5-8-2024 For reasons to be detailed in a forthcoming order, it is not appropriate to recall the jury for the purpose of clarifying its verdict at this late date. The jury could have been asked to clarify its verdict before it was discharged--but no request was made (or more accurately, the opportunity to make such a request was waived). The jury might have been asked to clarify its verdict shortly thereafter, before the jurors were exposed to others. But no request was made. Within 24 hours of the verdict, the jurors were exposed to intense publicity and ctiricism of their verdict.

We are not going to get a new verdict from the same jury.The jurors' personal accounts of their deliberation are not admissible to impeach the verdict. There is not the slightest suggestion of misconduct. Therefore, regardless of what the jurors now think of their verdict, their testimony is not admissible to change it. -continued-

STATE OF NEW HAMPSHIRE

ROCKINGHAM, *ss.* SUPERIOR COURT

CASE NO. 217-2020-CV-00026

DAVID MEEHAN

v.

STATE OF NEW HAMPSHIRE, et al.

-continued- That said, at the very least, the finding of "one incident" was contrary to the weight of the evidence. While the court will enterain a motion under Rule 43 or RSA Chapter 526, the better course is charted in Belanger v. Teague, 126 N.H. 110 (1985). But all of this will be put in a narrative order with suitable citation.

Honorable Andrew R. Schulman
May 8, 2024

*****THIS FILING PERTAINS TO PLAINTIFF MEEHAN'S INDIVIDUAL CASE*****
*****THIS FILING DOES NOT PERTAIN TO CONTRACTOR DEFENDANTS*****

~~Clerk's Notice of~~ Decision Document Sent to Parties on 05/08/2024

PLAINTIFF'S EMERGENCY MOTION FOR JURY POLL

Plaintiff David Meehan moves the Court to reconvene and poll the jury, stating for cause as follows:

1. This case began with jury selection on Monday April 8, 2024. A four-week trial followed, and the jury received the case for deliberations at approximately 10:00 AM on May 3, 2024.

2. The jury was provided with a multi-page verdict form containing a total of 10 questions. It expeditiously and decisively completed its deliberations in about four hours, rendering its verdict shortly before 2:00 PM.

3. The jury answered questions 1 (statute of limitations), 2 (liability), and 6 (apportionment between DHHS and non-party individual actors) in Mr. Meehan's favor. It also answered questions 3 through 5 in his favor, awarding $18,000,000.00 in compensatory and $20,000,000.00 in enhanced compensatory damages.

4. The jury answered question 10, which asked how many "incidents" Mr. Meehan had proven, by stating "1" in numerals and "one" in words.

5. Shortly after the verdict was read to all counsel, Assistant Attorney General Brandon F. Chase spoke to the press. During his remarks, AAG Chase claimed that the jury's award to Mr. Meehan would be reduced to a total of $475,000.00 because of the application of RSA 541-B:14. Later that afternoon, the press spokesperson for the New Hampshire Attorney General's Office issued a press release that, while purporting to "respect" the jury's decision, made the same claim.

6. Since the verdict was returned, Mr. Meehan's counsel have received a series of emails from jurors, beginning at 6:54 PM on May 3, 2024. Five of those emails previously were disclosed to the Court as Exhibits 1 through 5 to Plaintiff's Emergency Motion for Hearing dated May 5, 2024, and Plaintiff's Supplement to that Motion dated May 6, 2024. All of those emails—four from the foreperson and one from juror number 16—express the jurors' dismay that David Meehan would not receive the full $38,000,000.00 they intended him to receive due to either the jurors' mistake or their misunderstanding of the jury instructions and verdict form, or both.

7. Since the filing of the Supplement to the Emergency Motion for Hearing, Mr. Meehan's counsel have received two additional emails, one from juror number 7 and another from juror number 16. *See* Exhibits 6 and 7, attached hereto.

8. All seven of these emails were unsolicited and sent by jurors who were taken aback by what they perceived as the State Defendants' misinterpretation of their verdict. Juror number 16 has explained in detail that the jury collectively believed that David Meehan had suffered "100+ episodes of abuse" and that it concluded he suffers from "'one' incident/case of complex PTSD…." *See* Exhibit 7; *see also* Exhibit 4 ("We wrote on our verdict form that there was 1

incident/injury, being complex PTSD, from the result of upwards of 100+ injuries (Sexual, Physical, emotional abuse).”). This juror’s explanation of what the jury found is unequivocal. The jury answered question 10 in the manner it did believing he had suffered “1”/”one” permanent injury as a result of “100+” instances of abuse.

9. The inclusion of question 10, and exclusion of the Court’s chart summarizing David Meehan’s testimony about the instances of abuse he suffered, followed lengthy argument by both sides regarding the significance of the term “incident” as it is used in RSA 541-B:14. The Court, cognizant of the arguments on both sides and the difficult issues presented, disagreed with the competing definitions proposed by the parties, and instead fashioned a middle path in which it interpreted the term “incident” to mean “an episode of abuse.” Order Regarding Stipulation as to the Applicability of RSA 514-B:14 (May 2, 2024). Consistent with the Court’s interpretation, question 10 on the verdict form defined the term “incident” as a:

(a) single episode during which the plaintiff was injured;

(b) for which injuries the jury has found DHHS liable in response to previous questions;

(c) on claims the jury found to be timely in response to question 1.

10. Unfortunately, it is now beyond question that the definition of the term “incident” in the verdict form led to juror confusion and misunderstanding. All three jurors who have come forward have indicated that they did not understand question 10, and they have suggested that the jury as a whole did not either. Rather than answering question 10 with the number of “episodes of abuse” Mr. Meehan suffered, as was the Court’s intent, the jury appears to have instead answered the question by focusing on the number of “injuries” for which it found DHHS liable—a mistake that likely follows from part (b) of the Court’s definition. Indeed, this explanation resolves an inconsistency in the jury’s verdict; had the jury in fact found that Mr. Meehan had suffered only

one "episode of abuse," it is inconceivable that any reasonable juror would have returned a verdict in the amount of $38,000,000.00.

11. The New Hampshire Supreme Court has made clear that under circumstances such as these, where it appears the jury has misconceived its duty, it is the "imperative duty" of the trial court to poll the jury and "*to explain to the jury how they should proceed and direct them to give the case further consideration*." *Sigel v Boston & M.R.R.*, 107 N.H. 8, 27 (1966) (emphasis added).

12. In this case, three of twelve jurors have come forward to clearly state that they and their fellow jurors did not understand question 10 on the verdict form. They have stated in no uncertain terms that in answering that question and that question alone, they misconceived their duty; contrary to their attempt to exercise their duty in finding in David Meehan's favor on every other question and awarding him $38,000,000.00.

13. The Supreme Court has weighed the length, complexity, and expense of trial in considering whether a jury should or should not be polled. In *Sigel, supra,* the Court considered a multi-party personal injury case of substantial magnitude that had lasted three weeks. It noted that fairness dictated polling the jury following receipt of an erroneously completed verdict form to avoid "the heavy burden of the expense, the delays, and the arduous labor involved in a retrial …." *Id.* In that case, the Supreme Court sanctioned polling the jury rather than declaring a mistrial given those burdens. *Id.* Here, it is not only the heavy burden associated with potentially re-trying what was a four-week trial, but the nature of the claims and testimony, that counsel in favor of polling the jury. At trial, David Meehan was required to testify for days about the horrific trauma inflicted on him—testimony the twelve jurors unanimously and unequivocally deemed credible—and he should not be forced to endure another round of multi-day testimony reliving that trauma if a less destructive corrective measure remains available to the Court.

14. The Supreme Court has also held that a delay of a matter of days should not dissuade the trial court from exercising its duty to poll the jury and thereby avoiding a miscarriage of justice. *See, e.g., Vatistas v. Hickens*, 121 N.H. 455, 457 (1981) (holding that five-day delay in requesting a jury poll was not untimely where verdict was returned on Wednesday and motion to poll was made on the following Monday); *see also Drop Anchor Realty Trust v. Hartford Fire Ins. Co.*, 126 N.H. 674, 683 (1985) (affirming trial court's reconvening of jury five days after close of trial and after several jurors had discussed the case with defendants' counsel). Even where the jury has been discharged, "[t]he trial court has the power to reconvene and poll a jury where it appears that the jury has made a mistake which produced its verdict." *Vatistas*, 121 N.H. at 457. In fact, in *Vatistas*, the Supreme Court held that it had been an abuse of discretion for the trial court to *fail* to reconvene and poll the jury even after the jury's discharge. *See id.*

15. While the Supreme Court has also cautioned against polling a jury due to the passage of time, its focus in doing so has been wariness about parties influencing jurors or jurors' memory fading. *See, e.g., Corliss v. Mary Hitchcock Memorial Hosp.*, 127 N.H. 225, 229 (1985). In this case, there is no evidence that the jurors who have come forward were influenced by anything other than their realization that they had misunderstood the meaning of question 10 on the verdict form. Mr. Meehan's counsel have neither contacted any jurors nor responded to the many emails they have received from members of the jury. *Cf. Drop Anchor Realty Trust*, 126 N.H. at 683 (fact that jurors may have been exposed "to the influence of defendants' counsel" did not "militate[] so strongly against reconvening the jury as to require a reversal"). The press's coverage of AAG Chase's and the Attorney General's Office's commentary on the verdict did not sway those jurors' thinking; it simply made them aware that the State Defendants' interpretation of the verdict was contrary to the jurors' own understanding of the verdict they had rendered. Nor

is there any plausible argument to be made that the jury could have forgotten David Meehan's testimony since the close of trial.

16. This is not a case in which the moving party is speculating about jury error or in some way grasping at straws. It is a case in which three of twelve jurors have taken their duty seriously enough to come forward and attempt to correct what they perceive to be a miscarriage of justice. It is, as was the case in both *Vatistas* and *Sigel*, a case calling for this Court to exercise its "imperative duty" to take corrective measures.

17. Once a trial court reconvenes a jury, it has broad discretion in how to proceed. *See Drop Anchor Realty Trust*, 126 N.H. at 684 (recognizing that while *voir dire* examination is the most common method of questioning a recalled jury, special written questions may be used). Reconvening the jury and questioning them to see if they as a body concur in what the foreperson said within hours of the first wave of post-verdict publicity and what juror number 16 said on the Sunday morning following a Friday afternoon verdict can do no harm. It is part and parcel of the Court's role in administering justice and avoiding a miscarriage of the same. It will give the Court an opportunity to query the jurors, gain clarity as to their thinking and, if, and only if their answers warrant, correct what may be an easily corrected mistake.

18. Given the extraordinary and exigent nature of these issues, Plaintiff has not sought the concurrence of counsel for State Defendants. *See* N.H. Super. Ct. Civil R. 11(c). Any such attempt would likely be futile. On May 5, 2024, AAG Chase, wrote to the undersigned to acknowledge the three previous juror communications of which the parties were aware at that time were "unusual," but declared their receipt did not give rise to an "emergency" in need of the Court's attention on an expedited basis.

19. David Meehan reserves all rights to file and respond to posttrial motions in the ordinary course.

WHEREFORE, Plaintiff David Meehan respectfully requests that the Court:

a. promptly convene a hearing as soon as possible;

b. reconvene and poll the jury; and

c. grant such other and further relief as the Court deems just and equitable.

Respectfully submitted,

DAVID MEEHAN,

By and through counsel,

Dated: May 7, 2024

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CERTIFICATE OF SERVICE

I certify that on this May 7, 2024, I am serving a copy of this document by electronically sending it through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

/s/ David A. Vicinanzo
David A. Vicinanzo, Esq.

EXHIBIT 6

From: [redacted]
Subject: David Meehan
Date: May 6, 2024 at 8:25 PM
To: crilee@rileelaw.com, dvicinanzo@nixonpeabody.com

AS

To David Meehan Legal Team-

I saw on the news some other jurors were emailing in about the gross injustice on the 475k limit for the verdict in the David Meehan case. I wanted to start by saying I am truly sorry for the way this has played out. We were very clear in the jury room about our verdict in the case and that David should get the 38 million dollar total we had come up with. If we had known about the 475k limit, we absolutely would have made that reflection in our verdict form. I'm deeply saddened by our verdict does not reflect our wishes. If there is anything further I can do, please feel free to reach out to me via email or phone.

Thank you,

[redacted]
Juror 7
[redacted]

EXHIBIT 7

From: **GoDaddy** donotreply@godaddy.com
Subject: rileelaw.com Contact Us: Form Submission
Date: May 6, 2024 at 10:02 PM
To: crilee@rileelaw.com

Name:
[redacted]
Phone
[redacted]
Email:
[redacted]
Subject:
Follow up on David Meehan case
Message:
Good Evening Russ and the rest of your legal team, I have read some of the recent articles regarding the emergency hearing you are trying to set up with the court. I was juror number 16, and emailed you earlier about our position and our understanding of what was defined as "incident" or injury or whatever they want to label David's injury as. I can not state strongly enough that we the jury were in unanimous agreement that David suffers from "one" incident/case of complex PTSD, as the result of the 100+ episodes of abuse (physical, sexual, and emotional) that he sustained at the hands of the State's neglect and abuse of their own power. He was forced to live in a state of emotional distress, and therefore it is almost incomprehensible that the State of NH is trying to misconstrue our verdict on semantics. I understand this is a lot of money at hand, but we felt like David is entitled to this settlement, based on the preponderance of evidence that was presented and clearly shows he is suffering greatly from this " incident" of ongoing PTSD, due to the 100+ incidents of abuse. The State of NH failed their fiduciary duty to care for David and make sure he was safe and taken care of as a child. If I can be of any assistance in clarifying our position further, please feel free to reach out. I do not feel like anyone, including the State or the Supreme Court of NH, or your legal team, should interpret our words, but we the jury, and that was our final and clear verdict, which was overwhelmingly clear to us, hence we calculated our award very timely and accordingly. It should not need to go to appeals court, because I am telling you clearly, we the jury, unanimously found the State 100% guilty and liable for the 100+ abuses David endured, resulting in 1 ongoing incident of complex PTSD, that he will deal with for the rest of his life. We wrote one incident, because the PTSD will last with David forever and could never be clearly defined by a date or a single episode. David should be awarded the $38 million dollars, because that is what we the jury felt was adequate compensation for David Meehan's ongoing injuries. Thank you for listening to our rationale and I truly hope David understands our position more clearly now.

This message was submitted from your website contact form:
https://www.rileelaw.com/contact-us.html