

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-00285

Jon Swan

MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY

The plaintiff, Casella Waste Systems, Inc. (“Casella” or the “Plaintiff”), hereby moves to exclude all testimony of the Defendant’s expert witness, Muriel Robinette, and states as follows in support thereof:

Background and Introduction

1. This action arises out of the breach of a settlement agreement by the Defendant and a counterclaim for Plaintiff’s alleged breach of the same settlement agreement. Defendant has sought throughout these proceedings to turn the case into a requiem on the Plaintiff’s subsidiary’s landfill in Bethlehem, New Hampshire.

2. Prior to this case, Casella sued the Defendant for several defamatory statements he made regarding various entities owned by Casella. That case was settled and resulted in an agreement whereby the Defendant agreed that if he posted statements on social media or elsewhere about the Plaintiff of the landfill, he must include certain statements with his comments. Almost immediately, the Defendant breached the terms of the settlement agreement, and Casella sued for breach. Casella twice moved to amend the complaint based on additional breaches by the Defendant.

3. On or about October 15, 2024, the Defendant disclosed Ms. Robinette as an expert witness to testify regarding the truth of the Defendant's statements, and in particular, whether or not the Bethlehem landfill is currently "leaking". Through significant motion practice and several orders, the court limited the scope of discovery such that the truth or falsity of the Defendant's statements was not at issue. Defendant was therefore not permitted to seek discovery that would support his statements that the landfill was "leaking". Despite the orders limiting discovery and the order denying Plaintiff's motion for summary judgment, the Plaintiff anticipates that the Defendant will attempt to introduce expert evidence from Ms. Robinette. Based on the court's prior orders, such expert evidence should be excluded under New Hampshire Rule of Evidence 401 as it is not relevant to this case.

Discussion

4. Under Rule 401, evidence is relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." N.H. R. Evid. 401.

5. Casella brought claims for breach of contract based on the Defendant's failure to include certain prefatory statements and information in posts that attributed acts or omissions to Casella or its subsidiaries. Casella moved for summary judgment because the Defendant admitted making the statements, and all of the statements, on their face, failed to include the agreed-upon prefatory language that such statements were the Defendant's opinion or similar language.

6. On September 25, 2025, this court denied Plaintiff's Motion for Summary Judgment. In doing so, the Court acknowledged that "the truth of whether contaminants are being discharged does not matter, what matters instead is whether a reasonable person would read the statement as imputing conduct or intent onto the Plaintiff." Order on Motion for Partial Summary

Judgment at 5. The Court also acknowledged that the “it is undisputed that the Defendant’s posts failed to include the required prefatory language.” *Id.*

7. For trial, then, the only outstanding factual issue on Plaintiff’s claims is whether or not a reasonable person would understand the Defendant’s statements as attributing conduct to the Plaintiff.

8. The Defendant’s expert witness disclosure states that she will “provide comment, explanation and interpretation on publicly available studies and reports concerning the Bethlehem NCES landfill” and that she “has specific familiarity with the Bethlehem NCES landfill....” Further, the expert disclosure states that “Ms. Robinette will be asked to comment on whether Mr. Swan’s factual assertions about NCES leaking...are true or false.”

9. As the Plaintiff has stated, and as the Court has recognized, Plaintiff is not pursuing a defamation claim.

10. Accordingly, the proffered testimony is not relevant to any matter that is the subject of this contract case, and the Defendant has no grounds upon which to introduce expert evidence. *See* May 2, 2025 Order on Motion to Compel at 3.

11. The proffered expert evidence is not relevant and should be excluded.

Conclusion

12. For the foregoing reasons, Defendant should not be permitted to introduce any testimony or reports from his expert witness, Muriel Robinette.

WHEREFORE, plaintiff Casella Waste Systems, Inc. respectfully moves that this Honorable Court:

- A. Exclude all expert testimony of the Defendant's expert, Muriel Robinette; and
- B. Grant such other relief as may be just and proper.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.,
By Its Attorneys,

Date: December 15, 2025

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CERTIFICATE OF SERVICE

I hereby certify that the within pleading is being served electronically through the court's ECF system upon counsel of record and all other parties who have entered electronic service contacts in this case.

Date: December 15, 2025

/s/ Jacob M. Rhodes
Jacob M. Rhodes, Esq.