

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss.

DAVID MEEHAN

v.

STATE OF NEW HAMPSHIRE,
DIVISION OF HEALTH AND HUMAN SERVICES

217-2020-CV-00026

(This Order Applies Only To The Individual Meehan Case)

ORDER

The matter before the court is the State Defendants' Motion To Apply Damages Cap Under RSA 541-B:14,I (Docket Document 758). The motion is reluctantly GRANTED.

The statutory damages cap is \$475,000 per claimant for all claims arising from a "single incident. Therefore, in the absence of a timely motion for reconsideration, the court will issue a final judgment plaintiff's favor in the amount of \$475,000, plus statutory interest and recoverable costs, ten days from the date of the clerk's notice of this order.

I. Preface

The court continues to believe that, if the jury accepted the gist of the plaintiff's testimony, entering a judgment in the amount of the statutory damages cap will amount to a miscarriage of justice. See Order of May 22, 2024, p. 14. The amount of the verdict--\$38 million in compensatory and enhanced

compensatory damages—cannot be reconciled with the jury's finding that this liability arises from only a single incident. (By agreement, the jury was instructed to determine the number of "incidents" for the purpose of the court's application of the damages cap in RSA 541-B:14,I.)

The court cannot resolve the inconsistency in the jury's findings by substituting one judge's view of witness credibility and circumstantial inferences for that of the jury. Put simply, this judge cannot:

A. Make up his own list of incidents (which would require a significant amount of line drawing, seeing as the plaintiff alleges more than 200 incidents, and some of the boundaries between incidents are open to reasonable debate); and

B. Then decide for himself, for each separate incident whether the plaintiff proved liability *vel non*; and finally

C. Replace the jury's findings with his own, perhaps idiosyncratic, findings.

Because the State Defendants have rejected the court's suggestion of "additur of incidents," (which the State Defendants have the absolute right to do) there is only one remedy for the disconnect in the jury's verdict. That remedy is a new trial *de novo*, as provided for in RSA 526:1.

Yet, the plaintiff has been resolute in asking for every form of relief except a new trial *de novo* on all issues. The

last opportunity to request one will be via timely motions for reconsideration of (a) this order and (b) the orders denying plaintiff's motions for a partial JNOV and, in the alternative, a partial new trial limited to a redetermination of the number of incidents.

II. The Damages Cap Is Constitutional On Its Face And As Applied

Plaintiff alleges that the "per claimant, per incident" damages cap in RSA 541-B:14,I violates his State Constitutional rights to equal protection (N.H. Constitution, Part 1, Articles 1, 2 and 12) and to a remedy (N.H. Constitution, Part 1, Article 14).

Although there are some plausible arguments why a somewhat higher per incident cap might be required (see below), plaintiff takes issues with the existence of any cap. To prevail on this argument, plaintiff would have to convince the New Hampshire Supreme Court to overrule forty years of precedent limning the State's sovereign immunity. This court must respect that precedent.

In a 1985 Opinion of the Justices, all five sitting justices opined that a \$250,000 per claimant, per incident damages cap on damages against the State would be constitutional on its face. See Opinion of the Justices, 126 N.H. 554, 567-568 (1985):

The bill thus establishes two damage ceilings: \$250,000 per claimant and \$2,000,000 per incident. The constitutionality of these limitations turns on whether the restrictions placed on an injured person's right to recovery by these limitations be not so serious that they outweigh the benefits sought to be conferred upon the general public. We find that this test is satisfied and therefore uphold the per claimant and the per incident damage ceilings. The authority of the legislature to set reasonable limits on damages recoverable against governmental entities is well established. . . .

. . . We earlier noted that the State had an interest in minimizing its liability exposure because if the State incurred significant liability, the payment of claims could impair the financial ability of the State to render governmental services. Recognizing the risk posed by unlimited liability exposure, as well as the unique characteristics of the State-tortfeasor citizen-plaintiff relationship, we hold that reasonable recovery limits are constitutionally permissible.

The \$250,000 per claimant limitation distinguishes between persons injured by the State and persons injured by other tortfeasors. Although a plaintiff's legitimate damages may exceed this ceiling, we find that, even given the soaring costs of medical services, legal expenses, and other damages likely to be sustained by tort victims, this limit adequately balances the competing interests of the State and of the personal injury plaintiff at this time. We therefore uphold its constitutionality.

(Internal citations omitted; bracketing and quotation marks omitted; formatting cleaned up). See also Laramie v. Stone, 160 N.H. 419, 438 (2010) (applying the present \$475,000 per claimant, per incident damages cap).

There remain two questions: (A) Whether, due to inflation, the present \$475,000 damages cap is too low to be constitutional

on its face, and (B) if not, whether the application of that cap is constitutional as applied.

In answering these questions, the court takes judicial notice of the Consumer Price Indices published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"). The court also takes judicial notice of the online inflation calculator published by the BLS. That tool converts the purchasing value of a dollar in any given year and month to the purchasing value of a dollar in any other year and month.

The court does not opine on whether the CPI is the best measure for comparing the present damages cap to the \$250,000 approved by the Supreme Court in 1985. There might be well be a superior index that is more regional and more weighted towards certain types of costs. Yet the CPI is a reasonable gauge that it is easily accessible and properly the subject of judicial notice.

When the Legislature increased the damages cap from \$250,000 to \$475,000 in 2007 (2007 N.H. Laws 356:2), it almost exactly mirrored the increased cost of living as measured by the CPI. According to the BLS online calculator, \$250,000 in November 1985 (when the Opinion of the Justice was issued) would be worth \$477,750 (when the 2007 amendment became effective). Thus, this court must conclude that the damages cap of \$475,000, was constitutional on its face when it was enacted in 2007.

This case was filed in January 2020. \$475,000 in July 2007 (when the present cap became effective) was worth \$588,270 in January 2020. This is a difference of about 24%. The reduction in purchasing power is meaningful, but not so large as to make the statute unconstitutional on its face. The Opinion of the Justices does not stand for the proposition that \$250,000 was the lowest constitutional damages cap the Legislature could have enacted in 1985. Rather, it stands for the proposition that \$250,000 was well within the zone of reason at the time. The Legislature is not required to track the CPI or any other gauge of inflation, let alone do so within any specified margin of error.

Plaintiff is entitled to pre- and post-judgment interest since the date of filing. See RSA 336:1. Although the interest rate on judgments tracks the discount rate on U.S. Treasury Bills, rather than the CPI, it effectively takes inflation into account. Thus, if the cap is applied, plaintiff will receive close to \$100,000 in statutory interest:

	Judgment	Interest	Total
Judgment	\$475,000		
2020 Interest @ 3.9% 1/11/20 to 12/31/20 (354 days)		\$17,967	
2021 Interest @ 2.1%		\$9,975	
2022 Interest @ 2.0%		\$9,500	
2023 Interest @ 5.8%		\$27,550	
2024 Interest @ 7.3% 1/01/24 to 11/04/24 (309 days)		\$29,335	
TOTAL (As of today)	\$475,000	\$94,327	\$569,327

If the damages cap was constitutional on its face as of the date of filing, then because of the interest on the judgment, it should still be constitutional at the time the judgment is paid.

That said, the court notes that \$475,000 in July 2007 would be worth \$719,004 in September 2024 (the most recent month for which data is available). This reflects the inflation of the last few years. However, the difference between what plaintiff would receive today inclusive of statutory interest (e.g. \$569,327) and \$719,004 is just about 25%. Once again, while this a measurable difference, it is not a constitutional one.

Plaintiff next argues that the damages cap is unconstitutional as applied in his case. But this argument is really not about the cap; it is once again about the number of incidents that form the basis for plaintiff's claims. Plaintiff

argues that his case is different because he alleges he was sexually assaulted by several different State employees, in different locations, on different dates, under different circumstances, some separated by furloughs from YDC, on perhaps hundreds of occasions, spread out over years. Plaintiff testified to what, in the court's view, amounts to well over 100 separate incidents. Had the jury either (a) been asked to make individualized liability and damages findings for 100+ incidents, or (b) responded to the actual jury instructions by finding 100+ incidents, the aggregated damages cap would have been far larger than the actual verdict. The problem is the jury found just one incident.

A damages cap of \$475,000 for a single incident of sexual assault may be unwise public policy, but it is difficult to believe that the New Hampshire Supreme Court would find such a cap unconstitutional. Why is a claimant who suffered a single incident of sexual assault, entitled to a more generous damages cap than a claimant who was grievously and permanently injured in some other way?

In any event, plaintiff does not say what amount of damages would be constitutional as applied. If the present Legislatively determined cap of \$475,000 is unconstitutional, would \$1 million be allowed? What about \$2 million? Plaintiff does not posit

any logical stopping point. He has proffered no calculus that the court could apply.

For all of these reasons, the court finds that application of the damages cap is constitutional as applied.

III. Conclusion

Unless plaintiff requests a new trial *de novo*, on all issues, the court will enter judgment in his favor in the amount of \$475,000 (plus statutory interest and recoverable costs) in ten days from the clerk's notice of this order.



Andrew R. Schulman,
Presiding Justice

November 4, 2024