

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 PRECLUDE TESTIMONY FROM DEFENDANT**

The plaintiff, Casella Waste Systems, Inc. (“Casella” or the “Plaintiff), hereby moves to preclude the Defendant from testifying regarding his subjective intent when making the statements at issue in this case (the “Statements”), what he believes a reasonable person would interpret those Statements to mean, and to whom any actions or omissions were attributed, and in support thereof states as follows:

**Background and Introduction**

1. As discussed in Plaintiff’s contemporaneously filed motions *in limine*, the factual issues in this case are narrow. Plaintiff is seeking to further clarify and confirm the narrow nature of the factual issues at trial. In the other motions *in limine*, the Plaintiff has requested the court to exclude any evidence from the Defendant’s expert witness and preclude the Defendant from providing expert testimony. Turning to the primary factual issue, the only dispute on the Plaintiff’s claims in this case is whether or not the Statements made by the Defendant attributed an act or omission to the Plaintiff or its subsidiaries. *See* Sept. 25, 2025 Order on Motion for Partial Summary Judgment at 5 (“it is disputed whether the posts impute conduct or intent onto the Plaintiff.”)

2. On the Plaintiff's motion for partial summary judgment, in addition to narrowing the scope of disputed factual issues, the Court described the standard for assessing the factual issues as "whether a reasonable person would read the statement as imputing conduct or intent onto the Plaintiff." *Id* at 6. Thus, the primary issue is how a reasonable person would understand the Statements; the issue is not how the Defendant subjectively interpreted or intended those Statements.

### **Discussion**

3. 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.

4. Plaintiff anticipates that the Defendant will seek to testify regarding his subjective intent in making the Statements. Such testimony is irrelevant. The Defendant's subjective mental state has no bearing on the interpretation the Statements would be given by a reasonable person. The Defendant has not claimed that his subjective intent or mental state could affect how a reasonable person understands the Statements. Similarly, the Defendant cannot testify as to how a reasonable person would understand the Statements and whether such statements attributed acts or omissions to the Plaintiff or its subsidiaries.

5. 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.

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

## Conclusion

7. For the foregoing reasons, Defendant should not be permitted to testify as to his subjective mental state in making the Statements or how a reasonable person should or would interpret the Statements.

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

- A. Exclude the Defendant's testimony in the manner set forth above; 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

By: /s/ Jacob M. Rhodes

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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.

4924-1388-4802, v. 1