**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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

**Defendant Mark Steyn's Opposition to the Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine to Reconsider or Alter or Amend Award of Sanctions**

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This Court correctly determined that Plaintiff Mann and his attorneys engaged in bad faith misconduct that required sanctions. *See* Order (Mar. 12, 2025). Mann's present motion for reconsideration of that Order does nothing to undermine that determination. Steyn agrees with Simberg's response and joins it in full. He adds a few additional points of his own here and also responds to Mann's belated opposition to Steyn's claimed attorney's fees, raised for the first time in this motion to reconsider.

First, Mann and his attorneys' feigned surprise at this Court's decision to impose sanctions on them is not credible. This Court confirmed that the sanctions motion remained pending in its Order Setting Post-Trial Briefing Schedule (Feb. 9, 2024). When Plaintiffs sought consent to file a status report *nunc pro tunc* with the D.C. Court of Appeals, Steyn required them to include the omitted motion from their status report. *See* Ex. A (Emails). Plaintiffs agreed. *Id.* Since July 2024, Plaintiffs have filed monthly status reports that *Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct* remained pending in the trial court. *See* Exs. B, C, D (Status Reports). In fact, the day before this Court granted the sanctions award, Plaintiffs told the Court of Appeals that because this Court's March 4 order had not referenced Steyn's motion, that they (erroneously) believed the motion was moot. Ex. D. Mann and his attorneys had plenty of notice.

This Court need not even consider Mann's motion, as it is "not obliged to entertain or act on" a motion for reconsideration. *See Marshall v. United States*, 145 A.3d 1014, 1019 n.12 (D.C. 2016) (quoting *United States v. Jones*, 423 A.2d 193, 196 n.4 (D.C. 1980)). It should decline to do so. This Court was well-within its "broad authority to craft sanctions that it deems will punish and deter bad-faith litigation." *In re S.U.*, 292 A.3d 263, 271 (D.C. 2023) (citing *Breezevale Ltd. v. Dickinson*, 879 A.2d 957, 967, 970 (D.C. 2005); *Synanon Found., Inc. v. Bernstein*, 517 A.2d 28,

38 (D.C. 1986)). These inherent powers "certainly include[] the authority to award … attorney's fees." *Id.*

Even if this Court were to consider revisiting its interlocutory order, it should do so only "so long as the reconsideration [i]s 'consonant with justice.'" *Bernal v. United States*, 162 A.3d 128, 134 (D.C. 2017) (quoting *Marshall*, 145 A.3d at 1019). The federal district court described its own "as justice requires" standard for reconsideration as "flexible," but still requiring "some 'good reason' to reconsider an issue already litigated by the parties and decided by the court, such as new information, a misunderstanding, or a clear error." *Montgomery v. I.R.S.*, 356 F.Supp.3d 74, 79 (D.D.C. 2019) (citation omitted), *aff'd,* 40 F.4th 702 (D.C. Cir. 2022). This Court is not *limited* to those categories, *Bernal*, 162 A.3d at 133–34, but they are illustrative. Because Mann has not provided any new information, and his arguments reflect a tripling down (not a misunderstanding or clear error or anything similar), this Court should deny his motion for reconsideration.

**ARGUMENT**

Mann's motion to reconsider puts beyond any doubt that he and his attorneys knew the evidence they presented to the jury was false. His present motion conflates knowledge with intent and offers declarations from his attorneys that merely add further evidence that they knew the dollar amounts they blew up into a large demonstrative in front of the jury were *wrong*.

Mann's contention that he cannot be punished for his attorneys' conduct is contrary to binding precedent and falsely minimizes the role he played in the deception. Mann emphasizes that *he* was the one who noticed his sworn interrogatory responses were wrong, but he fails to explain why he did not correct those numbers when it really counted, *i.e.*, when they were presented to the jury. And Mann and his attorneys' repeated statements that their actions were no

big deal because defendants corrected their false statements and evidence on re-cross merely underscores their lack of contrition and refusal to take responsibility for their actions.

Finally, Mann's challenge to Steyn's rates should be rejected, as Mann failed to respond to Steyn's Fee Submission on the merits. He thus conceded the point and cannot challenge those rates for the first time on a motion to reconsider. In any event, Steyn's rates are reasonable, and Mann has not presented evidence to undermine that reasonableness. Steyn should now be awarded his attorney's fees expended responding to this meritless motion for reconsideration.

## I. Mann and His Attorneys Engaged in Bad Faith.

Mann's motion for reconsideration only underscores what this Court already found in its order: (1) Mann and his attorneys *knew* that the dollar amounts in the exhibits they presented were wrong, (2) the charts should not have been presented to the jury in the way Mann and his attorneys presented them, and (3) the time for Mann to correct those misleading exhibits was before his attorneys sat down. *See generally* Order. Mann's complaint that he had no other list to draw on to refresh his recollection is a red herring. *See* Mem. in Support of Mot. 4–7, 18–19, 27–28 ("Mot."). He certainly has a broad ability to refresh his recollection, but he is not entitled to publish a list to the jury to do it. If he did not know the amounts, he should have said so. His inability to quantify his damages is a product of his case never being about rectifying actual damages. Mann's motion merely continues to double- and triple-down on his and his attorneys' bad faith misconduct.

This Court correctly found "that Dr. Mann, through Mr. Fontaine and Mr. Williams, acted in bad faith when they presented erroneous evidence and made false representations to the jury and the Court regarding damages stemming from loss of grant funding." Order 29. Specifically, this Court found that "the misconduct of Dr. Mann and his counsel":

- (1) was extraordinary in its scope, extent, and intent;
- (2) subjected a jury not only to false evidence and grievous misrepresentations about a crucial part of Dr. Mann's case, but also to additional trial proceedings for correcting the record and the jury's impressions thereof that otherwise likely would have been unnecessary;
- (3) further complicated a trial already rife with convoluted and difficult legal and factual issues; and
- (4) burdened Defendants and the Court with the time- and resource-intensive task of ascertaining the true extent of the misconduct and determining appropriate remedial measures for the same, all without any meaningful acknowledgement of the nature of the misconduct by Dr. Mann or his attorneys.

*Id.* at 42. This motion for reconsideration continues Mann and his attorneys' pattern of failing to meaningfully acknowledge the nature of their misconduct.

In support of his motion for reconsideration, Mann offers declarations from two of his attorneys, Williams and Fontaine, and himself. These declarations offer no basis for reconsideration. They are improper on their face, and they substantively fail to provide any reason for this Court to reconsider its order sanctioning Mann and his attorneys.

**A. The declarations are improper.**

The Mann, Williams, and Fontaine declarations should be disregarded because Mann cannot now "bolster [his] arguments with evidence that apparently would have been available to [him]" when the issue was briefed and argued. *See SmartGene, Inc. v. Advanced Biological Lab'ys, SA*, 915 F.Supp.2d 69, 80–81 (D.D.C. 2013) (granting motion to strike declarations attached to motion to reconsider), *aff'd,* 555 F.App'x 950 (Fed. Cir. 2014). Courts have recognized that "[f]or the purposes of a motion for reconsideration, … 'newly raised' evidence is not considered 'new' evidence if it was 'previously available.'" *Citizens for Resp. & Ethics in Wash. v. U.S. DOGE Serv.*, No. 25-cv-511 (CRC), 2025 WL 863947, at *4 (D.D.C. Mar. 19, 2025) (quoting

*Schoenbohm v. FCC*, 204 F.3d 243, 250 (D.C. Cir. 2000)). These declarations cannot support Mann's motion to reconsider this Court's order on sanctions.

**B. The declarations bolster this Court's finding that Plaintiffs acted knowingly.**

If there were ever any doubt that Mann and his attorneys acted knowingly in presenting false evidence to the jury, these declarations remove that doubt. The Court found that "[g]iven such circumstances" here, Williams and Fontaine "knew about the errors in Exhibit 517A" before Fontaine used it. Order 33. Although the declarations are not grounds to reconsider this Court's decision, they do provide direct evidence of knowledge to bolster the circumstantial evidence of bad faith that this Court already found sufficient for sanctions.

Mann's entire motion conflates knowledge with intent, such as when he argues (at 7) that his attorneys' conduct was not "knowingly false" because they "had no intention whatever to mislead the Court." But there is no "intent" requirement here. To do something "knowingly" is to act with knowledge or awareness of the facts or situation, and not because of mistake, accident or some other innocent reason. It does not require specific intent. *Black's Law Dictionary* defines "Knowing" as "[h]aving or showing awareness or understanding; well-informed" or "[d]eliberate; conscious." (12th ed. 2024). No mention of intent there. "Intent" gets its own definition, meaning "[t]he state of mind accompanying an act, esp. a forbidden act." *Intent, id*. The Rules of Professional Conduct define "Knowingly" to mean "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." D.C. Rules Pro. Conduct 1.0(f). Again, there is no mention of intent. Their declarations regarding intent are irrelevant here. *See* Mann Decl. ¶ 10 ("I had no intention to mislead the Court or the jury about any aspect of my case."); Williams Decl. ¶ 8 ("we had no intention of" discussing "the incorrect answers"); *id.* ¶ 11 ("I state categorically that I had no such intent."); Fontaine Decl. ¶ 18 ("Neither I nor Dr. Mann had any

intention to deceive the Court or the jury"); *id.* ¶ 23 ("I did not intend to represent to the Court that the funding amounts were the same."). Intent is not a threshold issue for a violation; intent, rather, goes to the *severity* of the resulting sanction. *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989).

Williams's and Fontaine's declarations make clear that Mann and his attorneys were aware that they were presenting false information to the jury. It was deliberate. It was conscious. Their declarations repeatedly emphasize that they *knew* the amounts presented to the jury were not correct. Mann swears that he "noticed the errors [him]self in 2023 when we were preparing for trial, and [he] promptly alerted [his] counsel and worked diligently to fix the errors." Mann Decl. ¶ 4. Williams declares that before the trial, "we realized that Dr. Mann's interrogatory answers were incorrect," Williams Decl. ¶ 4, and "we caught the errors," *id.* ¶ 9. Then, before Mann's testimony, "it was specifically discussed that the incorrect answers had been superseded by corrected answers." *Id.* ¶ 11. Fontaine declares that Mann determined his sworn interrogatory responses "contained several errors concerning the dates on which grant decisions had been made and the amounts received by [Penn State]." Fontaine Decl. ¶ 4. Then, "Mann corrected the errors in the grant funding tables." *Id.* ¶ 5. Fontaine "knew that the numbers had changed, and [he] knew that defense counsel knew the numbers had changed." *Id.* ¶ 23. He "also believed at the time that the Court knew the numbers had changed." *Id.* ¶ 24. And he chose not to "elicit any testimony concerning the funding amounts" because he "expected Ms. Weatherford would cover the changes in the funding amounts during her re-cross examination." *Id.* ¶ 25.

Mann attempts to evade the obvious conclusion that he and his attorneys acted knowingly by arguing (at 19) that each person had to "*knowingly* offer evidence" that he "*knows* to be false." But their declarations show that they knowingly offered the evidence. There's really never been a dispute there. And the declarations also plainly state that they knew the numbers were false. *See,*

*e.g.*, Fontaine Decl. ¶ 23 ("I knew that the numbers had changed, and I knew that defense counsel knew the numbers had changed."); Williams Decl. ¶ 4 ("we realized that Dr. Mann's interrogatory answers were incorrect").

Mann's motion focuses on the fact that Mann and his attorneys knew the numbers were false and that Defendants knew the numbers were false. *See, e.g.*, Mot. 6 (citing Fontaine Decl. ¶¶ 20–23). But the greatest harm from Mann's false statements and evidence was that the *jury* did not know anything other than what was presented to them. Mann cannot explain away his decision to blow up the chart into a large demonstrative that already omitted some material from Exhibit 517, but not the prominently displayed false numbers, as merely a tool to refresh his recollection. And Mann could not publish false evidence to the jury just because he believed that it would be corrected on cross-examination.

**C. The declarations show lack of contrition and refusal to take responsibility.**

Mann's motion and his attorneys' declarations further highlights their continued denial of responsibility for their actions. It defies credulity for Mann to argue that "[a]s set forth above and in the attached declarations, the Attorneys did *not* know they were making a false statement." Mot. 16; *see also* Williams Decl. ¶ 3 ("I did not mislead the Court or introduce false evidence, and certainly had no intention of taking any action that would lead the Court to conclude to the contrary."); *id.* ¶ 11 ("I also categorically state that I find it fundamentally perplexing how Mr. Fontaine and I can be accused of falsifying the record after trying to correct the record."); Fontaine Decl. ¶ 28 ("I assure the Court that I did not intend to mislead it in any way, nor attempt to introduce false evidence, at any point during the trial of this matter."). Nor is Mann's own sworn statement believable, that he "unequivocally den[ies] that [he] made any knowingly false

statements to the Court. Nor did [he] attempt to or actually introduce false evidence to the Court." Mann Decl. ¶ 3.

As this Court correctly held, "[t]he admission of Exhibit 517A without any limiting instruction or other special directive, however, did not authorize Dr. Mann's counsel to misrepresent—whether affirmatively or by omission—the truth and accuracy of the information contained in the exhibit," nor did Defendants' "legally correct objections and effective examination of Dr. Mann, or Defendants' seeming acquiescence to Dr. Mann's testimony on Exhibit 517A, somehow relieve Dr. Mann's counsel of *their duties as officers of the Court and members of a profession dedicated to honesty and integrity*." Order 41 (emphasis added). Nor could Mann's attorneys decide to just "handle [their misrepresentations] on redirect." *See* Trial Tr. 28:1–6 (1/29/24 PM) (Exhibit E hereto [extracted]). Defendants were not required to cross on that subject, or even to cross at all. And if Defendants had not corrected the misrepresentations themselves, there would not have been an opportunity for Mann to do so on redirect. The misrepresentations should never have been presented, and once presented, should have been corrected before Mann's attorneys sat down.

In short, the declarations make clear that Mann and his attorneys knowingly presented false evidence. Mann's attorneys emphasize their longtime experience, which shows they should have known better than to present this evidence in the manner they did, and it certainly shows they should know better than to continue to double and triple down that they did nothing wrong. *See* Williams Decl. ¶ 2 (nearly 50 years as D.C. bar member); Fontaine Decl. ¶ 2 (33 years as D.C. bar member). This Court should deny Mann's motion to reconsider.

## II. Mann was properly included in the sanctions.

Mann's argument (at 28–29) that he cannot be sanctioned because he is not subject to the Rules of Professional Conduct is contrary to binding precedent. The Court of Appeals affirmed sanctions against a petitioner and his attorney where the trial court found the attorney had violated the Rules of Professional Conduct and the petitioner had assisted him by meeting with the victim and giving her documents his attorney had drafted. *In re Jumper*, 984 A.2d 1232, 1252 (D.C. 2009). Mann cannot escape sanctions by "contend[ing] that he is a lay person who was merely following his lawyer's advice, and that the sins of his lawyer should not be visited upon him." *Id.* The sanctions are for litigation misconduct, not directly for violating the Rules. Such violations are merely evidence of bad faith.

Mann has not provided any evidence that he did not endorse his attorneys' statements and actions. And in any event, Mann concedes that he "*is* responsible for his own testimony under oath." Mot. 28. His motion notes that "he certainly would have acknowledged … the precise figure" had he been furnished his amended interrogatory responses. *Id*. But he failed to correct the false numbers presented to the jury, despite having been the person to note that those numbers were incorrect in the first place. These facts show that Mann knowingly participated in presenting false evidence and testimony to the jury. At most, Mann has shown "there are two permissible views of the evidence," and in that case, this Court's "choice between them cannot be clearly erroneous." *In re Jumper*, 984 A.2d at 1254. This Court did not err in its determination, and Mann's motion for reconsideration should be denied.

## III. Steyn Correctly Used *Laffey* Matrix Rates

Mann's complaints about Steyn's request for $27,579.40 in fees and costs, using the *Laffey* matrix, should be disregarded. Mann conceded that this amount is correct by failing to respond on

the merits. He cannot challenge it for the first time in a motion to reconsider. And in any event, the question is whether $27,579.40 is an appropriate sanction under this Court's inherent powers for Mann and his attorneys' bad faith misconduct. The attorney fees are just a proxy for an appropriate sanction.

### A. Mann conceded that Steyn's rates were proper and cannot now challenge them in a motion for reconsideration.

Mann failed to challenge Steyn's rates on the merits and does so now for the first time in his motion for reconsideration. When a party fails to respond "within the prescribed time, the court may treat the motion as conceded." Super. Ct. Civ. R. 12-I(e); *see also Bednarek v. Pourbabai*, No. 2017 CA 002410 B, 2018 WL 11346541, at *3 (D.C. Super. Ct. Oct. 3, 2018) (treating motion for attorney's fees as conceded where no opposition was filed). And given that Mann approaches this Court on a reconsideration motion, this Court is "not obliged to entertain or act on" it in any event. *Marshall*, 145 A.3d at 1019 n.12 (quoting *Jones*, 423 A.2d at 196 n.4).

This Court directed Steyn to "file all necessary materials in support of the costs and fees awarded in this Order by March 26, 2025." Order at 45. Steyn did so. *See* Def. Steyn's Submission on Amount of Fees & Costs to be Awarded as a Sanction for Pl.'s Bad-Faith Trial Misconduct & Supporting Docs. (Mar. 26, 2025) ("Fee Submission"). In his Fee Submission, Steyn calculated and requested a total of $27,579.40 in fees and costs. *Id*. at 4.

The Sanctions Order also directed Mann to "file any response within fourteen days of Defendants' filings in support of the sanction award." Order at 45. The due date for Mann's response was April 9, 2025. Mann, however, did not file a response. *See also* Def. Steyn's Notice of Pl.'s Failure to Respond (Apr. 17, 2025).

Accordingly, Steyn's calculation of $27,579.40 in fees and costs, using the *Laffey* matrix, should be treated as conceded.

### B. The *Laffey* Matrix Rates are Proper Here.

Even if Mann were allowed to challenge Steyn's rates for the first time in a reconsideration motion, his arguments (at 29–30) against using the *Laffey* Matrix here fail. The standard is whether Steyn's claim for $27,579.40 is reasonable.

The *Laffey* matrix is strong evidence of reasonableness. The U.S. District Court for the District of D.C. recognized it as "the benchmark for reasonable fees" in that court. *Am. Lands All. v. Norton*, 525 F.Supp.2d 135, 149–50 (D.D.C. 2007) (collecting cases). And that court also recognized that that "[c]ourts in this Circuit have often relied on the *Laffey* matrix, or an updated version thereof, to determine appropriate fee awards based on market rates," and they have done so "even where the *Laffey* rates are not the rates actually charged to the client." *Muldrow v. Re-Direct, Inc*., 397 F.Supp.2d 1, 3 (D.D.C. 2005) (collecting cases). *Accord West v. Potter*, No. 05-1339 (HHK/AK), 2009 WL 10659210, at *3 (D.D.C. Oct. 13, 2009).

Other evidence of reasonableness may exist, but Mann had the chance to present such evidence on the merits and failed to do so. A party "must either accede to the applicant's requested rate or provide specific contrary evidence tending to show that a lower rate would be appropriate." *See Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319, 1326 (D.C. Cir. 1982). Now on Mann's motion to reconsider, he again fails to provide any evidence of reasonableness to counter the *Laffey* matrix, other than to note that the attorneys in this matter have different billing rates. But Mann cites no case for the proposition that a party who is entitled to attorney's fees should receive fees based, not on the *Laffey* matrix, but on rates paid to *a different party*.

In any event, even for an attorney fee award under a fee-shifting statute, as opposed to the inherent powers sanction here, the goal is "rough justice," not "auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011). This Court "need not, and indeed should not, become [a] green-eyeshade

accountant[].” *Id.* Accordingly, the sanction against Mann and his attorneys should be left in place, and this Court should deny Mann’s motion for reconsideration.

## IV. Steyn Should Be Awarded His Attorney Fees for this Response

Mann’s motion to reconsider has only compounded the time wasted by the parties because of Mann and his attorneys’ misrepresentations. This Court was correct to sanction them for those misrepresentations, and, as explained, this new motion to reconsider is meritless. Accordingly, Steyn should be granted his attorney’s fees spent responding to it.

The “court’s inherent powers give it broad authority to craft sanctions that it deems will punish and deter bad-faith litigation,” which “certainly includes the authority to award all costs … expended as a result of such litigation,” such as the motion to reconsider here. *See In re S.U.*, 292 A.3d at 271 (citations omitted). “Because the costs arising from the sanctions proceedings were ‘occasioned by the objectionable conduct,’ a district court may include costs arising from the sanctions proceedings in the sanctions award.” *Norelus v. Denny’s, Inc.*, 628 F.3d 1270, 1298 (11th Cir. 2010) (citation omitted); *see also Wardwell v. Metmor Fin., Inc.*, No. 88-cv-122-S, 1988 WL 156801, at *4 (D. Mass. Nov. 3, 1988) (noting that “it is permissible to award fees for efforts to collect sanctions”); *Rajala v. Allied Corp.*, No. 82-cv-2282, 1985 WL 8030, at *1 (D. Kan. Jan. 10, 1985) (“The court further finds attorney’s fees for time spent by plaintiff in opposing defendant’s motion for review are proper.”). An attorney fee award for this response is necessary to punish and deter the bad faith conduct at issue here.

## CONCLUSION

For these reasons, this Court should deny Mann’s motion for reconsideration and award Steyn his attorney’s fees spent responding to it.

Dated: June 10, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2025, I caused a copy of the foregoing document to be served by eFileDC upon the following:

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# EXHIBIT A

Outlook

## RE: Mann v. National Review, 24-cv-228

**From** Hummel, Amorie <AHummel@cozen.com>
**Date** Thu 7/11/2024 6:29 PM
**To** H. Christopher Bartolomucci <cbartolomucci@schaerr-jaffe.com>; Mark I. Bailen PC <mb@bailenlaw.com>; DeLaquil, Mark <mdelaquil@bakerlaw.com>; Weatherford, Victoria L. <vweatherford@bakerlaw.com>; Dick, Anthony J. <ajdick@jonesday.com>; Justin Miller <jmiller@schaerr-jaffe.com>
**Cc** John B. Williams <jbwilliams@williamslopatto.com>; Fontaine, Peter <PFontaine@cozen.com>; Patrick.Coyne@finnegan.com <Patrick.Coyne@finnegan.com>

The motion has been added to the status report.

-Amorie

COZEN O'CONNOR

**Amorie Hummel**
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**From:** H. Christopher Bartolomucci <cbartolomucci@schaerr-jaffe.com>
**Sent:** Wednesday, July 10, 2024 5:58 PM
**To:** Hummel, Amorie <AHummel@cozen.com>; Mark I. Bailen PC <mb@bailenlaw.com>; DeLaquil, Mark <mdelaquil@bakerlaw.com>; Weatherford, Victoria L. <vweatherford@bakerlaw.com>; Dick, Anthony J. <ajdick@jonesday.com>; Justin Miller <jmiller@schaerr-jaffe.com>
**Cc:** John B. Williams <jbwilliams@williamslopatto.com>; Fontaine, Peter <PFontaine@cozen.com>; Patrick.Coyne@finnegan.com
**Subject:** Re: Mann v. National Review, 24-cv-228

****EXTERNAL SENDER****

Thanks, Amorie. I disagree. The Court said this in its post-trial Order of February 9, 2024, at 2 (attached):

"The Court will also reserve a decision on Mr. Steyn's outstanding February 1, 2024 *Motion for Sanctions for Bad-Faith Trial Misconduct*."

Please let me know if you need more convincing.

Chris

**From:** Hummel, Amorie <AHummel@cozen.com>
**Date:** Wednesday, July 10, 2024 at 5:44 PM
**To:** H. Christopher Bartolomucci <cbartolomucci@schaerr-jaffe.com>, Mark I. Bailen PC <mb@bailenlaw.com>, DeLaquil, Mark <mdelaquil@bakerlaw.com>, Weatherford, Victoria L. <vweatherford@bakerlaw.com>, Dick, Anthony J. <ajdick@jonesday.com>
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**Subject:** RE: Mann v. National Review, 24-cv-228

Chris,

It is our position that the February 1 motion was denied on February 7 after argument offered by all parties, including Mr. Steyn himself (2/7/24 AM at 38:21-39:22). The Court addressed "outstanding motions" that morning (id. at 14:9) and the motion for sanctions was also specifically noted as part of that dialogue, which the Court viewed in tandem with Simberg's comparable motion for an adverse inference instruction (id. at 15:15-17). All outstanding motions were denied (id. at 42:11-15) and, instead, the posterboard demonstrative at issue, Exhibit 117, was withdrawn and did not go back to the jury (id. at 44:17-19).

Please confirm if you agree after having an opportunity to review the transcript.

Thank you.
Amorie

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**Subject:** Re: Mann v. National Review, 24-cv-228

****EXTERNAL SENDER****

Amorie, your status report is incomplete because it does not include Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct, filed on Feb. 1, 2024. If you add that pending motion to the report, you may say that Defendant Steyn does not oppose your motion for leave to file out of time.

Chris

---

**From:** Hummel, Amorie <AHummel@cozen.com>
**Date:** Wednesday, July 10, 2024 at 4:12 PM
**To:** Mark I. Bailen PC <mb@bailenlaw.com>, DeLaquil, Mark <mdelaquil@bakerlaw.com>,

Weatherford, Victoria L. <vweatherford@bakerlaw.com>, H. Christopher Bartolomucci <cbartolomucci@schaerr-jaffe.com>, Dick, Anthony J. <ajdick@jonesday.com>
**Cc:** John B. Williams <jbwilliams@williamslopatto.com>, Fontaine, Peter <PFontaine@cozen.com>, Patrick.Coyne@finnegan.com <Patrick.Coyne@finnegan.com>
**Subject:** RE: Mann v. National Review, 24-cv-228

Counsel,

Please advise if you will consent to our filing the attached status report out of time.

Thank you.
Amorie

COZEN O'CONNOR

**Amorie Hummel**
**Member | Cozen O'Connor**
One Liberty Place, 1650 Market Street Suite 2800 | Philadelphia, PA 19103
P: 215-665-4643 F: 215-372-2333
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***Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.***

***Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.***

# EXHIBIT B

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

| | |
|---|---|
| MICHAEL E. MANN, PH.D.<br><br>Plaintiff/Appellant,<br><br>v.<br><br>NATIONAL REVIEW INC.;<br>COMPETITIVE ENTERPRISE INSTITUTE;<br>RAND SIMBERG; and MARK STEYN,<br><br>Defendants/Appellees. | No. 24-cv-228 |

## APPELLANT'S STATUS REPORT

Pursuant to the Court's June 4, 2024 Order, Plaintiff/Appellant, Michael E. Mann, Ph.D. respectfully files the below status report:

1. The following post-trial motions are still pending before the Superior Court:

   a. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion to Alter or Amend Judgment*, filed February 15, 2024;

   b. *Defendant Simberg's Motion for Judgement as a Matter of Law Under Rule 50(b)*, filed March 8, 2024;

   c. *Defendant Mark Steyn's Motion for Stay of Execution on the Judgement*, filed March 9, 2024;

   d. *Defendant Mark Steyn's Motion for a New Trial*, filed March 9, 2024;

   e. *Defendant Mark Steyn's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for Remittitur of Punitive Damages*, filed March 9, 2024;

   f. *Plaintiff's Rule 54 Bill of Costs*, filed March 11, 2024;

   g. *Plaintiff's Motion for Attorney Fees Under the Anti-SLAPP Act Against Defendant Mark Steyn*, filed March 11, 2024;

   h. *Defendant National Review Inc.'s Bill of Costs Under Rule 54(d)*, filed March 11, 2024;

i. *Defendant National Review Inc.'s Motion for Attorneys' Fees and Costs*, filed March 11, 2024;

j. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion for Costs Under Rule 54*, filed March 11, 2024;

k. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion for Litigation Costs, Including Attorney's Fees, Under DC's Anti-SLAPP Act*, filed March 11, 2024;

l. *Defendant National Review Inc.'s Supplemental Motion for Attorneys' "Fees on Fees,"* filed May 3, 2024; and

m. *Defendant Competitive Enterprise Institute and Rand Simberg's Supplemental Motion for Attorney's Fees Under the D.C. Anti-SLAPP Act*, filed May 9, 2024.

2. In addition, one trial motion remains pending, *Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct*, filed February 1, 2024.

3. All of the above motions have been fully briefed, but none have been decided.

Dated: July 11, 2024

Respectfully submitted,

*/s/ John B. Williams*

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patrick.coyne@finnegan.com

*Counsel for Plaintiff, Michael E. Mann, Ph.D.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that below counsel for all parties have registered for and consented to electronic service under Rule 25, and on July 11, 2024, I caused a copy of the foregoing *Appellant's Status Report* to be served by electronic filing on the following:

Mark W. Delaquil
Andrew M. Grossman
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*Counsel for Defendant National Review Inc.*

*/s/ John B. Williams*
John B. Williams

# EXHIBIT C

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

| | | |
|---|---|---|
| MICHAEL E. MANN, PH.D.<br><br>Plaintiff/Appellant,<br><br>v.<br><br>NATIONAL REVIEW INC.;<br>COMPETITIVE ENTERPRISE INSTITUTE;<br>RAND SIMBERG; and MARK STEYN,<br><br>Defendants/Appellees. | ) | No. 24-cv-228 |

# APPELLANT'S STATUS REPORT

Pursuant to the Court's June 4, 2024 and July 15, 2024 Orders, Plaintiff/Appellant, Michael E. Mann, Ph.D., respectfully files the below status report:

1. On January 6, 2025, a decision was issued on *Plaintiff's Motion for Attorney Fees Under the Anti-SLAPP Act Against Defendant Mark Steyn*, filed March 11, 2024.

2. On January 7, 2025, a consolidated decision was issued on the below post-trial motions awarding National Review Inc. $530,820.21 in attorneys' fees and costs, which Plaintiff intends to appeal:

   a. *Defendant National Review Inc.'s Bill of Costs Under Rule 54(d)*, filed March 11, 2024;

   b. *Defendant National Review Inc.'s Motion for Attorneys' Fees and Costs*, filed March 11, 2024; and

   c. *Defendant National Review Inc.'s Supplemental Motion for Attorneys' "Fees on Fees,"* filed May 3, 2024.

3. The following post-trial motions are still pending before the Superior Court:

   a. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion to Alter or Amend Judgment*, filed February 15, 2024;

b. *Defendant Simberg's Motion for Judgement as a Matter of Law Under Rule 50(b)*, filed March 8, 2024;

c. *Defendant Mark Steyn's Motion for Stay of Execution on the Judgement*, filed March 9, 2024;

d. *Defendant Mark Steyn's Motion for a New Trial*, filed March 9, 2024;

e. *Defendant Mark Steyn's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for Remittitur of Punitive Damages*, filed March 9, 2024;

f. *Plaintiff's Rule 54 Bill of Costs*, filed March 11, 2024;

g. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion for Costs Under Rule 54*, filed March 11, 2024;

h. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion for Litigation Costs, Including Attorney's Fees, Under DC's Anti-SLAPP Act*, filed March 11, 2024; and

i. *Defendant Competitive Enterprise Institute and Rand Simberg's Supplemental Motion for Attorney's Fees Under the D.C. Anti-SLAPP Act*, filed May 9, 2024.

4. In addition, one trial motion remains pending, *Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct*, filed February 1, 2024.

5. In accordance with the Court's June 4, 2024 Order, Plaintiff will advise the Court within 15 days when all of the above motions have been decided.

Dated: January 10, 2025

Respectfully submitted,

*/s/ John B. Williams*

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patrick.coyne@finnegan.com

*Counsel for Plaintiff, Michael E. Mann, Ph.D.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that below counsel for all parties have registered for and consented to electronic service under Rule 25, and on January 10, 2025, I caused a copy of the foregoing *Appellant's Status Report* to be served by electronic filing on the following:

Mark W. Delaquil
Andrew M. Grossman
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*Counsel for Defendant Mark Steyn*

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*Counsel for Defendant National Review Inc.*

*/s/ John B. Williams*
John B. Williams

# EXHIBIT D

**IN THE DISTRICT OF COLUMBIA**
**COURT OF APPEALS**

| | |
|---|---|
| MICHAEL E. MANN, PH.D.<br><br>Plaintiff/Appellant,<br><br>v.<br><br>NATIONAL REVIEW INC.;<br>COMPETITIVE ENTERPRISE INSTITUTE;<br>RAND SIMBERG; and MARK STEYN,<br><br>Defendants/Appellees. | Nos. 24-cv-0228 & 25-cv-0111<br>(consolidated appeals) |

# APPELLANT'S STATUS REPORT

Pursuant to the Court's June 4, 2024 and July 15, 2024 Orders in Case No. 24-cv-0228, Plaintiff/Appellant, Michael E. Mann, Ph.D., respectfully files the below status report:

1. On January 6, 2025, a decision was issued on *Plaintiff's Motion for Attorney Fees Under the Anti-SLAPP Act Against Defendant Mark Steyn*, filed March 11, 2024.

2. On January 7, 2025, a consolidated decision was issued on the below post-trial motions awarding National Review Inc. $530,820.21 in attorneys' fees and costs, which Plaintiff appealed on February 6, 2025:[1]

   a. *Defendant National Review Inc.'s Bill of Costs Under Rule 54(d)*, filed March 11, 2024;

   b. *Defendant National Review Inc.'s Motion for Attorneys' Fees and Costs*, filed March 11, 2024; and

   c. *Defendant National Review Inc.'s Supplemental Motion for Attorneys' "Fees on Fees,"* filed May 3, 2024.

[1] Plaintiff's appeal of the February 6 decision at Case No. 25-cv-0111 was consolidated with the present appeal by this Court's order dated February 27, 2025.

3. On January 19, 2025, a decision was issued on *Defendant Competitive Enterprise Institute and Rand Simberg's Motion to Alter or Amend Judgment*, filed February 15, 2024.

4. On March 4, 2025, a consolidated decision was issued on the below post-trial motions, denying Defendant Mark Steyn's request to reverse the trial judgment, grant a new trial, and stay judgement execution, and granting his request for remittitur:

a. *Defendant Mark Steyn's Motion for Stay of Execution on the Judgement*, filed March 9, 2024;

b. *Defendant Mark Steyn's Motion for a New Trial*, filed March 9, 2024; and

c. *Defendant Mark Steyn's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for Remittitur of Punitive Damages*, filed March 9, 2024.

5. The Superior Court's March 4 decision does not reference *Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct*, which was filed during trial on February 1, 2024, but Plaintiff believes this motion has been rendered moot by the March 4 decision.

6. The following post-trial motions are still pending before the Superior Court:

a. *Plaintiff's Rule 54 Bill of Costs*, filed March 11, 2024;

b. *Defendant Simberg's Motion for Judgement as a Matter of Law Under Rule 50(b)*, filed March 8, 2024;

c. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion for Costs Under Rule 54*, filed March 11, 2024;

d. *Defendant Competitive Enterprise Institute and Rand Simberg's Motion for Litigation Costs, Including Attorney's Fees, Under DC's Anti-SLAPP Act*, filed March 11, 2024; and

e. *Defendant Competitive Enterprise Institute and Rand Simberg's Supplemental Motion for Attorney's Fees Under the D.C. Anti-SLAPP Act*, filed May 9, 2024.

7. On February 6, 2025, Plaintiff filed *Plaintiff's Motion for Stay of Amended Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees*, which also remains pending.

8. In accordance with the Court's June 4, 2024 Order, Plaintiff will advise the Court within 15 days when all of the pending motions have been decided.

Dated: March 11, 2025

Respectfully submitted,

*/s/ John B. Williams*

John B. Williams (No. 257667)
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ahummel@cozen.com

*Counsel for Plaintiff, Michael E. Mann, Ph.D.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that below counsel for all parties have registered for and consented to electronic service under Rule 25, and on March 11, 2025, I caused a copy of the foregoing *Appellant's Status Report* to be served by electronic filing on the following:

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*Counsel for Defendant National Review Inc.*

*/s/ John B. Williams*
John B. Williams

# EXHIBIT E

## Trial Transcript 1/29/24 PM
## [extracted]

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:

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

PETER FONTAINE, Esquire
AMORIE I. HUMMEL, Esquire
COZEN O'CONNOR
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(Appearances continued on the next page.)



(Continued from the previous page.)

PATRICK COYNE, Esquire.
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 New York Avenue, N.W.
Washington, D.C. 20003.

On behalf of the Defendant Simberg:

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Transamerica Pyramid
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MARK W. DeLAQUIL, Esquire
RENEE KNUDSON, Esquire
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MARK BAILEN, Esquire
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Washington, D.C. 20036

On behalf of Defendant Steyn:

H. CHRISTOPHER BARTOLOMUCCI, Esquire
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Also present:

Melissa Howes (Power of Attorney for Steyn)

TABLE OF CONTENTS

TRIAL

WITNESSES



EXHIBITS



MISCELLANY

THE COURT: All right. And why did this not come out during the direct?

MR. FONTAINE: Why did it not come out?

THE COURT: Right.

MR. FONTAINE: We decided that we were going to handle it on redirect.

THE COURT: All right. All right.

MR. FONTAINE: That's why.

THE COURT: All right.

Yes. And we'll bring back the jury.

MR. BARTOLOMUCCI: Your Honor, we had raised a matter right after the lunch break about Mr. Steyn.

THE COURT: Oh, yes. Yes. I'm sorry. We'll let them know.

(Jury present at 2:58 p.m.)

THE COURT: You may be seated.

And, members of the jury, you likely noticed that Mr. Steyn is not with us this afternoon. Because of illness, he will be -- he will return to us tomorrow morning.

MR. FONTAINE: Okay. Could I put up Exhibit 517 again, please.

BY MR. FONTAINE:

Q. Dr. Mann, when we last broke, we were talking about Exhibit 517, which were your answers to

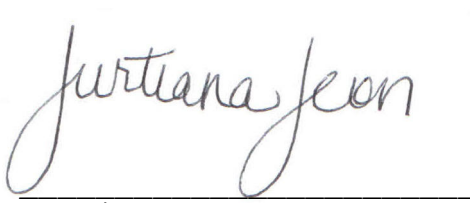
(Whereupon, the proceedings concluded at 4:49 p.m.)

**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

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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

**(Proposed) Order**

Upon consideration of Plaintiff Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine's Motion to Reconsider or to Alter or Amend Award of Sanctions, the memoranda and exhibits in support thereof, the opposition filed by Defendant Mark Steyn, and any reply thereto, it is hereby

ORDERED that the Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine to Reconsider or to Alter or Amend Award of Sanctions is DENIED.

DATED this _____ day of _____, 2025.

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