

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No: 217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

OBJECTION TO MOTION IN LIMINE
(ROBINETTE EXPERT TESTIMONY)

1. The Plaintiff seeks to bar the Defendant, Mr. Swan, from introducing expert opinion testimony by his disclosed expert Muriel Robinette. Motion at 1.

2. The Defendant objects because, while the truth or falsity of Mr. Swan's statements has been deemed not relevant to the question of breach of his contractual obligations, heavily contested in this matter is whether the liquidated damages provision meant \$5,000 for each proven violation or each legal action. The difference is obviously a profound one for the ultimate outcome of this case.

3. As noted in the Defendant's Motion for Partial Summary Judgment filed December 15, 2025, even assuming the Plaintiff can prove breach, an award damages more than \$5,000 for this action in its entirety is impermissible because the plain language of the Settlement Agreement says \$5,000 per action—not per violation. At minimum, the language is ambiguous and requires testimony concerning the parties' intentions in order for the jury to understand what the parties actually agreed to—if anything—concerning liquidated damages.

4. But even assuming that the liquidated damages provision could be construed to mean “per proven violation” or “per statement,” the Plaintiff is required to prove that the

liquidated damages provision “per statement” is a reasonable and not greatly disproportionate to the presumable loss or injury, *i.e.*, its presumed *actual damages* from the offending conduct. *See* Motion for Partial Summary Judgment at 4 (*quoting Langlois v. Maloney*, 95 N.H. 408, 412 1949)). Whether Mr. Swan’s statements are true or false is acutely relevant to whether the liquidated damages sum of \$5,000 is proportionate or not to the presumable loss or injury. In this case, a jury could reasonably find that the erroneous assertion of an otherwise true fact without prefatory opinion language is, at best, nominal harm. This would lead to either of two outcomes that would have a substantial impact on the case. First, the conclusion that anything more than \$5,000 liquidated damages for the entire action would be grossly disproportionate and therefore, the provision is only sustainable as a \$5,000 award in total for all alleged breaches. Or second, a determination that the reasonable damages to reputational harm from a true statement are nominal, zero, or disproportionate, thereby invalidating the liquidated damages provision in its entirety and forcing the Plaintiff to explain to a jury how these true statements damaged its reputation. Thus, the truth or falsity of Mr. Swan’s statements is highly relevant to the Plaintiff’s claim that it is entitled to \$5,000 liquidated damages per statement.

5. Mr. Swan properly disclosed an expert, Muriel Robinette, to analyze, interpret and explain the underlying documents that Mr. Swan’s statements pivoted off—specifically including such matters as whether the Bethlehem NCS solid waste facility was “leaking” PFAS and other forever chemicals, as described exhaustively in the public documents that Mr. Swan was posting about (and incorporating by reference). Based on her testimony, a jury could reasonably conclude that the harm to the Plaintiff of Mr. Swan’s failure to include “In my opinion” language in his posts was de minimus because the statement was, in fact, true—and that awarding \$5,000 for

such a breach, let alone a dozen such breaches, would be grossly disproportionate to the presumable loss or injury.

6. Simply put, it cannot “harm” the Plaintiff reputationally to say that its facility is leaking PFAS chemicals and 1,4 dioxane when, by its own admission, the facility is emitting these chemicals. Muriel Robinette is disclosed to testify about the substantial truth or falsity of Mr. Swan’s statements in light of the Plaintiff’s own disclosures, admissions and reports of New Hampshire DES. That is a relevant consideration in this matter if the liquidated damages provision is not to be deemed unconscionably and impermissibly punitive. *E.g., General Linen Svcs v. Franconia Inv. Assoc. LP*, 150 N.H. 595, 599 (2004). Excluding the testimony would be error.

7. For these reasons, the Defendant requests that the Court deny the Plaintiff’s Motion to Preclude “Expert” Testimony from Defendant’s disclosed expert.

Respectfully submitted,

JON SWAN

By his Attorneys:

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Dated: January 15, 2026

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded, this day, to counsel of record, via the Court's electronic file & serve system.

/s/ *Jeremy D. Eggleton*
Jeremy D. Eggleton