

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ASSOCIATION TO PRESERVE AND)
PROTECT LOCAL LIVELIHOODS, *et al.*)

Plaintiffs,)

PENOBSCOT BAY AND RIVER PILOTS)
ASSOCIATION,)

Plaintiff-Intervenor,)

v.)

Civil Action No. 1:22-cv-416-LEW

TOWN OF BAR HARBOR, a municipal)
corporation of the State of Maine,)

Defendant,)

CHARLES SIDMAN,)

Defendant-Intervenor.)

**PLAINTIFFS’ MOTION TO EXCLUDE DEFENDANT-INTERVENOR’S EXPERT
WITNESS, CHARLES SIDMAN**

Plaintiff, Association to Preserve and Protect Local Livelihoods (“APPLL”) and Plaintiffs B.H. Piers, L.L.C, Golden Anchor, L.C., Delray Explorer Hull 495, L.L.C., Delray Explorer Hull 493, L.L.C., and Acadia Explorer Hull 492, L.L.C. (the “Pier-Tender Plaintiffs”) (collectively, “the Plaintiffs”) hereby move to exclude the testimony of Defendant-Intervenor’s expert witness, Defendant-Intervenor himself, Charles Sidman, for the following reasons:

I. BACKGROUND

Under this Court’s Expedited Scheduling Order, all Parties were to designate experts by April 7, 2023, with the deadline for the designation of rebuttal experts by April 19. (ECF 82). On April 7, 2023, Plaintiffs (as well as Plaintiff-Intervenors) designed Todd Gabe, Ph. D. as an expert. Defendant Charles Sidman did not designate an expert on April 7.

By notice dated April 19, 2023, Defendant Sidman designated himself as an expert witness pursuant to Rule 26(a)(2)(C) “to rebut the expert testimony of Plaintiffs and Plaintiff-Intervenors’ expert witness.” **Attachment A**. Under the Expedited Scheduling Order, therefore, Defendant Sidman was not generally designated as an expert but, rather, was designated as a rebuttal expert—meaning rebuttal to the only expert designated in this case—Dr. Gabe. Defendant Sidman’s designation advised that he “may testify as a fact witness and also provide expert testimony under Evidence Rules 702, 703, or 705.” *Id.*

Rule 702, of course, sets forth the general evidentiary rule for the admission of expert testimony. Rule 703 allows an expert to base his or her opinion on “facts and data” of which “the expert has been made aware of or personally observed,” but provides further that the expert may do so “[i]f experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject.” Fed. R. Evid. 703. (emphasis added). Finally, Rule 705 authorizes the court to permit an expert to “offer an opinion—and give the reasons for it—without first testifying to the underlying facts or data.” Fed. R. Evid. 705.

Defendant Sidman’s expert designation identified seven categories on which he was designated as an expert: (1) excessive amounts of cruise ship passengers in Town harm local businesses; (2) excessive amounts of cruise ship passengers in Town cause excessive congestion, overcrowding, and a diminished quality of life for Town residents; (3) excessive amounts of cruise ship passengers in Town jeopardize the Town’s ability to deliver municipal and public services; (4) the Ordinance improves the ability of local businesses to attract and serve customers; (5) the Ordinance reduces excessive congestion and overcrowding attributable to cruise ship passengers, and improves the quality of life for Town residents; (6) the Ordinance reduces the strain on

municipal and public services; and (7) the Ordinance is reasonable and designed to protect, preserve, and promote the general health, safety, welfare, and peace in the Town.

II. LEGAL STANDARD

The basis for the admissibility of expert testimony is set forth in the four prongs of Federal Rule of Evidence 702, which allows an expert witness to testify in the form of an opinion if:

- (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) testimony is based on sufficient facts or data;
- (c) testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Rule 702 further provides that all types of expert testimony present questions of admissibility for the trial court in deciding whether the evidence is reliable and helpful. *See* 2000 Advisory Committee Notes, Fed. R. Evid. 702. The trial court's review of potential expert testimony "entails an examination of [the expert's] conclusions to determine whether they flow rationally from the methodology employed." *Samaan v. St. Joseph Hospital*, 670 F.3d 21, 32 (1st Cir. 2012). Expert testimony should be excluded when there is "simply too great an analytical gap between the data and the opinion proffered[.]" *Id.*

As the First Circuit noted, a reliable foundation for expert testimony requires "an inquiry into the methodology and the basis for an expert's opinion." *Samaan*, 670 F.3d at 31. To make such an inquiry, the First Circuit created a two-part test, called the *Daubert* test. *Id.* The first prong of the *Daubert* test assesses reliability under Rule 702 and requires the court to determine "whether (1) the expert's knowledge can be or has been tested; (2) whether the theory has been subjected to peer review and publication; (3) the known or potential error rate; and (4) whether the theory has gained general acceptance in the relevant scientific field. *Id.* at 593-594. With respect to (1), the

U.S. Supreme Court has cautioned, the term ‘knowledge’ “connotes more than subjective belief or unsupported speculation”. *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 589-590 (U.S. 1993).

The second prong of the *Daubert* test assesses relevance. As the First Circuit noted in *Samaan*, Rule 702 requires “an adequate fit between the expert’s methods and [the expert’s] conclusions.” *Samaan*, 670 F.3d at 32. When an expert’s opinion is based solely or predominantly upon experience, the expert must explain how that experience lends to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts. 2000 Advisory Committee Notes, Fed. R. Evid. 702; *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 135-36 (2d Cir. 2013) (recognizing that an expert historian could be admissible under certain circumstances but affirming exclusion of expert historians who based opinions largely on hearsay statements by artists and speculated on the motivations and made credibility determinations of other witnesses). Thus, the more subjective and controversial the expert’s opinion, the more likely the opinion will be excluded as unreliable. *See, e.g., O’Conner v. Commonwealth Edison Co.*, 13 F.3d 1090 (7th Cir. 1994) (expert testimony based on a completely subjective methodology held properly excluded); *see also* 2000 Advisory Committee Notes, Fed. R. Evid. 702.

In contrast, Rule 701 of the Federal Rules of Evidence allows a non-expert witness to provide opinion testimony based on that person’s personal perception or not an opinion based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Courts have properly excluded proffered expert testimony when it constitutes opinions that a lay person could offer. *See, e.g., United States v. Lespier*, 725 F.3d 437, 449 (4th Cir. 2013) (affirming exclusion of psychologist’s testimony about effects of sleep deprivation and holding that testimony concerning obvious matters are not helpful to the trier of fact under Fed. R. Evid. 702). Where an

expert relies exclusively upon counsel for facts and data, and does nothing to verify those facts, this factor, coupled with other deficiencies, may subject an expert to exclusion. *See, e.g., Munoz v. Orr*, 200 F.3d 291, 301-02 (5th Cir. 2000) (affirming exclusion of expert witness in disparate impact case who started from the assumption that discrimination had occurred, made a number of mathematical errors, failed to consider important variables, and relied upon information provided by counsel and failed to verify it).

Unlike in *Ruiz-Troche v. Pepsi Cola*, where the First Circuit held that the trial court improperly excluded a pharmacology expert on the basis that the expert's methodology was unable to meet a higher precision standard than what Rule 702 requires, Mr. Sidman's proffered expert testimony is based on his subjective opinions, rather than on an alternative methodology commonly accepted in the field. 161 F.3d 77, 85 (1st Cir. 1998).

III. ARGUMENT

1. Mr. Sidman's opinions, as set forth in his rebuttal expert designation, do not rebut those of Todd Gabe, Ph.D.

As noted above, Mr. Sidman did not designate himself as an expert on April 7 but, rather, reserved his designation until April 19, when he designated himself as a "rebuttal" expert. As has also been noted above, under these circumstances, the only expert for which Mr. Sidman could be a rebuttal expert is Plaintiffs' and Plaintiff-Intervenor's expert, Todd Gabe, Ph.D. Therefore, the "categories" Mr. Sidman as to which he would offer rebuttal expert testimony must be compared to Dr. Gabe's expert opinions.

Category No. 1: Mr. Sidman designated himself to testify to "facts and opinions" on "excessive amount of cruise ship passengers in Town harm local businesses." Attachment A, p.

2. To begin with, it should be noted that this statement is phrased in the affirmative rather than in the negative as would be expected of a "rebuttal" expert opinion. Having said that, it is assumed

that as a rebuttal testimony, Mr. Sidman would be rebutting Dr. Gabe's reports or testimony that numbers of cruise ship passengers visiting Bar Harbor were not "excessive" and did not "harm local businesses." But this misunderstands Dr. Gabe's reports and his testimony. Dr. Gabe gathered, analyzed, and, reported data, including his interpretation of those data, but did not make qualitative judgments about what they meant—that is, whether the numbers of cruise ship passengers were "excessive" or not or the impact on local businesses was "harmful" or not. Therefore, Category No. 1, as described, is not a "rebuttal" expert opinion to Dr. Gabe.

Category No. 2: Category No. 2 represents that Mr. Sidman will testify that "excessive amounts of cruise ship passengers cause excessive congestion" (and related effects) in Bar Harbor. But, again, Dr. Gabe did not report or testify that the amounts of cruise ship passengers were excessive or not. Nor did he testify or report that they diminished or not the "quality of life for Town residents." Therefore, Category No. 2, as described, is not a "rebuttal" expert opinion to Dr. Gabe.

Category No. 3: Category No. 3 represents that Mr. Sidman will testify that "excessive amounts of cruise ship passengers jeopardize the Town's ability to deliver municipal and public services." But Dr. Gabe never reported or testified on the issue of whether the municipal services of the Town of Bar Harbor could support or not the numbers of cruise ship passenger. Therefore, Category No. 3, as described, is not a "rebuttal" expert opinion to Dr. Gabe.

Categories Nos. 4-7: Each of the Categories 4-7 represent that Mr. Sidman will testify to the positive attributes and effect of the Ordinance on Bar Harbor—ranging from the ability of Bar Harbor to attract local businesses (Category No. 4), the reduction of excessive congestion and overcrowding and improvement of the quality of life of Bar Harbor residents (Category No. 5), the reduction on the "strain on municipal and public services" (Category No. 6), and, that the

Ordinance is “reasonable and designed to protect, preserve, and promote the general health safety and welfare, and peace in the Town” (Category 7).

The difficulty with each of the last four categories is that Dr. Gabe has never expressed any opinion on either effects of the Ordinance, whether beneficial or otherwise. Therefore, Category Nos. 4-7, as described, is not a “rebuttal” expert opinion to Dr. Gabe. In addition, a close review of Categories Nos. 4-7 reveals that, under the guise of “expert” testimony, they provide Mr. Sidman with the opportunity to testify—purportedly authoritatively—that he thinks the Ordinance is a good idea and will have the beneficial effects he has long claimed and continues to claim for it. That is not expert testimony—rebuttal or otherwise. It is one man’s opinion dressed up as the product of the application of rigorous and exacting methods which are integral and essential to true expert opinions under Rule 702.

For these reasons alone, Mr. Sidman’s rebuttal expert designation fails and this Court should reject his status as such.

2. Mr. Sidman’s Rebuttal Expert opinions are not the product of reliable methods, relying too heavily on his own perceptions and dismissive of more objective data.

Mr. Sidman’s rebuttal testimony is based on Mr. Sidman’s personal experiences and knowledge, not scientific research, or any particular type of method. In his deposition, Mr. Sidman was asked on what basis he formed his opinion “that the town’s ability to deliver municipal and public services are jeopardized by cruise ship passengers as opposed to persons coming to Bar Harbor by all other means of conveyance.” Depo. Sidman 23:3-7 (May 30, 2023).¹ Mr. Sidman testified that his “expertise here is simply a great deal of time spent in this environment.” Depo. Sidman 23:23-24 (May 30, 2023). He continued his testimony to say he spent approximately 80,000 hours on the sidewalks of Bar Harbor, which he calculated by taking half the days in a year,

¹ All relevant sections of Mr. Sidman’s deposition are attached hereto as Attachment B.

about 200, 10 hours a day for 40 years. Depo. Sidman 24:1-8 (May 30, 2023). However, Mr. Sidman had no documentation to support his 80,000-hour contention, nor did he have any other scientific data to support expert testimony that he has spent 80,000 hours on the streets of Bar Harbor, though he did think it was humorous that someone would keep such documentation or data. Depo. Sidman 24:9-12 (May 30, 2023); Depo. Sidman 25:1-11 (May 30, 2023). Even if he did, his contention would be based on his personal experiences, not a specialized opinion based on a scientific, technical, or other specialized knowledge.

Mr. Sidman was also asked about his contention that the ordinance “improves the ability of local business to attract and service customers.” Depo. Sidman 34:17-21 (May 30, 2023). As part of his response, Mr. Sidman states “I would explain to you that countless people stay away from town because they are deterred by the cruise ship crushes. So if the cruise ship crush wasn’t there for a few hours, innumerable other people would come to town over a longer period of time and deliver better business to the downtown shops. I can say that being a business owner in town for 30 years” Depo. Sidman 36:5-13 (May 30, 2023). However, he concedes that he has not collected any data to quantify the people who have not shown up. Depo. Sidman 36:18-21 (May 30, 2023). Mr. Sidman goes further to say “It’s my experience and other businesses in town, the same reports over and over and over again.” Depo. Sidman 36:22-25 (May 30, 2023). Mr. Sidman could not break down the number of people not coming to Bar Harbor in May, June, and July, stating “I have no data at all.” Depo. Sidman 37:11-19 (May 30, 2023). Instead, Mr. Sidman calls the basis of his contention, “repeated interactions”, or “experiences”. Depo. Sidman 38:4-5 (May 30, 2023). He has not tried to analyze this systematically at all. Depo. Sidman 37:9-10 (May 30, 2023).

Next, Mr. Sidman purports to offer rebuttal testimony that the ordinance is “reasonable and designed to protect, preserve, and promote the general health, safety, welfare, and peace in the town. He alleges his basis for this opinion is his 30-plus years in tourist businesses, operating tourist businesses downtown, dealing with thousands of potential customers each year, and the personal interactions” Depo. Sidman 40:3-7 (May 30, 2023). His opinions about the Town’s peace and welfare are formed from as an active participant in these debates as a business owner and as a frequent downtown inhabitant. Depo. Sidman 40:11-13 (May 30, 2023). Again, these are Mr. Sidman’s personal observations and perceptions, which are opinions of a layperson, not an expert.

With respect to first prong of the *Daubert* test, Mr. Sidman’s contentions have not and could not be tested, they have not been the subject to peer review or publication, the error rate is unknown, and his theories has not gained any general acceptance in any scientific field let alone in the relevant scientific field. These opinions are nothing more than Mr. Sidman’s own, personal contention, based on his own personal perception, which excludes Mr. Sidman’s rebuttal testimony as an expert opinion and instead places it squarely within the confines of Rule 701, opinion testimony by a lay witness.

3. Mr. Sidman’s Rebuttal Expert opinions manifest an unreliable fit between his methodology and his opinions.

Mr. Sidman’s methodology is hard to describe because he has no methodology. He offers rebuttal testimony based on his personal experiences and perceptions, not scientific study or methodology.

For instance, Mr. Sidman’s contention that excessive amounts of cruise ship passengers in Town jeopardizes the Town’s ability to deliver municipal and public services is based on his own observations. Mr. Sidman did not consult with the Fire Chief because “he has a different kind of

knowledge” and the Fire Chief’s knowledge would not contravene Mr. Sidman’s personal experience. Depo. Sidman 26:11-13 (May 30, 2023). This is because he has “direct experience from countless hours and nobody’s opinions to the contrary or supplementary is necessary.” Depo. Sidman 28:9-11 (May 30, 2023). Mr. Sidman also testified that law enforcement was somewhat affected by cruise ship passengers to a lesser degree than the emergency services that the fire department render. Depo. Sidman 30:21-22 (May 30, 2023). He bases this opinion based on his own “direct experience observing hordes of people.” Depo. Sidman 30:23-24 (May 30, 2023). However, he has only observed the crowds, never a failure to provide law enforcement services as the direct result of cruise ship passengers. Depo. Sidman 31:1-7 (May 30, 2023). In formulating his opinion, the observations or knowledge of the Police Chief played very little role because his opinion is based on his observations. Depo. Sidman 31:8-13 (May 30, 2023). He did not feel it necessary to seek the opinions of the people charged with delivering municipal and public services. Depo. Sidman 32:9-13 (May 30, 2023).

Mr. Sidman’s methodology is nothing more than his own personal beliefs and viewpoints, regardless of the opinions of others, including those who may have significantly more experience and insight into a given topic.

4. Mr. Sidman does not possess the requisite qualifications to offer admissible rebuttal testimony to Dr. Todd Gabe

To the extent Mr. Sidman is attempting to offer rebuttal testimony based on his academic training in biochemistry, immunology, and business administration, it should be excluded. Dr. Gabe is an economist who holds a Master’s degree in applied economics and published a number of scholarly articles and other publications centered around his expertise as an economist. Currently, Dr. Gabe is an economy professor at the University of Maine. In stark contrast, Mr. Sidman holds degrees in biochemistry and immunology as well as a Master’s degree in business

administration. Mr. Sidman has worked as a scientist, a professor of molecular genetics, biochemistry, and microbiology. Currently, he is the managing partner of a venture capital enterprise. Mr. Sidman has been a journal reviewer for a number of publications, none of which are publications in the field of economics. More telling, on Mr. Sidman's CV, he lists a number of academic interests, none of which include economics.

Though Mr. Sidman contends that he has expertise in science and scientific methodology, he offers no foundation to support his contention that his experience with biochemistry and immunology contends with Dr. Gabe's experience as an economist. Mr. Sidman does not share any opinion as to how the difference sciences are similar, other than broad sweeping statements that "good science is good science." Depo. Sidman 13:18-19 (May 30, 2023). However, Mr. Sidman contends that Dr. Gabe's work may be "acceptable to the journals that he publishes in or his community, but in [Sidman's] life and experience, it's sloppy and non-reproducible science." Depo. Sidman 13:4-7 (May 30, 2023). It is clear that Mr. Sidman does not know or understand economic studies or what goes into them. Instead, he is comparing the study of economics to his experience in biochemistry and immunology, even though his involvement in those fields ended approximately thirteen years ago.

Mr. Sidman also concedes that Dr. Gabe's studies are acceptable within the field of economics. *See* Depo. Sidman 12:3-6 (May 30, 2023) ("I understand his discipline, economics and the journals that he publishes in frequently accept that kind of methodology. That's the difference between hard and soft science."); Depo. Sidman 13:4-7 (May 30, 2023) ("I regard his work as maybe acceptable to the journals that he publishes in or his community . . ."). Mr. Sidman further agrees that Dr. Gabe's work is acceptable in the field of economics, despite Mr. Sidman's own criticisms of Dr. Gabe's work. Depo. Sidman 19:22-24 (May 30, 2023).

One of Dr. Gabe’s studies relies on methodology created and applied previously by other researchers; however, Mr. Sidman concedes that he did not review the underlying research, even though he offers an opinion that the methodology is improper. Depo. Sidman 15:7-20 (May 30, 2023). Further, Mr. Sidman agrees that he did not review the sources Dr. Gabe relied on to develop his methodology, which he cited in his report. Depo. Sidman 17:8-16 (May 30, 2023). This is concerning since Mr. Sidman does not have any expertise as an economist, but is holding himself out to be an expert on scientific methodology, but he did not even review Dr. Gabe’s sources. It is unreliable to have a biochemist and immunologist offering opinion on the scientific study of an economist, especially when that same biochemist does not even review the underlying research and sources supporting economist’s method and opinion. Instead, the biochemist, which is a “hard science,” offering an opinion on a wholly separate study of economics, which is a “soft science” according to Mr. Sidman. *See* Depo. Sidman 10:20-21 (May 30, 2023) (calling Mr. Sidman’s background a hard science); and Depo. Sidman 34:17-21 (May 30, 2023). Depo. Sidman 12:3-9 (May 30, 2023) (referring to his science as a hard science and economics as a soft science, saying, “That’s the difference between hard and soft science. It’s experimental and reproducible and detailed and predictive or not”).

IV. CONCLUSION

For the foregoing reasons the testimony of Defendant-Intervenor’s rebuttal expert witness, Defendant-Intervenor himself, Charles Sidman, must be excluded.

Dated this 9th day of June, 2023.

/s/ Timothy C. Woodcock

Timothy C. Woodcock, Bar #1663

P. Andrew Hamilton, Bar #2933

Patrick W. Lyons, Bar #5600

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2023, the foregoing was served to all counsel of record via email.

/s/ Timothy C. Woodcock

ATTACHMENT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

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|------------------------------------|---|-----------------|
| ASSOCIATION TO PRESERVE AND |) | |
| PROTECT LOCAL LIVELIHOODS, et al., |) | |
| |) | |
| <i>Plaintiffs,</i> |) | |
| |) | No. 1:22-cv-416 |
| v. |) | |
| |) | |
| TOWN OF BAR HARBOR, a municipal |) | |
| corporation of the State of Maine, |) | |
| |) | |
| <i>Defendant.</i> |) | |
| |) | |

**DEFENDANT-INTERVENOR CHARLES SIDMAN'S
REBUTTAL EXPERT WITNESS DESIGNATION**

Pursuant to the Court's Scheduling Order, Defendant-Intervenor Charles Sidman, through his attorneys, hereby designates the following expert who may testify at trial in the above-captioned matter to rebut the testimony of Plaintiffs and Plaintiff-Intervenors' expert witness:

Charles Sidman
c/o David P. Silk
Curtis Thaxter LLC
One Canal Plaza, Suite 1000
P.O. Box 7320
Portland, ME 04112-7320

Mr. Sidman is not being contemplated as a witness under Federal Rule of Civil Procedure 26(a)(2)(B) because he has not been retained or specially employed to provide expert testimony in the case, nor do his duties regularly involve giving such testimony. Mr. Sidman is being identified pursuant to Rule 26(a)(2)(A) because he may testify as a fact witness and also provide expert testimony under Evidence Rules 702, 703, or 705. This disclosure is submitted to satisfy the requirements of Rule 26(a)(2)(C), which does not require Defendant-Intervenor to include facts unrelated to the expert opinions the witness will present.

Subject Matter: Mr. Sidman is a full-time resident of Bar Harbor and local business owner who will offer opinion evidence to rebut Plaintiffs' designated expert witness Mr. Todd Gabe's opinion, to the extent admissible, as to the economic benefits and pedestrian impacts of cruise ship passengers visiting Bar Harbor.

Substance of Facts and Opinions: Mr. Sidman is expected to testify to the following facts and opinions: (1) excessive amounts of cruise ship passengers in Town harm local businesses; (2) excessive amounts of cruise ship passengers in Town cause excessive congestion, overcrowding, and a diminished quality of life for Town residents; (3) excessive amounts of cruise ship passengers in Town jeopardize the Town's ability to deliver municipal and public services; (4) the Ordinance improves the ability of local businesses to attract and serve customers; (5) the Ordinance reduces excessive congestion and overcrowding attributable to cruise ship passengers, and improves the quality of life for Town residents; (6) the Ordinance reduces the strain on municipal and public services; and (7) the Ordinance is reasonable and designed to protect, preserve, and promote the general health, safety, welfare, and peace in the Town.

Grounds for Opinion: Mr. Sidman's opinions are based upon his status as a full-time resident of Bar Harbor and local business owner, providing him with personal experience to address the economic and pedestrian impacts that cruise ship passengers have on Bar Harbor. His opinions may also be based on his work performed as lead petitioner to submit a citizens' initiative ballot petitioning the Town Council to amend Bar Harbor Code Chapter 125, Article VII, § 125-77(H), which limits the number of people allowed to disembark from cruise ships into Bar Harbor to a maximum, in the aggregate, of 1,000 per day. He may also base his opinions on his analysis and investigation into: (1) his knowledge of Bar Harbor and its citizens; (2) his

review of photographs of the Town; (3) witness statements; (4) videos; (5) deposition testimony of parties and witnesses; and (6) review of Plaintiffs' expert witness designation and statements.

Exhibits to be Used: Defendant-Intervenor reserves the right to designate additional exhibits disclosed by any of the parties in this case, brought to light by any witnesses, or produced in discovery. At this time, Defendant-Intervenor designates the following exhibits:

- a. All documents produced in discovery;
- b. Maps, diagrams, illustrations, or other demonstratives to serve as visual aids regarding the impact of cruise ship passengers on congestion in the Town.

Dated: April 19, 2023

/s/ Robert Papazian

David P. Silk, Esq., Bar No. 3136
Robert Papazian, Esq., Bar No. 6491
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*Attorneys for Defendant-Intervenor
Charles Sidman*

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2023, I caused the foregoing document to be served via electronic mail upon counsel of record addressed as follows:

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P. Andrew Hamilton, Esq.
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Dated: April 19, 2023

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Robert Papazian, Bar No. 6491
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ATTACHMENT B

UNITED STATES DISTRICT
DISTRICT OF MAINE

| | | |
|---------------------------------|---|---------------------|
| ASSOCIATION TO PRESERVE AND |) | |
| PROTECT LOCAL LIVELIHOODS, et |) | |
| al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action |
| PENOBSCOT BAY AND RIVER PILOTS |) | No. 1:22-cv-416-LEW |
| ASSOCIATION |) | |
| |) | |
| Plaintiff-Intervenor, |) | |
| |) | |
| v. |) | |
| |) | |
| TOWN OF BAR HARBOR, a municipal |) | |
| corporation of the State of |) | |
| Maine, |) | |
| |) | |
| Defendant, |) | |
| |) | |
| CHARLES SIDMAN, |) | |
| |) | |
| Defendant-Intervenor |) | |

ZOOM DEPOSITION OF: CHARLES SIDMAN

BEFORE: Lisa Fitzgerald, Notary Public, via Zoom on
May 30, 2023 beginning at 3:04 p.m.

Maine Court Reporting Services
60 Starlight Drive
Brewer, Maine 04412
207-989-3264
Lisa@MeCRS.com

1 A. Okay, the first one is a number of points in Dr. Gabe's
2 work I regard as sloppy and nonreproducible methodology.
3 It's bad science and it's pseudoscience, and I also
4 forwarded a typology of different kinds of science other
5 than the good kind and the hard kind, so a number of
6 subpoints under this.

7 The first one -- shall I go into the subpoints?

8 Q. Please.

9 A. So the first one is Dr. Gabe, I believe, distributed
10 4,000-plus surveys to a variety of passengers from
11 different cruise ships. My understanding is he has no
12 information and did not keep track of the 2,000 or so,
13 roughly half, that he got back, which ships they came
14 from.

15 And so since one -- since a number of the ships
16 that they distributed surveys to could have accounted
17 for the entire set of returned surveys, this could be
18 one data point basically, and a lot is being made from
19 one essentially anecdotal data point. So that's a
20 problem. That would -- the equivalent in my background
21 of hard science and medical research would be, I went to
22 a hospital, I visited a variety of wards, I took samples
23 from some people, and I got these results. Now, which
24 people on which wards suffered from which diseases, I
25 don't remember, I can't tell you, but I took some

1 numbers I took where and what it means. That is just
2 bad science or pseudoscience.

3 I understand his discipline, economics and the
4 journals that he publishes in frequently accept that
5 kind of methodology. That's the difference between hard
6 and soft science. It's experimental and reproducible
7 and detailed and predictive or not. His work has none
8 of these characteristics of excellent science, as I see
9 it, as an expert.

10 And it's not a distinction between natural and
11 social science because there are experimental forms of
12 economics, there are experimental forms of psychology.
13 You can do excellent hard science within the social
14 sciences. His observational accounts are not that.

15 And finally, from his methodology and understanding
16 of what I consider scientific research, he apparently
17 did not even understand what an IRB is or how it affects
18 his work. He wanted to throw it up as a barrier to
19 transparency of data.

20 It's not. It stands for Institutional Review
21 Board, and it's involved with either animal or human
22 work, and with animals it's considered the welfare of
23 the animals. With humans it's concerned with the
24 welfare of the subject and individual identification;
25 but there's nothing standing in the way of

1 person-by-person data reporting in medical research --
2 or any research on humans as long as it's deidentified.

3 He did not appear to understand what an IRB is or
4 what it does. So that's all my first point. I regard
5 his work as maybe acceptable to the journals that he
6 publishes in or his community, but in my life and
7 experience, it's sloppy and nonreproducible science.

8 So that's the first point. We can discuss that if
9 you wish.

10 Q. Let me ask a couple of questions about that.

11 A. Sure.

12 Q. First, so is it your testimony, Mr. Sidman, that you --
13 do you, yourself, have expertise in the field of
14 economics?

15 A. I have expertise in science and scientific methodology.
16 Economics is one of a variability of subfields and
17 subsets, and he has never worked in a medical
18 laboratory. I'm not an economist academically but good
19 science is good science.

20 Q. I want to be clear on this, Mr. Sidman. You understand
21 that Professor Gabe was not offering an opinion on
22 medical science; correct?

23 A. He was offering an opinion on academic research, which
24 I'm eminently qualified to comment on.

25 Q. Mr. Sidman, I asked you a question and you're not

1 research as well.

2 All of these fields of research and publication
3 have common principles of rigor, and you cannot separate
4 one out and say it doesn't follow or it doesn't have to
5 follow the general principles of rigor.

6 White mice/black mice operate under the same rules.

7 Q. So, again, Professor Gabe's testimony, he noted that one
8 of his reports was relying on methodology rather than
9 applied by another set of researchers, are you aware of
10 that?

11 A. I am.

12 Q. Did you review the underlying research?

13 A. I know what he's talking about.

14 Q. Did you review the underlying research?

15 A. I did not.

16 Q. And so you're here to testify that the methodology that
17 he employed was improper even though he cited another
18 authority for the soundness of that method, and you,
19 yourself, have not reviewed that method; is that
20 correct?

21 A. That doesn't suffice. What counts is what you report as
22 an independent researcher, and you don't get a pass by
23 saying I did what somebody else did. You must report
24 what you, yourself, did specifically so that someone
25 else can reproduce it. That's the standard in rigorous

1 write, and report.

2 MR. WOODCOCK: Okay.

3 THE WITNESS: That's the way research works.

4 BY MR. WOODCOCK:

5 Q. Mr. Sidman, I have a question for you, which I'm trying
6 again, because you're not answering.

7 A. I think I am.

8 Q. Did you, yourself, review the sources that
9 Professor Gabe relied on to develop the methodology he
10 employed and which he cited in his report?

11 MR. PAPAZIAN: Object.

12 THE WITNESS: I don't have to offer this opinion.

13 MR. WOODCOCK: Pardon?

14 THE WITNESS: I do not, and it's not necessary that
15 I do so, to offer this opinion. Bad science is bad
16 science.

17 BY MR. WOODCOCK:

18 Q. So the question is, did you review those underlying
19 reports for the methodology under which Dr. Gabe relied
20 in part and the answer is, no?

21 MR. PAPAZIAN: Asked and answered.

22 MR. WOODCOCK: The answer is no; correct?

23 THE WITNESS: That is correct, and it is not
24 necessary for me to express this opinion about what he
25 did and reported.

1 Have you ever done that? Have you ever tried to
2 gather information by using a survey?

3 A. I'm not a survey scientist.

4 Q. Do you know whether using surveys is something that is
5 common to the field of economics?

6 A. I do.

7 Q. How do you know that?

8 A. I have many economics colleagues, I've been around
9 universities my entire life, I've read economic
10 literature, economic studies have appeared in the same
11 journals that I have published in. I know how surveys
12 can be used, and I know how they can be misused and
13 abused.

14 If he had taken the same surveys and reported from
15 which ships they were returned, we would be having a
16 very different discussion. He could have but he didn't.

17 Q. And so you, yourself, on what basis -- what reports or
18 sources of economic scientific methodology do you rely
19 on for that proposition?

20 A. I don't rely on economic methodology. I rely on
21 research and scientific methodology.

22 Q. So you don't know whether Professor Gabe's use of these
23 surveys was acceptable in the field of economics?

24 A. It evidently was because they got published. That is
25 sloppy science.

1 Do you recognize that?

2 A. I do.

3 Q. And -- so what -- on what basis do you assert that the
4 Town's ability to deliver municipal and public services
5 are jeopardized by cruise ship passengers as opposed to
6 persons coming to Bar Harbor by all other means of
7 conveyance?

8 A. Well, I think we've been through this by previous
9 testimony. The issue is the concentrated large number
10 of cruise ship passengers, which in the past can be 5-
11 or 10,000 people injected into the streets for double or
12 triple or a quintuple number of people on the streets
13 even taking account of all the land-arriving visitors,
14 which are more spread out.

15 I know from approximately 80,000 hours of
16 Bar Harbor downtown experience that at those times it is
17 positively unsafe to be on the sidewalks of Bar Harbor.
18 You walk in the streets, you're hidden in crowds.
19 Should someone fall over, have a medical emergency, you
20 would be unseen for a long time. Medical personnel
21 would take an extra length of time to be aware and to
22 reach the incident.

23 My expertise here is simply a great deal of time
24 spent in this environment.

25 Q. So I want to understand your testimony here. Are you

1 saying that you have spent 80,000 hours on the sidewalks
2 of Bar Harbor?

3 A. Approximately, and the way that number was generated was
4 take about half the days of the year, that's about 200,
5 take 10 hours a day, that's 2,000 a year, multiply that
6 by 40 years, and it's greater than that but I'm rounding
7 off. That's where the 80,000 hours in downtown
8 Bar Harbor comes from.

9 Q. Do you have any documentation of any observation --
10 Mr. Sidman, I realize you find this amusing. You find
11 this amusing, do you not?

12 A. I couldn't help chuckle.

13 Q. You find these questions amusing, don't you, Mr. Sidman?

14 MR. PAPA ZIAN: Please be respectful of my client.

15 MR. WOODCOCK: How would he like to be respectful
16 of me, Mr. Papazian? How about not laughing at the
17 interrogator's questions?

18 Why don't you have a conversation with Mr. Sidman
19 about decorum?

20 THE WITNESS: I think I'm behaving very well,
21 Mr. Woodcock.

22 MR. WOODCOCK: I'm sure you do, Mr. Sidman. I
23 would have no doubt of that.

24 BY MR. WOODCOCK:

25 Q. So the question -- the question that I had for you that

1 you found so amusing was, do you have any notations of
2 any of the observations that you made of pedestrian
3 traffic in the 8,000 hours of pedestrian observation
4 that you've compiled over 40 years?

5 A. I don't need to annotate it. I walk on the streets
6 because it is so -- I can't get by on the sidewalks.
7 I've run businesses downtown for the majority of that
8 time. That's personal experience that I have no need to
9 annotate or to be vivid in my mind.

10 Q. So the answer is no?

11 A. It's unnecessary, no.

12 Q. So with respect to the municipal services, the way
13 you've characterized your expert opinion, you are
14 jeopardizing, or at least the cruise ship passengers are
15 jeopardizing, the Town's ability to deliver municipal
16 services; right?

17 A. That is my belief and statement.

18 Q. Okay. Jeopardy is a state of risk; isn't that correct?

19 A. Yes.

20 Q. Okay. So what municipal services are in jeopardy and
21 when?

22 A. The ability to reach a person who has had a medical
23 incident -- tripped, had a heart attack, been run over
24 by a car -- those intense crowds would naturally be
25 compromised in anyone's judgment and in the judgment of

1 several thousand Bar Harbor voters.

2 Q. So in the opinion of the fire chief?

3 A. No, I did not ask the fire chief.

4 Q. Pardon?

5 A. I did not ask the fire chief. This is direct
6 observation.

7 Q. But isn't the fire chief someone who should have
8 considerable knowledge of the ability of under what
9 circumstances emergency medical services can be rendered
10 by his department?

11 A. He has a different kind of knowledge. I bear him all
12 respect, but his knowledge does not contravene my
13 personal experience.

14 Q. So you consider his knowledge to be irrelevant to your
15 analysis?

16 MR. PAPA ZIAN: I'm going to object to speculation.
17 He can't testify as to what the fire chief knows or
18 doesn't know.

19 MR. WOODCOCK: He's an expert, and he's offering an
20 opinion, Attorney Papazian, and I need to know what his
21 opinion rests on, and I have the right to know whether
22 his opinion incorporates the perspective of the fire
23 chief or not.

24 THE WITNESS: It does not.

25 MR. PAPA ZIAN: He is a credible expert, and I

1 BY MR. WOODCOCK:

2 Q. So the question here -- because the question -- the
3 opinion is that -- just so I understand, Mr. Sidman,
4 where you're coming from, on your expert opinion that
5 the Town's ability to render emergency medical services
6 has been jeopardized by the presence of cruise ship
7 passengers, the knowledge and perspective of the fire
8 chief is not relevant to your opinion; is that correct?

9 A. Partially relevant. It's not essential. I have my
10 direct experience from countless hours and nobody's
11 opinions to the contrary or supplementary is necessary
12 for me to have that experience and know that experience.

13 Q. Does that also apply -- you would agree that under the
14 heading of municipal and public services, that would
15 also be law enforcement?

16 A. Less so because they're not concerned with a medical
17 emergency, usually not. They're concerned more with
18 misbehavior.

19 Q. Okay.

20 A. And they could be compromised as well. If somebody
21 started misbehaving in a crowd, it's harder to reach
22 them than misbehaving in less of a crowd. But that's
23 not primarily what I had in mind.

24 Q. Well, I'm trying to find out all that you had in mind.

25 So the term that is used in your designation here

1 need to restrain yourself; do you understand that?

2 A. I'm trying.

3 Q. I'm trying to get a question out. I will ask you
4 questions, and even though you think you may know what
5 the question is, please forbear until the entire
6 question is out. Otherwise, the record will be almost
7 illegible; do you understand?

8 A. Yes.

9 Q. All right. So the question that I was asking you here
10 was with respect to the cruise ship passengers
11 jeopardizing law enforcement services, and what is your
12 opinion with respect to that?

13 A. It probably doesn't help, but I'm more concerned with
14 the medical services, and I'm not at all concerned with
15 the public service of removing snow from the sidewalks.

16 Q. What's that got to do with law enforcement?

17 A. It's municipal services. So if we go down the whole
18 list of municipal services, medical is at the top, snow
19 removal is at the bottom, law enforcement would be in
20 the middle.

21 Q. I'm asking you about law enforcement.

22 A. I'm saying it's somewhat affected.

23 Q. And on what do you base that?

24 A. Again, my direct experience observing hordes of people.

25 Q. And what have you observed about the jeopardy of the

1 provision of law enforcement services in the Town of
2 Bar Harbor that is posed by cruise ship passengers as
3 opposed to all other persons who arrive in Bar Harbor by
4 all other means of conveyance?

5 A. I've only observed the crowds, which would make anybody
6 in any municipal department more difficult to get where
7 they need to go.

8 Q. So in the formulation of that opinion of yours, do the
9 observations or knowledge of the chief of police have
10 any role?

11 A. Very little.

12 Q. And why not?

13 A. Because they're my observations. I'm not asking for his
14 observations.

15 Q. He is -- you're asking about the jeopardy being placed
16 on the provision of municipal services; correct?

17 A. That's my opinion. I've offered it.

18 Q. I want to show that I understand your opinion here.

19 It sounds as though, from the perspective of the
20 actual impact of cruise ship passengers on municipal
21 services, the persons in charge of those municipal
22 services, their knowledge and experience does not
23 matter; is that your testimony?

24 MR. PAPAZIAN: Objection. That misconstrues his
25 testimony.

1 MR. WOODCOCK: I'm trying to get at what is
2 going -- undergirds Mr. Sidman's opinion, and I'm
3 entitled to know whether -- what weight, if any, he is
4 giving the fire chief or the police chief in his opinion
5 that municipal services, for which they are responsible,
6 are in jeopardy because of cruise ship passengers.

7 MR. PAPAZIAN: Objection. Asked and answered.

8 MR. WOODCOCK: You can answer, Mr. Sidman.

9 THE WITNESS: I can only repeat that my direct
10 observations are the source of my opinion, and I did not
11 ask or feel necessary to ask whether the fire chief or
12 the police chief agreed with this or disagreed with
13 that.

14 It's my opinion from my experience. I have a lot
15 of -- I'm very familiar with this town having spent
16 these countless hours. So that's my opinion, and I'm
17 sticking to it.

18 MR. WOODCOCK: That's not my question, Mr. Sidman.
19 My question --

20 MR. PAPAZIAN: Objection.

21 THE WITNESS: I answered it.

22 BY MR. WOODCOCK:

23 Q. Mr. Sidman, Mr. Sidman, that's not my question. I've
24 been trying this question now for some time, and I'd
25 like a straight answer to it, and that is understanding

1 If the fire chief and the police chief held
2 perspectives that disputed your opinion or contradicted
3 your opinion, would you -- would that change your
4 opinion or not?

5 A. If there was a disagreement, if they were to come out
6 and say everything's fine, your concern is misplaced, I
7 would have to say, chief, I beg to differ. This is my
8 concern.

9 Q. So if the fire chief were to say that cruise ship
10 passengers in his experience do not jeopardize the
11 provision of emergency medical services by the fire
12 department, you would give no weight to that opinion as
13 having any effect on your own opinion?

14 A. I wouldn't say no weight. I would register the
15 disagreement and barring any further observation or fact
16 that I could obtain, I would maintain my opinion.

17 Q. Now, you -- your opinion also includes the -- your
18 expert designation includes the assertion that the
19 ordinance, which has brought us here today, improves the
20 ability of local businesses to attract and serve
21 customers; correct?

22 A. Yes.

23 Q. Isn't the ordinance intended to expressly limit the pool
24 of customers for businesses?

25 A. No.

1 Q. And so in your view the fact that those 1,500 will not
2 be on the street when otherwise they would be, does
3 that -- is that an example of how the ordinance would
4 attract customers to Bar Harbor businesses?

5 A. If you're interested in this relationship, I would
6 explain to you that countless people stay away from town
7 because they are deterred by the cruise ship crushes.

8 So if the cruise ship crush wasn't there for a few
9 hours, innumerable other people would come to town over
10 a longer period of time and deliver better business to
11 the downtown shops.

12 I can say that being a business owner in town for
13 30 years.

14 Q. And you're saying countless people. Are we talking tens
15 of thousands?

16 A. No, in our particular business, I'm going to guesstimate
17 several thousand a year.

18 Q. Have you done any kind of, let's say, data collection to
19 quantify what you're talking about?

20 A. Quantify the people who haven't shown up? No, I have
21 not.

22 Q. Yes, but you've told us that there are many people who
23 have told you they're not showing up?

24 A. Absolutely. It's my experience and other businesses in
25 town, the same reports over and over and over again.

1 Q. We went over that in your testimony previously. You
2 identified two businesses as I recall.

3 So what is the number, then, Mr. Sidman, since
4 you're talking about countless people not coming, what's
5 the number? Is it 1,000? Is it 50,000? Let me break
6 it down further.

7 What's the number in May? What's the number in
8 June? And what's the number in July?

9 MR. PAPA ZIAN: Object --

10 BY MR. WOODCOCK:

11 Q. How many people are not coming based on your testimony
12 as an expert to Bar Harbor in the months of May, June,
13 and July because cruise ships are there? And break down
14 each month with particularity, please.

15 A. Well, I can't address month-by-month. I have no data at
16 all. I'm just telling you the over and over again
17 reports we had, cruise ship visitors amount to maybe 10
18 percent, roughly, of the visitors to Bar Harbor each
19 year.

20 I think if they were reduced, or even eliminated
21 entirely, which we are not trying to do, we would
22 probably regain 10 percent easily more around the clock.

23 Q. And on what do you base that? What data do you have to
24 share with us --

25 A. No data.

1 Q. So that's just --

2 A. I keep telling you it doesn't exist.

3 Q. That's a feeling?

4 A. No, repeated interactions are more than a feeling.
5 They're experience.

6 Q. And you have absolutely no documentation of these
7 repeated interactions?

8 A. That's true.

9 Q. You haven't tried to analyze it systematically; correct?

10 A. That is correct.

11 Q. You haven't set out -- for the people who have said they
12 are not coming, you haven't given any survey saying why
13 are you not coming, we need to make a record of this?

14 A. I think I'm going to smile again because I think this is
15 an absolutely ludicrous line of questioning.

16 Have you quantitatively analyzed the time that you
17 sit down for dinner with your family and the variation
18 around that norm and the mean? Of course, not. It's
19 just a fact of life. You live with it.

20 Q. Mr. Sidman, you have proposed an ordinance to the people
21 of Bar Harbor based on the feelings that you've
22 shared --

23 A. It was brought into and it was passed.

24 Q. Mr. Sidman, we have an agreement that I ask my questions
25 and you answer them.

1 A. It is not correct.

2 Q. And in what way is that not?

3 A. The additional experience is my 30-plus years in tourist
4 businesses, operating tourist businesses downtown,
5 dealing with thousands of potential customers each year,
6 and the personal interactions -- this has gotten very
7 fraught. It's difficult for our community, and that's
8 part of the peace and welfare of our community that the
9 unrestrained commercial greed of certain businesses is
10 tearing our town apart.

11 I have opinions about that as an active participant
12 in these debates as a business owner and as a frequent
13 downtown inhabitant.

14 Q. And you have an economic interest in limiting cruise
15 ship passengers; correct?

16 A. Many people do, and I think everybody's interest is
17 served by the initiative. I think our town would be
18 better off economically under the provisions of the
19 initiative which is why the Town accepted it.

20 Q. That's not the question, Mr. Sidman, and you know it's
21 not the question.

22 You have an economic interest in limiting cruise
23 ship passengers from disembarking in Bar Harbor, do you
24 not?

25 MR. PAPAIZIAN: I'm going to object. Assumes facts