

5/7/2026

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Closing

Ladies and gentlemen of the jury, thank you for your careful attention over these last few days. We appreciate you.

I told you at the start it's a David and Goliath case and so it has proved to be.

Casella sued Jon Swan for defamation six years ago because of his advocacy in public against their proposed dump near Forest Lake in Dalton. The megacorporation against one man who spoke loudly for his convictions.

They settled that case on May 11, 2023, as you heard, after a long day of negotiation.

The agreement contained two basic exchanges.

First, each party agreed to dismiss their claims. Casella had claims and Jon had counterclaims. Jon also paid Casella \$1500. That was the first stage.

Second, they agreed to some forward-looking promises to each other. They would keep the settlement confidential, and Jon would modify the way he talked about Casella by expressing his statements as opinions.

The confidentiality provision was very important to Jon. He had fought a good and successful fight against the landfill in Dalton and he didn't want his supporters—who donated money so he could defend himself—to have to see him making deals with the devil. So he agreed to modify his speech if they agreed to keep things quiet.

He thought he had a deal.

As you heard, two weeks later, they sued him again. It shows the goal all along was just to keep hunting Jon Swan, to silence him, and that's why we're here today.

But Casella overreached—a sign of the bully's hubris. Let me explain how.

Jon did not breach

In their complaint they alleged that Jon misrepresented the way the case was resolved in an internet post—Exhibit 1.

First, let's look at the picture. Remember what Jon said about the relief he felt after ending three years of litigation and having to spend six figures in legal fees? About the end of a long day of hard compromise?

Casella is trying to turn Jon's sense of happiness over that outcome into an attack on them. And while they readily conceded that his Facebook post here doesn't breach the contract, they are trying to argue that this isn't fair to them. What's not fair, is suing someone two weeks after settling the case—over this.

Because let's look at what the agreement here on this blowup says. It says "the terms and existence of this Agreement shall be confidential. No party shall disclose the terms set forth in this Agreement to any person..."

As you can see in Exhibit 1, there is no mention of the settlement agreement in this post. No mention of confidentiality, no mention of future speech controls, no mention of any term of the settlement agreement. He is simply reposting the headline of a newspaper

article and a link to the article. SHOW EXHIBIT B, compare Headline to Headline Posted.

As Jon said, he didn't even actually craft these words at all. Someone else's words. The words of a public communication by an independent party.

Nothing in the Settlement Agreement prohibits this post. Nothing about this post deprives Casella of the benefit of the Confidentiality Agreement. No one would even know, reading this post, that there was a settlement agreement, nor any of its terms. The Agreement is no less confidential after this post than it was before this post.

Casella's breach number 1

To illustrate the point, let's look at the Complaint Casella filed six days later. Exhibit JJ.

G—please put Casella Exhibit 1 on the Screen right next to Exhibit JJ.

Compare Jon's post at Exhibit 1 and Casella's complaint at Exhibit JJ (run through language)—you tell me which one “discloses the terms set forth in this Agreement” or the “existence of this Agreement.” Actually don't tell me. But think about it. I'll give you a hint. It's the one that says: “QUOTE FROM COMPLAINT”.

Now the crazy thing about that Complaint is that at the very same time they filed the Complaint, Casella filed a Motion to Seal the agreement itself, which the Court immediately granted. That's Exhibit KK. See what that means? *They knew* how to make the complaint private and confidential if they wanted to—and they didn't do it. Instead, you heard Attorney Lehman try to turn the

tables on Jon—as if it was his responsibility to seal the Complaint, not theirs.

Now, I couldn't actually read the mind of this huge corporation or its leadership—even if they had decided to show up and testify for the lawsuit *they* brought—but I was almost thinking did they do that intentionally?

Casella's lawyers are professionals. They sealed one filing on May 25, 2023. They could easily have sealed the Complaint—indeed, all it would have required was one more paragraph, maybe even one more sentence, in their motion to seal. They did not do that. Certainly, no one from Casella thought it was important enough to be here to rebut that suspicion.

But listen, let's set aside Casella's motives, which are unknowable without actually hearing from them. All you need to do is look at Exhibit 1 and Exhibit JJ. Only one of these documents discloses the existence of the settlement agreement and its terms, and guess what: it's not Jon's post.

So Casella breached the terms of this settlement agreement with this public complaint filed May 25, 2023—just two weeks to the day after the Settlement Agreement was signed.

Now let's talk about Dave Leonard and Rebecca Metcalf.

Casella's breach number 2

On May 19—six days before Casella filed its contract-breaching Complaint—Casella breached the agreement in a different way.

Exhibit O shows a facebook comment thread that was begun by Lucy Golden, who lives in Franconia.

Lucy Golden posts the Caledonian Record newspaper story about the dismissal of the Casella and Swan claims against each other.

She writes, “Looks like Goliath gave up.”

Four minutes after she made that post at 11:27 pm on Friday night, May 19, Dave Leonard responds. He says ... “You don’t have the specifics of the case. If you do then someone is violating the gag order.”

Wait a minute!

Remember Mr. Leonard—this is a guy who coordinated with Casella’s public relations directing about putting pro-Casella information into the public debate. He doesn’t like Jon Swan. He’s got no incentive to be helpful to Jon’s case. He just told you the truth.

In this thread, he goes on to talk about the “settlement” (Exhibit O 1/4), the “non-disclosure clause” (2/4) and how “part of the settlement is non disclosure.” (2/4). When Lucy Golden pressed him on it Mr. Leonard said, “no I asked about it and was told they could not talk about it because of the non-disclosure order.” (3/4)

This whole conversation happened over the weekend of May 19 to 21, 2023. So he couldn’t have learned about those things from Casella’s public contract-violating complaint.

This must be a new violation!

How did Dave Leonard learn about the non-disclosure agreement? Casella told him that day, on May 19, if not before.

Mr. Leonard testified that he went to the transfer station and caught up with Rebecca Metcalf, Casella's outreach coordinator in the New Hampshire north country.

He admitted he was trying to get more information out of her than he got from the newspaper story and he did.

You can read the newspaper story at Exhibit B. Where the newspaper story didn't mention a settlement agreement, Rebecca Metcalf did.

Where the newspaper story didn't mention a non-disclosure agreement, Rebecca Metcalf did.

According to Dave, she said, "I can't talk about it, there's a non-disclosure agreement."

She used those words, those specific words. I know that Attorney Rhodes tried to lead Mr. Leonard back into saying it was just his interpretation based on his paralegal training. But he was very specific on that witness stand and he said that Rebecca Metcalf, Casella's Outreach Coordinator, used those words specifically.

I don't know if you remember this little bit of irony—but do you recall what Casella's attorney, Brian Gould, told Jon Swan what he couldn't say if asked about the end of the lawsuit?

Let's look at our Exhibit A, Mr. Gould talks about what Jon can say about the docket markings. Those are the papers that end the lawsuit with the Court. He says, "We aren't moving to seal them

If he can post them and ignore the questions I think that's fine, but he can't say anything else (including "I can't talk about it.")"

Ironic, isn't it? When Rebecca Metcalf told Dave Leonard that she can't talk about it because of the non disclosure agreement, Casella did exactly what Brian Gould said Jon Swan couldn't do.

That's a violation of the settlement agreement, as I am sure Attorney Gould would agree. Casella set that bar. Maybe in a different world that's just a slip of the tongue. Not Casella's World though. If Jon had said that, is there any doubt in your mind that he would have been sued. This happened May 19, barely over a week after the parties signed and committed to confidentiality.

Let's review the timeline again: Settlement Agreement signed May 11; this breach, May 19; Casella's second breach May 25.

I'm asking you to circle yes when the jury verdict form asks you whether you think Casella breached the settlement agreement with these reckless disclosures.

Materiality

The Court is going to ask you to decide if these two breaches were important to the purpose of the contract not really technical or incidental.

Certainly these two breaches were harmful to Jon because the confidentiality term of the settlement agreement was important to him. It was essential, meaning it was part of the essence of the contract, not merely a technicality. It was fundamental, not incidental.

To give you an example, a technical breach might look something like this: two parties agree to a deal where one will do landscaping on the other's lawn for two years; and the other guy will pay the first guy \$5000. There's a provision in the contract that requires the signatures on the bottom line to be in blue ink. But the contract gets signed electronically instead. That's not a material breach. It does not go to the essence of what the parties agreed to.

This does. Jon led a huge, multi-year fight against Casella and its landfill.

He didn't want to do a deal with the Devil, but as you heard him testify, the costs of battling a corporation like Casella were high. But if he was going to settle, he wanted the agreement and its terms confidential to protect his reputation.

That was the bargain that was struck. Going forward, Jon would agree to talk about Casella in terms of "opinion" and Casella would keep the agreement confidential.

Casella blew that trade up. Once they disclosed the existence and terms of the settlement agreement, Jon's benefit from that bargain went away forever. There was no putting the genie back in the bottle. There was no way to remedy the loss of confidentiality. Once it is public, it's always public.

And isn't it interesting how quickly word gets around. Rebecca Metcalf tells Mr. Leonard sometime before May 19, and by Midnight that night, everyone on his Trash Talk Facebook page knows that Jon Swan cut a deal with Casella—a deal that was supposed to be confidential.

Jon was right to value that benefit he bargained for. It was vital to the existence of the contractual settlement agreement. But Casella wanted to have its cake and eat it too—to do away with the benefit Jon got and still claim the benefit Jon owed them.

A contract is a two-way street. Each party gets some obligations and some benefits.

What Casella did is like if you needed inventory to run your business and your supplier stopped sending you goods but kept charging you money. That wouldn't be fair right?

Well this isn't fair either.

Casella stripped Jon of all benefit he got from the settlement agreement and then claimed he was in breach. It's gross.

So what is to be done? VERDICT FORM. The jury verdict form in this case asks you if Casella breached the contract. I want you to answer yes to each of those questions, because the Court will take that verdict and apply the law—which will help remedy the injury to Jon.

For a plaintiff who didn't even have the confidence to put its own witnesses on the stand, that is the only right outcome. I ask you respectfully to agree on a verdict fully for Jon Swan in this case.

Speech Posts

Now, these are the speech posts that Casella is claiming breached the agreement:

Exhibit 4, Exhibit 6, Exhibit 7, Exhibit 8, Exhibit 9, Exhibit 10, Exhibit 12, and Exhibit 15. No others. Eight posts.

The first of these, Exhibit 4 was dated August 9, 2023. MARK ON FLIP CHART. This was almost three months *after* Casella twice breached the agreement, destroyed the confidentiality of the settlement, and sued him.

But on the merits, I've got to say a few things about these posts.

First, read the Agreement carefully. It has a safe harbor right in its first sentence that captures every statement Jon has ever made about Casella, including these statements.

It reads, "Except in an instance in which Swan repeats or relays a public communication by an independent source, other than Swan, Swan agrees...[to these restrictions]"

So he's only required to express something as his opinion if he's saying something that wasn't a public communication by someone else first.

This safe harbor covers every statement Casella says is a breach of the contract. Let's look at Exhibit 6. He says READ. He testified that these water quality monitoring reports are produced by Casella's engineering firm three times annually. He says, "the water quality monitoring reports ... confirm this." That's an independent public communication.

And all of the statements are some version of what he said here in Exhibit 6: “NCES is leaking contaminants into the Ammonoosuc River watershed.” Mr. Lehman hopefully had Jon point each one out for you.

You heard Jon testify that with each and every one of these statements, he was repeating or relaying a public communication from an independent source. With these posts, all you have is his word on that. You’re going to have to weigh Jon’s credibility on that point. But think about this. Would any rational publicly traded corporation take the time to sue a guy—not once, but twice!—and this time over 8 tweets or whatever they are—if he wasn’t a really, really effective obstacle to their plans?

So when Jon says, “It’s leaking!” or “NCES is leaking contaminants into the Ammonoosuc River watershed,” he was trying to stay within the terms of the agreement by (GO TO PROVISION ON CHALK)—repeating or relaying “a public communication by an independent source” including, as he said in Exhibit 6, Casella’s own water quality monitoring reports prepared by Sanborn Head & Associates, their engineers.

For that reason, these posts are protected by the safe harbor provision, and you should answer “no” every time the Court asks you on the verdict form if Exhibits 4, 6-10, 12 and 15 breached the contract.

That was my first point.

Here’s **my second point** about each of these Exhibits.

There's a provision in the Future Public Communication paragraph that hasn't gotten a lot of attention yet from anyone and it's this:
READ IMPUTES CONDUCT

Whether any one of these tweets actually "imputes conduct" to Casella is a factual dispute in this case. You get to make that decision.

Let's look at what he says in them very carefully. GO THROUGH EACH:

- Let's start with Exhibit 6: READ with emphasis, who's the question about—not casella, and note passive construction. "being released"—the dump simply is. It's doing what dumps do. He's not saying Casella is causing the leaching; he's not saying Casella isn't doing something it should be doing. He's saying the solution here is getting EPA or DES to act and create plans for remediation. And honestly, don't you think that if Jon Swan thought Casella could do something about this themselves, he wouldn't be afraid to demand it? There is no conduct or lack of conduct imputed to Casella in this case. It's a question about why the government isn't acting.
- In Exhibit 4, he mentions the NCES landfill and says its releasing contaminants... he's talking about the landfill itself—the facility. He isn't saying Casella is doing it. He isn't even saying NCES the subsidiary operator is doing it. He's describing a factual condition of a large inanimate facility, it is what landfills do, not assigning responsibility or imputing conduct or not-conduct to Casella.

- Exhibit 7: “PFAS contaminants are leaking *from the landfill...*” and “*It’s leaking PFAS*” If he wanted to impute conduct to Casella, he would have said, “Casella is...” or “They are...” right? He’s talking about a physical condition at the inanimate landfill facility, not the Plaintiff. In fact, who is he actually attributing conduct or no-conduct to here? NHDES and EPA! They are the ones who are failing to act. He makes no mention of Casella.
- Exhibit 8—same thing here. Same words, same pictures even. Same call to petition EPA and DES, same attribution of neglect—to them, not Casella.
- Exhibit 9—NHDES/Gov, inanimate landfill. No mention of Casella, and the mention of NCES is of the landfill, not the company.
- That last point is worth looking a little more closely at. Jon calls the landfill “NCES”. It’s the name of the landfill. How do we know? Let’s look at Exhibit 15. “It will become a superfund site”—so while at first glance it looks like he’s referring to Cassella and NCES, if you read it carefully, when he says NCES is synonymous with the landfill. And no conduct or not-conduct is imputed to Casella here.
- Exhibit 10: “It’s leaking”—down below—EPA would like to hear... Again, EPA, not Cassella, is accused of failing to do something it should be doing.
- Exhibit 12: EPA/DES, and this below here—that’s just a physical observation of an environmental condition. No conduct or not conduct is attributed to Casella or even NCES here.

Casella is going to try to mock and scoff at this distinction, but only because it's true. Lawyers like Mr. Lehman and I fuss with great deliberation and care over shades of meaning between pronouns. But under the standards Casella had dictated in this case, words matter. Jon wrote those words intuitively because he was talking about the physical feature, the facility, and not attributing or imputing any conduct to Casella or its subsidiaries.

When you consider all the public advocacy Jon must have made against the dump in Dalton, it's mindboggling that we're here. Who sues someone over 8 tweets? I guess the same people who would sue someone while the ink was still wet on their settlement agreement.

They are trying to silence him.

We want you to deliver a verdict in this case that will forcefully rebuke Casella's lawfare.

We are asking you to enter a complete verdict in the Defendant's favor, in Jon's favor, and also find that it was Casella, not Mr. Swan, who breached the Settlement Agreement on May 19 and 25, 2023.

On Jon's behalf, Rachel and I very much appreciate your service. I hope you have a great weekend.

Thank you.