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CROSS EXAMINATION

BY ATTORNEY CARUSO:

Q. Good afternoon, sir.

A. Good afternoon.

Q. I think you acknowledge that PLAINTIFF EXPERT at least he didn't make any mathematical errors, right?

A. That is correct.

Q. And he also, he based his damages largely in the lost profit category, he based his damages largely with the pro forma on the one hand and then the tax returns from 2017 to 2022 on the other hand, right?

A. I think that is a fair statement.

Q. Thank you. And you also looked at those tax returns, right?

A. Yes, sir, I did.

Q. Because I think at one point you mentioned something about you would need tax information to

1 calculate lost tax damages, lost tax benefits. But I
2 just want to be clear.

3 When you examined the CLIENT #1 and CLIENT #2
4 tax returns, you don't have any challenges to the
5 the integrity of the numbers in those returns, do you?

6 A. No, sir, I do not.

7 Q. You accepted them as accurate and true?

8 A. Yes, sir.

9 Q. Thank you.

10 And you spent some time at the beginning on
11 your credentials. And while you certainly have some, I
12 want to be clear. You are not a CFF? You are not
13 certified in financial forensics by the AICPA, are you?

14 A. I was at one point, but I dropped those
15 letters because all I did was have to write a check
16 because I have enough gray hair, so I could have that
17 credential based on my experience.

18 But I thought, hey, I didn't pass an exam, I
19 didn't do anything to really earn this, so I dropped
20 those initials.

21 I don't know if PLAINTIFF EXPERT ever took an
22 exam or if he did the same thing.

23 Q. Well, you know though from reading his report
24 and his professional certifications that he does have

1 the CFF designation, right?

2 A. Yes, sir, I do.

3 Q. And you have no basis to speculate that he
4 didn't earn it or didn't take the exam, do you?

5 A. Most of the practitioners I know just had to
6 write a check.

7 Q. So are you accusing PLAINTIFF EXPERT of buying a
8 designation?

9 A. Yeah, I guess I am.

10 Q. And you have absolutely no proof for that, do
11 you?

12 A. Oh, like I said, my proof is that most of the
13 practitioners that I have seen and many of them use
14 that CFF credential, got it because they just wrote a
15 check to the AICPA. It was a money grab by the AICPA.

16 Q. So is the AICPA a corrupt organization in
17 your opinion?

18 A. No, I don't think it's corrupt, but it's
19 greedy.

20 Q. Wow. And yet you have cited them for your
21 definition, you know, of the reasonable certainty
22 standard?

23 A. Yes, sir.

24 Q. You don't have the CGMA, Charter Global

1 Management Accountant certification, do you?

2 A. No, sir, I don't.

3 Q. PLAINTIFF EXPERT has that?

4 A. I believe he does.

5 Q. Is that corrupt also?

6 A. I don't know. I don't even know what that
7 credential is.

8 Q. You don't? Well, you are familiar with
9 AICPA?

10 A. I am.

11 Q. And the Charter Global Management Accountant
12 is a designation that comes from AICPA, right?

13 A. I don't know. That is news to me.

14 Q. How long have you been an accountant?

15 A. I was licensed since January of 1989.

16 Q. Only in California?

17 A. Yes, sir.

18 Q. All right. Now, PLAINTIFF EXPERT also has the
19 certified valuation analyst, CVA designation, right?

20 A. If I recall correctly, yes.

21 Q. And you do not?

22 A. I do not.

23 Q. Is that also corrupt?

24 A. No. I, actually, used to teach for that

1 organization.

2 Q. But you didn't get the certification that
3 they offer for CVA, did you?

4 A. No, sir. I was fine with the CPA.

5 Q. And you do not have the master analyst in
6 financial forensics, MAFF, that PLAINTIFF EXPERT has, do you?

7 A. I do not.

8 Q. Do you have any reason to contend that
9 PLAINTIFF EXPERT'S master in analyst and financial
10 forensics is corrupt?

11 A. I do not.

12 Q. And you don't have the certified fraud
13 examiner designation that PLAINTIFF EXPERT has, do you?

14 A. I do not. And that is another one by the way
15 that a lot of people are grandfathered in by just
16 writing a check. I don't know if PLAINTIFF EXPERT did that.

17 Q. You have no facts whatsoever to make that
18 type of accusation in open court, do you?

19 A. Beyond that I have seen a number of my peers
20 use that credential, and all they ever did was write a
21 check.

22 Q. Is that how you go about forming opinions,
23 you just know things anecdotally, and then you come
24 into court and make accusations?

1 A. No, sir.

2 Q. I see. Well, did you -- were you retained by
3 one of these law firms to testify in Desert Wind Energy
4 v. Wind Power Partners?

5 A. Boy, that sounds vaguely familiar. How long
6 ago was that?

7 Q. Well, it was 2010, so it's been fifteen
8 years. But it was federal court out in California.

9 A. Okay, if you tell me. I don't remember what
10 venue.

11 Q. Would you like to see the opinion?

12 A. Sure.

13 ATTORNEY CARUSO: Okay. Did your Honor want a
14 copy?

15 THE COURT: Sure. Thank you.

16 ATTORNEY CARUSO: Well, you know what? I marked
17 on --

18 THE COURT: That is fine. As long as opposing
19 counsel can see it.

20 ATTORNEY CARUSO: I didn't want to hand him what I
21 marked up.

22 BY ATTORNEY CARUSO:

23 Q. Desert Wind Energy v Wind Power Partners, the
24 Honorable Virginia Phillips, United States District

1 Judge sitting in the Central District of California.

2 That is Los Angeles, right?

3 A. Yes, sir, it is.

4 Q. That is your home town?

5 A. Yes, sir.

6 Q. And on Page 4 of this opinion, which was
7 issued on March 3, 2010, the judge ruled, Thus,
8 DEFENSE EXPERT'S opinions regarding defendant's compliance
9 with the contractual payments requirements is
10 inadmissible.

11 Do you see that?

12 A. I do not.

13 Q. Well, Page 4 of the opinion.

14 A. Oh, I found it.

15 Q. Okay. And you see that the judge ruled one
16 of your opinions at least inadmissible, right?

17 A. Yes, sir.

18 Q. And a couple of paragraphs above that the
19 reason why your opinion was inadmissible is the
20 DEFENSE EXPERT declaration notes set forth the factual basis
21 or data he relied on to reach his conclusions on the
22 issue of that case, right?

23 A. I mean, I don't remember any of the details
24 of the case. But I am not going to refute and say this

1 is inaccurate.

2 Q. You had a federal court judge rule your
3 opinion is inadmissible because you didn't do your home
4 work, right?

5 A. Oh, it could have been one of my opinions,
6 but I have not been excluded in totality but once.

7 Q. And the judge cited cases from the Seventh
8 Circuit Federal Court, which happens to be in Chicago,
9 from the Fifth Circuit where the courts lay out the
10 ground rules for expert opinions.

11 And the quote from the Target Stores case
12 right above your exclusion, the Court, federal Court of
13 Appeals said, An expert who supplies nothing but a
14 bottom line supplies nothing of value to the judicial
15 process.

16 Do you see that?

17 A. I do.

18 Q. And then applying those cases about experts
19 who supply nothing of value, your opinion was excluded,
20 wasn't it?

21 A. Well, I haven't had a chance to read this
22 whole opinion, and I don't remember the specifics of
23 the case.

24 Q. You don't remember a federal court not

1 admitting your opinion?

2 A. Again, if it's a partial -- you know, many
3 times I will testify and I have many opinions. If they
4 strike one opinion, that is not uncommon.

5 Q. It's not uncommon for you to have some of
6 your opinions stricken?

7 A. No, it's not uncommon to have --

8 Q. Thank you.

9 A. -- any expert's opinion.

10 Q. Really? You don't have any knowledge of
11 PLAINTIFF EXPERT'S opinions being stricken, do you?

12 A. I did not research that.

13 Q. Oh, I see.

14 Are you familiar with the Latin term ipse
15 dixit? I-P-S-E D-I-X-I-T?

16 A. Yes, sir, I am.

17 Q. It means that, ipse dixit means this is so
18 because I say it's so. Ipse dixit is not allowed in
19 giving expert testimony, is it?

20 A. That is my understanding, yes, sir.

21 Q. And that is true here in Illinois, right?

22 A. I assume it is.

23 Q. Would you like to read an Illinois case
24 saying that ipse dixit is not allowed?

1 A. I prefer not to.

2 Q. I can understand why.

3 So your opinion, you started out by saying
4 that AICPA has a reasonable certainty standard, right?

5 A. Yes, sir, they do.

6 Q. And then you go on and on through how many
7 pages, 125 pages of criticizing PLAINTIFF EXPERT.

8 A. I mean, my entire report and all the
9 schedules is about 120 pages.

10 Q. And I think at some point you said, Oh, there
11 were five critical errors and things like that?

12 A. Yes, sir.

13 Q. And you don't cite any authority for any of
14 these alleged critical errors, do you?

15 A. I think they are really tethered to the facts
16 of this case.

17 Q. Well, but the bottom line is when it comes to
18 the subject of discounting, you think PLAINTIFF EXPERT did it
19 wrong, right?

20 A. He did.

21 Q. And there you go. And all we have is your
22 word for that, right?

23 A. Well, if you looked at other analyses, if I
24 had been the plaintiff's expert here, I would have

1 discounted back to the date that these gentlemen
2 acquired their agencies.

3 Q. You cite no authority other than yourself in
4 saying that PLAINTIFF EXPERT was wrong on discounting, right?

5 A. Well, I cited the fact that his historical
6 projection, key word is projection, these are not
7 absolute certain amounts. So to the extent they are
8 estimates and/or projections you have to discount
9 those, too. That is the basis upon which I am
10 concluding he used the wrong methodology.

11 Q. And you cite no generally accepted accounting
12 principle that supports your conclusion, right?

13 A. Generally accepted accounting principles
14 don't apply to damages calculations.

15 Q. You cite nothing from the Association of
16 International Certified Professional Accountants to
17 support that opinion, right?

18 A. You don't need to.

19 Q. I see. And you cite nothing from any other
20 professional association or professional standard to
21 support your opinion that PLAINTIFF EXPERT did not properly
22 engage in his discounting analysis, right?

23 A. Beyond the facts of this case and my
24 experience.

1 Q. Okay. And that is what -- and that is what
2 the courts say that you can't just come in and say
3 that, you know, it's based on me and what I have to
4 say.

5 And the same is true if we go through all
6 your criticisms of PLAINTIFF EXPERT'S report. You have no
7 specific standards that you can say that PLAINTIFF EXPERT did
8 not comply to; is that true?

9 A. You don't really use standards to look at the
10 mechanics of a model.

11 Q. Well, you don't. We know that.

12 A. And neither did PLAINTIFF EXPERT, by the way. But
13 the standards really apply to a much more gestalt
14 level, higher level, i.e., reasonable certainty,
15 looking at the evidence and what is being utilized.
16 There you might look to the standards.

17 But whether it comes under the specific model
18 that we are talking about, PLAINTIFF EXPERT'S model, all
19 my criticisms are very valid.

20 Q. You are aware from reading PLAINTIFF EXPERT'S
21 report that he tested his opinions in this case against
22 some industry standard models such as IBIS World,
23 I-B-I-S, right?

24 A. I vaguely recall that.

1 Q. Would you like to go back and spend the time
2 now to read PLAINTIFF EXPERT'S report where he cited IBIS
3 World?

4 A. I don't want to waste the jury's time.

5 Q. Okay. Do you consider IBIS World a reliable
6 source of data?

7 A. I don't have an opinion one way or the other.

8 Q. And he also looked at Business Minor
9 (phonetic), that is a reliable source of data, is it
10 not?

11 A. It could be. It depends.

12 Q. Well, you didn't come to this hearing --
13 excuse me -- to this trial today citing other sources
14 to say, hey, PLAINTIFF EXPERT looked at IBIS World but I
15 looked at this one and it's even better, right?

16 A. I didn't have to.

17 Q. Well, that is right because you know
18 everything?

19 A. No. I just had to look at what PLAINTIFF EXPERT
20 did, and given my experience and knowledge and the
21 facts of this case, it's very easy to criticize how
22 grossly overstated his estimates are.

23 Q. I see. But you felt no need to supply the
24 jury with authoritative sources to support your

1 opinions, did you?

2 A. Beyond the reasonable certainty standard, no.

3 Q. If we could have the one with the red and
4 blue columns. I have lost track of the numbers but his
5 chart in the red and blue.

6 I think it pertains to CLIENT #1. Was it 2.4?

7 DEFENSE LAWYER: 2.6, I believe.

8 ATTORNEY CARUSO: Can we pull up the red and blue
9 charts.

10 THE COURT: Is that from -- who is laptop is that
11 from?

12 DEFENSE LAWYER: That is mine.

13 DEFENSE LAWYER: We can pull that up. What number?
14 2.4, you said.

15 THE COURT: It was defendant's demonstrative.

16 ATTORNEY CARUSO: The one with the red and blue
17 for CLIENT #1.

18 DEFENSE LAWYER: I think that was 2.6.

19 THE WITNESS: I think it's 2.6, yeah.

20 ATTORNEY CARUSO: Thank you, sir.

21 THE WITNESS: You have got it.

22 THE COURT: Thank you.

23 BY ATTORNEY CARUSO:

24 Q. And to be clear, PLAINTIFF EXPERT is the red, you

1 are the blue, right?

2 A. The red is PLAINTIFF EXPERT'S projection and the
3 blue is the actual corrected by me.

4 Q. Got it. And, first of all, you demonstrated
5 that from '17 to '22 and '23 is after the termination,
6 right?

7 A. Yes, sir.

8 Q. So if we stopped at '22, you demonstrate that
9 CLIENT #1 was growing his agency, don't you?

10 A. That would show that the profit line was
11 growing.

12 Q. And he grew his agency right up to the point
13 that Farmers terminated him because he was in the
14 bottom 2 to 5 percentile of performance in Farmers,
15 right?

16 A. I don't know why they terminated him.

17 Q. I thought you had been reading the
18 transcripts in this case?

19 A. No, I just read PLAINTIFF EXPERT'S.

20 Q. Okay. And I am not going to go through all
21 your charts, but I just wanted the jury to see that
22 your own corrected profit analysis shows CLIENT #1 was
23 working hard and he was growing his business but he was
24 terminated?

1 A. I can't draw that conclusion. The profit
2 line was increasing, but that is a function of revenues
3 which is a function of sales, and it's also a function
4 of cost containment and how you manage your expenses
5 and cost of a business because that is projecting
6 profits, not revenues.

7 Q. You haven't issued any opinions criticizing
8 CLIENT #1 expense management, have you?

9 A. No, sir.

10 Q. Or CLIENT #2, right?

11 A. That is correct.

12 Q. And you are critical of, and I think we were
13 looking at something for CLIENT #2 and again I lost track
14 of the number, but you had an analysis of his staffing,
15 right?

16 A. Yes, sir.

17 Q. And one of your opinions is that CLIENT #2
18 didn't hire the right number of people that it would
19 take to reach the profit forecast he was hoping to
20 achieve, right?

21 A. Well, again, damages are not based on hope.
22 They are based on reasonable certainty.

23 Q. And PLAINTIFF EXPERT testified to reasonable
24 certainty in his opinion, right?

1 A. He thought these things were reasonably
2 certain, but --

3 Q. That is right. Thank you. DEFENSE EXPERT --

4 THE COURT: Did you want that?

5 ATTORNEY CARUSO: Pardon?

6 THE COURT: Did you want that demonstrative again?

7 ATTORNEY CARUSO: I don't think it's necessary. I
8 don't think it's necessary.

9 BY ATTORNEY CARUSO:

10 Q. I think we all remember that CLIENT #2 had
11 one employee and you were saying from the forecast and
12 models he should have had three, and since he didn't
13 have three he couldn't possibly have expected to earn
14 the profits he hoped to make when he entered the agency
15 agreement, right?

16 A. No. I am just saying that the pro forma that
17 PLAINTIFF EXPERT relied upon had some assumptions in it that
18 CLIENT #2 never came close to achieving. And that
19 is an apple and an orange comparison. You need to
20 correct these things so that you can comparing apples
21 to apples or oranges to oranges, and PLAINTIFF EXPERT didn't
22 do that. And when you do that his lost profit
23 projection goes away.

24 Q. The fact that CLIENT #2 was only able to

1 hire one person and not more than one, two, or three,
2 or whatever as initially projected, that is part of the
3 injury he suffered, right?

4 A. Well, you misspoke. He never hired anybody.
5 I think he had \$500 of wages over the entire period
6 that he managed it. He was the only employee.

7 Q. He had SELLER #1 helping him, didn't he?

8 A. Well, at least the salaries and wages line
9 for his agency only showed \$500 was spent.

10 Q. He had SELLER #1 helping him, didn't he?

11 A. I recall from some deposition testimony that
12 she was there for a short period, but a very short
13 period.

14 Q. You may have him confused. SELLER #2 was the
15 lady, SELLER #1 was the gentlemen, right?

16 A. You are correct.

17 Q. Thank you.

18 But my point is you didn't see any evidence
19 in analyzing any of the records you looked at in this
20 case to suggest to you that when he started his
21 operations CLIENT #2 was generating enough cash where he
22 could have hired more people but instead for some
23 strange reason he didn't want to hire people and he
24 wanted to file. You saw nothing like that, did you?

1 A. No. But let's take that pro forma that it
2 contemplates up to three and a half selling commission
3 people. Heck, he could have put in ten and PLAINTIFF EXPERT
4 would have claimed his damages were 10 million dollars
5 really.

6 A. I mean, at what point do you draw the line?
7 So you have to kind of come back to reality. And I
8 think the function or the reality is that CLIENT #2
9 could not hire these people because he couldn't
10 generate enough revenue to be able to hire them.

11 Q. Exactly. And if the projections were
12 reasonable -- and, by the way, whether the projections
13 and the expectations were reasonable, that is for the
14 jury to decide, not you, right, sir?

15 A. That is correct.

16 Q. Okay. So if per chance the jury finds that
17 CLIENT #2 had reasonable expectations of being able
18 to generate enough money to put that agency up into
19 high gear, hire the people and make the kind of money
20 that he was led to believe he could expect, then that
21 is for the jury to decide, right?

22 A. The ultimate decision here is always the
23 jury's.

24 Q. Of course. And if he failed to hire people

1 because the cash flow wasn't generating enough for
2 those people, then that is part of the injury, right?

3 A. I don't know if you are putting the cart
4 before the horse in that he had hoped conceivably in
5 those pro formas to have some type of a business model,
6 but, clearly, he didn't get there. And he couldn't
7 sell enough to get there. I don't know who is
8 responsible for that. In my mind it's the plaintiff
9 himself.

10 Q. You had an opinion about CLIENT #1 officer
11 compensation, right?

12 A. Yes, sir.

13 Q. And I apologize. I am fumbling around and
14 looking for the chart where we see that. But I think
15 it's, actually, Schedule 5 to PLAINTIFF EXPERT'S report on
16 the CLIENT #1 Insurance Agency, Schedule 5.

17 And in Schedule 5, as you acknowledge,
18 PLAINTIFF EXPERT after he acknowledged your correction and
19 DEFENSE LAWYER correction, you guys will have to figure out
20 who gets credit for it, but he agreed with you guys
21 that, yeah, I have to put the 109,000 back in, and he
22 did that, right?

23 A. I am sorry. Where is 109,000 on this
24 schedule?

1 Q. Compensation of officers, the operating
2 expenses on the left, compensation of officers, you
3 move it all the way to the right. There it is, the
4 little 109, 500. That is the adjustment PLAINTIFF EXPERT
5 made giving you credit for spotting that. He missed
6 it?

7 A. Correct.

8 Q. And after you pointed out that he missed it,
9 he put it back in, right?

10 A. He did make that correction.

11 Q. And you testified today an hour ago or
12 whatever on direct exam, but he failed to add the
13 officer compensation for '20 and 2021, right?

14 A. That is correct.

15 Q. But there was no officer compensation in 2020
16 or '21, was there?

17 A. Well, if you will scroll down on that
18 schedule and go to salaries and wages, you will see the
19 second row there on the second page, salaries and wages
20 in 2020 of 59,757 and salaries and wages in '21 of
21 71,774. That is officer comp.

22 Q. And in PLAINTIFF EXPERT'S calculations those are
23 listed, and you scroll down and he has got them as part
24 of the operating expenses for those years, right?

1 A. Did he make the adjustment for them?

2 Q. You see it right there, don't you?

3 A. I see what?

4 Q. That the salaries and wages are in those
5 lines before he totals up the expenses?

6 A. Right. And that is owners' compensation.
7 There is only two employees at the CLIENT #1 agency,
8 CLIENT #1 and his brother. So that had to be paid a
9 salary and wages to one of the two of them, and they
10 are both owners, they are 50/50 owners in 2020 and 2021
11 and thereafter.

12 Q. Let's go back to PLAINTIFF EXPERT'S summaries that
13 he corrected earlier this week after he made the three
14 corrections that were noted. And that would be for
15 CLIENT #1 and CLIENT #2 the adjusted damages, the revised
16 summary damages.

17 You understand that the opinion from
18 PLAINTIFF EXPERT is that, and this is CLIENT #1, that if CLIENT #1
19 stayed with it in the insurance agency until his 67th
20 birthday, over all those years, another thirty years of
21 work, he would have adjusted lost profits of a
22 1,000,001 had all the things he had been led to believe
23 per his testimony, if all those things had been true?

24 A. PLAINTIFF EXPERT is of that opinion. I am not.

1 Q. Well, I understand. I am asking you
2 understand that is PLAINTIFF EXPERT'S opinion?

3 A. I do.

4 Q. And PLAINTIFF EXPERT testified that he personally
5 believes these are very modest lost profit claims for
6 someone to work that long having bought a business and
7 worked that long to claim this much lost profit from
8 now until his 67th birthday, discounted back to present
9 value is a modest claim, wouldn't you agree?

10 A. No. I would say it's speculative and grossly
11 overstated.

12 Q. I see. And the same thing for CLIENT #2.
13 If we can get his summary up?

14 And he made -- and, again, after PLAINTIFF EXPERT
15 makes the corrections, the PLAINTIFF EXPERT opinion is that if
16 he stayed with this insurance agency, his adjusted lost
17 profits until working to 67 over his remaining work
18 life is a 1,000,173, and that is also a modest lost
19 profit claim; wouldn't you agree?

20 A. Again, I would say it's speculative and
21 grossly overstated.

22 Q. And you understand that for each year
23 projecting into the future PLAINTIFF EXPERT did establish a
24 baseline where he forecasted an actual profit and then

1 only measured what he claims to be or opined to be the
2 actual lost -- the forecast lost profit above the
3 forecast actual profit?

4 Do I need to rephrase that one?

5 A. I think you do.

6 Q. Yeah. Sorry. In the PLAINTIFF EXPERT'S model,
7 PLAINTIFF EXPERT'S model, he projected out that if these
8 agencies continued, they hadn't been terminated, they
9 would have -- they would have generated some level of
10 actual profit.

11 In other words, the plaintiffs would have
12 gone to work, continued working their agencies, and
13 there would be some forecasted actual profit, right?

14 A. That is what his model does.

15 Q. And then he tried to measure the forecasted
16 lost profit above the forecast actual profit, right?

17 A. The difference in theory is a damage. But in
18 this situation the actual exceeds -- for CLIENT #1 for
19 the seven years that we have seen data, the actual
20 exceeds that pro forma amount. There is no damage.

21 Q. Well, in projecting an actual profit level
22 that is PLAINTIFF EXPERT'S way of accounting for the fact
23 that the plaintiffs would have to continue to work;
24 they weren't simply hoping to get damages out of this

1 case as if they don't have to never work another day in
2 their life, right? You would assume they would
3 continue working, right?

4 A. That is what his model assumes.

5 Q. So he didn't account for mitigation of
6 damages in that way; is that true?

7 A. He grossly understated what the actual
8 projection is measuring, thereby overstating his damage
9 amount.

10 Q. And, again, we have you and your personal
11 beliefs with no citation to any authoritative source as
12 to why you are right and PLAINTIFF EXPERT is wrong, right?

13 A. I think my authoritative source is the facts
14 of the case, the contracted issue. I mean, you have to
15 really look at what is going on here and what is that
16 pro forma and what did that really represent.

17 Q. And that is what the jury will decide, right?

18 A. They will.

19 ATTORNEY CARUSO: No further questions. Thank
20 you.

21 REDIRECT EXAMINATION

22 BY DEFENSE LAWYER:

23 Q. DEFENSE LAWYER again. Deep breath.

24 So if I am remembering correctly, this is the

1 schedule where you were making the DEFENSE LAWYER/DEFENSE EXPERT
2 corrections that PLAINTIFF EXPERT admitted he was wrong
3 about, right?

4 A. Correct, in order to get to what is reflected
5 as blue bars in this graph.

6 Q. So for all the letters after his name and all
7 those other things, PLAINTIFF EXPERT admitted that you were
8 right; is that the case?

9 A. At least on that, even though he did admit a
10 number of other items.

11 Q. And while we are looking there at 2022, do
12 you recall from CLIENT #1 deposition testimony that he
13 testified that about 30 percent of his revenue in those
14 final years came from nonFarmers insurance?

15 A. That is consistent with my recollection.

16 Q. So that number there is showing that his
17 agency is making a profit, but it doesn't necessarily
18 show that his Farmers book of business is growing; is
19 that right?

20 A. That is probably true.

21 Q. And in terms of the mitigation, you read the
22 trial testimony for PLAINTIFF EXPERT, correct?

23 A. I did.

24 Q. And did PLAINTIFF EXPERT take into account in his

1 forward mitigation the income that CLIENT #1 and
2 CLIENT #2 would earn from other insurance companies
3 outside of other than Farmers?

4 A. He did not.

5 Q. So if you only look at the projected Farmers,
6 projected hypothetical Farmers, but you don't take into
7 account 30 percent growing of his business, is that a
8 fair mitigation analysis in your opinion?

9 A. No, it's understating what would be the
10 actual projection and thereby overstating the damage
11 measurement.

12 Q. Okay. PLAINTIFF EXPERT talked about Ex Post and
13 Ante something or another. Could you remind everybody
14 what that is?

15 A. It's just different --

16 ATTORNEY CARUSO: Objection.

17 THE COURT: Sir, he wants to make an objection. I
18 will rule before you answer.

19 THE WITNESS: Sure.

20 ATTORNEY CARUSO: This is redirect. Now we are
21 going off into subjects that were not covered in the
22 direct.

23 DEFENSE LAWYER: That is part of the discount
24 analysis, correct?

1 THE WITNESS: Yes, sir.

2 DEFENSE LAWYER: So he talked about the discount
3 analysis.

4 THE COURT: Okay. I will allow it.

5 BY DEFENSE LAWYER:

6 Q. Okay. So sorry.

7 Refresh the jury's understanding of what Ex
8 Post versus Ex Ante discounting is?

9 A. There is just two different approaches. And
10 PLAINTIFF EXPERT used Ex Post. He took all of his future
11 projections after, I believe, December 31st of '24 and
12 discounted those at at rate of 16 percent. Actually,
13 we agree on that rate, by the way.

14 But what he didn't do is he didn't go back
15 and discount anything that is historical, i.e., before
16 December 31st of 2024.

17 And as you can see both in his model and what
18 I have been presenting, these damage models start in
19 2017 or 2016. And so there is a lot of uncertainty
20 within the amounts that are being projected
21 historically. And you have to discount those, too.

22 We, clearly, have a difference of opinion on
23 it. But it is significant. I think it was a \$411,000
24 difference depending on which methodology one uses. I

1 personally feel mine is the appropriate. I, actually,
2 know mine is the appropriate methodology. But it does
3 have a big impact.

4 Q. So when Mr. Caruso was saying, well, who is
5 the authority on whether it should be discounted Ex
6 Post or Ex Ante, and can you cite any authority -- are
7 you able to say to PLAINTIFF EXPERT himself as somebody that
8 said you can do it both ways?

9 A. He talks about it ad nauseam in his own
10 report.

11 Q. We looked at the schedule. Again, this was
12 CLIENT #1, and we are talking about the DEFENSE EXPERT
13 corrections. I just want to make sure because it's
14 sort of a little bit confusing there.

15 When you pointed out to Mr. Caruso that he
16 should scroll down and look at the wages and salaries,
17 Mr. Caruso was saying it's there, it's there, it's
18 there. What was the mistake that PLAINTIFF EXPERT made by
19 including those numbers in the expense area?

20 A. He should have taken those out, similar to
21 what he took out for officer comp because the salaries
22 and wages, I don't know if they were additionally paid
23 to CLIENT #1 or to his brother, but they
24 were the only two individuals, and they are both owners

1 of that agency. So it's officers' compensation. It's
2 owners' compensation, and it should be added back to
3 the actual profitability of the agency.

4 Q. And is that because it's not actually an
5 expense?

6 A. Well, it is an expense. It's just back to
7 that issue, do you want to pay yourself a salary or do
8 you just want to let everything accumulate down to the
9 bottom line and have a big pool of profits at end of
10 the year that you can then distribute?

11 Q. But at the end of the day, that money is
12 reflected as an expense is, actually, money in
13 CLIENT #1 pocket; is that right?

14 A. One of the CLIENT #1, one of the owners of that
15 agency.

16 Q. And then last thing, Mr. Caruso was going on
17 about how you applied nothing, you did no work, you
18 applied nothing.

19 Did you do work in this case, you know, that
20 120 pages and all of those schedules, would you just
21 give us a little refresher what was the work that you
22 did to come up with these numbers and your opinions?

23 A. Well, we replicated PLAINTIFF EXPERT'S model. We
24 looked at what his assumptions were. We looked at all

1 the information that was provided not only in his
2 report but also through the testimony of the
3 individuals, the contract language, interrogatory
4 responses, all the facts of this case to see did it
5 jive with what is really relevant at least in my mind
6 in terms of trying to measure damages. And I think he
7 ignored a lot of critical facts and information which
8 results in a very large and speculative number in my
9 opinion.

10 Q. And so you are giving a summary of all of the
11 work that you did there; is that fair to say?

12 A. I mean, I think we billed like \$120,000. We
13 have done a lot of work. This binder basically is a
14 lot of the information that we considered and reviewed
15 in detail. So, yes, we have done quite a bit of work.

16 Q. And do you think it would be helpful for the
17 jury for us to go through every single page and
18 schedule in that 120 Page report in order to understand
19 what PLAINTIFF EXPERT'S errors were?

20 A. I would not want to torture them with that.

21 Q. So I will spare the jury that exercise.

22 DEFENSE LAWYER: Thank you.

23 ATTORNEY CARUSO: Very, very quickly.
24

1 RECCROSS EXAMINATION

2 BY ATTORNEY CARUSO:

3 Q. I think -- I just want to memorialize this.
4 I think you agreed with PLAINTIFF EXPERT on the discount rate
5 using 16 percent, I believe, in his opinion?

6 A. Yes.

7 Q. And you agree with PLAINTIFF EXPERT on the discount
8 rate because that is a conservative discount rate,
9 right?

10 A. No. I mean, it's subjective, but the
11 methodology used, it's a build-up method is accepted.
12 It's similar to what I do. He used (indecipherable)
13 data, which I do also. And so that was not -- there
14 are many other problems over much bigger things than
15 the discount rate.

16 Q. You brought up or counsel brought up Ex Post
17 as opposed to Ex Ante just a minute ago on the
18 redirect. Both, both approaches are permissible under
19 professional standards, right?

20 A. I would say yes.

21 Q. Okay. So then it becomes up to the expert to
22 exercise their best judgment and opinion in making
23 their choice, right?

24 A. Ultimately, yes.

1 Q. And when you say that -- you vote for Ex Ante
2 in this case whereas PLAINTIFF EXPERT voted for Ex Post; is
3 that fair?

4 A. He opted for Ex Post because you get a higher
5 damage number if you do so.

6 Q. And you opt for Ex Ante because you get a
7 lower one, right?

8 A. No. It's the proper method.

9 Q. But both methods are permitted, right?

10 A. They are, but you have to look at the facts
11 of the case. You have to look at what is being modeled
12 and given what is modeled here, if I had a jury of
13 twelve forensic accountants, I am pretty certain they
14 would all agree with me.

15 ATTORNEY CARUSO: Move to strike on speculation
16 and lack of foundation.

17 THE COURT: Granted. The jury will disregard
18 that statement.

19 ATTORNEY CARUSO: Thank you.

20 BY ATTORNEY CARUSO:

21 Q. Are you familiar with examples in the
22 economic literature about cases like a commodity lost
23 like a gold bar or a lottery ticket, and the choice is
24 do we have to measure the gold bar Ex Post or Ex Ante?

1 So, in other words, if someone stole one of
2 your gold bars back in 2016 and now the case comes to
3 trial in 2025, in that type of circumstance Ex Ante --
4 some would say Ex Ante is more appropriate because we
5 wouldn't want the jury verdict to fluctuate based on
6 what happened to the price of gold in the interval
7 between the injury and the trial.

8 Is that the argument for Ex Ante?

9 A. I don't understand what you are talking
10 about. I just know in this case Ex Ante is the
11 appropriate methodology.

12 Q. In your opinion?

13 A. In my opinion.

14 Q. You are not familiar with some of those
15 articles about, let's say it was a lottery ticket.
16 Someone stole the lottery ticket away from you back in
17 2016, Ex Post would try and estimate the value of the
18 lottery ticket in 2016 as opposed to Ex Ante which
19 would measure the value of the lottery ticket at the
20 time it was stolen versus the time of trial Ex Post
21 because in between some plaintiffs may have had a
22 winning lottery ticket and others wouldn't, and Ex Ante
23 kind of wants to get back to the time of the injury to
24 avoid fluctuations in the price of -- in the value of

1 the lottery ticket and things like that.

2 You are not familiar with that?

3 A. Not with lottery tickets and gold bars.

4 Q. No? Okay. My point is that these were
5 ongoing businesses where we have data for the years of
6 performance, and your opinion is we should disregard
7 all that and look at Ex Ante?

8 A. No. My opinion is that you need to adjust
9 your projections and model to take into consideration
10 that the historical amounts that are being projected
11 here are just that, they are being projected, they are
12 estimates. They are uncertain. They are not
13 guaranteed. And so you have to modify your model to
14 take into consideration that risk. And PLAINTIFF EXPERT
15 didn't do that.

16 Q. The doctrine of reasonable certainty does not
17 require guaranteed, right?

18 A. It does not.

19 ATTORNEY CARUSO: Thank you. No further
20 questions.

21 THE COURT: Anything further?

22 DEFENSE LAWYER: No, your Honor. Thank you.

23 THE COURT: All right. The witness is excused.

24 Thank you very much.