

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 SOLELY TO
DAVID MEEHAN'S INDIVIDUAL CASE**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES'
MOTION FOR REMITTITUR RELATING TO ENHANCED COMPENSATORY
DAMAGES**

The defendant, the New Hampshire Department of Health and Human Services (“DHHS”), by and through its counsel, the New Hampshire Department of Justice, files this Motion for Remittitur relating to the enhanced compensatory damages award. DHHS files this motion in an abundance of caution and for the purpose of preserving all issues for appeal. By way of other pending motions, the plaintiff has challenged the statutory damages cap contained in RSA 541-B:14, I as unconstitutional. If that issue is resolved in the plaintiff’s favor, DHHS wishes to preserve its position on remittitur as stated herein and would ask the court to resolve it. If the constitutional issue is decided in DHHS’s favor, then this motion is likely moot. In support of this motion, DHHS states as follows:

1. The jury in this case returned a verdict of \$18,000,000 in compensatory damages, and \$20,000,000 in enhanced compensatory damages, for a total damages award of \$38,000,000.

2. DHHS maintains that the statutory damages cap contained in RSA 541-B:14, I applies to that \$38,000,000 award and reduces it accordingly. DHHS has moved for that relief, and the plaintiff has challenged the statutory damages cap as unconstitutional.

3. While DHHS has argued that the statutory damages cap is constitutional, it files this motion to preserve an alternative argument in the event a court in this case were to hold that the statutory damages cap is unconstitutional.

4. In DHHS's view, an enhanced compensatory damages figure of \$20,000,000 is not supported by sufficient evidence, nor is it consistent with the weight of the evidence.

5. Accordingly, in the event the statutory damages cap in RSA 541-B:14, I(a) does not apply, the jury award should be reduced to \$18,000,000.

6. "When an act is wanton, malicious, or oppressive, the aggravating circumstances may be reflected in an award of enhanced compensatory damages." *Stewart v. Bader*, 154 N.H. 75, 87 (2006) (quoting *Figlioli v. R.J. Moreau Cos.*, 151 N.H. 618, 625 (2005)).

7. "These enhanced compensatory damages, sometimes called liberal compensatory damages, are awarded only in exceptional cases." *Id.*

8. To obtain these damages, "there must be 'ill will, hatred, hostility, or evil motive on the part of the defendant,'" *Aubert v. Aubert*, 129 N.H. 422, 431 (1987) (quoting *Munson v. Raudonis*, 118 N.H. 474, 479 (1978)), or, in other words, a showing of "actual malice," as distinguished from implied or legal malice, *Munson*, 118 N.H. at 479.

9. "Without such a showing, the mere commission of a tort will not give rise to the aggravated circumstances necessary for the award of liberal compensatory damages." *Id.*

10. Plaintiff's counsel did not present evidence sufficient to prove that DHHS or its control group at the time expressly harbored ill will, hatred, or hostility against the plaintiff or

that DHHS's negligence was expressly animated by an evil motive on the part of the DHHS or its control group. To the extent any evidence of such actual malice exists in the record, it is weak and circumstantial and could only supply an inference, at most, of implied malice, which does not meet the legal standard.

11. And even if such minimal, circumstantial evidence of implied malice could meet the legal standard, the weight of the evidence does not justify entry of an award of enhanced compensatory damages.

12. For example, Plaintiff elected *not* to call a standard of care/policies expert. Thus, there was no evidence elicited regarding what the standard of care should have been during the relevant time periods, except for what had been set forth in those policies that were submitted as evidence. There was no evidence to support the notion that DHHS breached its standard of care in relation to the causes of action alleged such that it harbored ill will, hatred, or hostility against the plaintiff, or that DHHS's negligence was expressly animated by an evil motive of the DHHS or its control group.

13. Plaintiff also presented no evidence that could support a finding that DHHS knew or should have known that Plaintiff's alleged abusers – Buskey, Davis, Woodlock, Murphy – created a danger of harm to juveniles held at YDC. In fact, there was no evidence, whatsoever, as to the hiring process for *any* of these four individuals and little, if anything, was known at the time of their hiring.

14. The evidence actually showed to the contrary. Plaintiff's counsel elicited testimony and documentary evidence to show that the four individuals would routinely receive good remarks from their colleagues at the regular check-ins. Additionally, evidence showed that some of the individuals were regularly involved in their communities. While Plaintiff's counsel

may argue that each of the alleged abusers were covering for one another, such knowledge did not make its way to DHHS's control group in any way to act upon. Thus, there could be no evil motive on the part of the DHHS.

WHEREFORE, DHHS respectfully request that this court enter an order:

- A. Striking the enhanced compensatory damages award; and
- B. Granting such further relief as the court deems just and equitable.

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND
HUMAN SERVICES

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: August 21, 2024

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic filing system to all parties of record.

Date: 8/21/2024

By: /s/ Brandon F. Chase
Brandon F. Chase