

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 217-2020-CV-00026

DAVID MEEHAN

V.

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

**THIS PLEADING RELATES SOLEY TO DAVID MEEHAN'S INDIVIDUAL CASE**

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**REPLY TO PLAINTIFF'S PARTIAL OBJECTION TO  
DEFENDANT'S MOTION TO RECONSIDER "ORDER ON POST-VERDICT  
MOTIONS" AND INTERLOCUTORY APPEAL STATEMENT**

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The Defendants, the New Hampshire Department of Health and Human Services, by and through its counsel, the New Hampshire Department of Justice, respectfully replies to the Plaintiff's objection to its motion reconsider the Court's "Order on Post-Verdict Motions" (December 10, 2024) (hereinafter, "*Order – Post-Verdict*") and Order on Interlocutory Appeal (December 10, 2024). In support of its motion, DHHS states as follows:

**Introduction**

1. Plaintiff partially objects to Defendant's motion, essentially arguing that the Defendant's points have already been rejected and do not meet the standard for reconsideration; moves for clarification, asking this court to clarify that its ruling on the new trial request is held in abeyance pending the interlocutory appeal so that the Supreme Court can consider the appeal before a new trial is ordered; and lastly argues that Defendant's request to add a new question to the interlocutory appeal about whether the trial court erred in a granting a new trial is too late and unnecessary if the court clarifies its order in Plaintiff's favor.

2. Prior to delving into argument, it is important to outline the procedural history of how the current posture came to be.
3. This case was originally brought in 2020 and went to trial on April 8, 2024. On May 3, 2024, a jury verdict was rendered. Significant post-trial briefing immediately began, and continued for the next four months, eventually concluding on September 9, 2024. On November 4, 2024, this Court made its decisions – 1) the statutory cap of RSA 541-B is constitutional; 2) the statutory cap applies to this case; 3) Plaintiff is not entitled to partial judgment notwithstanding the verdict; and 4) Plaintiff is not entitled to an “Incidents” only trial.<sup>1</sup> The Court then stated that judgment would be made final ten days later on November 14, 2024. *See Order on State Defendants’ Motion to Apply Damages Cap Under RSA 541-B:14, I* (Nov. 4, 2024) (“*Order – Cap*”). In other words, this case had reached its conclusion in the Superior Court.
4. On November 14, 2024, the day the Court was set to enter final judgment, Plaintiff filed three motions – 1) a motion to reconsider; 2) a motion to approve interlocutory appeal statement; and 3) a motion to stay pending interlocutory appeal.
5. On or about December 10, 2024, the Court made its decisions on those three motions.
  - A. **Clarification is not needed; the order for a new trial, which was based upon the Plaintiff’s own “last-minute” motion, vacated the verdict.**
6. The Court **first** ruled on the Plaintiff’s Motion to Reconsider and Plaintiff’s Motion for Interlocutory Appeal, issuing a narrative order. *See Order on Post-Verdict Motions at 1* (“*Order – Post-Verdict*”) (“**The plaintiff’s last minute, alternative request for a new trial**”).

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<sup>1</sup> Plaintiff requested this specific relief at least twice. As noted in the Court’s order on November 4, 2024, “[t]hat request was denied, and is denied again, for the reasons set forth above.” *See Order on Plaintiff’s Motion for Partial Judgment Notwithstanding Verdict* (Nov. 4, 2024) (“*Order – PJNOV*”).

*de novo* on all issues submitted to the first jury, including (a) the factual disputes relating to limitations, (b) liability, (c) damages for such particular “incidents” as liability may be found, (d) damages among possible joint tortfeasors (e.g. Debenedetto), and (f) the total number of “incidents” for which liability may be found, is GRANTED. A new trial is hereby ORDERED. All other relief requested in the motion for reconsideration is DENIED.” (emphasis in original); *id.* at 2 (“Docket document 874, plaintiff’s motion to approve interlocutory appeal is also GRANTED. In this judge’s view, now that a new trial has been ordered, an interlocutory appeal is not merely appropriate but necessary.”).

7. The Court **then** ruled on the Plaintiff’s Appeal Statement. *See* Margin Order on Interlocutory Appeal Statement (Dec. 10, 2024) (“The court *wrote separately* in a brief narrative order issued this date, to explain why, in the court’s view, an interlocutory appeal is necessary. In the court’s view, the answers to the proposed questions turn largely on the construction of the term ‘single incident’ in RSA 541-B:14, I.”) (emphasis added).
8. **Lastly**, the Court rule on Plaintiff’s Motion to Stay. *See* Margin Order on Plaintiff’s Motion to Stay Pending Interlocutory Appeal (Dec. 9, 2024) (“*Order – Stay*”) (“The court ruled on the motion for reconsideration on this date. In ruling on that motion, the court granted the request for a new trial *de novo* and denied all other relief requested in the motion. The court also granted the motion to approve an interlocutory appeal. This individual case is *now* STAYED pending acceptance or declination of the interlocutory appeal, and if the appeal is accepted, pending its resolution.” (emphasis added)).
9. The wording used in those orders shows the clear order in which they were made – 1) a new trial was ordered; 2) an interlocutory appeal was then approved because a new trial had just

been ordered; and 3) the case was then stayed pending acceptance or declination of said appeal. In light of the court's clear writing – clarification is simply not warranted.

10. Moreover, although Plaintiff argues that there is no case law on this issue, such is not the case. As stated in Defendant's Motion to Reconsider, it has been *long* established that the "effect" of an "award of a new trial" is that "the previous verdict is entirely set aside, and the case is to be heard anew like an original action and as if no judgment had been rendered in the court below." *Bickford v. Franconia*, 73 N.H. 194, 195 (1905); *see* RSA 526:5 ("Whenever a new trial is granted the action shall be brought forward on the docket of the court, and shall be tried as if no judgment had been rendered therein."); *see also* Blackstone's Commentaries, Vol. 3, p. 391 ("GRANTING a new trial, under proper regulations, cures all these inconveniences, and at the same preserves entire and renders perfect that most excellent method of decision, which is the glory of the English law. A new trial is a rehearing of the cause before another jury, but with as little prejudice to either party, as if it had never been heard before. No advantage is taken of the former verdict on the one side, or the rule of court for awarding such second trial on the other: and the subsequent verdict, though contrary to the first, imports no tittle of blame upon the former jury; who, had they possessed the same lights and advantages, would probably have altered their own opinion. The parties come better informed, the counsel better prepared, the law is more fully understood, the judge is more master of the subject; and nothing is now tried but the real merits of the case."); 24 CJS, Criminal Law, § 1511 ("An order granting a new trial reopens the whole case, which then stands for trial de novo, and places the accused in the same position as if no trial had been had."); 39 Am Jur, New Trial, § 204 ("An order directing a new trial has the effect of vacating the proceedings and leaving the case as though no trial had been had. The verdict

and judgment are set aside, even though the order does not specifically mention either. The granting of the motion usually has the effect, ipso facto, of vacating the judgment.”).

11. Again, the legal effect of ordering a new trial – an order only made as a result of Plaintiff’s counsels’ own “last minute, alternative request for a new trial *de novo* on all issues submitted to the first jury” – is to entirely wipe out the jury’s prior verdict. *See* RSA 526:5.
12. Because all three of the plaintiff’s proposed questions presented ask the Supreme Court to issue an opinion based on a verdict that “is entirely set aside,” *id.*, any opinion would be purely advisory and, thus, improper.

**B. The Court should add to any interlocutory appeal the question of whether it erred in granting the plaintiff a new *de novo* trial.**

13. As stated in its Motion to Reconsider, DHHS requests that the Court add the following question:

Whether the trial court erred in granting the plaintiff a new *de novo* trial?

14. This question is appropriate for review because the Court has granted a new *de novo* trial over DHHS’s objection, thus generating a ruling that can be appealed.
15. This question also most directly implicates the question of what the term “single incident” means in RSA 541-B:14. *See Margin Order – Interlocutory Appeal Statement* (December 10, 2024) (“[i]n the court’s view, the answers to the [Plaintiff’s] proposed questions turn largely on the construction of the term ‘single incident’ in RSA 541-B:14, I. This is an issue of first impression in New Hampshire. The resolution of this issue will be of vital importance not only to this case but to hundreds of other consolidated cases.); *see also id.* at *Order – Post-Verdict* (December 10, 2024) at 2-4.

