retained by the defense.

Q. Do you believe that Dr. Goldman knows what he's doing?

MR. McELFISH: Vague and ambiguous. You may answer.

THE WITNESS: I'm not sure I understand that question.

Q. Is he competent to do these types of analyses?

MR. McELFISH: Vague and ambiguous. You may answer.

THE WITNESS: The only thing I can say is that in this particular matter I have reviewed Dr. Goldman's opinion and I certainly do not agree with some of the conclusions that he reached.

Q. And clearly he doesn't agree with some of yours, right?

A. That appears to be the case. Yes.

Q. But, two qualified professionals can look at the same thing and have different opinions, right?

MR. McELFISH: Vague and ambiguous. You may answer.

THE WITNESS: In my opinion the methods, the data and the assumptions that I have used are the most appropriate for this matter.

Q. On page 2 of your report at the bottom, on "Opinion of Economic Loss," you've got -- it's not even really a range. It's either almost 3.9 million or 4.3, roughly, depending on which scenario you accept. Is that fair?

A. That is correct, yes, which earning scenario we used.

Q. And the one being in the 21,000 for 2012 versus 40,000?

A. Approximately. Yes.

Q. Based on your review of the materials in this case, isn't it true that Mr. Bauta never made more than $19,000 in any year that you reviewed?

A. Based on my review of his W-2 wage and tax statements, that is correct. Yes.

Q. Is it reasonable, then, to do an analysis at a yearly income of more than double the amount of money he had ever earned in his lifetime?

MR. McELFISH: Vague and foundation. Go ahead.

THE WITNESS: Are you referring to the second scenario?

Q. Yes, ma'am.

A. That question that you just asked me is a question you would need to ask Mr. Provder. My calculation of Mr. Bauta's lost earnings, based on an annual salary of $40,040, is based on the vocational opinion of Mr. Provder.

Q. Okay. So, you just took the data, plugged in the data and came up with conclusions; is that fair?

A. For my calculation of lost earnings in the second scenario, I did rely upon Mr. Provder's opinion regarding Mr. Bauta's earnings capacity as a first-line restaurant manager or supervisor.

Q. And do you know what a first-line restaurant supervisor or manager is? Do you know what that means?

A. Specifically, off the top of my head, I couldn't say.

Q. What's your understanding of

Mr. Bauta's job the last time he worked?

A. Based on my review of the documents, Mr. Bauta was a restaurant shift manager at McDonald's from 2006 through October of 2012.

Q. Do you know if there's a distinction between a shift manager and a front line supervisor?

A. You would need to ask Mr. Provder in this case. He is the one that offered the opinion about first-line supervisor. You'd need to ask him specifically what he was referring to.

Q. You certainly have no opinion as to Mr. Bauta's life expectancy in this case, you were just using statistical tables, right?

A. I did rely upon statistical tables. Yes.

Q. So, you personally have no opinion as to his life expectancy?

A. I couldn't, as an economic expert. That's correct.

Q. How much money did Mr. Bauta earn in the year prior to the accident?

A. That I don't know. I had not been provided with any W-2s for the year immediately

preceding the accident.

Q. You did read his deposition, so you know he was out of work for that entire year prior to the accident, correct?

MR. McELFISH: Objection. Misstates facts in evidence, lacks foundation. You can answer.

THE WITNESS: My understanding is that he was unemployed for at least part of the period of time immediately preceding the accident. Yes.

Q. Do you have an understanding of anything he did to earn money during the year prior to the accident?

MR. McELFISH: Same objections. Go ahead.

THE WITNESS: I don't recall whether there was any discussion of that in his deposition transcript or not. As I said, I had not been provided with any W-2s for the year 2012.

Q. Is someone's employability and/or work history prior to an allegedly disabling incident relevant to your opinions?

MR. McELFISH: Foundation. You may

answer.

THE WITNESS: That, in this case, is a question you'd have to ask Mr. Provder. I did rely upon his opinion as a vocational expert in this matter.

Q. Do you know what Dr. Provder or Mr. Provder relied on to form his opinions in terms of Mr. Bauta's employability or earning capacity?

MR. McELFISH: Foundation. You may answer.

THE WITNESS: Specifically, no. I certainly reviewed Mr. Provder's reports, but again, you would need to ask him what the basis for his opinions are.

Q. In your report, on page 15, the paragraph that starts, "As noted in the life care plan" --

A. Yes.

Q. -- talks about the recommendations of Dr. Lattuga. Why do you reference Dr. Lattuga?

A. I believe Dr. Lattuga's recommendations were included in the life care plan of Mr. Provder.

Q. And do you know what Dr. Lattuga's role relative to Mr. Bauta is or was?

A. Off the top of my head, no.

Q. I'm back on page 3, subparagraph 4, when you're talking about expected working years. You state:

"As of the date of injury, first to Mr. Bauta's age, education, labor force activity, statistical cohort" -- did I read that right, "cohort"?

A. Yes.

Q. -- "have 23.7 years of remaining labor force activity."

Where did that information come from?

A. That information was provided in tables appended to the article that is cited on this page, specifically an article by Scoob Pica & Krueger (phonetic). The underlying data, though, is U.S. government data.

Q. Do you know if that article takes into consideration felons?

A. I would assume it does. And I say that simply because the data presented in this article is data based on the actual experience

of people in the U.S. population.

For this case I looked very specifically at the actual experience of 37, 38-year-old males with a high school diploma. That includes everyone; felons, non-felons and so on.

Q. Well, did you look at anything for 37, 38-year-old high-school educated males convicted of felony sex crimes and who are registered sex offenders and how that might affect their ability to earn income?

MR. McELFISH: Relevance. You may answer.

THE WITNESS: Did I look specifically at that? No.

Q. Did you know, when you were doing your analysis, that Mr. Bauta is a felon and registered sex offender?

A. There certainly was discussion in his deposition transcript of a conviction. I don't remember how much detail was provided, but I believe there was reference to an alleged rape. So, I was certainly aware of at least some of that. Yes.

Q. Could that affect someone's earning

capacity?

A. I suppose it's possible. But, it certainly is already reflected in my analysis, because of the fact that the data that I based my analysis on is based on the actual experience of the population, the population that includes, among other things, people that have been convicted of various crimes.

Q. Do you know why Mr. Bauta lost his job at McDonald's when he did?

A. I don't believe I know that specifically. No.

Q. Do you know what, if anything, Mr. Bauta was doing to try and find work in the year before the accident?

A. There was some discussion of this in his deposition transcript; I don't recall specifically what he said.

I believe he had gone on an interview or two, I believe he said he had submitted some applications online. But, there was some discussion in his transcript about the efforts he had made.

Q. I'm looking at page 4 and you have a box there breaking down Mr. Bauta's earnings

based on W-2s between 2007 and 2013, right?

A. Yes.

Q. The most he earned was in 2011, that's $18,931. Does that fall above or below what's considered poverty level?

A. That I couldn't say, as I sit here today.

Q. Same page, under sub 7, "Occupation and Employment," you state:

"At the time of the injury Plaintiff was reportedly unemployed, but searching for employment."

I know from your prior testimony you have no idea what, if anything, he was actually doing to try and find employment, correct?

MR. McELFISH: Actually, misstates testimony. The Witness did testify as to what she understood he was doing --

THE WITNESS: I was going to say, actually, I did testify earlier that my understanding of his efforts were that he had, I believe, gone on at least one interview, submitted some applications online and some other details provided in his deposition transcript.

Q. And that's fair. Does your understanding come from anywhere other than Mr. Bauta's deposition transcript?

A. I believe most, if not all, of the information provided to me about any job search efforts he undertook were contained in his deposition transcript.

Q. So, you've never seen an application he submitted?

A. That's correct.

Q. You don't know if he ever did or not, you just know what he said, correct?

A. I certainly have not seen any applications. That's correct.

Q. In paragraph 6 on the same page you state:

"It is reported that, as a result of the negligence of the Defendant" --

Where does that understanding come from?

A. The information in paragraph 6 was obtained from the complaint in this case.

Q. Fair to say you never reviewed the report from the Pennsylvania State Police on the actual accident at issue?

A. That is correct. I did not.
Q. On page 5 we talked a little bit about, you know, the front-line restaurant manager issue. I want to look at the second paragraph.
In scenario A you assume that Mr. Bauta would have worked as a restaurant shift manager earning $21,500 per year in 2012.
A. Yes.
Q. That's a 13.5 percent jump from what he actually earned in 2011. How is that justified?
A. It really isn't. If you look at --
Q. It really isn't a jump of 13.5?
MR. McELFISH: Let the Witness -- please let the Witness answer.
THE WITNESS: I have to explain why. If you look at --
MR. BARMEN: I'm trying to get clarification on the answer.
MR. McELFISH: She's trying to give it to you.
THE WITNESS: Yeah. I'm trying to give it to you. The --
Q. Where are you looking?

A. The best way for me to explain is if you look at page 9. The figure on page 4 of my report for 2011 of $18,931, that represents how much Mr. Bauta actually earned in 2011.

If we look at page 9 of my report, it is true, as you just asked me, that I do start with an annual salary of $21,500 per year in 2012, however, I do not assume that Mr. Bauta would have worked a full year every year.

I actually take into account the probability he would have missed some work now and then in each year and, by making those downward adjustments, I actually calculate his earnings at roughly $18,000 each year, which is, in fact, consistent with what he earned in the year 2011.

That's proper comparison, the adjusted earnings after the work life and unemployment adjustment to his W-2 earnings in 2011.

Q. Okay. That I actually understood.

Have you done any type of analysis to determine what Mr. Bauta's lost earnings would be if Mr. Capotosto is correct and

Mr. Bauta could do some work?

A. I did not evaluate Mr. Capotosto's report. No.

Q. That's certainly something you could do?

A. I suppose I'm capable of doing that. Yes.

Q. Why do you assume an implementation date of the life care plan of April 2016?

A. Life care plans, by their very nature, are forward looking. When I value life care plans I typically begin my calculation of costs a month or two after I issue my report to allow for the parties to exchange the reports, have some discussion and so on.

Q. On page 7, the second paragraph starts, "Another adjustment." You're talking about the adjustments you make for periods of unemployment?

A. Yes.

Q. Is what you did here standard or did you take into consideration the fact that this gentleman was unemployed for an extended period of time, it doesn't make a difference?

A. That's technically not relevant.

What I did here, in order to determine the appropriate adjustment for unemployment, is look at the average unemployment rate for males of various ages, specifically the ages that Mr. Bauta would have been.

Q. The bottom paragraph of the same page you talk about state unemployment compensation. Do you know if Mr. Bauta was receiving unemployment compensation in the year he was out of work?

A. I don't specifically recall whether he was or not.

Q. Do you know if Mr. Bauta was receiving any kind of state or federal financial assistance during the year he was out of work?

A. That I don't specifically recall.

Q. Do you know if he is now?

A. That I don't know. To answer your question, though, yes, it does appear, based on a review of the 2012 tax returns, as if Mr. Bauta had received some unemployment compensation that year.

Q. On page 8 -- and this is something I have to explain, because I just don't

understand it. At the bottom:

"Given the aforementioned Plaintiff's pre-injury adjusted earnings are projected at 83.44 percent of gross earnings" --

Explain it in a way for someone of my limited mental capacity to understand.

A. Sure. What this means, in essence, is that when I calculate the lost earnings I am giving Mr. Bauta 83.44 cents on every dollar, because I'm reducing each dollar each year downward for three things; periods of missed work because of injury, illness and so on, periods of missed work because of unemployment, and also taking into account the money he would have had to spend on job-related expenses.

Q. How is Mr. Bauta paying for his medical care now?

MR. McELFISH: Relevance. You may answer.

THE WITNESS: That I don't recall, off the top of my head, whether there was some discussion in his deposition transcript or Mr. Provder's report. I don't recall. It's not relevant for my

analysis.

Q. You're given a data set, you do what you do and you come up with a solution?

MR. McELFISH: Vague, ambiguous.

You may answer.

THE WITNESS: What Mr. Bauta may or may not be getting now in terms of care, how he may or may not be paying for that isn't relevant for my analysis, because my analysis focuses on the care that he needs, according to Mr. Provder, going forward, and my calculation, then, is of the total amount of money necessary to fund that.

Q. You've heard the term, I'm sure, "garbage in, garbage out," right?

A. I heard the phrase. Yes.

Q. So, if the data you're relying on is inaccurate, then the result you come up with is going to be inaccurate; is that fair?

MR. McELFISH: Vague and ambiguous.

You may answer.

THE WITNESS: If for whatever reason I use different data, then I would probably end up a with a different

result. That's correct.

Q. Why is 4 percent the appropriate discount rate to use?

A. My opinion regarding the discount rate in this matter is based primarily on two sources.

I looked at low-risk fixed-income securities. Specifically I looked at yields on U.S. Treasury securities, high-grade municipal bonds. And I started by looking at what interest rates are on those types of securities right now, starting by looking at current spot rates. And specifically I looked at bonds that have about a 30-year maturity.

And if I look at the current yields on 30-year fixed income securities, like the ones I just described, I believe, as of today's date, the yield is around 3 percent. When I prepared my original report it was actually below 3 percent.

In addition to looking at the current spot rates, I also looked back in time and I looked at what the yields on these types of securities had been over the past five, ten, twenty, thirty years.

And I did that because, as an economist, it certainly would not be reasonable for me to assume that interest rates are going to continue to stay as low as they have been.

So, based on my review of those two sources I determined that, on average, any lump sum of money Mr. Bauta may have received, if he invested it in low-risk fixed-income securities, he would earn, on average, a percent a year.

Q. On page 14, "Cost of Lifetime Care," you say, "It is known that Mr. Bauta's condition has medical requirements that will continue throughout his life expectancy."

When you say "it is known," are you just again relying on what Provder stated?

A. That is a reference to Mr. Provder's life care plan. Yes.

MR. BARMEN: Let's take five.

(Recess taken.)

BY MR. BARMEN:

Q. You reviewed Goldman's report, correct?

A. I did. Yes.

Q. And you certainly disagree with his

opinions that you overinflated the growth rate for medical services?

A. Yes.

Q. Tell me how Fred's wrong there.

A. I disagree with his opinion regarding the growth rates for the medical care for several reasons.

For one thing, I believe Dr. Goldman only looks at historical data, which, in my professional opinion, is not enough.

In my professional opinion, when an economic expert is forming an opinion about future growth rates, it's important to consider not only historical data, but also to consider projections of anticipated changes as well as other factors that may influence those costs going forward, like the demand for various goods and services.

Q. Where does your understanding come from that Goldman only relies on historical data and doesn't consider projections?

A. I do not recall seeing any reference to projections in his report, but of greater significance, he clearly focuses in his report on historical changes.

Q. Did he not cite one source for projections in his report?

A. I don't recall seeing a reference to projections other than his reference to a source that we also used in our report, and that is the Social Security Administration's Trustees Report, which specifically contains projections regarding future wage growth.

Q. So, there is a source in his report on future projections?

A. Of wage growth. Yes.

Q. After reviewing Mr. Goldman's report you sent a letter or a follow-up supplement dated October 13, 2016 in response to Goldman, right?

A. Yes.

Q. Do you have that in front of you?

A. I do. Just to be clear for the record, did you just say or did you just imply that my letter was dated October 13th, 2016? You may have and I understand why you -- I just want to be clear for the record.

Q. Okay. You're right. I might have misspoke. Fred's report's dated October 13, 2016.

A. Correct.

Q. Your supplement is November 18, 2016.

A. Correct. Yes. It's a little unclear on my supplement, but.

Q. Page 1 -- or paragraph 1 you talk about page 2, "Growth Rate." You're referring to Goldman's report, page 2, "Growth Rate," right?

A. Yes.

Q. You talk about data for 2015 not being available and in the last sentence you state:

"Therefore, you would need to update your original calculations to reflect the updated data."

Have you done that?

A. No.

Q. Have you been asked to do that?

A. Not yet. Our standard practice is to update our calculations either upon request or at or around the time of trial.

Q. The second paragraph there, you say:

"Dr. Goldman notes the wages during the past four years have increased by an annual

rate of 1.8 percent.

"Since 2016's not over yet, it's not clear to us how Dr. Goldman made any determination about how the wages have increased through 2016."

What do you mean there?

A. On Dr. Goldman's -- or in Dr. Goldman's report on page 2, if you look about two thirds of the way down you'll note he specifically states, "During the past four years, 2012 through 2016."

The point that I made in my rebuttal is that Dr. Goldman prepared his report in October of 2016, the year-end date of 4/2016 was obviously not yet available, so it wasn't clear to me how he could form an opinion on the growth of wages from 2012 through 2016 since 2016 hadn't concluded yet.

Q. Well, after his first sentence, his page 2, paragraph 2 "Growth Rate," there's an indication of a footnote, right?

A. There is. Yes.

Q. And if you look down at that footnote 2, it says it's based on the first and second quarters.

A. That's correct.
Q. So, he was taking that into consideration, right?
A. Not technically.
Q. No?
A. If he was looking at just the first and second quarters of 2016 and to calculate the growth rate for the past four years, he would have needed to go back into 2011 and look at the third and fourth quarters.
So, it just was unclear to me specifically how he could offer an opinion that this represented growth over a four-year period when, in fact, he had not looked at a full four-year period.
Q. But, you don't know whether he did or whether he didn't?
A. Well, he indicates here that he looked at the period 2012 through 2016. If you couple that with the footnote, that indicates that he looked at a period of approximately three and a half years, 2012 into the first half of 2016.
Q. Okay. I see.
Back to your supplement from

November 18, 2016, page 2, "Discount Rate," you state:

"It's not clear to us whether Dr. Goldman uses a discount rate of 4.5 percent or 4 percent."

Then you go on to state that 4.5 percent is too high to use. Right?

A. Yes.

Q. If you look at page 3 of Mr. Goldman's report under sub 4, "Discount Rate," he clearly states he used a discount rate of 4 percent, right?

A. He did state it there. He then went on to make reference to 4.5 percent.

Q. Show me where he makes reference to 4.5 percent.

A. At the end of that paragraph. He notes:

"Based on interest rate projections by the Congressional Budget Office during the next 20 years, the interest rate on ten-year U.S. Treasury notes is expected to increase from the current rate to 4.5 percent."

Q. Okay. But, he clearly stated he uses 4 percent. He's just noting something

about an expected increase. He never indicated he used 4.5, right?

A. All I stated in my report, it wasn't clear to me what he had used.

Q. Okay. Explain to me your criticism, on page 2 of that supplement under sub B, about neglecting to consider the recent recession.

A. That is in reference to several items specifically. And I did point out some of these at the end of that paragraph.

For example, the CPI for the care of invalids, that is a CPI that first started being published, I believe, in 2009, possibly 2008. But, I believe 2008 or 2009.

So, for that particular CPI there was not -- is not a history of those costs prior to the most recent recession.

The CPI for medical equipment, that CPI was first published, I believe, in 2005 or 2006.

So, again, there's not a significant history of that CPI prior to the most recent recession.

The significance of this general comment, though, is that there is a general

consensus among economists, as well as reference in many government documents, the Board of Trustees Report of Medicare, for example, about a recessionary impact on medical costs.

So, in other words, the slower growth rate of medical costs over the past roughly five or six years post-recession is the result of the recession, which means that once we get further and further away from the recession and those effects disappear, I would expect to see the increase in medical costs pick up.

And that cannot be factored in if Dr. Goldman is looking at things like a CPI that extends only as far back, for example, as 2009 or, say, 2005 or 2006.

Q. When was the most recent recession that you're referencing?

A. The most recent recession is the one that began in 2008 and technically hit its trough in 2009.

Q. So, that's what you're referencing here, 2008, 2009?

A. Correct.

Q. Who's Kenneth Betz?

A. He is one of the other economists with our group.

Q. And what was his involvement with preparing your report?

A. His role was fairly limited in this case. He was involved with the case early on. I believe he and I had a preliminary discussion about the case when it first came in.

He has helped with some of the research and he certainly reviewed the report before he signed it.

But, by and large I was and am the lead economist and I was the one that prepared the analysis, determined what research needed to be done and so on.

Q. Do you have any handwritten notes that you took during your analysis in this case? I didn't see them in the file there that we marked as Exhibit 1.

A. None exist.

Q. Did any ever exist?

A. No. Other than the handwritten notes on Dr. Goldman's report, none other exist.

Q. What about computer notes?

A. Probably not. I typically type everything into the report. It's a work in progress. I take things out when they're no longer necessary, I add things in when I need them in there.

Q. Under "Growth Rate" Goldman talks about 1.8 percent. You wrote -- that's your handwriting, correct -- "Too low"?

A. Yes.

Q. Why? What are you referencing there?

A. I believe I was referencing the growth rate that I had calculated for a four-year period, keeping in mind, when I prepared this report I did not have the most current year's worth of data.

So, this statement might not hold any longer, as I sit here today. I haven't revisited this since that time.

Q. In the paragraph that we talked about already, discount rate in Goldman's report, where he clearly says he used a discount rate of 4 percent, you have notes in the margin there. What do those represent?

A. These are the current spot rates probably as of some time on or around November 18th, 2016 for U.S. Treasury securities as well as municipal bonds. And then I simply listed the spot rates for one, two, five, ten and thirty-year bonds.

Q. On page 5 of his report there's a paragraph there, and in the margin you just wrote "Wrong" and underlined it.

What's wrong with what Goldman said in that paragraph on that page?

A. I certainly do not agree with his opinion regarding the appropriate gross rate for nonprescription equipment and supplies.

Q. You don't agree, but based on what?

A. Well, based on my earlier discussion simply about the fact that a growth rate needs to be based not only on historical rates, but also on information about projections and/or anticipated changes in supply and demand.

Q. Is there some kind of reference you can point me to that tells me that when it comes to this issue you're right and he's wrong?

A. Is there a specific reference?

Probably not. But, certainly there are numerous economics textbooks, for example, that talk about the fact that prices and costs influenced by changes in both supply and demand and that factors that would drive up the demand for a particular product would also put upward pressure on the prices or costs.

Q. The second-to-last paragraph, where he says he discounted future medical care costs at 4 percent, you draw a line and wrote, "Hmm." Tell me why.

A. This just circles back to my original comments about the fact that, while it did appear as if Dr. Goldman used a 4 percent discount rate, it was not clear to me that, in fact, he had used that.

Q. Well, looking here, he actually definitively says, two separate times in his report, "I used 4 percent."

A. He does. But, as I mentioned before, he also made reference to the 4.5 percent.

Q. Okay. That note I understand, this one I don't.

On the last page of Goldman's

report, page 8, about the middle of the page, you have a note in the margin. Please tell me what you were referring to there and what your note means.

A. Sure. This is something I discussed a few minutes ago. My note says, "Not long enough series."

This was referring to the fact that the CPI data for the care of invalids and elderly at home was just started in 2006, and in my professional opinion that doesn't provide us with enough data, a long enough period.

Q. Well, if the series only started in '06 or, in the other case, '09, if that's when it started, what else is there to look at for that information?

A. There are many things. There are other CPIs that were started before then that reflect some of this information. There also is other U.S. Department of Labor data about wage rates for these occupations.

There's something called the Occupational Outlet Handbook that includes information about the growth and projections for growth in various industries across various

occupations.

So, there's a wide variety of other data that one could and, in my opinion, should examine, particularly in cases like this when, for example, the CPI was just begun recently.

Q. What information did you take into consideration that you believe Goldman did not, specifically?

A. I can't specifically comment on what he may or may not have reviewed, but I can tell you what I reviewed.

Q. And it was unclear. That's what I'm asking you. What did you specifically review?

A. I did review the Consumer Price Index data, as Dr. Goldman did, I also regularly reviewed the Annual Report of the Board of Trustees of the Social Security Administration, the Annual Report of the Board of Trustees of Medicare and Medicaid.

I regularly review other publications by the U.S. Department of Labor. I'm drawing a blank on the name of one right now. But, other publications of medical care costs.

Q. I don't mean to interrupt, but let

me ask you, those things that you just told me that you regularly review, the Annual Report of the Board of Trustee, Social Security Administration, Medicare and Medicaid, did you specifically reference them in preparing your report and doing your analysis in this case?

A. I specifically referenced the Annual Report of the Board of Trustees of the Social Security Administration.

I did not specifically reference the Annual Report of the Board of Trustees of Medicare and Medicaid simply because, as an economist, it is my job to regularly review the types of data sources, and they do ultimately factor into my opinions.

Unless I extract data, though, from a particular source, I don't particularly provide that source in my report.

So, for example, I also regularly review the Occupational Outlet Handbook that I mentioned previously. Since I don't extract any data, though, for this purpose, it's not specifically cited in my report.

Q. And yet, you assume that Goldman didn't look at any of those things.

A. Well, what I said was, I couldn't say for sure, but, it doesn't appear to me as if he did, because, when he does present his opinions he focuses very heavily on the historical rates.

Q. Well, I'm sure Ray will ask him about it next week.

MR. BARMEN: Anything? Do you want to talk for a second?

MR. MOROKNEK: Okay.

(Recess taken.)

MR. BARMEN: I have no further questions for you. I appreciate your time.

THE WITNESS: My pleasure.

(Time noted: 4:01 p.m.)

A C K N O W L E D G M E N T

STATE OF )
:ss
COUNTY OF )

I, KRISTIN KUCSMA, M.A., hereby certify that I have read the transcript of my testimony taken under oath in my deposition of January 27, 2017; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
KRISTIN KUCSMA, M.A.

Signed and subscribed to before me this _____ day of _____, ____.

_____
Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK )
: ss
COUNTY OF NEW YORK )

I, TONI FREEMAN GREENE, a Notary Public within and for the State of New York, do hereby certify:

That KRISTIN KUCSMA, M.A., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th of January, 2017.

_____
TONI FREEMAN GREENE

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