

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E MANN, PhD)
Pennsylvania State University)
Department of Meteorology)
University Park, PA 16802)
)
Plaintiff,)
)
v)
)
NATIONAL REVIEW, INC)
215 Lexington Avenue)
New York, NY 10016,)
)
- and -)
)
COMPETITIVE ENTERPRISE INSTITUTE)
1899 L Street, NW)
Washington, DC 20036,)
)
- and -)
)
RAND SIMBERG)
c/o Competitive Enterprise)
Institute)
1899 L Street, NW)
Washington, DC 20036,)
)
- and -)
)
MARK STEYN,)
Box 30)
Woodsville, NH 03785)
)
Defendants.)

Case No 2012 CA 008263 B
Judge: Frederick H Weisberg

DEFENDANT STEYN'S ANSWER AND COUNTERCLAIMS TO
AMENDED COMPLAINT

Defendant Mark Steyn, for his Answer to the Amended
Complaint:

1. Denies the allegations in Paragraph One of the Amended
Complaint.

2. Denies the allegations in Paragraph Two of the Amended Complaint, except admits that Dr Mann self-identifies as a "climate scientist" and promotes theories about "global warming" and "climate change".
3. Denies the allegations in Paragraph Three of the Amended Complaint, except admits that Defendant Steyn is a critic of Plaintiff's theories.
4. Denies the allegations in Paragraph Four of the Amended Complaint.
5. Denies the allegations in Paragraph Five of the Amended Complaint.
6. Denies the allegations in Paragraph Six of the Amended Complaint.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Seven of the Amended Complaint.
8. Admits the allegations in Paragraph Eight of the Amended Complaint and that Plaintiff purports to base jurisdiction on the statute alleged.
9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Nine of the Amended Complaint.
10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Ten of the Amended Complaint.
11. Denies the allegations in Paragraph Eleven of the Amended Complaint.

12. Denies the allegations in Paragraph Twelve of the Amended Complaint, except admits that Plaintiff purports to base venue in this Court on the facts alleged.
13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Thirteen of the Amended Complaint.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Fourteen of the Amended Complaint.
15. Denies the allegations in Paragraph Fifteen of the Amended Complaint, except admits that Plaintiff is "well-known for ...the so-called 'Hockey Stick Graph'".
16. Denies the allegations in Paragraph Sixteen of the Amended Complaint, except admits that the 1999 paper "included the following graph".
17. Denies the allegations in Paragraph Seventeen of the Amended Complaint.
18. Denies the allegations in Paragraph Eighteen of the Amended Complaint, except admits that there are many individuals and organizations who are critical of Plaintiff's theories.
19. Denies the allegations in Paragraph Nineteen of the Amended Complaint, except admits that certain emails between Plaintiff and researchers at the CRU and elsewhere were made public in or about November 2009.

20. Denies the allegations in Paragraph Twenty of the Amended Complaint, except admits that the emails were believed by many to support critics of Plaintiff's theories.
21. Denies the allegations in Paragraph Twenty-One of the Amended Complaint, except admits that following the publication of the emails various bodies in the United Kingdom and the United States conducted certain investigations.
22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Twenty-Two of the Amended Complaint.
23. Denies the allegations in Paragraph Twenty-Three of the Amended Complaint, except admits that an NSF report was issued in 2011 and, insofar as Plaintiff purports to characterize it, refers the Court to that document for its content.
24. Denies the allegations in Paragraph Twenty-Four of the Amended Complaint, and refers the Court to reports and publications for their content.
25. Denies the allegations in Paragraph Twenty-Five of the Amended Complaint, except admits that there was an investigation by former FBI Director Freeh concluding that Penn State and its highest officers had helped cover up the serial child rape perpetrated by Dr Mann's colleague Jerry Sandusky.

26. Admits that an article authored by Defendant Simberg appeared in a publication of CEI and refers the Court to that document for its content.
27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Twenty-Seven of the Amended Complaint.
28. Denies the allegations in Paragraph Twenty-Eight of the Amended Complaint, except admits that a post authored by Defendant Steyn with that title appeared in the opinion blog of National Review Online and refers the Court to said blog post for its content.
29. Denies the allegations in Paragraph Twenty-Nine of the Amended Complaint, except admits that the blog post authored by Defendant Steyn has not been amended or edited since its original publication and refers the Court to said blog post for its content.
30. Denies the allegations in Paragraph Thirty, especially the allegation that obscure unread losers at whatever "Discover Magazine" is are in any sense "respectable and well-regarded journalists".
31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Thirty-One of the Amended Complaint.
32. Denies the allegations in Paragraph Thirty-Two of the Amended Complaint, except admits that an editorial authored by National Review's editor was published on said date and refers the Court to said editorial for its content.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Thirty-Three of the Amended Complaint.
34. Repeats and realleges the responses in Paragraphs One through Thirty-Three.
35. Denies the allegations in Paragraph Thirty-Five of the Amended Complaint.
36. Denies the allegations in Paragraph Thirty-Six of the Amended Complaint.
37. Denies the allegations in Paragraph Thirty-Seven of the Amended Complaint.
38. Denies the allegations in Paragraph Thirty-Eight of the Amended Complaint.
39. Denies the allegations in Paragraph Thirty-Nine of the Amended Complaint.
40. Denies the allegations in Paragraph Forty of the Amended Complaint.
41. Denies the allegations in Paragraph Forty-One of the Amended Complaint.
42. Denies the allegations in Paragraph Forty-Two of the Amended Complaint.
43. Denies the allegations in Paragraph Forty-Three of the Amended Complaint.
44. Denies the allegations in Paragraph Forty-Four of the Amended Complaint.
45. Denies the allegations in Paragraph Forty-Five of the Amended Complaint.

46. Denies the allegations in Paragraph Forty-Six of the Amended Complaint.
47. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
48. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
49. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
50. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
51. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
52. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
53. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
54. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.

55. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
56. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
57. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
58. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
59. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
60. Denies the allegations in Paragraph Sixty of the Amended Complaint.
61. Denies the allegations in Paragraph Sixty-One of the Amended Complaint.
62. Denies the allegations in Paragraph Sixty-Two of the Amended Complaint.
63. Denies the allegations in Paragraph Sixty-Three of the Amended Complaint.
64. Denies the allegations in Paragraph Sixty-Four of the Amended Complaint.
65. Denies the allegations in Paragraph Sixty-Five of the Amended Complaint.

66. Denies the allegations in Paragraph Sixty-Six of the Amended Complaint.
67. Denies the allegations in Paragraph Sixty-Seven of the Amended Complaint.
68. Denies the allegations in Paragraph Sixty-Eight of the Amended Complaint.
69. Denies the allegations in Paragraph Sixty-Nine of the Amended Complaint, and thinks we're going round in circles here.
70. Denies the allegations in Paragraph Seventy of the Amended Complaint.
71. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
72. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
73. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
74. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
75. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.

76. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
77. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
78. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
79. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
80. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
81. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
82. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
83. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
84. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.

85. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
86. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
87. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
88. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
89. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
90. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
91. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
92. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
93. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.

94. Denies knowledge or information sufficient to form a belief as to the truth of allegations not directed at Defendant Steyn.
95. Repeats and realleges the responses in Paragraphs One through Ninety-Four.
96. Denies the allegations in Paragraph Ninety-Six of the Amended Complaint.
97. Denies the allegations in Paragraph Ninety-Seven of the Amended Complaint.
98. Denies the allegation that Defendant Steyn compared Dr Mann to a convicted child molester, and denies knowledge or information sufficient to form a belief as to the truth of other allegations in Paragraph Ninety-Eight of the Amended Complaint.
99. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Ninety-Nine of the Amended Complaint.
100. Denies the allegations in Paragraph One-Hundred of the Amended Complaint.
101. Denies the allegations in Paragraph One-Hundred-And-One of the Amended Complaint.
102. Repeats and realleges the responses in Paragraphs One through One-Hundred-And-One.
103. Denies the allegations in Paragraph One-Hundred-And-Three of the Amended Complaint, except admits that Dr Mann's colleague Sandusky is presently serving a lengthy gaol

sentence for child rape and multiple other sex crimes against children.

104. Denies the allegations in Paragraph One-Hundred-And-Four of the Amended Complaint.

105. Denies the allegations in Paragraph One-Hundred-And-Five of the Amended Complaint.

106. Denies the allegations in Paragraph One-Hundred-And-Six of the Amended Complaint.

107. Denies the allegations in Paragraph One-Hundred-And-Seven of the Amended Complaint.

108. Denies the allegations in Paragraph One-Hundred-And-Eight of the Amended Complaint.

109. Denies the allegations in Paragraph One-Hundred-And-Nine of the Amended Complaint.

110. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph One-Hundred-And-Ten of the Amended Complaint.

111. Denies the allegations in Paragraph One-Hundred-And-Eleven of the Amended Complaint, and feels Plaintiff is going round like a circle in a spiral, like a wheel within a wheel, like the circles that you find in the tree-rings of your mind.

112. Denies the allegations in Paragraph One-Hundred-And-Twelve of the Amended Complaint.

113. Denies the allegations in Paragraph One-Hundred-And-Thirteen of the Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

114. The Complaint fails to state a claim upon which relief may be granted against Defendant Steyn.

SECOND AFFIRMATIVE DEFENSE

115. The statements at issue made by Defendant Steyn are true.

THIRD AFFIRMATIVE DEFENSE

116. Defendant Steyn did not make the statements at issue with "actual malice". That is, he did not make the statements with the knowledge they were false or with reckless disregard for their truth or falsity.

FOURTH AFFIRMATIVE DEFENSE

117. The statements at issue made by Defendant Steyn are absolutely protected freedom of speech and of the press under the First Amendment to the US Constitution.

FIFTH AFFIRMATIVE DEFENSE

118. The statements at issue made by Defendant Steyn constitute legitimate public debate on a controversial, highly charged issue of intense public interest.

SIXTH AFFIRMATIVE DEFENSE

119. The statements at issue made by Defendant Steyn constitute non-actionable opinion and are absolutely protected.

SEVENTH AFFIRMATIVE DEFENSE

120. The statements at issue made by Defendant Steyn are not defamatory, and would not be understood as defamatory by a reasonable reader in light of their immediate and broader

social context and setting surrounding the challenged statements.

EIGHTH AFFIRMATIVE DEFENSE

121. The statements at issue made by Defendant Steyn were made in the unique electronic format of the Internet, not print media. By its very nature, the Internet is immediate and global with a wider-ranging and less mediated public discourse than that of print newspapers, and therefore in order to function is entitled to the very broadest definition of free expression.

NINTH AFFIRMATIVE DEFENSE

122. This action is barred by the DC Anti-SLAPP Law, DC Code § 16-5501, et seq.

TENTH AFFIRMATIVE DEFENSE

123. The allegations of Count Six for emotional distress do not constitute conduct so shocking and outrageous as to exceed all reasonable bounds of decency.

ELEVENTH AFFIRMATIVE DEFENSE

124. Plaintiff's claim for intentional infliction of emotional distress based on Defendant's constitutionally protected speech violates Defendant Steyn's First Amendment rights and cannot be maintained..

TWELFTH AFFIRMATIVE DEFENSE

125. Plaintiff has suffered no damages.

THIRTEENTH AFFIRMATIVE DEFENSE

126. Plaintiff has said the same or worse as the statements at issue about many fellow scientists, statisticians and

other prominent figures, none of whom has sued him. Plaintiff is seeking to impose restraints on freedom of speech on political opponents and others who disagree with him that he himself does not abide by.

FOURTEENTH AFFIRMATIVE DEFENSE

127. Defendant Steyn has said substantially the same things or worse about the fraudulence of Plaintiff's hockey stick for many years in far more prominent publications in Australia and other jurisdictions without attracting legal action by Dr Mann. It cannot be the intent of the First Amendment that it should leave citizens of the United States with fewer rights to free speech than those of countries that remained within the British Empire.

FIRST COUNTERCLAIM

128. Defendant Steyn is a popular writer and columnist on matters of public interest. He has been published over the years by the leading newspapers and magazines throughout the English-speaking world, including The Wall Street Journal, The Times of London, The National Post of Canada, The Australian, The Irish Times, The Jerusalem Post, The Spectator, Maclean's, and The Atlantic Monthly. He is the author of the international bestselling books America Alone and After America, both of which make plain his opposition to the public policy positions advocated by Plaintiff. Defendant Steyn is also a human rights activist whose efforts on behalf of freedom of speech have been recognized

by the Canadian Committee for World Press Freedom, by the Danish Free Press Society, and by the repeal in 2013 of Canada's Section 13 censorship law. For his writing in American publications, he was presented with the Eric Breindel Award for Excellence in Opinion Journalism.

129. Plaintiff Michael Mann is a widely known figure in the scientific and public policy spheres of global warming research who has thrust himself into the politics of the global warming debate by appearing in TV commercials for political candidates, writing newspaper columns regularly for The Guardian, The New York Times and others, serving as scientific advisor to and appearing in a climate-change TV series starring climate experts Matt Damon and Jessica Alba, and is therefore a public figure. In March 2012, Plaintiff published a book called The Hockey Stick And The Climate Wars: Dispatches From The Front Lines, the "front lines" presumably referring to his media appearances with Miss Alba et al.

130. Plaintiff has engaged in a pattern of abusive litigation designed to chill freedom of speech and to stifle legitimate criticism of Plaintiff's work. He is currently suing Dr Tim Ball in British Columbia over a hoary bit of word play ("should be in the state pen, not Penn State") applied to innumerable Pennsylvanians over the years. Having initiated the suit, Dr Mann then stalled the discovery process, so that the BC suit is now entering its third year - Mann's object being to use the process as a punishment,

rather than any eventual trial and conviction. See Mann vs Ball et al, British Columbia VLC-S-S-111913 (2011) (exhibit attached).

131. At the other end of the spectrum, Plaintiff and his Counsel have issued demands that have no basis in law, as they well know - including the preposterous assertion, in response to a parody video by "Minnesotans for Global Warming", that "Professor Mann's likeness" is protected from parody and satire. (See attached letter from Plaintiff's counsel.) Plaintiff has engaged in serial misrepresentation and false claims to authority, including (in his original Complaint against Defendant Steyn) purporting to be a Nobel Laureate and (in his current Complaint and elsewhere) purporting to have been exonerated by multiple investigations and by fellow scientists who have, in fact, pronounced Mann and his work "inappropriate", "exaggerated", "non-robust" and his defense of it "incorrect". There is a smell to the hockey stick that, in Lady Macbeth's words, "all the perfumes of Arabia will not sweeten" - nor all the investigations. And so Dr Mann has determined to sue it into respectability.

132. At the same time, Plaintiff continues to evade the one action that might definitively establish its respectability - by objecting, in the courts of Virginia, British Columbia and elsewhere, to the release of his research in this field. See Cuccinelli vs Rectors and Visitors of the University of Virginia, 283 Va. 420, 722 S.E.2d 626 (2012)

133. As with his previous legal threats and actions, Plaintiff has brought this lawsuit for the purpose of wrongfully interfering with critics' statutorily protected right of advocacy on an issue of great public interest and constitutionally protected free-speech rights.

134. Plaintiff's lawsuit was designed to have and has had the effect of inhibiting legitimate debate on the issues and public policy surrounding the theories expounded by Plaintiff and others and of restricting the free flow of ideas concerning the merits of those theories. It was also designed, at a time of the IPCC and others' growing disenchantment with the "hockey stick" and the public's lack of interest in Plaintiff's book *The Hockey Stick And The Climate Wars: Dispatches From The Front Lines* (published shortly before this action), to re-ignite his dimming celebrity and create artificially a new "front line" for him to pose on.

135. It is already having the desired effect. This very week, on February 19th, enraged by a Pennsylvania weatherman's Tweet, Plaintiff instructed his acolytes through his Facebook and Twitter pages to call the CBS affiliate and demand to know whether this was "acceptable behavior". Several went further and made threats to "add him to the lawsuit", and similar. In the event that Mann succeeds in delaying discovery as he has in British Columbia, there will be three years for him and his

enforcers to bully weathermen, parodists, fellow scientists and many others by threatening to "add them to the lawsuit".

136. More particularly, Plaintiff's lawsuit, with the intent to silence Plaintiff's critics, has targeted Defendant Steyn, who has written articles critical of Plaintiff and his theories.

137. Such improper chilling of free, robust and uninhibited public debate over climate change taints and skews the democratic process and distorts the resulting governmental public policy response to alleged global warming.

138. Plaintiff's lawsuit has damaged Defendant Steyn by interfering with his right to express opinions on controversial matters and causing him to expend time, money and effort in having to respond to this lawsuit.

139. The claims in Plaintiff's lawsuit arise from an act in furtherance of the right of advocacy on an issue of public interest and Plaintiff's lawsuit therefore violates the Anti-Strategic Lawsuits Against Public Participation Act (Anti-SLAPP Act), DC Code Section 16-5501, et seq.

140. As a result of Plaintiff's campaign to silence those who disagree with him on a highly controversial issue of great public importance, wrongful action and violation of the Anti-SLAPP Act, Steyn has been damaged and is entitled to damages, including but not limited to his costs and the attorneys' fees he has incurred and will incur in the future in defending this action, all in an amount to be determined

at trial, but in any event, not less than \$5 million, plus punitive damages in the amount of \$5 million.

SECOND COUNTERCLAIM

141. Repeats and realleges the allegations in paragraphs 128 to 130.

142. Plaintiff's wrongful interference with Defendant Steyn's constitutionally protected rights of free speech and public expression and his engagement and use of the courts as an instrument of the government to carry out that wrongful interference violates the First Amendment and constitutes a constitutional tort for which Defendant Steyn is entitled to be compensated.

143. As a consequence of Plaintiff's wrongful act, Defendant Steyn has been damaged and is entitled to damages, including but not limited to his costs and the attorneys' fees he has incurred and will incur in the future in defending this action, all in an amount to be determined at trial, but in any event, not less than \$5 million, plus punitive damages in the amount of \$5 million.

WHEREFORE, Defendant Mark Steyn demands judgment as follows:

- a. Dismissing Plaintiff's Amended Complaint in its entirety;
- b. On his First Counterclaim, awarding him compensatory damages in an amount to be determined at trial, but in any event, not less than \$5 million and punitive damages in the

amount of \$5 million, plus his costs and expenses including reasonable attorneys' fees;

- c. On his Second Counterclaim, awarding him compensatory damages in an amount to be determined at trial, but in any event, not less than \$5 million and punitive damages in the amount of \$5 million, plus his costs and expenses including reasonable attorneys' fees; and
- d. Granting such other and further relief as to the Court seems just.

Dated: Woodsville, New Hampshire
February 20th 2014

 /s/Mark Steyn
Mark Steyn
Defendant
Box 30
Woodsville, NH 03785
(603) 747-4055
mark@defendfreespeech.org

EXHIBIT

A



Court File No. **VLC-S-S-111913**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Michael Mann

PLAINTIFF

AND:

Timothy ("Tim") Ball,
The Frontier Centre for Public Policy Inc.,
and John Doe

DEFENDANTS

NOTICE OF CIVIL CLAIM

Michael Mann
c/o McConchie Law Corporation
Suite 290 – 889 Harbourside Drive
North Vancouver, BC V7P 3S1

Timothy ("Tim") Ball
205 – 27 Songhees Road
Victoria, BC V9A 7M6

The Frontier Centre for Public Policy Inc.
203-2727 Portage Avenue
Winnipeg, Manitoba R3J 0R2

John Doe
Address not known

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

1. The plaintiff Michael Mann is a professor in the Department of Meteorology at Pennsylvania State University and a director of that university's Earth System Science Center.
2. The defendant Timothy ("Tim") Ball (hereinafter "Ball") retired in 1996 from a position as a professor in the Geography Department of the University of Winnipeg, Winnipeg, Manitoba. He resides in the City of Victoria in the Province of British Columbia.
3. The defendant The Frontier Centre for Public Policy Inc. (hereinafter the "FCPP") is a company duly incorporated under the laws of Manitoba. The said defendant has a registered office at 203-2727 Portage Avenue, Winnipeg, Manitoba, R3J 0R2.
4. The defendant FCPP at all material times owned and operated an Internet website located at <http://www.fcpp.org/> [the "FCPP Website"]. The defamatory publications on the FCPP Websites which are referred to in this Notice of Civil Claim were accessible to and published to many persons in British Columbia and elsewhere in Canada and the world.
5. The identity of the defendant John Doe is not yet known to the plaintiff. As soon as his identity becomes known, the Plaintiff will apply to this Honourable Court to amend the style of cause to substitute that defendant's true name for "John Doe" in the Notice of Civil Claim in this action.

6. All of the acts and omissions of the defendant John Doe complained of in this Notice of Civil Claim occurred during the course and scope of his employment by, or authority as an agent of, the defendant FCPP.

The Defamatory Expression

7. On or about February 9, 2011 the defendant Ball participated in an interview with the defendants FCPP and John Doe which was electronically recorded with the knowledge and consent of each of the defendants for the agreed purpose of re-publication to the world on the FCPP website (the "Ball Interview") in the form of text and in the form of an electronic recording, which in fact occurred. During the Ball Interview, the defendants FCPP and John Doe asked the following question: "*Various government and academic agencies have whitewashed the Climategate scandal so far. Do you think anyone will be prosecuted for fraud?*" (the "FCPP Question") in response to which the defendant Ball published the following words of and concerning the plaintiff:

There is a move amongst the Attorney Generals in the States to start prosecuting. For example, Michael Mann at Penn State should be in the State Pen, not Penn State. In England as well there are inquiries triggered by three things. One thing was what information was in those leaks. Second one was the cover-up by the so-called panels charged to investigate. Third was the complete failure of the UK weather office and their weather forecasting because they had been working with these people where the e-mails were leaked from. They were linked together. So those three things have kept the politicians looking at it. You're going to see a lot more investigations.

8. In the context of the FCPP Question, the Ball Words convey the following natural and ordinary inferential meanings of and concerning the plaintiff to the average, ordinary reader:
 - (a) The plaintiff is guilty of criminal fraud in matters relating to Climategate; or

(b) Alternatively, there are reasonable and probable grounds to believe the plaintiff is guilty of criminal fraud in matters relating to Climategate.

Each of those meanings is false, malicious and defamatory of and concerning the plaintiff.

9. The natural and ordinary inferential meanings alleged in paragraph 8 of this Notice of Civil Claim constituted slander actionable *per se* when the Ball Words were first published orally as alleged in paragraph 7 of this Notice of Civil Claim. Those natural and ordinary meanings constituted libel when re-published on the FCPP website as alleged in paragraphs 8 and 11 of this Notice of Civil Claim.
10. The defendant Ball published the Ball Words with the knowledge, expectation and intention that the FCPP Question and the Ball Words would be re-published by the defendants FCPP and John Doe on the FCPP website as alleged in paragraphs 8 and 11 of this Notice of Civil Claim. Alternatively, such re-publication was the natural and probable result of the original publication of the Ball Words by the defendant Ball. In the circumstances, the defendant Ball is responsible in fact and law for such re-publication.
11. On or about February 10, 2011 and continuous thereafter, the defendants FCPP and John Doe defamed the plaintiff by publishing or causing to be published the FCPP Question and the Ball Words on the FCPP Website in the form of text and in the form of an electronic recording.

Express Malice

12. The defendants published the defamatory expression for which each is responsible with the knowledge that the meanings conveyed by that expression were false, or alternatively, with reckless indifference whether they were true or false, and/or for the predominant purpose of harming the plaintiff and exposing him to hatred, ridicule and contempt, lowering the plaintiff in the estimation of others, and causing him to be shunned and avoided.

13. On February 11, 2011, the plaintiff through legal counsel asked the defendants Ball and FCPP to publish a full and unequivocal retraction and apology for the Ball Interview. The defendants Ball and FCPP have neglected or refused to publish any retraction or any apology.

Damages and Injunctive Relief

14. The defendants have been guilty of reprehensible, insulting, high-handed, spiteful, malicious and oppressive conduct, and such conduct by the defendants justifies the court in imposing a substantial penalty of exemplary damages on the defendants and an award of special costs in favour of the plaintiff, in addition to an award of general damages for injury to reputation. The plaintiff will rely upon the entire conduct of the defendants before and after the commencement of this action to the date of judgment.
15. The defendants were actuated in publishing the defamatory expression complained of in this Notice of Civil Claim by express malice, which has increased the injury to the plaintiff, and has increased the mental distress and humiliation of the plaintiff.
16. The defendants will continue to publish the defamatory expression complained of in this Notice of Civil Claim unless the defendants are restrained from doing so by an Order of this Honourable Court.

Part 2: RELIEF SOUGHT

1. The plaintiff therefore claims against the defendants and each of them, jointly and severally, for the following relief:
- (a) general damages;
 - (b) aggravated damages;
 - (c) exemplary and punitive damages;
 - (d) special damages;

- (e) an interlocutory and permanent injunction to restrain the defendants, by themselves, or by their agents, servants, employees, or otherwise, directly or indirectly, from any further publication of the defamatory expression complained of in this Notice of Civil Claim, or expression to the same effect;
- (f) an Order requiring the defendants FCPP and John Doe to permanently remove the Ball Interview from any electronic database where it is accessible, including without limiting the generality of the foregoing, the FCPP Website;
- (g) interest pursuant to the *Court Order Interest Act*;
- (h) special costs plus disbursements; and
- (i) such further and other relief as to this Honourable Court may seem just.

Part 3:LEGAL BASIS


1. The defendants are jointly liable for committing the common law torts of libel and slander actionable *per se* in relation to the publication and republication of the Ball Words and FCPP Question.
2. The plaintiff relies on common law principles governing the assessment of damages for defamation.
3. The plaintiff relies on common law principles concerning injunctive relief for defamation.

Plaintiff's address for service:	c/o McConchie Law Corporation Suite 290 – 889 Harbourside Drive North Vancouver, BC V7P 3S1
Fax number address for service (if any):	604-988-1610
E-mail address for service (if any):	mcconchie@libelandprivacy.com
Place of trial:	Vancouver, British Columbia

The address of the registry is:

800 Smithe Street, Vancouver, BC V6Z 2E1

Date: March 24, 2011


Signature of
 plaintiff lawyer for plaintiff
Roger D. McConchie
McConchie Law Corporation
Solicitor for the Plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim in tort for damages and an injunction for defamation arising from the publication of defamatory statements which were published orally (slander *per se*) and in the form of text and an electronic recording on the Internet.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)

- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, Libel and Slander Act.

EXHIBIT

B

COZEN
O'CONNOR
ATTORNEYS

A PROFESSIONAL CORPORATION

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202.912.4800 800.540.1355 202.912.4830 FAX www.cozen.com

March 8, 2010

Peter J. Fontaine
Direct Phone 856.910.5043
pfontaine@cozen.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED &
EMAIL

[REDACTED]
MN 55359

Re: Cease and Desist

Dear Mr. [REDACTED]:

This firm represents Professor Michael E. Mann, Director of the Earth System Science Center at Pennsylvania State University. We are writing to demand that you cease and desist any and all use of Dr. Mann's likeness, which you have misappropriated in various videos posted on your webpage <http://www.minnesotansforglobalwarming.com>, including the video "Hide the Decline-Climategate." You are hereby advised that the use of Dr. Mann's likeness, which you clearly misappropriated from PSU's webpage, <http://www.meteo.psu.edu/~mann/MRG/index.html>, is not authorized and infringes on various copyrights. Such use also improperly misappropriates Professor Mann's likeness for commercial exploitation, given that the video clearly supports Minnesotans for Global Warming's efforts to sell various products and merchandise. Finally, the referenced video clearly defames Professor Mann by leaving viewers with the incorrect impression that he falsified data to generate desired results in connection with his research activities. This false impression irreparably harms Dr. Mann's personal and professional reputation.

For these reasons, we demand that you immediately cease and desist using Dr. Mann's likeness and that you immediately remove the defamatory video from your web page (including cached versions). If you persist with this defamatory activity, please be advised that we will be compelled to enforce Dr. Mann's rights, which may include the recovery of damages from you. Please contact me to confirm your intentions or if you wish to discuss this matter further.

Very truly yours,

COZEN O'CONNOR

By: Peter J. Fontaine

PJF/smc

cc: Michael E. Mann
Tom Cogill, Photographer