

# The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

CASELLA WASTE SYSTEMS, INC.

v.

JON SWAN, et al.

Docket No.: 217-2020-CV-00212

## ORDER

The plaintiff, Casella Waste Systems, Inc. (“Casella”), brings this action for damages and equitable relief against the defendants<sup>1</sup>, Jon Swan f/k/a Jon Alvarez, Forest Lake Association, and Save Forest Lake, alleging the defendants engaged in a campaign to disparage Casella’s reputation by publishing and disseminating false statements of fact. Mr. Swan moves for summary judgment. Casella objects. The Court held a hearing on this matter on February 3, 2023. For the reasons set forth below, Mr. Swan’s motion is GRANTED in part and DENIED in part.

### I. Standard

To prevail on a motion for summary judgment, the moving party must establish that there is “no genuine issue as to any material fact” and that it is “entitled to judgment as a matter of law.” Sabato v. Fed. Nat’l Mortg. Ass’n, 172 N.H. 128, 131 (2019). In order to defeat summary judgment, the non-moving party “must put forth contradictory evidence under oath, sufficient . . . to indicate that a genuine issue of fact exists so that

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<sup>1</sup> The Court refers to the defendants collectively as “Mr. Swan.”

the party should have an opportunity to prove the fact at trial . . . .” Phillips v. Verax, 138 N.H. 240, 243 (1994) (citations and quotations omitted). A fact is material if it affects the outcome of the litigation under the applicable substantive law. Palmer v. Nan King Rest., Inc., 147 N.H. 681, 683 (2002). The Court looks to the “affidavits and other evidence” and to “all inferences properly drawn from them, in the light most favorable to the nonmoving party.” Clark v. N.H. Dep’t of Emp. Security, 171 N.H. 639, 650 (2019). In deciding the motion, the Court assesses “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed by the parties.” RSA 491:8-a, III.

## **II. Background**

Casella is a solid waste resource management company that maintains operations in New Hampshire, Maine, Vermont, Massachusetts, New York, and northern Pennsylvania. (Am. Compl. ¶¶ 7, 8.)<sup>2</sup> Through its subsidiaries and divisions, Casella provides a range of services, including waste management education and training, residential curbside collection, commercial and industrial waste removal, waste hauling services, “singlestream” or commingled recycling, and food waste composting. (Id. ¶ 8.) Casella also possesses materials recovery facilities, landfills, and regional transfer stations. (Id.) In addition, Casella operates municipally owned transfer stations on behalf of cities and towns. (Id.) Its operations in New Hampshire serve more than 50,000 households and 5,500 businesses, across 150 towns and cities. (Id. ¶ 11.)

North Country Environmental Services, Inc. (“NCES”), one of Casella’s subsidiaries, owns and operates a landfill in Bethlehem. (Id. ¶ 9.) The prior owner of

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<sup>2</sup> The Court cites the amended complaint for the factual background of the present motion.

the property operated an unlined landfill on the property, which leached contaminants into groundwater, some of which drained into the Ammonoosuc River. (Id.) During the acquisition of the landfill, Casella excavated the entire unlined landfill and placed the excavated waste in a new, double-lined landfill cell built to comply with state and federal regulations. (Id.) Following removal of the waste, groundwater at many portions of the site has met drinking water quality standards for many years. (Id.) However, when spring water sampling began in the mid-1980s, the results routinely indicated the presence of volatile organic compounds (“VOCs”). (Id.) Since April 2005, there have been no detections of VOCs in the main spring. (Id.) Since April 2017, there have been no detections of VOCs in any of NCES’s springs. (Id.)

Following litigation between NCES and the Town of Bethlehem in 2012, NCES entered into a settlement agreement that had the effect of limiting the size of NCES’s landfill to sixty-one acres. (Id. ¶ 10.) Although NCES owns land adjacent to the landfill, it cannot expand the landfill into those parcels without the town’s consent and an amendment to the town’s zoning ordinance. (Id.) Although NCES is in the process of seeking approval for a final expansion that would allow the landfill to operate until 2026, NCES opted to search for alternative sites to develop a new landfill. (Id. ¶¶ 10, 11.) In 2018, NCES entered into an option contract with two property owners to acquire over 1,000 acres of contiguous parcels in Dalton for the development of a second landfill. (Id. ¶ 11.) The property, however, is located beyond a ridge from Forest Lake State Park. (Id. ¶ 13.) Jon Swan, who owns a home by Forest Lake, became alarmed when he learned of the project and founded “Save Forest Lake,” an organization aimed at stopping the development of the NCES landfill in Dalton. (Id. ¶¶ 13, 14.)

Mr. Swan has conducted a public advocacy campaign in opposition of Casella's planned construction of the new landfill. (Id. ¶ 14.) Mr. Swan has declared himself "at war" with Casella. (Id. ¶ 25.) Casella alleges that several of the statements Mr. Swan made in the course of this campaign are defamatory. (Id. ¶ 3.) The Court will address each statement individually.

### **III. Analysis**

To determine whether a statement communicates defamatory material, the Court examines "whether the [statement] was reasonably capable of conveying the particular meaning . . . ascribed to it by the plaintiff" and "whether that meaning is defamatory in character." Boyle v. Dwyer, 172 N.H. 548, 554 (2019). A statement is defamatory in character where it holds the plaintiff "up to contempt, hatred, scorn or ridicule, or tend[s] to impair [the plaintiff's] standing in the community." Id. "Whether a communication is capable of bearing a defamatory meaning is an issue of law to be determined the Court. Only if the Court determines that language is defamatory is there then the question for the jury whether the communication was in fact understood by its recipient in the defamatory sense." Catalfo v. Jensen, 657 F. Supp. 463, 466 (D.N.H. 1987).

A "statement of opinion" is not defamatory, "unless it may reasonably be understood to imply the existence of [a] defamatory fact as the basis for the opinion." Automated Transactions, LLC v. Am. Bankers Ass'n, 172 N.H. 528, 532 (2019). Accordingly, the Court interprets statements of "rhetorical hyperbole," which cannot be construed as factual assertions, to constitute non defamatory statements of opinion. Id. at 533. Whether a statement of opinion implies the existence of a defamatory fact is a question of law for the Court to determine "in the context of the publication taken as a

whole.” Id. “If an average reader could reasonably understand a statement as actionably factual, then there is an issue for a jury’s determination and summary judgment must be denied.” Id. “A statement of fact is not shielded from an action for defamation by being prefaced with the words ‘in my opinion,’ but if it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable.” Partington v. Bugliosi, 56 F.3d 1147, 1156 (9th Cir. 1995).

“An important criterion for distinguishing statements of opinion from statements of fact is verifiability, i.e., whether the statement is capable of being proven true or false.” Automated Transactions, 172 N.H. at 533. “Where an expressive phrase, though pejorative and unflattering, cannot be objectively verified, it belongs squarely in the category of protected opinion.” Id.; see Phantom Touring, Inc. v. Affiliated Publications, 953 F.2d 724, 728 (1st Cir. 1992) (finding statement that theater production was “a rip-off, a fraud, a scandal, a snake-oil job” to be protected opinion because, in part, there could be “no objective evidence to disprove it”); Catalfo, 657 F. Supp. at 468 (finding statement that plaintiff was “sleazy” to be expression of opinion because, even assuming the word carried the definition “marked by low ethical standards, . . . it is [not] capable of verification” because “[e]thical standards are inherently subjective”). “The vaguer a term, or the more meanings it reasonably can convey, the less likely it is to be verifiable and hence actionable.” Id. at 534.

A speaker cannot be liable for a defamatory statement which is true. Thomas v. Telegraph Publishing Co., 155 N.H. 314, 335 (2007). “In the law of defamation, truth is defined as substantial truth, as it is not necessary that every detail be accurate. In other

words, literal truth of a statement is not required so long as the imputation is substantially true so as to justify the gist or sting of the remark.” Id. “[T]he conclusion that a statement is substantially true will . . . involve a determination that whatever errors are in the statement are irrelevant in the minds of the audience.” Id. The determination of the substantial truth of a specific statement must consider the context of the entire publication. Id. at 336.

To establish defamation against a private person, the plaintiff must show that the defendant acted “intentionally or negligently in communicating defamatory material” and, if so, that the defendant (1) “kn[ew] that the statement [was] false and that it defames the other,” (2) “act[ed] in reckless disregard of these matters,” or (3) “act[ed] negligently in failing to ascertain” the truth. McCarthy v. Manchester Police Dep’t, 168 N.H. 202, 210 (2015). When defamation is alleged against “a public official or public figure,” however, the plaintiff “must prove that the statement was made with ‘actual malice,’ meaning with knowledge that [the statement] was false or with reckless disregard of whether it was false or not.” MacDonald v. Jacobs, 171 N.H. 668, 674-75 (2019). “[R]eckless disregard of truth” will be found where there is a “subjective awareness of probable falsity.” Gertz v. Robert Welch, Inc., 418 U.S. 323, 334 n.6 (1974) (citing St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (“There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.”)).

Casella concedes that it is a public figure and thus the MacDonald test applies. (Consolidated Facts ¶ 1.)

Mr. Swan seeks summary judgment on several statements Casella claims are actionable for defamation. The Court addresses each statement in turn.

“Scammed Elderly Residents”

On January 16, 2020, Mr. Swan posted the following statement on the Save Forest Lake Facebook page:

(This is meant to be satirical but obviously very much based on local reality)

Please talk to your friends and loved ones, especially the elderly and more vulnerable, so they don't fall victim!

An investigator learned of two different scams just this week!

The first was perpetrated on an elderly citizen of Bethlehem. It seems that a waste management company had convinced him over the past 8 months that going door to door in that town, along with posting signs throughout, at a significant cost to both his finances and reputation, would somehow convince the residents of that town that a continued relationship would [sic] that company would somehow be of benefit to the town. Please be sure to keep an eye on your loved ones so that they don't fall victim to this as well!

The second case involved an elderly citizen of the Town of Dalton. There too a waste management company had persuaded a town elder, via email, to put his reputation on the line by presenting an apparently fictitious offer of riches to the town government, with “no strings attached” (yes, he sadly fell for that one) without the realization that this could be deemed as an attempt to influence public opinion regarding a very unpopular landfill development. “Confusion” on the part of the elderly victim was cited by the waste management company representative when approached by the investigators.

Please be sure to monitor the activities, including email and social media accounts, of your elderly loved ones to protect them from such scams in the future, particularly those centered around requests by waste management companies seeking advocates to lobby the public on their behalf. This has become a favorite of waste management companies, most of whom are worth hundreds of millions of dollars and have employees capable of doing their own dirty work.

Thank you!

(Swan Aff. ¶ 5; Ex. A.) The statement did not originally contain the opening parenthetical. (Plf.'s Facts ¶ 1.) A Facebook user commented on the original post asking whether the issue had been reported to authorities and whether an investigation was being conducted. (Id. ¶ 2.) The Save Forest Lake Facebook page responded to the user, “[i]t’s meant to be satirical, but obviously very much based on fact.” (Id. ¶ 3.) After the exchange, the post was updated to include the opening parenthetical. (Id. ¶¶ 4, 5.) However, a Save Forest Lake Twitter account posted the same statement without the parenthetical. (Plf.'s Facts, Ex. 1, Attach. B.)

Mr. Swan cites an email sent from Rebecca Metcalf, Casella’s outreach manager, to Don Mooney, a resident of Dalton, expressing Casella’s interest in providing a monetary gift to the Town of Dalton. (Def.’s Facts ¶ 6; Swan Aff.; Ex. B.) Mr. Mooney responded with interest to Ms. Metcalf’s email. (Swan Aff.; Ex. B.) Mr. Mooney advocated for the development of a landfill in Dalton and encouraged local residents and authorities to support the project. (Def.’s Facts ¶ 7.) Casella contends that Mr. Mooney acted independently to advocate for a new landfill in Dalton and that he was never employed by Casella or offered financial assistance or promises of personal gain in exchange for his advocacy. (Plf.’s Facts ¶ 11.)

Mr. Swan argues that his statement that Casella was “scamming elderly residents of Dalton and Bethlehem” is satire, opinion, or comment on a set of publicly known facts. Mr. Swan contends that the statement, viewed in the context of Save Forest Lake’s Facebook feed with thousands of posts on it related to Casella, is clearly satire. Casella argues that the statement does not bear the “markers of obvious



falsehood or humorous hyperbole . . . .” (Plf.’s Obj. at 14.) The Court agrees with Casella.

The First Amendment protects satire. Hustler Magazine, Inc. v. Falwell, 85 U.S. 46, 53 (1988). However, a statement is not protected by the First Amendment when it implies false and defamatory facts. See Milkovich v. Lorain Journal Co., 497 U.S. 1, 20-21 (1990). The protections afforded to satirical speech are the same afforded to opinion; “[i]f an average reader could reasonably understand a statement as actionably factual, then there is an issue for a jury’s determination and summary judgment must be denied.” Automated Transactions, 172 N.H. at 533. Mr. Swan’s statement is not so obviously satirical that the Court can determine that no reasonable reader could understand the statement as purporting the veracity of the underlying factual allegations. See Milkovich, 497 U.S. at 21 (“This is not the sort of loose, figurative, or hyperbolic language which would negate the impression that the writer was seriously maintaining that petitioner committed the crime of perjury. Nor does the general tenor of the article negate this impression”). The Court disagrees with Mr. Swan that the context of the other posts on the Save Forest Lake Facebook feed support a finding that the statement was satire. Assuming viewing the post in the context of the entire Facebook page is appropriate, the record is ripe with factual allegations made against Casella in other Save Forest Lake Facebook posts. Mr. Swan’s advocacy campaign against Casella is based on targeted factual allegations. Accordingly, the context of the additional posts on the Save Forest Lake Facebook page do not support the satirical quality of this statement. Therefore, the statement is not protected satire.

Casella argues that Mr. Swan's statement is not protected opinion because its allegations can be objectively verified including: that an investigator learned of scams against the elderly, that a waste management company convinced an elderly man to campaign for landfill development in his town, that a waste management company "persuaded a town elder . . . to put his reputation on the line" for a "fictitious offer of riches" to the town, and that "the company mentioned the elderly man's confusion 'when approached by investigators.'" (Plf.'s Obj. at 11.) Casella argues that it cannot be protected as opinion because it can be objectively verified. Mr. Swan contends that the statement represents his opinion that Casella is operating a "scam" and is not actionable. See Automated Transactions, 172 N.H. at 538 ("The lack of precision makes the assertion "X is a scam" incapable of being proven true or false").

While the Court agrees that Mr. Swan's characterization of Casella's alleged actions as a "scam" is opinion, the statement as a whole implies the existence of underlying defamatory facts and thus, the statement is actionable. The statement does not simply state that Casella is running a "scam" but rather states specific facts, the truth of which is verifiable. In the statement itself, Mr. Swan states that it is "very much based on local reality." (Swan Aff., Ex. A.) Casella points to several specific allegations within the statement and denies their truth. Therefore, the statement is not protected opinion because it implies underlying verifiable facts which are capable of defamatory meaning.

Lastly, Mr. Swan argues that the statement is substantially true and thus not actionable. Casella disagrees and disputes the truth of several facts underlying Mr. Swan's assertions. To find the statement substantially true, the Court would have to

determine that “whatever errors are in the statement are irrelevant in the minds of the audience.” Thomas, 155 N.H. at 335. The Court cannot do so here. While the statement need not be literally true, the imputation must be substantially true “so as to justify the gist or sting of the remark.” Id. Here, the “gist or sting” of the statement is that Casella is convincing elderly residents to advocate on its behalf at the residents’ expense. While the emails between Ms. Metcalf and Mr. Mooney provide some support of Mr. Swan’s allegations, Casella raises a genuine dispute of material fact as to whether Casella convinced an elderly man to support it “at a significant cost to both his finances and reputation,” whether Casella “persuaded a town elder . . . to put his reputation on the line” for a “fictitious offer of riches,” and whether Casella officials spoke to an investigator about these allegations. The record does not support the substantial truth of the underlying facts the statement implies and thus the Court cannot decide on summary judgment whether the statement was substantially true.

The Court finds that the statement is not protected satire or opinion and the record does not support a finding that it is substantially true. Accordingly, the Court denies summary judgment on this statement.

#### Out of State Waste in New Hampshire Landfills

On November 20, 2019, Mr. Swan published a Facebook post claiming, among other things, that Casella was an “overall bad business partner filling up NH landfill space with out of state trash.” (Am. Compl. ¶ 22; Def.’s Facts ¶ 3.) On February 12, 2020, responding to news that Casella withdrew an application to expand its Bethlehem landfill, Mr. Swan posted the following statement on Facebook:

Just got this news from NH DES! This will be interesting to watch as it unfolds, for sure. Dalton has certainly proven that it does not want Casella as a business partner.

Casella may not have a home in NH sooner than we thought. NH has capacity for NH trash, and North Country towns better start reaching out to AVRDD/Mt Carberry soon. Casella needs NH so it can continue to import trash from out of state, we do not need Casella and its poor management and bully tactics. Goodbye Casella!

(Swan Aff., Ex. C.) In 2020, Casella imported 59,874.43 tons of out-of-state waste into its Bethlehem landfill; in 2019, it imported 113,345.11 tons. (Def.'s Facts ¶¶ 11-12.)

Out-of-state waste comprised 24.4% and 32.7% of the total waste accepted into the Bethlehem landfill in 2019 and 2020, respectively. (Plf.'s Obj. at 28.)

Mr. Swan argues that the statements are not actionable because they are not capable of defamatory meaning and are otherwise substantially true. Casella counters that while it is true that a portion of its Bethlehem landfill is dedicated to the storage of out of state waste, the claims that it "needs" to "fill" its New Hampshire landfills with out of state waste is both verifiably false and defamatory.

The Court finds that the statement "Casella needs NH . . ." is a characterization based on substantially true facts. Casella concedes that it uses New Hampshire landfills to deposit out of state trash. Casella contends that the statement implies it "will sacrifice New Hampshire resources for the benefit of the bottom line." (Plf.'s Obj. at 28.) The Court finds the statement substantially true because Casella, as a corporate entity, made, and continues to make, the business decision to import out of state trash to New Hampshire landfills. Mr. Swan's characterization of that fact as "need" is his opinion on an undisputed fact. The Court declines to find that because Mr. Swan used the word "need," the statement is actionable. See Harris v. Quadracci, 856 F. Supp. 513, 520 (E.D. Wis. 1994) (finding the defendant's statement that the plaintiff "demanded" a

certain percentage of profits not actionable when plaintiff admitted she “wanted” that percentage).

The Court likewise finds the statement that Casella is “filling up NH landfill space with out of state trash” substantially true and thus it is not actionable. Casella concedes it imports out of state trash into New Hampshire landfills. The “gist” or “sting” of the remark is that Casella is filling up New Hampshire landfill space with trash from other states. That imputation is substantially true as Casella is taking out of state trash and “filling” otherwise empty space in New Hampshire landfills. Therefore, the statement is not actionable.

The Court grants summary judgment on these statements.

#### Zero-Sort Recycling and the Collapse of the Recycling Market

On February 3, 2020, Mr. Swan posted the following statement on the Save Forest Lake Facebook page:

This from Casella Waste Systems FB page. Note how once again, Casella Waste Systems, (that self-titled “champion of the environment and sustainability” for the past 40 years), piggy-backs off of the efforts of OTHERS to REDUCE the amount of waste going into their landfills. This is a very unscrupulous company that only cares about the bottom line and not the environment. Otherwise, they would have been leading the way to reduce what we waste. Their “Zero-Sort” single-stream recycling program helped collapse the Asian market with its high-rate of contamination ultimately leading to more recycling product being landfilled.<sup>3</sup> Of course, Casella’s business plan solely focuses on profiting from what we waste. Just wish they’d be honest about that. We do not want this poorly run garbage profiteer and polluter anywhere near Forest Lake and we look forward to their expulsion from Bethlehem in or before 2023. Unless, of course, they go back on their word, again and seek expansion there by trying to pack the Select Board. We’ll see. #Unscrupulous #DumpCasella! #SaveForestLake

(Swan Aff., Ex. F.) The statement refers to another Facebook post made by Casella.

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<sup>3</sup> The underlined portion of the text represents the statement Casella contends is defamatory.

In a newsletter, Casella stated the following:

China Enacted the National Sword Program in 2017 to cut down the amount of 'carried waste' being sent into the country as an initiative to combat pollution. China has banned 24 types of materials that were previously entering their country as recyclables. The largest ban that has impacted the US recycling industry has been the ban on mixed paper (junk mail/scrap paper). For all other finished recyclables imported to China, the specifications are now at a .5% contamination rate, reduced from the industry standard of 3%.<sup>4</sup>

(Def.'s Facts ¶ 17.) Casella operates a zero-sort single-stream recycling program. (Id. ¶ 14.) Casella stated in marketing materials that the average contamination rate of incoming single stream material is 20%. (Id. ¶ 15.) However, Casella contends that 20% represents the average contamination rate of materials entering the system and not the recyclables Casella resells on the market which comply with industry standards. (Pff.'s Obj. at 15.)

Mr. Swan contends that his statement is unverifiable in two respects: whether the zero-sort recycling program had a "high rate" of contamination and whether the contamination rate "helped collapse" the Asian market. Casella contends that the statement, read as a whole, is capable of verification and therefore cannot be classified as protected opinion or speculation. There are multiple interpretations of what "helped" means in this context. See Catalfo, 657 F. Supp. at 534 ("The vaguer a term . . . the less likely it is to be verifiable and hence actionable"). "Helped" could mean anything

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<sup>4</sup> Casella argues that the Court should not consider this and other facts put forward by Mr. Swan because they were not referenced or included with the contested statements and therefore could not have formed the basis of the statement. Whether or not facts are disclosed in the alleged defamatory statement may or may not be material to the analysis on summary judgment. "A defamatory communication may consist of . . . an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion." Restatement (Second) of Torts § 566, at 170; see Automated Transactions, 172 N.H. at 534. In that instance, the Court will not consider undisclosed facts in its analysis of whether a statement of opinion implied a defamatory factual basis. However, the Court may consider undisclosed facts to determine whether the statement was substantially true or objectively verifiable. To that extent, the Court will consider facts put forward by Mr. Swan in support of his arguments that a statement was either substantially true or is not objectively verifiable.

within the range of Casella single-handedly caused the collapse of the Asian recycling market to Casella's export of contaminated recyclables to China, combined with those exported from an unknown number of other sources, together, contributed to the collapse of the Asian recycling market. A trier of fact cannot verify whether Casella's zero-sort recycling program "helped" collapse the Asian recycling market because "helped" does not have a clear definition within the context of Mr. Swan's statement. The same is true as to whether the zero-sort recycling program had a "high rate" of contamination. Whether the rate of contamination was "high" is Mr. Swan's subjective opinion and not objectively verifiable. A trier of fact cannot verify whether the contamination rate was "high" because it is a qualitative characterization and the record does not support the existence of objective criteria to determine whether a contamination rate is "low" or "high." The Court finds that whether Casella "helped collapse" the Asian recycling market and whether its zero-sort recycling system had a "high" rate of contamination are not verifiable and thus not actionable.

The Court grants summary judgment on this statement.

#### Accident in Vermont

On December 29, 2019, Mr. Swan posted to the Save Forest Lake Facebook page the following email circulated by Casella regarding a trucking accident in Coventry, Vermont. (Def.'s Facts ¶ 20.)

Dear All,

We wanted to follow up on an incident that occurred early this morning in Coventry if you have not already learned of it.

This morning an empty MBI transfer trailer jackknifed within the roadway just north of the Route 5 / Route 100 intersection.

The tractor and trailer was [sic] disabled due to black ice.

While the driver was outside the truck deploying safety triangles, a loaded leachate tanker travelling southbound on Route 5 whose driver could not stop the vehicle, tried to maneuver the truck to safety and lost control. The loaded tanker not only hit the transfer trailer but the driver of the trailer as well, he was transported to the North Country Hospital.

Needless to say the tanker was compromised and lost several fluids including leachate from the tanker.

...

(Swan Aff., Ex. I.) The accident occurred in close proximity to the Black River. (Def.'s Facts ¶ 21.) Both trucks involved in the accident belonged to Casella's subcontractors. (Id. ¶ 22.)

On December 29, 2019, Mr. Swan posted the following statement on the Save Forest Lake Facebook page:

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This so-called environmental steward has apparently managed to dump 8000 gallons of leachate from its Coventry landfill into the Black River, which ultimately feeds into Lake Memphremagog (a source of drinking water for many) early on Friday Dec. 27 at around 3 am (seemingly a violation in itself as work is not supposed to begin until 6 am). Now do we need this at Forest Lake? I think not.

...

(Swan Aff., Ex. I.) On December 31, 2019, the Caledonian Record published an article stating that the leachate spill from the trucking accident did not reach the Black River. (Def.'s Facts ¶ 25.) In response to this information, Mr. Swan made the following statement as a comment beneath the December 29 post:

Thank goodness, talk about a close call and a lot of nasty stuff! Now let's see what kinds of violations DEC comes up with. COVENTRY — An estimated 8,000 gallons of leachate from the landfill in Coventry spilled from a breached tanker truck early Friday morning in an accident that left one man seriously injured.

The leachate, liquid that is drained from within the liners of the landfill on Airport Road, contaminated soils around Route 5 where the accident



occurred but did not reach the nearby Black River, said Shawn Donovan, spill manager for the Vermont Department of Environmental Conservation.

(Swan Aff., Ex. L.)

Mr. Swan argues that the statement is not actionable because (1) the facts upon which he relied were included in the statement, (2) the statement was opinion or conjecture, and (3) he posted an update as new facts became publicized. Casella counters that (1) the facts upon which Mr. Swan relied on did not establish the volume of leachate that may have spilled from the tanker nor state that leachate actually entered the Black River, (2) the statement is not opinion or conjecture because local regulators in Vermont conducted an investigation into the accident and definitively concluded that leachate did not enter the river, and (3) the update does not negate the defamatory nature of the original post especially where the update was in the form of a comment to the original post, several layers deep below other comments.

When a speaker outlines the factual basis for their opinion, “he or she is not liable for defamation . . . no matter how unjustified and unreasonable the opinion may be or how derogatory it is.” Automated Transactions, 172 N.H. at 539; see Thomas, 155 N.H. at 339 (explaining that defendant’s statements were nonactionable because they were “completely based” on disclosed facts). Here, Mr. Swan did not just state an opinion based on the disclosed facts concerning the trucking accident in Coventry. Rather, he added a new, derogatory fact that Casella “dumped” leachate into the Black River. While the accident occurred adjacent to the Black River, there was no indication, at the time of Mr. Swan’s first post, that leachate entered the Black River. Mr. Swan contends that it was reasonable to “express apprehension that the spill of 8,000 gallons of leachate might bleed into the Black River . . . .” (Def.’s Mem. Supp. Summ. J. at 15.)

The Court disagrees with Mr. Swan's characterization of his statement. Mr. Swan did not "express apprehension" that the spill "might" cause leachate to enter the Black River. Mr. Swan stated that Casella "managed to dump" leachate into the Black River. Accordingly, Mr. Swan's statement that Casella "dumped" leachate into the Black River was not "completely based" on disclosed facts. See Thomas, 155 N.H. at 339.

Further, Mr. Swan's statement was not opinion or conjecture. Whether Casella caused leachate to enter the Black River is a verifiable fact. An average reader could reasonably understand Mr. Swan's statement as actionably factual because he appeared to be reporting the events of the accident in Coventry and added the fact that Casella managed to "dump" leachate into the Black River. See Automated Transactions, 172 N.H. at 533. Viewing the statement as a whole, an average reader would reasonably assume that leachate had entered the Black River due to Casella's actions. Accordingly, because the statement is verifiable, it is not protected as opinion.

Mr. Swan's allegation that Casella dumped leachate into the Black River sufficiently demonstrates a reckless disregard for the truth. While there was no evidence that leachate had not entered the river, there was also nothing to support the allegation. A reasonable jury could find that Mr. Swan accused Casella of dumping leachate into the Black River without regard to whether the allegation was true because it was made in the course of his public advocacy campaign against Casella. The ambiguity of whether leachate had reached the Black River combined with Mr. Swan's declared "war" with Casella sufficiently support the existence of an unresolved question of fact as to actual malice.

Mr. Swan's update confirming that leachate did not reach the Black River does not sufficiently cure the defamatory nature of his initial statement. Mr. Swan's update took the form of a comment to the original Facebook post which several accounts had already commented on. An average reader viewing the original post would not necessarily see the update in the comments. Mr. Swan's update is insufficient to negate the evidence of his reckless disregard of the truth when making the original post. To be sure, Mr. Swan can argue to a fact finder that his update demonstrates an absence of actual malice but the Court will leave the determination of that issue for the trier of fact.

Accordingly, the Court denies summary judgment on this statement.

#### Pollution of the Ammonoosuc River

On December 17, 2020, Mr. Swan posted the following statement on the Save Forest Lake Facebook page with a link to a video clip:

Video from 2018 announcing the lawsuit vs Casella/NCES over violating the Federal Clean Water Act. The lawsuit alleges illegal discharges of pollutants from the companies' Bethlehem landfill into the Ammonoosuc River. A drainage channel at the landfill, operated by NCES, collects landfill pollutants and discharges those pollutants into the Ammonoosuc River, without a discharge permit, as required by the federal Clean Water Act.

Casella and NCES sought to have the case dismissed on three grounds: that Community Action Works and Conservation Law Foundation did not have standing to bring suit; that the discharges from the drainage channel did not require a Clean Water Act permit; and that Casella is not a proper defendant.

U.S. District Judge Paul Barbadoro denied the motion to dismiss on all three grounds. We are still awaiting word on when the Supreme Court may hear this suit.

(Swan Aff., Ex. FF.)

Mr. Swan contends that the post represents a general summary of the facts and issues in Toxics Action Center, et al. v. Casella Waste Systems, Inc. et al., No. 1:18-cv-

393 (D.N.H. 2018). The complaint in Toxics Action Center alleges that a drainage channel collects leachate from the Bethlehem landfill and discharges it into the Ammonoosuc River, polluting it with iron, manganese, and 1,4-dioxane. (App'x at 47, 53.) The plaintiffs in Toxics Action Center sought an injunction requiring Casella to cease all unauthorized pollutant discharges into the Ammonoosuc River. (Id. at 75.)

Mr. Swan argues that his statement is a fair and accurate report of public court filings and thus the fair report privilege shields the statement from liability. Casella contends that Mr. Swan's statement lacked necessary qualifiers such as "according to a complaint filed by plaintiffs" or "allegations made in court." (Plf.'s Obj. at 30.) Casella argues that Mr. Swan intended the statement that Casella operates a drainage channel which discharges pollutants into the Ammonoosuc River to be received as a statement of fact rather than a report of the complaint.

The fair report privilege "applies to the publication of defamatory matter concerning another in a report of an official action or proceedings or of a meeting open to the public that deals with a matter of public concern [ ] if the report is accurate and complete or a fair abridgement of the occurrence reported." Thomas, 155 N.H. at 327. "A report need not track or duplicate official statements to qualify for the privilege; rather, it need give only a 'rough-and-ready' summary that is substantially correct." Id. "[A] statement is considered a fair report if its 'gist' or 'sting' is true, that is, if it produces the same effect on the mind of the recipient which the precise truth would have produced." Id. "A defendant who asserts the fair report privilege bears the burden of establishing its applicability, and the determination of whether the defendant has carried this burden is for the trial court." Id. "If the privilege does not apply — that is, if a report

is not a fair and accurate account of an official proceeding — general fault standards will govern.” Id.

The Court finds that the statement is shielded by the fair report privilege because it summarizes a public court filing. First, Mr. Swan’s statement refers to a video included in the statement which addresses the Toxics Action Center lawsuit. Then, Mr. Swan begins his statement by stating that a lawsuit was initiated against Casella for violations of the Clean Water Act. The Toxics Action Center complaint alleged violations of the Clean Water Act. (App’x at 61.) The statement goes on to state the allegations contained in the complaint. It then states, “[a] drainage channel at the landfill, operated by NCES, collects landfill pollutants and discharges those pollutants into the Ammonoosuc River, without a discharge permit, as required by the federal Clean Water Act.” Casella contends that this statement is not covered by the fair report privilege because it is an affirmative assertion without qualification. The Court disagrees. The sentence within the statement about the drainage channel that Casella contends is actionable is preceded and succeeded by sentences referring to allegations in the complaint and arguments Casella put forward in its motion to dismiss. Viewing the statement as a whole, it provides a “rough-and-ready” summary of the arguments from both parties in the Toxics Action Center lawsuit. See Thomas, 155 N.H. at 327; Automated Transactions, 172 N.H. at 533 (“Words alleged to be defamatory must be read in the context of the publication as a whole”). Mr. Swan’s statement is a sufficient accurate report of the underlying lawsuit, shielding it from liability under the fair report privilege.

Accordingly, the Court grants summary judgment on this statement.

### Coventry Operating Hours

On December 29, 2019, Mr. Swan tagged another user and posted the following statement on a Save Forest Lake Twitter page: “Any info on the #Casella enviro spill in Coventry, VT from Friday 12/27 early morning? Apparently 8k #leachate spilled into the Black River at 3am, clearly a violation of permitted work hours, too.” (Plf.’s Facts, Ex. A, Attach. C.) On December 31, 2019, Mr. Swan posted the following statement on the Save Forest Lake Facebook page: “[A] fully-loaded 8000 gallon MBI leachate truck leaving the Casella Waste Systems landfill in Coventry, VT, before 3am in icy conditions, was involved in an accident with another garbage tractor trailer near the Black River, surely outside of the permitted hours of operation for the landfill.” (Swan Aff., Ex. R.) These statements refer to the trucking accident in Coventry, Vermont previously discussed.

The permitted hours of operation for Casella’s Coventry landfill applicable to when waste may be deposited in the landfill are 7:00 AM to 4:00 PM, Monday through Friday and 7:00 AM to 11:30 AM on Saturday. (Def.’s Facts ¶ 33.) However, neither truck involved in the accident was owned or operated by Casella. (Plf.’s Facts, Ex. D.) Rather, the trucks were operated by third-party operators who contract with Casella and are not subject to the operational requirements set in the applicable permit. (Id.)

Mr. Swan argues that Casella cannot show he acted with actual malice when making the statement and further, the statement is speculative and not an assertion of fact. Casella contends that the statement is verifiably false because the applicable permit limits the hours of operation but does not limit when third-party haulers carrying

leachate can access the facility, collect leachate, and travel to wastewater treatment plants.

The Court finds that whether Mr. Swan acted with actual malice in making the statement is a question of fact precluding summary judgment. While Mr. Swan points to the permitted hours of operation for the Coventry landfill as evidence that he reasonably concluded that those hours of operation extended to the permitted hours of operation for trucking to and from the facility, the record contains sufficient evidence to counter that conclusion and for a reasonable fact finder to find that Mr. Swan acted with reckless disregard as to the truth of the statement. The record does not reflect what information Mr. Swan was aware of, if any, about the landfill's operating hours prior to making the statement. Mr. Swan has made clear that he is "at war" with Casella through his public advocacy campaign. Drawing all inferences in favor of Casella, that fact is sufficient to preclude summary judgment here because Mr. Swan could be found to have acted with reckless disregard to the truth when he stated that trucking leachate at 3 a.m. was not permitted.

Mr. Swan argues that the statement is speculative because it states that the trucking of leachate at 3 a.m. is "surely outside the permitted hours of operation . . . ." The Court is not persuaded. Statements may be protected as opinion when they are speculative. Gray v. St. Martin's Press, Inc., 221 F.3d 243, 250 (1st Cir. 2000). The test is "whether the statement is properly understood as purely speculation or, alternatively, implies that the speaker or writer has concrete facts that confirm or underpin the truth of the speculation." Id. "The former is protected as opinion; the latter is taken as an indirect assertion of truth." Id. Here, the statement can reasonably be

understood to imply concrete facts that confirm the truth of the speculation. An average reader could understand Mr. Swan's statement to imply that Casella, in fact, engaged in or authorized the trucking of leachate outside of permitted hours. Accordingly, the statement is not protected opinion.

The Court denies summary judgment on this statement.

#### Horizons Engineering Complaint

On April 24, 2019, Mr. Swan posted the following statement on the Save Forest Lake Facebook page:

Subject: Ethics Complaint/Save Forest Lake

Good Morning Mr. Danles and Ms. Home:

I am writing to file an ethics complaint against Mr. Eric Pospesil and his engineering/surveying company, Horizons Engineering located in Franconia, NH. At the April 3rd, 2019 Town of Dalton Planning Board meeting, Mr. Pospesil and his company, representing Casella Waste Systems, knowingly attempted to deceive the Planning Board, abutters, and the public regarding an attempt by Casella Waste Systems of Rutland, VT to adjust property lines for 300+ acres of land, intended to become a garbage landfill, in such a way as to avoid having to notify abutting landowners, including the NH Dept of Parks as the land in question borders Forest Lake State Park. An attempt was made to create a 50 foot border of land encompassing the proposed landfill site, which said border would remain in the name of the seller, Douglas Ingerson, Jr., thus allowing Casella Waste Systems to proceed with plans for the development of the garbage landfill without notification of said abutters. This would also represent an attempt to circumvent DRI statute, particularly RSA 36:54 thru 8, regarding the notification of affected municipalities concerning proposed developments which would have an impact beyond the boundaries of a single municipality, of which a garbage landfill adjacent to Forest Lake, Burns Pond, the Ammonoosuc River, etc., would surely constitute.

I feel this blatantly deceptive presentation of a "lot line adjustment,["] which was appropriately rejected by the Town of Dalton Planning Board, to negate the required notification of said abutters, constitutes professional malfeasance and possibly criminal conduct. Mr. Pospesil knowingly attempting to mislead the town planning board with his "lot line adjustment" in order to fast-track a garbage landfill for his client, Casella Waste Systems, adjacent to a large body of water, Forest Lake. This sort of unprofessional



behavior simply cannot be allowed to occur without some form of redress. Using the engineering company's professional position to mask the property owner and proposed purchaser's intent to instill sell a large, 300 acre + sized piece of land carved out of a larger parcel, for a garbage landfill in a town with no zoning ordinances and skirting the abutting landowner process, which would include the NH Div. of Parks, is fraudulent and despite the failure of the attempt, should be addressed accordingly by those responsible for licensing and permitting.

. . .

(Appx. at 161.)

Casella concedes that it signed an option to purchase a portion of land owned by J.W. Chipping, Inc. the principal of which is Doug Ingerson. (Def.'s Facts ¶ 36.)

Casella, either with or without J.W. Chipping or Mr. Ingerson, assisted by Horizons Engineering, submitted a proposed lot line adjustment plan to the Dalton Planning Board proposing a new lot configuration for certain lots. (Swan Aff., Ex. T; Def.'s Facts ¶ 37.) The proposed plan changed the boundary of a certain lot to no longer abut Forest Lake State Park and create a boundary line fifty feet from the park. (Def.'s Facts. ¶ 38.) On April 3, 2019, the Dalton Planning Board denied the lot line adjustment. (Plf.'s Facts, Ex. D.) On April 24, 2019, Mr. Swan submitted an ethics complaint with the New Hampshire Board of Land Surveyors making the accusations included in the statement. (Id.)

Mr. Swan contends that the assertions in his statement regarding Casella's motives are speculation and opinion. Further, Mr. Swan contends that the statement made accusations against Mr. Pospesil, not Casella, and thus Casella cannot allege that it was defamed by the statements directed at Mr. Pospesil. Casella contends that the statement is defamation per se because the allegations contained therein charge Casella with "activities which would tend to injure [it] in [its] trade or business . . . ." See MacDonald, 171 N.H. at 674.

MacDonald states that defamatory statements which charge a plaintiff with “activities which would tend to injure him in his trade or business” are libel per se. Id. Statements which are found to be libel per se permit a plaintiff to recover general damages even when no special harm results from the statement. Id. However, the statement must still be defamatory. Id. (“[N]o proof of special damages is required when the jury could find that the defamatory publication charged plaintiff with a crime or with activities which would tend to injure him in his trade or business”) (emphasis added). Accordingly, the Court must determine whether the statement is capable of defamatory meaning.

The Court disagrees with Mr. Swan that because certain allegations in the statement are directed at Mr. Pospesil they do not defame Casella. The post states that Mr. Pospesil attempted to procure a lot line adjustment from the Town of Dalton Planning Board in a representative capacity for his principal, Casella. That alone is sufficient to satisfy Casella’s standing to challenge the post. Further, the statement makes several allegations specifically about Casella and its motives in seeking a lot line adjustment. Accordingly, the Court finds that the statement makes allegations against Casella either directly or through addressing its agent’s actions taken on its behalf and therefore, Casella can challenge the statement.

The Court finds that Mr. Swan’s statement is not protected opinion. “The First Amendment generally protects statements of opinion where the speaker outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the listener free to draw his own conclusions.” Piccone v. Bartels, 785 F.3d 766, 774 (1st Cir. 2015); see also

Automated Transactions, 172 N.H. at 534 (“[E]ven a provably false statement is not actionable [ ] when an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts”). While Mr. Swan outlined the underlying facts available to him in his statement, he did not “leav[e] the listener free to draw his own conclusions.” Piccone, 785 F.3d at 774. Mr. Swan did not frame his statement as an opinion based on the underlying fact that Casella sought a lot line adjustment. Rather, he stated, as a factual allegation, that Casella sought the lot line adjustment in an attempt to thwart notification requirements to abutting property owners. The allegation regarding Casella’s motives is objectively verifiable and the statement did not make explicitly or impliedly clear that it expressed Mr. Swan’s speculative opinion as to Casella’s motives. Therefore, the statement is not protected opinion.

The Court denies summary judgment on this statement.

#### “Packing” the Bethlehem Planning Board

On May 28, 2019, Mr. Swan posted the following statement on the Save Forest Lake Facebook page: “. . . We also know Casella is trying to pack the Town of Bethlehem Planning Board in an attempt to try, yet again, and against the will of the voters, to seek further expansion in that town . . . .” (Swan Aff., Ex. U.)

Mr. Swan argues that the assertion that Casella is trying to “pack the board” is incapable of objective verification. “Packing the board” could mean, as Casella contends, “tampering with a government institution to achieve a particular result.” (Plf.’s Obj. at 23.) Or, “packing the board” could mean supporting candidates for positions who would support the proponent’s goals. Mr. Swan’s characterization of Casella’s

involvement, however slight, in the Bethlehem Planning Board is incapable of verification. The Court finds that “packing the board” is too vague to put forward to a fact finder for objective verification. See Catalfo, 657 F. Supp. at 534. Accordingly, the statement is protected as opinion.

The Court grants summary judgment on this statement.

#### Waste Water Treatment Plants and the Merrimack River

On November 24, 2019, Mr. Swan posted the following statement with a link to a news article: “PA and landfill and WWTP [Waste Water Treatment Plant] runoff . . . May 2019. How much longer will NH allow for Casella to ship its millions of gallons of leachate to the Concord and Franklin WWTP’s despite their inability to treat it effectively before it is emptied into the Merrimack River?” (Swan Aff., Ex. Y.) The article linked in the post was from the Pittsburg Post-Gazette entitled, “Pa. Attorney General to investigate landfill runoff problems in Westmoreland County.” (Id.) The article, published on May 23, 2019, describes how the Pennsylvania Attorney General obtained an injunction to terminate the treatment of landfill leachate at a Westmoreland County waste water treatment plant because it threatened to discharge harmful materials into the Monongahela River. (Appx. at 175-77.)

Casella produces approximately 32,000 gallons of leachate daily that is treated at the Concord or Franklin waste water treatment facilities. (Def.’s Facts ¶ 46.) The NCES facility has delivered its leachate for treatment to the Concord and Franklin waste water treatment plants for 20 and 2.5 years, respectively. (Plf.’s Facts, Ex. D.) New Hampshire Department of Environmental Services (“NHDES”) has never contested NCES’s leachate treatment practices or the delivery of leachate to the facilities. (Id.)

Mr. Swan cites academic articles questioning the ability to treat leachate in municipal waste water treatment plants. (Id. ¶ 47.)

Mr. Swan contends that the statement is opinion, rhetoric, and persuasion because the statement rhetorically asked the State of New Hampshire how long it would permit Casella to ship leachate to public waste water treatment facilities when other states, as evidenced by the article, were pursuing the prevention of that practice due to harmful environmental impacts. Casella contends that the post is a false statement capable of defamatory meaning because it accuses “local facilities of practices that are bad for the environment and suggest[s] that [Casella] is complicit in that practice . . . .” (Plf.’s Obj. at 35.)

The Court finds that the statement is protected as opinion because whether waste water treatment facilities can properly treat leachate is an issue of scientific debate and thus incapable of objective verification. Mr. Swan provided academic articles questioning the practice of treating leachate at waste water treatment facilities. Casella has not countered this evidence with anything other than the fact that NHDES has never contested the practice. Casella contends that the Court cannot consider the academic articles Mr. Swan provided in support of his argument. That argument is unavailing as the Court may consider evidence not included in the alleged defamatory statement when asked to determine whether the statement is verifiable. Mr. Swan’s statement questioning how long New Hampshire will allow Casella to transport leachate to waste water treatment facilities “despite [its] inability to treat it effectively before it is emptied into the Merrimack River” is not actionable for defamation because it is an opinion regarding a matter of scientific debate.

The Court grants summary judgment on this statement.

“Weaponizing” the Legal System

On June 7, 2021, Mr. Swan posted the following statement on a Save Forest Lake Twitter page: “When Casella weaponizes the legal system: . . . A sad reality, meant to silence those who oppose them. NH deserves better than this company.” (Swan Aff., Ex. GG.) At the end of the post, Mr. Swan tags several other accounts. (Id.) The post referenced a copy of a stalking petition filed against Mr. Swan by Vanessa Cardillo. (Def.’s Facts ¶ 48.) Ms. Cardillo is the girlfriend of Doug Ingerson, owner of the land Casella intends to buy and construct its landfill on. (Id.)

Ms. Cardillo filed her stalking petition the day before the annual Dalton Town Meeting, at which Mr. Swan planned on canvassing voters because he was running for elected office. (Id. ¶ 49.) While the alleged conduct occurred months prior, Ms. Cardillo did not file the petition until the day before the election. (Id.) Mr. Swan sought to amend the petition to permit him to attend the Town Meeting, which the court obliged. (Id.) After a merits hearing, the court dismissed the petition. (Id.) Casella’s Region Vice President, Brian Oliver, testified that Casella did not participate in Ms. Cardillo’s stalking petition and only learned of it after it was filed. (Plf.’s Facts, Ex. E.)

Mr. Swan argues that the statement that Casella “weaponized” the legal system against him is protected opinion and not verifiable. Mr. Swan contends that the statement relates to Ms. Cardillo’s motivations in seeking the petition and the “implicit supposition that [Casella] . . . stood to benefit, financially or otherwise, if the stalking petition were permitted to continue . . . was protected opinion.” (Def.’s Mem. Supp. Summ. J. at 29.) Casella characterizes the statement as a claim that it was involved

with the filing of the petition, “suggesting it was a concerted effort to quash his advocacy and preclude him from campaigning near the polling location.” (Plf.’s Obj. at 25.) Accordingly, Casella contends that the statement is verifiable and thus not protected opinion.

The Court agrees with Mr. Swan that whether Casella “weaponized” the legal system against Mr. Swan cannot be objectively verified. However, that phrase is not the only defamatory aspect of the statement. The Court finds that the statement, as a whole, could reasonably imply that Casella participated in Ms. Cardillo’s filing of the stalking petition against Mr. Swan, the truth of which is verifiable. Mr. Swan’s statement cites the stalking petition and states that it represents an instance of Casella’s “weaponization” of the legal system. The statement heavily implies Casella’s involvement in the stalking petition. Mr. Swan’s statement is not protected as opinion because a fact finder could determine whether or not the fact implied in his statement, that Casella assisted in orchestrating the stalking petition against Mr. Swan, is true.

The Court denies summary judgment on this statement.

#### SLAPP Suits and Attorney’s Fees

Mr. Swan contends that this suit is a strategic lawsuit against public participation (“SLAPP”). SLAPP suits are “civil lawsuits filed against non-governmental individuals and groups, usually for having communicated with a government body, official, or the electorate, on an issue of public interest or concern.” Opinion of the Justices, 138 N.H. 445, 448 (1994). The suits “seek to retaliate against political opposition, attempt to prevent future opposition and intimidate political opponents, and are employed as a strategy to win an underlying economic battle, political fight, or both.” Id. at 449. “This

goal is realized by instituting or threatening multimillion-dollar lawsuits to intimidate citizens into silence.” Id. The New Hampshire Supreme Court found that the New Hampshire Constitution does not permit Anti-SLAPP legislation. Id. at 451. Still, Mr. Swan urges this Court to “put a stop” to Casella’s suit. (Def.’s Memo. Supp. Summ. J. at 6.) Further, Mr. Swan requests attorney’s fees.

As outlined in this Order, Casella has made out viable claims for defamation against Mr. Swan. The Court does not opine as to Casella’s motivations for filing suit against Mr. Swan. Mr. Swan’s arguments concerning Casella’s motivations are best suited for the fact finder. The Court denies Mr. Swan’s request for attorney’s fees as it appears the only support he provides is the classification of this suit as a SLAPP suit.

In summary, the Court grants Mr. Swan summary judgment on the following statements:

1. Out of State Trash in New Hampshire Landfills
2. Zero-Sort Recycling and the Collapse of the Recycling Market
3. Pollution of the Ammonoosuc River
4. “Packing” the Bethlehem Planning Board
5. Waste Water Treatment Plants and the Merrimack River

The Court denies Mr. Swan summary judgment on the following statements:

1. Scamming Elderly Residents
2. Accident in Vermont
3. Coventry Operating Hours
4. Horizons Engineering Complaint
5. “Weaponizing” the Legal System



Finally, in its second amended complaint, Casella added a statement regarding “the purposeful introduction of PFOS/PFOA contaminants into the Forest Lake area . . . .” (Sec. Am. Compl. ¶ 38.) Mr. Swan’s motion for summary judgment does not address this statement and therefore the statement continues, with the others not dispensed in this Order, forward.

**IV. Conclusion**

For the foregoing reasons, Mr. Swan’s motion is GRANTED in part and DENIED in part.

**SO ORDERED.**

3/10/2023  
Date

  
\_\_\_\_\_  
John C. Kissinger, Jr.  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 03/13/2023