IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D.,

Plaintiff,

v.

NATIONAL REVIEW, INC., *et al.,*

Defendants.

Case No. 2012 CA 008263 B

Judge Alfred S. Irving, Jr.

Defendant Mark Steyn's Objections to Plaintiff's Bill of Costs

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DEFENDANT MARK STEYN'S OBJECTIONS TO PLAINTIFF'S BILL OF COSTS

Pursuant to Civil Rule 54(d), 28 U.S.C. § 1920, and this Court's inherent power, Defendant Mark Steyn hereby objects to Plaintiff's Rule 54 Bill of Costs ("BOC").

INTRODUCTION

Plaintiff Michael Mann sued Defendants Mark Steyn and Rand Simberg for defamation. The jury returned a verdict in Plaintiff's favor. As to Steyn, the jury awarded $1 in nominal damages and $1 million in punitive damages. Trial Tr. 10–11 (2/8/24). As to Simberg, the jury awarded $1 in nominal damages and $1,000 in punitive damages. *Id*. at 7–8. On March 8, 2024, Plaintiff filed a notice of appeal from this Court's orders granting summary judgment to former Defendants National Review, Inc., and Competitive Enterprise Institute ("CEI").

On March 11, 2024, Plaintiff filed a bill of costs seeking a total of $679,489.74. *See* BOC 1.[1] Of that amount, more than $583,000 represents e-discovery costs. *See infra* at 6–7.

STANDARDS

Rule 54(d) provides in part: "Unless an applicable statute, these rules, or a court order provides otherwise, costs—other than attorneys' fees—should be allowed to the prevailing party." Super. Ct. Civ. R. 54(d)(1). "The Rule is substantially identical to its federal counterpart, and [the Court of Appeals] look[s] to federal decisions interpreting Federal Rule of Civil Procedure 54(d) for guidance." *Cormier v. D.C. Water & Sewer Auth*., 84 A.3d 492, 502 (D.C. 2013).

The Court of Appeals has "recognized that the Superior Court's discretion to award costs to the prevailing party under Civil Rule 54(d) is limited to items 'specifically authorized by 28 U.S.C. § 1920 … or by other statutes (or court rule).'" *Id.* (alterations in original) (quoting *Talley*

[1] Plaintiff's Bill of Costs, including exhibits, is 499 pages. For ease of reference, citations to the "BOC" are to the page number as reflected in the document page counter.

v. Varma, 689 A.2d 547, 555 (D.C. 1997)). The cited U.S. Code section states in pertinent part that a court may tax as costs, *inter alia*, "Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case." 28 U.S.C. § 1920(4). Thus, "the prevailing party may recover the cost of obtaining and copying records and other material necessary for case preparation and presentation." *Talley*, 689 A.2d at 555.

"Items proposed by winning parties as costs should always be given careful scrutiny." *Farmer v. Arabian Am. Oil Co*., 379 U.S. 227, 235 (1964). And "the decision whether to award costs ultimately lies within the sound discretion of the [trial] court." *Marx v. Gen. Revenue Corp*., 568 U.S. 371, 377 (2013).

OBJECTIONS

I. This Court Should Exercise Its Discretion to Deny an Award of Costs to Mann.

This Court has discretion to deny costs, and it should do so because the relevant factors indicate that each of the parties should bear his own costs.

Although Rule 54(d)(1) creates a presumption in favor of awarding costs to a prevailing party, a trial court has discretion to deny costs so long as it articulates a "good reason" for doing so. *Teague v. Bakker*, 35 F.3d 978, 996 (4th Cir. 1994). "Among the factors that justify denying an award of costs are: (1) misconduct by the prevailing party; (2) the unsuccessful party's inability to pay the costs; (3) the excessiveness of the costs in a particular case; (4) the limited value of the prevailing party's victory; or (5) the closeness and difficulty of the issues decided." *Ellis v. Grant Thornton LLP*, 434 F. App'x 232, 235 (4th Cir. 2011) (citation omitted). *See also Ass'n of Mexican-Am. Educators v. California*, 231 F.3d 572, 592–93 (9th Cir. 2000) (en banc); *Cantrell v. Int'l Bhd. of Elec. Workers*, 69 F.3d 456, 459 (10th Cir. 1995) (en banc); *Teague*, 35 F.3d at 996.

Here, the pertinent factors confirm that the parties should bear their own costs. *First*, there is no question but that this case "was a close and difficult one." *Teague*, 35 F.3d at 996; *see also Ass'n of Mexican-Am. Educators*, 231 F.3d at 593 ("The issues in the case are close and complex."); *Cantrell*, 69 F.3d at 459 ("close and difficult"). "The case was hotly contested at trial," *Ellis*, 434 F. App'x at 235, as the Court well knows. Ultimately, the jury found that some of Defendants' challenged statements were defamation and some were not, and it awarded Plaintiff only $1 in nominal damages from each Defendant.

Second, "[a]n award of costs may be reduced or denied because the prevailing party obtained only a nominal victory, or because the taxable costs of the litigation were disproportionate to the result achieved." *Richmond v. Southwire Co*., 980 F.2d 518, 520 (8th Cir. 1992) (affirming denial of costs to defamation plaintiffs who each recovered only $1 in nominal damages). As in *Richmond*, here the "motion for costs in this case suffers from both defects." *Id*.

As to the first defect—"the prevailing party obtained only a nominal victory"—the jury awarded Mann only $1 in damages from each Defendant, which makes the costs Mann seeks both disproportionate and unreasonably high. *See also Ass'n of Mexican-Am. Educators*, 231 F.3d at 592 n.15 ("the 'nominal' or partial nature of the prevailing party's recovery" may warrant denial of costs); *Cantrell*, 69 F.3d at 459 (costs may be denied if "damages were only nominal" or "the costs are unreasonably high"); *Milton v. Des Moines*, 47 F.3d 944, 947 (8th Cir. 1995) (affirming district court's denial of costs where plaintiff recovered only $1 in damages; determining that "on balance, fairness required each party to bear his or her own costs and expenses"). Although the punitive award against Steyn was much larger, that grossly excessive award is on very thin ice constitutionally, as explained in Steyn's motion for judgment as a matter of law and his new trial motion, and cannot be cited to justify the costs that Mann seeks here.

The second defect, the "costs of the litigation were disproportionate to the result achieved," *Richmond*, 980 F.2d at 520, is also present here. When the blatantly unconstitutional punitive award is properly put to one side, Mann's "recovery is so small that [he, as] the prevailing party[,] is victorious in name only." *Teague*, 35 F.3d at 996. Given Mann's recovery of only $1 from each defendant, the "excessiveness" of the $679,489.74 in costs that he seeks is obvious. *Ellis*, 434 F. App'x at 235; *Teague*, 35 F.3d at 996. In *Association of Mexican-American Educators*, in which the en banc Ninth Circuit affirmed the trial court's denial of costs, the Ninth Circuit stated that the $216,443.67 in "costs in this case are extraordinarily high." 231 F.3d at 591, 593. The costs that Mann seeks are more than *three times* greater than that "extraordinarily high" amount.

Third, also relevant are "actions taken by the prevailing party which unnecessarily prolonged trial or injected meritless issues." *Teague*, 35 F.3d at 996. Mann certainly did this. For example, at trial the Court commented that "it seemed that there was very little relevance to Drs. Bradley and Oreskes' testimony." Trial Tr. 9 (2/5/24 AM); *see also* Trial Tr. 88 (1/29/24 PM) ("I still am struggling with the need for the first two witnesses …."). The Court also commented on

> Dr. Mann's repeated insistence on giving extended answers and not directly answering questions put to him by counsel; the dearth of any witnesses, fact witnesses, to corroborate his claims and lay appropriate foundation to admit other documentary evidence concerning his claimed damages which triggered several extended, but again, well-founded evidentiary objections, largely resting on basic evidentiary principles and plainly worded Superior Court procedural rules; and, finally, the introduction of erroneous figures intended to go back with the jury during deliberations, figures that were corrected only upon recross-examination by defendants without an affirmative withdrawal or acknowledgment by plaintiff's counsel.

Trial Tr. 12 (2/5/24 AM). The Court may, and should, assume that Mann and his counsel were no more efficient or focused before trial than they were during trial and so ran up their costs unnecessarily. At a minimum, the Court should deny costs for the unnecessary and irrelevant Drs. Bradley and Oreskes and also Dr. Abraham, who failed to qualify as an expert and offered little or

no relevant testimony as a percipient witness. *See* BOC 148–49 (Fontaine Aff. at 2–3) ($5,572.79 in witness fees for Bradley, Oreskes, and Abraham); *id.* at 147 (Fontaine Aff. at 1) ($2,955.45 for Oreskes deposition); *id.* at 115, 117 ($213.00 and $1,858.65 for Abraham deposition); *id.* at 7 (Williams Aff. at 2) ($900.55 for Bradley deposition) and 126 (special $45 fee for Bradley deposition); *id.* at 383 ($855.55 for the same Bradley deposition, which the Bill of Costs improperly double counts). These costs should be disallowed.

Fourth, Mann has not established that Steyn (or Simberg) has the wherewithal to pay $679,489.74 in costs. *See Ass'n of Mexican-Am. Educators*, 231 F.3d at 592 (looking to "the losing party's limited financial resources"); *Ellis*, 434 F. App'x at 235 (considering "the unsuccessful party's inability to pay the costs"); *Teague*, 35 F.3d at 996 (the non-prevailing parties "were in general of modest means"). At trial, Mann did not introduce any evidence concerning Steyn's net worth (except to imply that he is a wealthy media elite). For his part, Simberg testified that he has a negative net worth of a "couple hundred thousand" dollars. Trial Tr. 16 (2/6/24 PM). It did come out at trial that Steyn has had three recent heart attacks. Trial Tr. 19 (1/23/24 AM). Those health challenges have not dulled Steyn's facilities, but it must be admitted that from an actuarial perspective they do not help Steyn's future earnings potential.

In addition to the foregoing non-exhaustive factors, the Court should also take into account the fact that Steyn is not responsible for the long delay or high costs in this case. For one thing, Steyn himself took little discovery from Mann. For another, Steyn did not join the interlocutory appeals taken by National Review, CEI, and Simberg to the D.C. Court of Appeals. Those appeals were noticed in January 2014 and were not finally resolved until the Court of Appeals issued its mandate in March 2019. The appeals resulted in a five-year stay of discovery pending appeal from 2014 to 2019. *See* Order (Apr. 11, 2014) (granting National Review's Mot. for Protective Order

Staying Discovery Pending Appeal); Scheduling Order (June 5, 2019) (permitting discovery).[2] Steyn is not to blame for this case taking 12 years to make it to trial. In fact, Steyn opposed the stay motion.

Finally, this Court should consider the fact that Mann himself has not paid any of the costs he seeks. The legal definition of a "cost" is "[t]he sum or equivalent expended, paid or charged for something." *Black's Law Dictionary* 312 (5th ed. 1979). But Mann has not expended, paid, or been charged anything. He has paid nothing, and owes nothing, to his small army of lawyers from three law firms. *See* Trial Tr. 80–81 (1/24/24 PM). "Q. You're not aware of any debt that you currently have, a legal debt that you have to any of these law firms? A. Not aware of it, no." *Id*. at 81. For him, this litigation has been a 12-year-long gravy train.

"Rule 54 may not be used as a windfall to [the prevailing party]. Any award of costs must be paid to the person or entity that actually incurred such costs on behalf of the prevailing party." *Potenza v. Gonzales*, Nos. 5:07-cv-225, 5:07-cv-0226, 2011 WL 288817, at *1 n.1 (N.D.N.Y. Jan. 27, 2011). Here, if a person or entity has incurred $679,489.74 in out-of-pocket costs in this litigation, proof of that is required, and the person or entity must come forward to request an award.

II. Plaintiff's Outrageous "E-Discovery" Fees Are Not Recoverable.

The bulk of Plaintiff's request consists of a shocking $583,011.44 in e-discovery fees. *See* BOC 148 (Fontaine Aff. at 2) (claiming $12,561.25 in "Electronic document processing fees";

[2] After the stay was lifted, Steyn did not prolong discovery. This Court denied Mann's motion to compel discovery from Steyn except on reconsideration in one small respect. *See* Order Denying Pl.'s Mot. to Compel Disc. Against Mark Steyn (Oct. 22, 2019); Order Granting in Part Pl.'s Mot. for Recon. of the Court's Order Relating to Disc. from Mark Steyn (Feb. 25, 2020). Steyn's lone discovery motion was resolved in his favor. *See* Order Denying Def. Steyn's Rule 36(a)(6) Mot. Re: the Sufficiency of Pl.'s Resps. & Objs. to Reqs. for Admis. as Moot at 2 (Aug. 19, 2020) (noting that Mann "agree[d] to withdraw his objections and promptly respond to all the requests for admissions" propounded by Steyn).

$504,974.12 in "Electronic document hosting fees"; and $64,362.97 in "Electronic document production processing and production conversion fees"); *id.* at 7 (Williams Aff. at 2) ($844.30 in "Electronic document hosting fees"); *id.* at 383 (another $268.80 in e-discovery charges in a Finnegan invoice). Plaintiff's request for e-discovery fees must be denied because of two serious problems he has.

A. The Cozen Firm Is Seeking Non-Allowable Attorney's Fees.

The first problem for Mann is that the e-discovery services were performed by an "ancillary business of Cozen O'Connor," one of his law firms. *See Ancillary Businesses,* Cozen O'Connor, https://www.cozen.com/ancillary-businesses (last visited Mar. 29, 2024); *CODISCOVR,* Cozen O'Connor, https://codiscovr.com (last visited Mar. 29, 2024). The fact that Cozen calls it an "ancillary business" clearly means that the firm is making a profit on its e-discovery services. Yet Rule 54 expressly *excludes* attorney's fees from allowable costs. *See* Super. Ct. Civ. R. 54(d)(1) ("[C]osts—other than attorney's fees—should be allowed to the prevailing party."). "The court therefore cannot award the plaintiff's attorney's fees in the guise of costs under Rule 54(d)(1)." *Bytska v. Swiss Int'l Air Line, Ltd*., No. 15-CV-483, 2016 WL 6948375, at *3 (N.D. Ill. Nov. 28, 2016). If this Court were to award e-discovery fees, it would violate Rule 54 by awarding attorney's fees to Cozen for its e-discovery services in the guise of costs.

B. Very Few E-Discovery Costs Are Recoverable.

The second problem that Mann has here is that only very limited categories of e-discovery tasks may properly be recovered as costs under Rule 54 and 28 U.S.C. § 1920(4). *See United States v. Halliburton Co*., 954 F.3d 307 (D.C. Cir. 2020).

As *Halliburton* explains, "section 1920(4) … authorizes district courts to award 'the costs of making copies of any materials where the copies are necessarily obtained for use in the case.'" *Id*. at 310 (quoting 28 U.S.C. § 1920(4)). "'[M]aking copies' means causing imitations or

reproductions of original works to come into being." *Id*. (citing *Merriam-Webster's Collegiate Dictionary* 702 (10th ed. 1997)). "In other words, the phrase 'making copies of any materials' … refers to the task of duplication; it does not include the steps leading up to duplication …." *Id*. "Put another way, section 1920(4) authorizes taxation of costs for the digital equivalent of a law-firm associate photocopying documents to be produced to opposing counsel." *Id*. at 311.

Although the prevailing-party defendants ("KBR") had sought some $58,894.01 in e-discovery expenses, *see* Br. of Defs.-Appellees, *United States v. Halliburton Co.*, 954 F.3d 307 (D.C. Cir. 2020) (No. 19-7064), 2019 WL 6682987, at *9, the Court awarded KBR only "$362.41 in 'External E-Discovery' conversion and production costs"—about 0.5% of KBR's request. *Halliburton,* 954 F.3d at 312. KBR had sought costs for five steps in the e-discovery process:

> (1) initial conversion, i.e., converting files from their native formats into a format compatible with an e-discovery hosting platform; (2) subscribing to a hosting platform, in this case Introspect, that facilitates the various steps of e-discovery; (3) processing documents, e.g., organizing, keyword-searching, and Bates stamping; (4) conversion for production, i.e., converting documents into shareable formats for production to opposing counsel, and, where necessary, transferring those files onto portable media, e.g., USB drives; and (5) production processing, i.e., drafting production cover letters and shipping discovery materials to opposing counsel.

Id. at 312. But the D.C. Circuit held that "the only e-discovery costs that KBR may recover are those incurred in step (4)—converting electronic files to the production formats (in this case, PDF and TIFF) and transferring those production files to portable media (here, USB drives)." *Id*. "The remaining e-discovery costs," it held, are "untaxable." *Id*.

Here, Cozen claims three categories of e-discovery fees:

Other: Electronic document processing fees	$12,561.25
Other: Electronic document hosting fees	$504,974.12
Other: Electronic document production processing and production conversion fees	$64,362.97

BOC 148 (Fontaine Aff. at 2). Cozen's "processing fees" of $12,561.25 correspond to step (3) in *Halliburton* and thus are not taxable. Its "hosting fees" of $504,974.12 are the same as step (2) in *Halliburton* and likewise are untaxable. (The same goes for $844.30 in "Electronic document hosting fees" claimed at BOC 7 (Williams' Aff. at 2), which are Finnegan firm fees, *see* BOC 136–45; and for another $268.80 in a separate Finnegan invoice, *see id.* at 383). And Cozen's "production processing and production conversion fees" of $64,362.97 improperly combine *Halliburton* step (4), which was taxable, and step (5), which was not. Because Cozen failed to separate taxable from non-taxable steps in this category, the $64,362.97 may not be awarded.

Defendant Steyn finds it remarkable that Mann did not cite *Halliburton* in its Bill of Costs. Indeed, Mann did not cite any authority as putative support for his outrageous claim for more than $583,011.44 in e-discovery fees. He cited only a procedural motion filed by CEI back in 2021. Mann's Bill of Costs states:

> Dr. Mann also seeks electronic document processing and hosting fees similar to Defendants Competitive Enterprise Institute and Rand Simberg in their October 4, 2021 Motion to Fix a Time for Plaintiff to Comply with Security Requirement ("Security Motion"). Security Motion ¶6; Decl. of Kristen Rasmussen ISO Security Motion ¶3 (requesting $35,000 in electronic document hosting services). Dr. Mann agrees that such fees should be recoverable by the prevailing party.

BOC 2. Yet Mann conveniently fails to mention that in 2021 he took the *opposite* position—telling this Court that hosting fees are not taxable—and opposed CEI's motion. This is what Mann said to the Court in 2021:

> CEI claims that it is entitled to $36,000 in e-discovery "hosting fees" that CEI says were necessary to deal with the one million pages of documents that Dr. Mann produced in discovery. That CEl's law firm chose to outsource this internal administrative function does not make it taxable, let alone necessary. *Again, neither the Superior Court's Bill of Cost form, nor Rule 54(d), nor D.C. Code Section 15-703 permits the taxation of vendor "hosting fees" as costs*.

Pl.'s Resp. to Defs. CEI and Rand Simberg's Mot. to Fix a Time to Comply with Security at 4–5 (Oct. 18, 2021) (emphasis added). Mann had it right the first time: Rule 54(d) does not permit taxation of e-discovery "hosting fees" as costs. *See Halliburton*, 954 F.3d at 312.

III. Steyn Is Not Liable for Costs Incurred by Mann on Unsuccessful Claims Against Other Defendants.

Mann improperly seeks to recover from Steyn costs relating to Mann's unsuccessful claims against National Review and CEI. Costs related to Mann's unsuccessful claims against other parties may not be recovered from Steyn. *See Copeland v. Marshall*, 641 F.2d 880, 891–92 (D.C. Cir. 1980) (en banc) ("[N]o compensation should be paid for time spent litigating claims upon which the party seeking the fee did not ultimately prevail."); *Westfahl v. District of Columbia*, 183 F. Supp. 3d 91, 102 (D.D.C. 2016) (denying costs associated with plaintiff's unsuccessful claims and reducing the total award of costs to reflect the degree of plaintiff's overall success). Because Mann failed to cull from his request those costs relating to his unsuccessful claims against National Review and CEI, he should be denied costs. It is not Steyn's job to do this for him, and Mann has the burden to set forth recoverable costs—and only such costs.

At a minimum, the Court should disallow these costs relating to Mann's claims against National Review ("NR") and CEI: $1,363.10 for Katherine Howell (NR) deposition (BOC 6, 139); $4,546.70 for Richard Lowry (NR) deposition (BOC 6, 141); $3,244.70 for John Fowler (NR) deposition (BOC 7, 141); $645.00 and $1,970.87 for Nathan Goulding (NR) deposition (BOC 7, 143, 148, 380–83); $2,155.20, $2,155.20, $1,527.82, $1,430.38, $803.00 for depositions of Myron Ebell and Ivan Osorio (CEI), which included improper double billing of the $2,155.20 amount (BOC 148, 295–97, 304–06, 310–12); $1,033.56 and $1,743.40 for Marc Scribner (CEI) deposition (BOC 6, 113, 147, 283–85); and $1,922.60 and $462.75 for Gregory Conko (CEI) deposition (BOC 147–48, 319–21, 325–27).

IV. The "Finnegan Pass-through Expenses" Include a Host of Non-Recoverable Items.

Plaintiff's Bill of Costs includes two sets of "Finnegan Pass-through Expenses." *See* BOC 129–45, 375–90. But many of the claimed expenses are not recoverable costs. This includes:

- $506.75 in travel expenses incurred by Mr. Coyne to meet with unnamed potential experts in 2019 (BOC 131);[3]
- $147.18 [$83.26 + $63.92] in "Interlibrary Materials & Loan Fees" (BOC 133, 143);[4]
- $844.30 [sum of $150.06, $188.89, $123.47, $124.20, $126.12, and $131.56] in "E-Discovery" charges in 2020 and 2021 (BOC 137, 139, 141, 143, 145), which the Williams Affidavit calls "Electronic document hosting fees," *id.* at 7;
- $413.82 [$206.91 x2] in "Westlaw-Search" charges (BOC 141, 143);[5]
- $268.80 [$134.40 x 2] in "E-Discovery" charges in February and March 2021 (BOC 383);
- $219.22 for Mr. Coyne's "Parking" and "Parking, including meals" (BOC 387);[6] and

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[3] *See Coats v. Penrod Drilling Corp*., 5 F.3d 877, 891 (5th Cir. 1993) ("The district court denied Coats' request for travel expenses …. These expenses are not included in § 1920 and therefore are not recoverable."), *aff'd on reh'g en banc*, 61 F.3d 1113 (5th Cir. 1995). "These expenses must be borne by the litigants." 10 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2666 (4th ed. 2023). *See also Quy v. Air Am., Inc*., 667 F.2d 1059, 1067 (D.C. Cir. 1981) (quoting with approval *Illinois v. Sangamo Constr. Co*., 657 F.2d 855, 864 (7th Cir. 1981)).

[4] Finnegan has not provided a declaration proving that interlibrary loan fees are costs the firm charges its fee-paying clients. *See Jackson Women's Health Org. v. Currier*, No. 3:12-cv-436-DPJ-FKB, 2019 WL 418550, at *12 (S.D. Miss. Feb. 1, 2019).

[5] *See United States v. Merritt Meridian Constr. Corp*., 95 F.3d 153, 173 (2d Cir. 1996) ("We agree that computer research … is not a separately taxable cost."); *Jones v. Unisys Corp*., 54 F.3d 624, 633 (10th Cir. 1995) ("costs for computer legal research are not statutorily authorized"); *Haroco, Inc. v. Am. Nat'l Bank & Tr. Co. of Chi.*, 38 F.3d 1429, 1440–41 (7th Cir. 1994). These holdings are sound. "Private market attorney fee rates reflect overhead costs like electronic research, just as they would reflect the cost of case reporters and other necessary books purchased for a law firm's library." *King v. JCS Enters., Inc*., 325 F. Supp. 2d 162, 172 (E.D.N.Y. 2004).

[6] "No statute lists parking, lodging, meals, or other unspecified expenses as recoverable costs." *Pelzer v. City of Philadelphia*, 771 F. Supp. 2d 465, 473 (E.D. Pa. 2011); *see also Sun Media Sys., Inc. v. KDSM, LL*C, 587 F. Supp. 2d 1059, 1065 (S.D. Iowa 2008) (disallowing meals and parking); *Williams v. Cmty. High Sch. Dist. 218*, No. 04 C 5279, 2006 WL 681045, at *2 (N.D. Ill. Mar. 13, 2006) (same).

- $6,443.18 in "Copy work" with no sufficient explanation or justification provided (BOC 388–90).

Added together, these non-recoverable costs total $8,843.25.

V. Other Objections

A. *Depositions Without Supporting Documentation:* Fees for "transcripts necessarily obtained for use in the case" may be treated as taxable costs under 28 U.S.C. § 1920(2). But supporting documentation must be provided. Here, in several instances, Mann has failed to include with his Bill of Costs any invoices from the court reporter. For this reason, the following costs must be disallowed: $1,376.07 for the Edward Wegman deposition (BOC 145); $3,020.48 for the Abraham Wyner deposition (BOC 376–79); $3,793.01 for the Steven McIntyre deposition (BOC 7, 145, 380–83); $1,135.75 for the Edward Wegman deposition (BOC 148, 380–83); $900.55 for the Raymond Bradley deposition (BOC 7, 145, 380–83); $3,669.42 for the Eugene Wahl deposition (BOC 6, 134–35); and $2,030.71 for the Rand Simberg deposition (BOC 147).

B. *Filing fees*: "Fees of the clerk" may be taxed per 28 U.S.C. § 1920(1). The docket in this case shows that the total filing fees charged by the Court to Mann were $1,160.00. Yet the Williams affidavit claims $1,750.11 in "Fees of the clerk/filing fees through trial" and the Fontaine affidavit claims $1,433.14 in such fees. *See* BOC 6, 147. Fees should be limited to the amount reflected on the docket. Mann improperly seeks to recover the $15.00 "CFX eFiling Fee" and the $1.88 "NIC Processing Fee" charged by a third-party service provider, CaseFileExpress, for each filing. BOC 58, 70-82. Those optional convenience fees are not recoverable. Only "Fees of the clerk" may be recovered. 28 U.S.C. § 1920(1) (emphasis added).

C. *Double-billed depositions*: Mann's deposition has been improperly double billed. It shows up in both the Williams affidavit ($1,478.00 charge) and the Fontaine affidavit ($1,903.10 charge). *See* BOC 6, 116; 147, 316–18. Because of the improper double billing, the larger amount

should be deducted. The Judith Curry deposition, too, has been improperly double billed in both the Williams affidavit ($712.50) and the Fontaine affidavit ($492.50). *See* BOC 6, 125; 147, 340–42. The larger amount should be deducted here as well.

D. *Excluded, not-called, and unnecessary witnesses*: This Court excluded the testimony of witnesses John Holdren, Peter Frumhoff, and John Mashey. Mann may not recover the $6,025.15 cost of their depositions. *See* BOC 313–15, 322–24, 328–30. Nor may Mann recover $5,071.63 for the depositions of Candice Yekel, Elroy Balgaard, and Edward Wegman. *See* BOC 147, 272–74, 331 (Yekel); 147, 346–48, 349–51 (Balgaard); 148, 380–83 (Wegman). These witnesses were not called at trial and these costs were not necessarily incurred. And the court should not award deposition costs of $5,927.65 for Raymond Bradley, Naomi Oreskes, or John Abraham. *See* BOC 7, 145, 380–83 (Bradley); 277–82, 337–39, 352–54 (Oreskes); 6, 115, 117 (Abraham). Although they did testify at trial, their testimony proved to be almost completely irrelevant, if not a waste of trial time.

E. *Expedition fees and rough ASCII fees*: The cost of the Mark Steyn deposition includes "2 Day Expedite" fee of $1,573.83 and also a fee of $339.90 for "Rough ASCII". *See* BOC 299. These fee are not recoverable. "[E]xpedited transcript costs are taxable, but only if the prevailing party explains why expedition was necessary." *George v. Molson Coors Beverage Co. USA LLC*, No. 1:20-cv-01914 (TNM), 2022 WL 4446384, at *3 (D.D.C. Sept. 23, 2022) (citing *Halliburton*, 954 F.3d at 313); *accord Borum v. Brentwood Vill., LLC*, No. 16-1723 (RC), 2020 WL 5291982, at *16 (D.D.C. Sept. 4, 2020). Mann has failed to do so. He "has given no justification" for the expedition fee. *George*, 2022 WL 4446384, at *3. Like expedition fees, fees for rough ASCII transcripts are not recoverable "absent a showing of necessity." *Borum*, 2020 WL 5291982, at *16. Mann has made no such showing. *See also* BOC 286–88 (rough ASCII fee of

$349.50 for Richard Lindzen deposition); BOC 349–51 (rough ASCII fee of $122.50 for Elroy Balgaard deposition).

F. *Appellate and pro hac vice costs*: Mann may not recover $1,605.35 in costs for printing briefs filed in the U.S. Supreme Court. *See* BOC 9–10. This Court should not award costs that were incurred in another court, especially since Steyn was not a party to the proceedings in the Supreme Court. Nor may Mann recover $200 in fees for applications for admission *pro hac vice* in the D.C. Court of Appeals. *See* BOC 185, 190. *Pro hac vice* fees are not taxable costs. *See Borum*, 2020 WL 5291982, at *14 (seeing "no reason to find *pro hac vice* fees as taxable costs" and finding that "§ 1920 does not authorize awarding *pro hac vice* fees"). Even if they were, Steyn was not a party to the proceedings in the Court of Appeals.

G. *Unexplained copying expenses*: Mann seeks $6,443.18 for "Outside Services Case Driven Technologies - Copy work done for 96491.8050." DOC 384–90. Mann has not explained what this very large charge was for or why it was necessary. It should not be allowed.

H. *Efiling vendor monthly maintenance fees*: The $50 "monthly maintenance fee" charged by Mann's efiling vendor is not recoverable. *See* BOC 164–72. The total fees charged were $400.

VI. Plaintiff's Bill of Costs May Be Held in Abeyance Pending Appeal.

As explained above, this Court has good grounds to deny costs to Mann and should do so. But if the Court does not, it may decide to hold the Bill of Costs in abeyance pending appeal.

Whatever the outcome of the post-trial motions filed by Steyn and Simberg, it is certain that an appeal or appeals to the D.C. Court of Appeals will follow. Mann, for his part, has already noticed an appeal of this Court's grant of summary judgment to CEI and National Review. Accordingly, this Court may properly decide to hold the Bill of Costs in abeyance pending the outcome of Mann's appeal and other appeals. *See CSX Transp., Inc. v. Peirce*, No. 5:05cv202,

2013 WL 5375983, at *3 (N.D. W. Va. Sept. 25, 2013) (holding "CSX's … bill of costs in abeyance pending the resolution of any appeal of the underlying jury verdict" as "the proper course of action at this time"); *Al-Kidd v. Gonzales*, No. CV 05-093-EJL-MHW, 2008 WL 11434598, at *2 (D. Idaho Nov. 14, 2008) ("[T]he Court will stay the taxation of costs pending resolution of al-Kidd's appeal to the Ninth Circuit.").

"If any appeal of the jury verdict and amended judgment is successful, such time and effort expended ruling on these matters will be a misuse of this Court's resources as at the very least such rulings will need [to be] altered." *CSX*, 2013 WL 5375983, at *3. Steyn could very well succeed on appeal (indeed, this seems quite likely), in which case he will be a prevailing party and won't be obligated to pay any costs to Mann. It is also possible that Mann will succeed on appeal against CEI and National Review and in a subsequent trial against them, in which case those entities will be responsible for their proper share of any costs awarded to Mann. At this juncture, awarding costs as against Steyn and Simberg only would be premature and could end up wasting judicial resources. The better course may be to hold the Bill of Costs in abeyance pending appeal.

CONCLUSION

For the foregoing reasons, Plaintiff's Bill of Costs should be denied in its entirety; or else drastically reduced in amount to a fraction of that requested; or else held in abeyance pending the outcome of appeals to the D.C. Court of Appeals.

Dated: April 10, 2024

Respectfully submitted,

s/ H. Christopher Bartolomucci
H. Christopher Bartolomucci
D.C. Bar No. 453423
Justin A. Miller
D.C. Bar No. 90022870
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Counsel for Defendant Mark Steyn

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, MORNING SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Tuesday, January 23, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 518, commencing at approximately 9:33 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

John Williams, Esquire & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

Official Court Reporter (202) 879-1063

There's no reason I should know the NSF, NAS, NRT, NYF, there's a zillion of them. I would imagine that all of the letters and combinations have been used up by now.

If you say to me there were three reports that Mr. Mann -- supposedly, with agencies beginning with N that just makes the point I was making.

You should try coming up with a different initial letter rather than naming all of your agencies beginning with N.

I apologize. I'm not American. That's just a tip.

Q. Well, I know you're not American, but you live in the United States, don't you?

A. Well, actually, as you well know, for the last year or so I just generally lived where my -- well, I, basically, live where I happened to be when I had the heart attack, and I've then been -- I've had whatever it is, three heart attacks within the last year.

And so I was in Italy when I had my third heart attack and then I was in France when I had my second heart attack. So, generally, I'm just standing where I am when I had my heart attacks.

Q. You have a legal residence in the State of New Hampshire, correct?

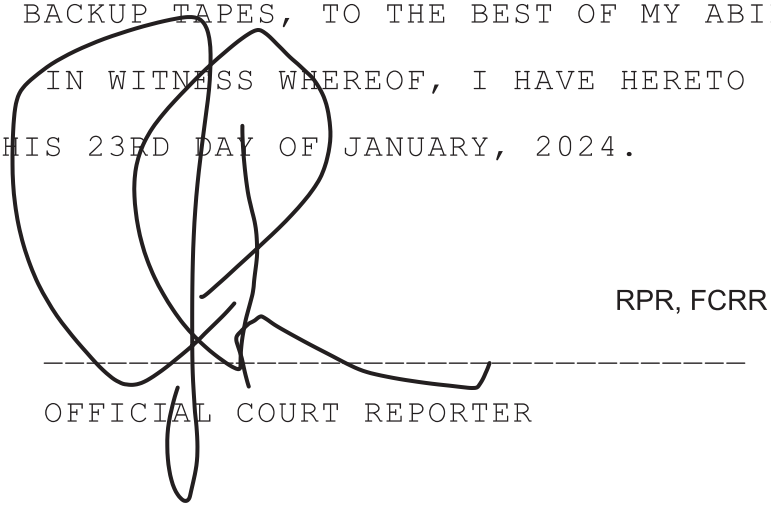
A. Correct.

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 23RD DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 89 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY NAME, THIS 23RD DAY OF JANUARY, 2024.



RPR, FCRR

_____

OFFICIAL COURT REPORTER

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, AFTERNOON SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Wednesday, January, 24, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 518, commencing at approximately 2:26 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

John Williams, Esquire & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

Official Court Reporter (202) 879-1063

Q. Top of page 10.
A. Top of page -- oh, 10? There only appears to be five pages -- 930-- oh, 938?
Q. 7.
A. Nine thirty-seven, there only appears to be five pages here.
Q. Okay, page four.
A. Yes.
Q. Okay. All right. And that's the same verification as the other ones we just saw?
A. Yes.
Q. Okay. Now, let's look at your response to Interrogatory Number 22.
(Pause in Proceedings.)
BY MS. WEATHERFORD:
Q. I'm ready to turn back to this. I apologize. I think there were a lot of different numbers in here.
I'm going to move on.
Now, before we broke I asked you a question about the attorney's fees that you have paid out of your pocket today, to date.
How much is that for this litigation?
A. Thus far, I don't believe that I have made payments, but I'm not sure. I don't think I have.
Q. So, you don't think you've paid any money in 12

years for your lawyers in this case; is that right?

A. As of yet, not to my knowledge.

Q. Okay. And you don't have a financial debt to any of these lawyers or their law firms for legal fees that you will have to pay, win or lose, after this trial?

A. I'm not sure about that. I don't think I do.

Q. You're not aware of any debt that you currently have, a legal debt that you have to any of these law firms?

A. Not aware of it, no.

Q. Okay. Thank you.

I'd like to turn back to -- we can go to what's been marked as Exhibit 635, please.

That should be in Volume Two.

(Pause in Proceedings.)

THE WITNESS: What was the exhibit number again?

BY MS. WEATHERFORD:

Q. Six thirty-five. It's on the screen, as well, we can zoom in to/from CC.

A. Yeah, towards the back of the binder, it's hard to get -- the exhibit number was six --

Q. Six thirty-five. This was an email that we've seen before so far in the course of this case?

A. Six thirty-five, okay.

Q. And it's a July 31st, 2003, email from you when

the clerk.

MS. WEATHERFORD: That's what I figured.

THE COURT: Yes.

MS. WEATHERFORD: Okay.

THE COURT: We'll try not to lose it.

All right. See you tomorrow.

(Whereupon, hearing concluded.)

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 24TH DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 91 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY NAME, THIS 24TH DAY OF JANUARY, 2024.

RPR, FCRR

OFFICIAL COURT REPORTER

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN,	:	
Plaintiff,	:	
v.	:	Civil Action Number
NATIONAL REVIEW, INC., et al.,	:	2012-CA-8263(B)
Defendants.	:	

Washington, D.C.
Monday, January 29, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 132, commencing at approximately 2:15 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

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PETER FONTAINE, Esquire
AMORIE I. HUMMEL, Esquire
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1650 Market Street Suite 2800
Philadelphia, PA 19103

(Appearances continued on the next page.)

(Continued from the previous page.)

reputational harm? Because -- I envisioned two to three days with Dr. Mann because he has the most knowledge about his case and how he was harmed. I still am struggling with the need for the first two witnesses in the case, Dr. Bradley -- and I know that you needed someone to set the table. And I knew that we were walking a fine line from a trial concerning climate change versus a trial concerning defamation. But --

MR. WILLIAMS: Your Honor --

THE COURT: -- it seems that Dr. Mann would be the one who could speak to his -- to harm to his reputation. So what -- what would Dr. Abraham bring to the conversation that would be relevant and helpful?

MR. WILLIAMS: Dr. Abraham is going to testify that, in view of the Sandusky allegations out there and the allegations of fraud that had, all of a sudden, cropped up again, once again, after they had subsided, in the wake of the NSF report, Dr. Abraham is going to testify that he was reluctant and did not invite Dr. Mann on to a project team.

He has already testified to this in a deposition. This is said. I don't think there's any issue on this. That's what he's going to testify to.

THE COURT: All right.

MR. WILLIAMS: Then pursuant to Your Honor's rulings, to the extent that they are going to challenge the

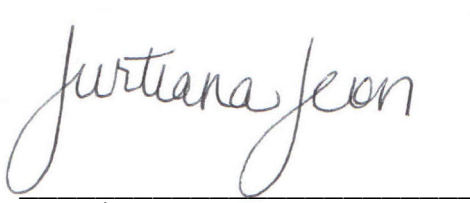
(Whereupon, the proceedings concluded at 4:49 p.m.)

CERTIFICATION OF REPORTER

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D, v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CA-8263(B), in said court on the 29th day of January, 2024.

I further certify that the foregoing 95 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 30th day of January, 2024.



Jurtiana Jeon, CSR, RPR
Official Court Reporter

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

MICHAEL E. MANN, Ph.D.,	:	
Plaintiff,	:	
v.	:	Civil Action Number
NATIONAL REVIEW, INC., et al.,	:	2012-CA-8263(B)
Defendants.	:	

Washington, D.C.
Monday, February 5, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 132, commencing at approximately 9:23 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

JOHN WILLIAMS, Esquire
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AMORIE I. HUMMEL, Esquire
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1650 Market Street Suite 2800
Philadelphia, PA 19103

(Appearances continued on the next page.)

grounds for them. And they -- they concerned largely the Court's and the Court of Appeals' prior rulings or implicated elementary, obvious evidentiary principles, such as hearsay, relevance versus admissibility, demonstratives versus exhibits, that should have been more carefully considered long before the trial.

The Court has noted previously that it was unclear and may require some additional reflection on the testimony, but it seemed that there was very little relevance to Drs. Bradley and Oreskes' testimony, especially where the defendants' theory of their cases appeared to suggest, at least for Mr. Simberg, scientific misconduct or academic misconduct in the narrow technical sense as was investigated by Penn State and the NSF and which were not what the statements meant.

As to Mr. Steyn, his statements about the bogus, fraudulent nature of the Hockey Stick graph in his mind were substantially and entirely true.

Furthermore, even as plaintiff recognized during jury voir dire and in the many bench conferences and filings with the Court, the validity of science writ large is not at issue in this case and the validity of the Hockey Stick chart is not the main focus of this defamation case, but it has otherwise appeared at times to be the effect, plaintiff bears the burden of proof to show that the

subject matter and the type of tort.

First, the two defendants had different defenses and, accordingly, had different points to emphasize to the jury in examination of plaintiff's witnesses. Second, the extensive examination of Dr. Mann is expected, as the individual claiming injury from defamation.

And, third, the full extent of Dr. Mann's time on the stand, while consuming the lion's share of elapsed trial time, appears to be the natural consequence of several factors that were in plaintiff's control: Dr. Mann's repeated insistence on giving extended answers and not directly answering questions put to him by counsel; the dearth of any witnesses, fact witnesses, to corroborate his claims and lay appropriate foundation to admit other documentary evidence concerning his claimed damages which triggered several extended, but again, well-founded evidentiary objections, largely resting on basic evidentiary principles and plainly worded Superior Court procedural rules; and, finally, the introduction of erroneous figures intended to go back with the jury during deliberations, figures that were corrected only upon recross-examination by defendants without an affirmative withdrawal or acknowledgment by plaintiff's counsel.

As to the request to deny testimony from McIntyre and McKitrick, the Court is simply not receptive to the

CERTIFICATION OF REPORTER

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D., v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CA-9263(B), in said court on the 5th day of February, 2024.

I further certify that the foregoing 85 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 5th day of February, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

MICHAEL E. MANN, Ph.D.,	:	
Plaintiff,	:	
v.	:	Civil Action Number
NATIONAL REVIEW, INC., et al.,	:	2012-CA-8263(B)
Defendants.	:	

Washington, D.C.
Tuesday, February 6, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 132, commencing at approximately 2:15 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

JOHN WILLIAMS, Esquire
WILLIAMS LOPATTO PLLC
1629 K Street, NW, Suite 300
Washington, D.C. 20006

PETER FONTAINE, Esquire
AMORIE I. HUMMEL, Esquire
COZEN O'CONNOR
One Liberty Place
1650 Market Street Suite 2800
Philadelphia, PA 19103

(Appearances continued on the next page.)

single-planet species; we want to be a multi-planet species. So it's important to -- that's also important to the future.

And there's a lot of space technology that can actually help with the climate problem. There are serious plans, and it's becoming economically feasible to actually put solar power-collecting satellites up into space and beam the power down to Earth, because the sun always shines up there.

Q. Thank you, Mr. Simberg. Shifting gears just very briefly, I'd like to ask you a couple of questions about your financial situation. How much money do you make each year in the last several years?

A. Well, it varies, but I'd say over the last few years, maybe a 10,000 a year.

Q. Okay. Do you have any debt?

A. Yes.

Q. How much?

A. A couple hundred thousand.

Q. And what is your total net worth?

A. Minus a couple hundred thousand.

Q. Okay. I want to start turning to the issues that are bringing us here today, the blog post that's at issue in this case. Can you first just tell us about where it was posted online originally? Today.

CERTIFICATION OF REPORTER

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D., v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CA-8263(B), in said court on the 6th day of February, 2024.

I further certify that the foregoing 116 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 7th day of February, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

MICHAEL E. MANN, Ph.D.,	:	
Plaintiff,	:	
v.	:	Civil Action Number
NATIONAL REVIEW, INC., et al.,	:	2012-CA-8263(B)
Defendants.	:	

Washington, D.C.
Thursday, February 8, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 132, commencing at approximately 4:30 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

JOHN WILLIAMS, Esquire
WILLIAMS LOPATTO PLLC
1629 K Street, NW, Suite 300
Washington, D.C. 20006

PETER FONTAINE, Esquire
AMORIE I. HUMMEL, Esquire
COZEN O'CONNOR
One Liberty Place
1650 Market Street Suite 2800
Philadelphia, PA 19103

(Appearances continued on the next page.)

a high degree of awareness that the statement was probably false.

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. For each statement from I(A)(4) that you found defamatory, relied on provably false facts, was false, and was made with either knowledge of falsity or reckless disregard for whether the fact was false, do you find that, for any one of them, plaintiff proved by a preponderance of the evidence that plaintiff suffered actual damage -- I'm sorry -- suffered actual injury as a result of the statement written or quoted by Defendant Simberg?

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. If you answered yes to question I(A)(5), please identify which statements by Defendant Simberg (listed as "a" through "d" above), for which you answered yes to all of the above questions in this section I(A).

Did you do that?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And what were they?

THE FOREPERSON: Statement "c" and statement "d."

THE COURT: All right. As to damages -- compensatory damages, number 1, what amount of compensatory damages do you award to plaintiff against Defendant Simberg

for damages resulting from the statements for which you answered yes to the question in I(A)?

THE FOREPERSON: $1.

THE COURT: All right. And punitive damages. Do you find that plaintiff has proved by clear and convincing evidence that Defendant Simberg's conduct in publishing his July 13, 2012, post showed maliciousness, spite, ill will, vengeance, or deliberate intent to harm plaintiff?

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. What amount of punitive damages do you award to plaintiff against Defendant Simberg?

THE FOREPERSON: $1,000.

THE COURT: All right. Now, as to defendant Mark Steyn, question number 1: Do you find that plaintiff has proved by a preponderance of the evidence that one or more of the above statements for [sic] Defendant Steyn's July 15, 2012, post was defamatory or had a defamatory implication that was intended by Mr. Steyn?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Number 2. For each statement from II(A)(1) that you found defamatory, do you find that, for any one of them, plaintiff has proved by a preponderance of the evidence that the defamatory meaning conveyed by Defendant Steyn's statement or statements asserted or

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. And number 5. For each statement from II(A)(4) that you found defamatory, relied on provably false facts, was false, and was made with either knowledge of falsity or reckless disregard for whether the fact was false, do you find that, for any one of them, plaintiff proved by a preponderance of the evidence that plaintiff suffered actual injury as a result of the statement written or quoted by Defendant Steyn?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And if you answered yes -- and you did, please identify which statements by Defendant Steyn (listed as "a" through "c" above), for which you answered yes to all of the above questions in section II(A), and then proceed to -- please state the statements.

THE FOREPERSON: Statement "a" and statement "c."

THE COURT: All right. And compensatory damages. What amount of compensatory damages do you award to plaintiff against Defendant Steyn for damages resulting from the statements for which you answered yes to the questions in I(A) [sic]?

THE FOREPERSON: $1.

THE COURT: All right. And for punitive damages. Do you find that plaintiff has proved by clear and convincing evidence that Defendant Steyn's conduct in

publishing his July 15, 2012, post showed maliciousness, spite, ill will, vengeance, or deliberate intent to harm plaintiff?

THE FOREPERSON: Yes, Your Honor.

THE COURT: What amount of punitive damages do you award to plaintiff against Defendant Steyn?

THE FOREPERSON: $1 million.

THE COURT: All right. Thank you. You may be seated.

Hushers.

(Whereupon, a sealed bench conference was taken but not transcribed.)

THE COURT: All right. Before I let you go, I am going to poll each one of you to determine whether you are in agreement with the verdict. And as I call you from seat closest to the bench to the far end, please state your juror number and then answer the question whether you agree with the verdict yes or no. So --

JUROR #931: Step up to the mic?

THE COURT: Yes. State your juror number once more, sir.

JUROR #931: Juror Number 931.

THE COURT: All right. And do you agree with the verdict?

JUROR #931: Yes, Your Honor.

CERTIFICATION OF REPORTER

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D., v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CA-8263(B), in said court on the 8th day of February, 2024.

I further certify that the foregoing 15 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 8th day of February, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., *Plaintiff,* v. NATIONAL REVIEW, INC., *et al.,* *Defendants*.	Case No. 2012 CA 008263 B Judge Alfred S. Irving, Jr.

(Proposed) Order

Upon consideration of Defendant Mark Steyn's Objections to Plaintiff's Bill of Costs, and any reply thereto, it is hereby

ORDERED that Plaintiff Michael E. Mann's Bill of Costs is DENIED, and Plaintiff must pay his own costs of the litigation.

DATED this _____ day of _____, 2024.

_____
Hon. Alfred S. Irving, Jr.
Associate Judge