

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

JURY INSTRUCTIONS

I. Function of the Court and Jury

Members of the jury, the evidence in this case has been completed. The attorneys have made their closing arguments. I will now instruct you on the law that applies in this case and then you will retire to decide a verdict.

To reach a fair and just verdict, you must understand and follow the law as I explain it to you. It is your duty as jurors to follow all of these instructions, regardless of any opinion you may have as to what the law ought to be. You are not here to change the law.

You should not consider any instruction in isolation. Rather, you should consider each instruction in the light of, and together with, all of the other instructions. You are to give all of these instructions the same weight and consideration.

It is up to you to determine the facts in this case. You and you alone are the judges of the facts. You must decide the facts based solely on the evidence presented at trial.

Thus, to reach a verdict, you apply the law as I explain it to you to the facts that you find.

You should reach a fair and just verdict without prejudice, without passion, without fear, and without sympathy.

The role of the judge is to run the trial in a fair, orderly and impartial manner, to decide the admissibility of evidence, and to instruct you the jury on the law that applies to the case. If I said or did anything during the trial that causes you to believe that I favor one party over the other I now instruct you that I do not favor either party in this case. I am neutral and impartial.

It is my job to instruct you at this time on all of the principles of law that pertain to this case. Therefore, I must instruct you now with respect to limitations, liability, damages and apportionment of fault. Of course, you cannot consider damages or apportionment of fault unless you first find that the plaintiff has proven liability. By instructing you on this issues, I do not mean to suggest in whose favor the case should be decided. I am completely neutral.

You and you alone, as I said, are the judges of the facts and you decide the verdict.

II. Equality Before The Law

All parties, including natural persons, corporations, limited liability companies, professional associations, and government agencies and agents are equal before the law.

III. Matters That Are Not Evidence

There are certain matters that you cannot consider:

Outside Information

You cannot consider anything that you may have read or heard about this case, or cases such as this, that has not been admitted as evidence in this case. Thus, you can only consider the evidence presented in this courtroom during this trial and the evidence you observed during the view.

The Complaint Is Not Evidence

The fact that the plaintiff brought a lawsuit is not evidence of anything. Filing a complaint and bringing a lawsuit is the formal means of presenting the issues to you for resolution.

Statements By The Attorneys Are Not Evidence

What the lawyers say is not evidence. You have heard the lawyers discuss the facts and the law in their arguments to you. These arguments are not evidence. The purpose of the arguments is to help you understand the evidence and the law. If the lawyers stated the evidence differently from how you recall it, then you should follow your own memory. If the lawyers state the law differently from the law as I explain it, then you must follow my instructions and ignore the statements of the lawyers.

You have also heard the lawyers question witnesses. The lawyers' questions are not evidence, regardless of the form in which the questions were asked.

Objections And Rulings Are Not Evidence

During the trial the lawyers made objections. The lawyers are supposed to object when they believe that certain evidence is not admissible. That is their job.

An objection is a request for a ruling of law from the court. Sometimes objections require bench conferences to resolve. In some cases, objections require the trial to be recessed. Please do not hold this against any party.

If I sustained an objection or excluded any evidence, you must not guess as to what the answer or evidence would have been. If I ordered that a question and answer be stricken from the record, you must not consider either the question or the answer as evidence.

If I allowed some information to be entered as evidence after hearing objections, you are not to give such evidence any special importance as a result of my ruling. It is not my duty and I certainly did not try to determine whether evidence was important when I made my rulings.

If you believe that in my rulings I suggested an opinion as to the facts, you should ignore such a suggestion. It is up to you alone to decide the facts in this case.

IV. Evidence

Evidence In The Case

During your deliberations you should consider only the evidence presented at trial. The evidence consists of:

1. The testimony under oath of the witnesses: This includes each witness' testimony during both direct examination and cross-examination. In other words, you are to consider all of the sworn testimony of all of the witnesses, regardless of which party called the witness to testify.

Witnesses may give testimony under oath by testifying in court in front of you during the trial.

Witnesses may also give testimony under oath by testifying at a deposition prior to trial. During a deposition all parties are given the opportunity to ask the witness questions. Deposition testimony should be considered by you just as testimony in court.

2. Exhibits that have been admitted into evidence: You will have access to all full exhibits as you deliberate.

3. The View: The trial in this case included a view of what remains of the campus of the former Youth Development Center. The view is evidence that you may consider as you deliberate. You must keep in mind, however, that the areas we visited are not in the same condition they were in during the years 1995 through 1999. Several buildings are no longer there and, due to the passage of time, it is not easy to discern

without guidance where they once stood. One of the buildings we visited was effectively abandoned and is now used by SWAT teams for practice.

4. The Stipulation: A stipulation is an agreement by the parties that certain facts are true. You may accept those facts as proven. In this case the parties have stipulated to the identifies of the individuals in senior positions at YDC in Manchester.

5. Judicial Notice: The court has taken judicial notice that this lawsuit was filed on January 11, 2020. You may accept this fact as proven.

Evidence Admitted For A Limited Purpose

You must be careful to recall my instructions during the trial regarding testimony and exhibits that were admitted for a limited purpose. You may use that evidence only for the specific purposes for which it was admitted, pursuant to my instructions during the trial.

Direct and Circumstantial Evidence

There are two types of evidence—direct and circumstantial.

Direct evidence is direct proof of a fact, such as the testimony of a witness based on personal knowledge—that is, what the witness actually saw, heard or otherwise directly experienced through his or her senses. Circumstantial evidence is indirect evidence which tends to prove a disputed fact by proof of other facts.

Let me give you a simple example to demonstrate the difference between direct and circumstantial evidence. Assume a witness testifies that on a particular day he left the public library in the afternoon and as he left heavy rain began to fall. His testimony would constitute direct evidence that it rained outside the public library on that afternoon. The witness personally saw the rain and felt the raindrops.

Now assume the witness testifies, instead, that he was inside the public library reading in a reference room with no windows to the outside. He testifies that in the afternoon, a woman walked into the room wearing a raincoat and carrying an umbrella, both of which were dripping wet. Now since he could not see outside, there is no direct evidence that it was raining. But based on his testimony, it would be reasonable and logical for you to conclude that on that date it was raining outside the public library in the afternoon. Therefore the witness's observations are circumstantial evidence that it was raining.

That is all there is to circumstantial evidence. On the basis of reason and common sense you infer from an established fact the existence or non-existence of another fact.

You should consider both kinds of evidence. You are permitted to give equal weight to both, but it is for you to decide how much weight to give any evidence, whether it is direct or circumstantial.

It is for you to decide whether a fact has been proven by circumstantial evidence. In making that decision, you must consider all of the evidence in the light of reason, common sense and your experience.

Number of Witnesses

In reviewing the evidence, you should consider the quality of the evidence and not the quantity. It is not the number of witnesses or quantity of evidence that is important. What's important is the quality of the evidence.

V. Witness Credibility

Credibility of Witnesses

In deciding this case, you must decide the credibility of witnesses; that is, it is up to you to decide who, if anybody, to believe. If there is any conflict between the witnesses, then you must resolve the conflict. Simply because a witness has taken an oath to tell the truth does not mean that you have to accept the testimony as true.

Use your common sense and judgment. Consider the factors you use in deciding important issues in your everyday lives. For example, you may consider the following:

1. The witness's appearance, attitude, and behavior on the stand and the way the witness testified;
2. The witness's age, intelligence and experience;
3. The witness's opportunity and ability to see or hear the things about which the witness testified;
4. The accuracy of the witness's memory;
5. Any motive of the witness not to tell the truth;
6. Any interest that the witness has in the outcome of the case;
7. Any bias of the witness, or friendship with or animosity against any of the other people in the case;
8. The consistency or inconsistency of the witness's testimony;

9. Whether what the witness said appears reasonable or unreasonable;
10. Whether what the witness said is consistent or inconsistent with the testimony of other witnesses, or with what the witness himself said at another time.

In deciding which witnesses to believe and how much of their testimony to believe, you should consider both the direct and cross-examination of the witnesses.

In deciding whether to believe a witness, you may consider whether the witness made statements before trial that are not consistent with the witness's testimony at trial. Thus, if the witness made a prior inconsistent statement, you may use that statement in deciding whether to believe the witness's trial testimony.

If you believe that part of a witness's testimony is false, you may choose to distrust other parts as well. But you are not required to do so. Inconsistencies and contradictions within a witness's testimony or between witnesses do not necessarily mean that you should disbelieve the witness. Memory failures and mistaken memories are common and may explain some inconsistencies and contradictions.

It is also possible for honest people to witness the same event and see or hear things differently. You should evaluate inconsistencies and contradictions and determine whether they are important or unimportant.

You need not disbelieve a witness's testimony simply because it is contradicted. Nor are you required to accept testimony as true simply because some or even all of the witnesses agree with each other. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

In short, you can accept all of what a witness says or you can reject all of what a witness says or you can accept some of it and reject some of it. It is up to you to consider the testimony of each witness and give it the weight you think it deserves.

These principles apply to all witnesses, including ordinary citizens, experts, police officers and government officials.

Expert Witnesses

You have heard the testimony of one or more expert witnesses.

An expert is a person who has specialized education, training, skill or knowledge that the average person does not have. When a case involves matters that are the subject of such specialized learning, expert opinions may be admitted to assist the jury in understanding the evidence. Thus, expert testimony may assist you in reaching a proper conclusion.

However, you are not required to accept an expert's opinions or testimony.

You must determine the credibility of expert witnesses and the reliability of their testimony and opinions. To do so, you should follow the same principles that apply to the consideration of testimony offered by other witnesses. You may also consider whether or not the expert took advantage of the opportunity to make a thorough investigation before rendering an opinion.

Additionally, you may reject an expert's opinions if:

1. The facts assumed by the expert are materially different from the facts as you find them to be; or
2. The expert's opinion is based on misinformation or misunderstanding; or
3. The expert lacks the qualifications to render a reliable opinion; or
4. After careful consideration of all the evidence in the case, expert and other, you disagree with the opinion

In short, expert testimony may be considered by you, but it is not controlling upon your judgment. You may believe all, part, or none of the testimony of an expert.

Hypothetical Question

When questioning an expert witness, an attorney may ask hypothetical questions. A hypothetical question is a question that asks the witness to assume that certain facts are true and to then give an opinion based upon those assumptions.

It is for you to decide from all of the evidence whether or not the facts, assumed in the hypothetical, have been actually proven. If the facts assumed have not been proven, you should disregard the opinion based on those facts.

If, however, you think the facts assumed have been established by the evidence, that is, that they are probably true, then you may consider the opinion and give it whatever weight you think it deserves. As with any other expert opinion, you may accept it or reject it, in whole or in part, according to your best judgment.

Learned Publications

Excerpts taken from a publication that an expert witness opines to be an authoritative text in his or her field of expertise may be considered by you for their truth. You may weigh the statements made in such excerpts from learned publications in the same manner as the other testimony you have heard and give as much weight and credence to the content of those articles as you believe it deserves.

VI. Burden Of Proof

In a civil case such as this, the party who makes a claim has the burden of proving it. This is called the burden of proof. The party having the burden of proof must satisfy you that his claim on an issue is more probable than not.

The party having the burden of proof does not have to prove its claim beyond a reasonable doubt as is required in a criminal case. What he must prove is that his claim is more probable than not.

As an example of what I mean, imagine in your mind the scales of justice. Put all the credible evidence on the scales, with the evidence in favor of the party having the burden of proof on one side of the scales and the evidence in favor of the other party on the other side. If the scales tip, ever so slightly, for the party having the burden of proof, then on that issue that party has sustained his burden. If the scales tip in favor of the other side, or remain level, then the party having the burden of proof has failed to prove it and is not entitled to relief.

This burden of proof is called proof by a preponderance of the evidence. The term “preponderance of the evidence” means “more likely than not” based on the evidence presented at trial.

In determining whether the party with the burden of proof has met that burden, you must consider all of the evidence that was presented by all of the parties.

VII. Who Is The Defendant?

The only defendant in this case is the New Hampshire Department Of Health and Human Services (DHHS). DHHS is a “department” level agency of Executive Branch of the State of New Hampshire. Thus, the ultimate defendant in this case is the State of New Hampshire itself.

You have heard testimony, and received exhibits relating to several other State agencies, such as:

The Division of Children, Youth and Families (DCYF);
The Division of Juvenile Justice Services (DJJS); and
The former Department of Youth, Development Services (DYDS).

The principal unit of the Executive Branch is the “department.” Departments are typically headed by Commissioners. The principal unit with a department is the “division.” Divisions are headed by Directors. Divisions may contain sub-units which are headed by Administrators, Supervisors, Superintendents and others.

At the time David Meehan first became a resident at both YDSU and YDC, those facilities were operated and managed directly by DHHS through its Division of Children, Youth and Families (DCYF).

During David Meehan's time at YDC, the management of the two facilities was transferred from DHHS to a new, department level agency, the Department of Youth Development Services (DYDS). DYDS was headed by a Commissioner and Assistant Commissioner.

DYDS no longer exists. All of its functions were transferred back to DHHS after Mr. Meehan left YDC.

The bottom line is this: DHHS is the only remaining defendant in this case because it assumed the legal obligations of its predecessor, DYDS, and all of divisions and units within DYDS

Thus, your task is to determine whether (a) plaintiff was injured during his residency at YDC, and if so, (b) whether DHHS and/or DYDS, and/or their subsidiary divisions were legally at fault for any of his injuries.

To make these instructions more readable, and easier to understand, when I refer to DHHS below, I am referring to DHHS and all of its divisions and units, and also to DYDS, and all of its divisions and units.

VIII. Legal Fault In General

Introduction

The fact that a person is injured does not necessarily mean that anyone is legally responsible for the injury. To recover monetary damages, plaintiff David Meehan must prove not only that he was injured, but also that the DHHS was legally at fault for his injuries.

As pertinent to this case, legal fault means the breach of a standard of care imposed by law that caused injury to a plaintiff. In this case Mr. Meehan alleges that DHHS breached two such standards of care, e.g. (A) the common law duty of reasonable care, the breach of which is known as Negligence and (B) Fiduciary Duty. I will instruct you on the elements of each of these two duties of care in a few minutes.

What is important now is that you understand that these are the only allegations of legal fault in the case. You cannot find DHHS liable unless Mr. Meehan establishes that he was injured as a result of either Negligence or Breach of Fiduciary Duty by DHHS.

Legal Fault By DHHS--In General

To prove legal fault, Mr. Meehan must show more than that he was injured through the unlawful actions (or inactions) of one or more DHHS employees. DHHS is not automatically liable for the actions (or inactions) of rogue employees. Put another way, it is not enough for Mr. Meehan to show that DHHS employed a person whose unlawful actions caused him harm.

DHHS can only be found liable for its own **“actions,” “failures to act,”** “and **“customs and practices.”**

A government agency can only act through its human officials, officers, employees and agents. Yet, as I just explained, not every action of front line staff qualifies as an “action,” “failure to act,” or “custom or practice” of the agency. I will use the short-hand term “decision makers” to describe the individuals whose official conduct equates with that of the agency. Put another way, Mr. Meehan alleges, and must prove, that one or more “decision makers” were responsible for the agency’s alleged Negligence and Breach of Fiduciary Duty.

Several terms that I have used need to be defined:

“Decision Makers”: In this case, the agency’s “decision makers” include all on-site YDC administrators and managers above the level of the house leaders.

The term “decision maker” also applies to the Commissioner of DYDS and his designees, the Director of DCYF and her designees, and the Commissioner of DHHS and his or her designees.

“Actions”: The term “actions” includes all decisions, orders, directives and acts taken by the agency’s “decision makers” based on “information known to the agency.” “Actions” may be written or oral. No degree of formality is required.

“Failure To Act”: The term “failure to act” refers to the “decision makers” failure to act on “information known to the agency.” I have already defined the terms “decision makers” and “information known to the agency.”

“Custom Or Practice”: An “custom or practice” is a way of doing things that is so widespread and well-settled that it constitutes a standard operating procedure. A “custom or practice exists” if the “decision makers” either know of the practice, or should have learned of the practice through the exercise of reasonable diligence. In contrast, isolated actions by a few lower level employees, that reasonably escape the notice of “decision makers”, do not constitute an official practice.

I will now define the term “information known to the agency” as it pertains to the DHHS’s alleged “actions,” “failures to act” and “customs and practices:”

“Information Known To The Agency”: “Information known to the agency” includes not only the information that the “decision makers” actually knew, but also:

(A) Information relating to physical abuse, the use of excessive force, the use of excessive restraints or confinement, and/or emotional abuse of YDC residents that the “decision makers” should have learned through the exercise of reasonable diligence in their operation of YDC; and

(B) Information possessed by YDC staff members with an express duty to report that information to “the decision makers.” During David Meehan’s residency at YDC, a staff member who reasonably suspected that another staff member used excessive force, committed a sexual assault, or committed any other type abuse against a resident had an express, duty to report what he or she learned to the “decision makers.”

The law does not assume that an employee who is complicit in the commission of intentional harm, or who purposely participates in violating the criminal law, will self-report his or her intentional misconduct to the agency. However, an agency knows (a) what the “decision makers” would have known through the exercise of reasonable diligence in operating the facility and (b) information that non-complicit employees had a duty to report.

Legal Fault Of DHHS--No Liability For “Discretionary Functions”

State agencies cannot be found liable for “actions,” “failures to act,” or “customs or practices” that are “discretionary functions.” This is so because the courts cannot second guess an executive branch agency’s choices among lawful alternative policies.

A “discretionary function” is one that is characterized by a high degree of discretion and judgment in weighing alternatives and making choices with respect to public policy. In making discretionary executive or planning decisions, an agency may properly consider the allocation of limited resources and competing economic needs, as well as other factors. I will give you some examples, to make this abstract concept clear: The decision of whether to install a traffic control device, such as a stoplight, at a

particular intersection, is a discretionary function. So too is the decision whether or not to place a protective guardrail on a roadway.

In contrast, a decision is not a “discretionary function” if it involves mere operational-level choices in the implementation of a previously made discretionary decision. Thus, for example the operational level choices involved in the actual construction of a guardrail and the installation and maintenance of a stoplight are non-discretionary decisions.

In this case, DHHS cannot be found liable for making discretionary planning decision. Additionally, DHHS cannot be found liable for lawful but discretionary decisions made by its employees in the discharge of their duties.

However, you can find DHHS liable for operational level “actions,” “failures to act” and “customs and practices” with respect the implementation of its previously made policy decisions.

IX. Limitations

The law requires a plaintiff who brings claims, such as the ones that are before you, to do so within a certain time period.

As pertinent to your deliberations, that period is three years from the date the plaintiff discovered, or through the exercise of reasonable diligence should have discovered, both:

- (a) his injuries; and
- (b) the fact that the defendant’s conduct caused his injuries.

Mr. Meehan filed this lawsuit on January 11, 2020. Therefore, this suit is timely if Mr. Meehan did not discover, and would not have discovered by using reasonable diligence, both his injuries and DHHS’s role in bringing about injuries, prior to January 11, 2017.

The date that Mr. Meehan first became aware of his injuries and DHHS’s role in bringing about his injuries is a question of fact for you to decide.

Whether Mr. Meehan should have learned, by using reasonable diligence, of the causal connection between his injuries and DHHS’s acts or omissions is also a question of fact for you to decide.

Mr. Meehan has the burden to prove that his lawsuit is timely by a preponderance of the evidence.

In this context a plaintiff discovers an injury when he can discern that he has suffered some meaningful harm, even if he does not yet know the full extent of the harm.

A plaintiff “discovers” a defendant’s causative role in bringing about his injury once he possesses articulable facts that establish a good faith, reasonable possibility sufficient to hail the defendant into court. In other words, a plaintiff need not have conclusive proof or certainty.

The defendant in this case is “DHHS.” No individual who served as a YDC staff member is a defendant. Therefore, the limitations period did not begin to run until Mr. Meehan discovered, or should have discovered, that conduct by DHHS itself was a substantial cause of his injuries. Just because he knew that certain individual YDC staff members allegedly caused him harm, does not mean that he automatically also knew, or should have known, that conduct by the agency--DHHS--was an additional, substantial cause of that harm.

I will provide you with an example to illustrate this point. A person who is injured in a motor vehicle collision may be immediately aware of the other driver’s fault. Therefore, the limitations period for claims against the other driver would start on the day of the collision. But if the other driver lost control of his vehicle because a defective piece of equipment malfunctioned, and if the equipment was manufactured by an after-market parts manufacturer and installed by a mechanic, those facts might not become known for some time.

“Reasonable diligence” is the degree of diligence or care that a reasonable person in the plaintiff’s position would exercise under the same or similar circumstances. The subjective knowledge of the individual plaintiff is not controlling.

In determining whether Mr. Meehan exercised “reasonable diligence,” you may consider evidence, to the extent you find such evidence exists, that the “decision makers” at DHHS concealed their causative role.

Keep in mind that the limitations period will begin to run regardless of what the plaintiff knows about the law. In other words, a plaintiff does not need to discover that the law provides a remedy in order for the limitations period to beginning running.

X. Plaintiff's Claims

Plaintiff's First Cause Of Action (Negligence)

Plaintiff David Meehan alleges that DHHS is liable under the common law doctrine of negligence. The doctrine of negligence has three parts or elements. Mr Meehan must prove each element by a preponderance of the evidence. Thus, Mr. Meehan must prove that:

1. DHHS had a “**duty to use reasonable care**” to protect him from (a) sexual assaults by staff, (b) excessive force and physical abuse by staff, (c) excessive confinement and (d) emotional abuse.

2. DHHS breached that “**duty to use reasonable care,**” by acting with “**negligence;**” and

3. DHHS’s “**negligent**” breach of the “duty to use reasonable care” was the “**legal cause**” of Mr. Meehan’s “**injuries**”.

I will now instruct you on each of these three elements, i.e.

1. The “duty to use reasonable care”
2. “Negligence;” and
3. “Legal causation”

Duty To Use Reasonable Care

A duty to use reasonable care arises when a person (or entity) engages in conduct that creates a foreseeable risk to others. Thus the duty to use reasonable care arises from a risk to others than can be reasonably foreseen.

Thus, a State agency that operates a residential facility for the detention, care, treatment, and well-being of children has a duty to use reasonable care to prevent injury to the juveniles in its care. This is so even for juveniles who are committed to the agency’s facility by the courts as juvenile delinquents or otherwise.

The types of injury the agency must use reasonable care to protect against includes, but is not limited, to:

- (a) sexual assaults by staff;
- (b) excessive force and physical abuse by staff;
- (c) excessive confinement; and
- (d) emotional abuse.

Reasonable care is the degree of care that an ordinary, prudent agency would use under the same or similar circumstances. Outstanding knowledge, skill and care are not required.

Negligence In General

Negligence is the failure to use reasonable care.

The failure to use reasonable care may take the form of action or inaction. In other words, negligence may consist of (a) doing something that an ordinary, prudent agency would not do under the same or similar circumstances, or (b) failing to do something that an ordinary, prudent agency would do under the same or similar circumstances.

If the standard of care allows for the exercise of reasonable judgment in the selection of one course of action from several options, all of which are within the standard of care, DHHS cannot be found liable if it exercised reasonable judgment in selecting one of the options, even though selection of other options may also have been reasonable.

Accordingly, in order to prove negligence in this case the plaintiff must:

1. Establish the standard of reasonable care for the operation of residential facilities for court-committed juveniles; and
2. Prove that DHHS failed to act in accordance with that standard of care. Recall that DHHS can only be liable for its “actions,” “failures to act” and “customs and practices” as explained above. Recall also that DHHS cannot be found liable for its discretionary decisions.

Keep in mind that Mr. Meehan must prove what the applicable standard was at the time of his residency at YDC. You cannot evaluate DHHS’s conduct in the light of knowledge that was acquired later.

Negligence As Alleged In This Case

Mr. Meehan alleges, and you may consider, only the following types of negligence:

1. Mr. Meehan alleges that DHHS was negligent with respect to enforcing its Youth Rights/Protection From Harm policy. More particularly, Mr. Meehan alleges that DHHS failed to adequately train, discipline and oversee staff with respect to their obligations to prevent and report:

- (a) any and all sexual abuse staff,
- (b) physical abuse by staff,
- (c) excessive use of force by staff,
- (d) excessive or abusive use of room confinement and
- (e) emotional abuse of residents by staff.

2. Mr. Meehan also alleges that DHHS was negligent with respect to implementing the ombudsman system that it put in place to elicit and respond to resident complaints.

3. Finally, Mr. Meehan alleges that DHHS was negligent with respect to the manner in which it implemented its room confinement policies.

DHHS's decision to adopt a policy of using room confinement as a sanction for serious disciplinary offenses was a discretionary policy decision for which DHHS cannot be held liable. Thus, you cannot find DHHS negligent or liable because it had a policy of using room confinement as a sanction, even if you disagree with that policy.

However, you may consider whether DHHS was negligent with respect to the implementation of the room confinement policy by failing to adequately train, oversee and discipline staff with respect to:

- (a) ensuring reasonable access to toilet and sanitary facilities;
- (b) ensuring access educational programming; and
- (c) ensuring adequate opportunity for exercise and mental stimulation.

Additionally, Mr. Meehan alleges that DHHS was negligent by failing to reasonably train, oversee and discipline staff with respect to the misuse of room confinement for retaliatory or other impermissible purposes. In this context an impermissible purpose is a purpose that is not permitted by the policy.

Legal Cause

Negligence is a legal cause of an injury if (a) the negligent conduct was substantial factor in bringing about the harm, and (b) the harm would not have occurred without the negligent conduct.

Negligence may be a legal cause of an injury even if it is not the sole cause of the injury. However, if negligent conduct is not a substantial factor in bringing about the injury, then it is not the legal cause of the injury.

Thus, to establish liability, Mr. Meehan must prove that "DHHS's negligent conduct was a substantial factor in bringing about his injuries, regardless of whether any other factors also contributed to cause the injuries.

“Injury”/Severe Emotional Distress: Mr. Meehan alleges three types of harm: (a) physical injuries, (b) offensive physical contact and (c) the infliction of severe emotional and mental distress.

In order to prevail on a claim for negligent infliction of emotional distress a plaintiff must prove, by the preponderance of the evidence, that he experienced severe emotional distress that has manifested itself through physical symptoms. The plaintiff must prove, through expert testimony, that the physical symptoms were caused by the emotional or mental injury.

Plaintiff's Second Cause Of Action
(Breach Of Fiduciary Duty)

Mr. Meehan alleges that DHHS is liable under the common law doctrine of Breach Of Fiduciary Duty. This doctrine has three parts or elements. Mr. Meehan must prove each element by a preponderance of the evidence. Thus Mr. Meehan must prove that:

1. DHHS had a “**fiduciary duty**” to exercise “**prudence and diligence**” to protect him from:
 - (a) sexual assaults by staff;
 - (b) excessive force and physical abuse by staff,
 - (c) excessive confinement; and
 - (d) emotional abuse.
2. DHHS breached that “**fiduciary duty**”; and
3. DHHS’s breach of “**fiduciary duty**” was the “**legal cause**” of Mr. Meehan’s “**injuries**”.

I will now instruct you on each of these elements.

Fiduciary Duty

I am instructing you that DHHS had a “fiduciary” duty to its juvenile residents to use “prudence and diligence” to create an environment free from sexual assault, physical assault, excessive confinement and emotional abuse.

This is so even though DHHS also had a duty to detain the residents it cared for so that they could not harm other residents or staff, or escape. DHHS had a legal obligation to carry out its public safety function without shortchanging its fiduciary obligations.

That said, a fiduciary duty is not a guaranty. It is a duty to use “prudence and diligence” to protect against foreseeable risks.

Although I am instructing you that a fiduciary obligation exists, I will take a moment to define the term “fiduciary,” because many of you may be unfamiliar with its meaning. In general, a fiduciary relationship exists when:

- (a) a person, with justification and good reason, places special confidence and trust in the honesty and fairness of another, and
- (b) the person or organization into which confidence and trust has been placed purports to act with the other’s interest in mind.

In general, a fiduciary relationship is characterized by reliance and trust on the fiduciary and often a degree of control by the fiduciary over the other party's person or property.

In this case, a fiduciary relationship exists because the residents at YDC were completely dependent on DHHS to provide for all of their needs. They juveniles could not fend for themselves, and neither they nor their parents had the ability to remove them from YDC's custody.

A fiduciary duty also existed because YDC's mission, as defined by the Legislature in statute was as follows:

The New Hampshire youth development center shall be administered to effect the following purposes and policies:

- I. To provide a wholesome physical and emotional setting for each child detained at or committed to the center;
- II. To provide protection, care, counseling, supervision, and rehabilitative services as required by the individual child;
- III. To assure that the child has not been deprived of those rights to which he or she is entitled by law;
- IV. To teach the child to accept responsibility for his or her actions;
- V. To recognize that the child's interests are of major importance while also acknowledging the interests of public safety;
- VI. To cooperate with the courts, law enforcement agencies, and other agencies in juvenile matters to ensure that the needs of each child who is involved with these agencies are met with minimum adverse impact upon the child; and
- VII. To return each child committed to the center to a community setting with an improved attitude toward society.

Once a fiduciary relationship is formed, the fiduciary must act in good faith and with due regard for the interests of the one reposing trust and confidence.

Prudence And Diligence

The fiduciary duty of care required DHHS to exercise "prudence and diligence." This is the degree of care and skill that a prudent person, who is familiar with such matters, would use in the management of a similar facility.

Legal Cause

I have already instructed on definition of legal cause. Thus, Mr. Meehan must prove that DHHS's "breach of fiduciary duty" was a substantial factor in bringing about his injuries.

Injury/Severe Emotional Distress

I have already instructed on the types of injuries alleged, e.g. (a) physical injuries, (b) offensive physical contact and (c) severe emotional distress. I have also already instructed you that in order to recover for severe emotional distress a plaintiff must prove, through expert testimony, that his emotional or mental injuries resulted in physical manifestations or symptoms.

Breach Of Fiduciary Duty As Alleged In This Case

Mr. Meehan alleges that DHHS breached its fiduciary duty with respect to the same matters that I described above with respect to Mr. Meehan's negligence claim. I will not repeat that instruction in its entirety. Briefly, Mr. Meehan claims that DHHS breached its fiduciary duty by (a) failing to adequately train, discipline and oversee staff with respect to their obligations under DHHS's Youth Rights/Protection From Harm policy, (b) failing to adequately implement the ombudsman system that it put in place, and (c) failing to adequately implement its room confinement policies

XI Damages

In General

You can only consider the question of damages if you unanimously find that DHHS is liable to plaintiff.

Understand that in every civil jury trial, the judge instructs the jury on both liability and damages before the jury begins to deliberate. The fact that I am giving you instructions on damages must not be taken as an indication as to whether I think you should, or should not, reach the question of damages.

Mr. Meehan has the burden to prove that it is more probable than not that damages he seeks were caused as a result of DHHS's legal fault (that is by Negligence and/or Breach of Fiduciary Duty). Mr. Meehan has the burden to prove the extent and the amount of those damages.

An injury or any other type of harm is caused by a defendant's legal fault if the defendant's legal fault was a substantial factor in bringing about the injury or harm.

Damages should be awarded for an injury caused by the defendant's legal fault even if the injury was more severe than could have been foreseen.

In determining the amount of damages, you may draw such inferences as are justified by your common experiences and the observations of mankind, from the evidence of the nature of the injuries and the results thereof.

Full, Fair And Adequate Damages

The amount of damages must be full, fair and adequate. It must not be cheap and miserly, nor should it be a reward or prize. The plaintiff is entitled to be fully compensated for harm resulting from the defendant's legal fault.

Monetary damages can only be awarded to compensate the plaintiff for injuries incurred as a result of the defendant's legal fault. The law cannot do the impossible by turning back the clock and eliminating the injury or harm from ever having occurred; it does provide a means by which a plaintiff can be made whole, by awarding full, fair and adequate compensation.

Monetary damages cannot be awarded to punish the defendant or to make an example of the defendant. Thus, you cannot award punitive damages in this case.

Avoid Speculation

The plaintiff must establish the amount of money representing adequate compensation with as much certainty as the circumstances permit. The law does not require mathematical certainty in computing damages. However, you may not indulge in speculation or conjecture.

Categories Of Damages

You are not required to compensate plaintiff for a category of loss or harm simply because I list that category or because I explain how to measure it.

For each category of loss or harm that the plaintiff claims, the plaintiff must prove that it is more probable than not, that:

1. The plaintiff has such a loss or harm.
2. The loss or harm was caused by the defendant's legal fault.

If you decide that the plaintiff has proven these two matters to be more probable than not, you must then decide how much money will fully, fairly and adequately compensate plaintiff for each of those items of loss or harm.

In awarding damages, the following categories may be considered:

1. Future Medical Expenses: The reasonable value of future medical care, medical services, including mental health treatment, medications and supplies.

Mr. Meehan has not made a claim for past medical expenses. Therefore, you may not award any damages for past medical expenses.

2. Lost Income/Lost Earning Capacity: You may award monetary damages to compensate Mr. Meehan for lost income and lost earning capacity. Such damages are measured by the value of any income that Mr. Meehan probably would have earned, but did not earn, or will not earn as a result of result of DHHS's negligence.

Mr. Meehan has the burden to prove his lack of earning capacity. It is up to you decide whether he has proven a total lack of earning capacity, or a partial lack of earning capacity, or no reduction in his earning capacity.

If you find that Mr. Meehan has proven that he will not fully regain his earning capacity in the future, then you may award damages for lost

income in the amount you find he would probably have earned but will not earn as a result of DHHS's Negligence and/or Breach of Fiduciary Duty.

2. Pain and Suffering: You may award monetary damages for reasonable compensation for any pain and suffering that Mr. Meehan experienced or is likely to experience in the future. This includes compensation for physical pain, discomfort, fears, anxiety, and mental and emotional distress.

No definite standard (or method of mathematical calculation) is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for pain and suffering you should exercise your reasonable judgment and the damages you determine have to be full, fair and adequate in light of the evidence.

3. Hedonic Damages: You may award monetary damages for reasonable compensation for any loss of enjoyment of life that Mr. Meehan experienced or is likely to experience in the future—that is, the inability to carry on and enjoy life as if the injury or harm had not occurred. This category of damages is separate and distinct from claims of conscious pain and suffering.

Duty To Mitigate

A person who has been injured through the fault of another is obligated to use reasonable efforts without undue risk, expense or humiliation to care for his physical and mental injuries and reasonable means to prevent their aggravation and to accomplish healing. Thus, a plaintiff may not recover for damages that he could have prevented by making reasonable efforts without undue risk, expense or humiliation. A plaintiff may, however, recover expenditures reasonably incurred to avoid or minimize damages.

When a plaintiff does not use reasonable efforts to care for his physical or mental injuries, and those injuries are aggravated as a result of such failure, the defendant's responsibility is limited to the amount of damage that would have been suffered had the plaintiff exercised the effort required of him.

The fact that a competent physician or therapist advised a person to submit to a course of treatment does not require an inference that the injured person was unreasonable in declining such treatment. Other factors as confronted the injured person must be considered in determining whether, although he refused or failed to follow the physician's or therapist's advice, he nevertheless exercised reasonable efforts in caring for himself and his injuries. You should not include in the verdict such damages, if any, that the plaintiff could have avoided by reasonable effort, without undue risk, expense or humiliation.

Aggravation of Pre-Existing Condition

Evidence was presented that Mr. Meehan may have had a prior emotional injury and/or mental health condition at the time he first became a resident at YDC.

A plaintiff is not entitled to recover damages for a condition or disability that he already had before the injury at issue occurred. However, he is entitled to recover damages for any aggravation of a pre-existing condition that was caused by the defendant's legal fault.

This is true even if the person's condition made him more likely to experience ill effects than a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any injury at all.

If you find that an existing condition is aggravated by the defendant's legal fault, the damages are limited to the additional damage caused by its aggravation.

Quotient Verdict Prohibited

In awarding damages, you must each make a judgment as to what amount will fully, fairly, and adequately compensate the plaintiff for the losses you find he has incurred. You are not allowed to average, that is, to add the damages and then divide by twelve and agree that the result shall be your verdict.

Apportionment With Other Parties At Fault

A plaintiff's injuries may be the result of legal fault on the part of multiple parties.

Consider, the following example involving three drivers: Driver A is operating the lead car. Driver A brakes suddenly because he is confused about whether to take the next exit. Driver B is immediately behind driver A. Driver B is going a safe and reasonable speed and keeping a proper distance from Driver A. When Driver A brakes, Driver B must brake. Driver C is behind driver B. He is playing with his phone and does not see that the cars ahead of him have slowed down. Driver C rear ends Driver B causing injuries to Driver B.

In this hypothetical example, a jury could find that both Driver A and Driver C were negligent and, therefore, legally at fault for the injuries to Driver B.

In a case in which more than one person or entity is at fault for a plaintiff's injuries, the jury is asked to apportion fault among the responsible parties.

A defendant who is less than 50 percent at fault is responsible for only that defendant's proportionate share of the damages based on fault. A defendant who is 50% or more at fault is responsible for 100% of damages.

To return to my example: Imagine that Driver B sues Drivers A and C. Imagine further that the jury finds that both defendants are legally at fault and that the total amount of damages is \$100. Finally, imagine that the jury finds that Driver A (the lead car) is 49% at fault and Driver C (the rear car) is 51% at fault. Driver A would have to pay \$49 (e.g., 49% of the damages). Driver B would be liable for the full amount of \$100, but he would be entitled to a set off for what Driver A actually paid.

There is one exception to this rule, if a defendant was an knowing and active participant in a common plan or design that caused harm to the plaintiff, then the defendant is liable for 100% of the damages, regardless of the degree of fault of each participant in the plan. To return to my hypothetical: Imagine that Drivers A and C were angry at Driver B, and decided that they would hassle Driver B by slamming on their brakes and following to close. Both drivers would be jointly and severally liable for 100% of the damages.

In this case, defendant DHHS claims that the following individuals are also at fault for plaintiff's injuries:

Bradley Asbury
Frank Davis
Jeffrey Buskey
Stephen Murphy
James Woodlock
Richard Brown
Gordon Thomas Searles

DHHS has burden to prove by a preponderance of the evidence that (a) one or more of these individuals was also responsible for plaintiff's injuries and (b) the degree of fault that is properly attributable to all individuals at fault.

Thus, if you find DHHS to be legally at fault in this case, you must also determine the following questions:

(A) The extent to which, if any, plaintiff's injuries were caused by DHHS's active and knowing participation in a common plan or design with any of individuals named above;

(B) Whether any of the individuals named above were also at fault for plaintiff's injuries; and

(C) Viewing plaintiff's compensable injuries as a whole, the specific percentage of fault for DHHS and each of the individuals, if any, who you also find to be at fault. THE TOTAL PERCENTAGES MUST ADD UP TO 100%.

Enhanced Compensatory Damages

New Hampshire law does not allow punitive damages. Therefore, you cannot award damages to punish or make an example of "DHHS."

However, in certain circumstances the law permits you, but does not require you, to consider an award of additional damages to reflect aggravating circumstances. These damages are called "enhanced compensatory damages." You may award "enhanced compensatory damages" only if Mr. Meehan has proven by a preponderance of the evidence, that DHHS's conduct was wanton, malicious or oppressive. "Wanton" means reckless indifference or disregard of consequences. "Malicious" means ill-will, hatred, hostility or bad motive. "Oppressive" means abuse of power."

Matters That May Not Be Considered:

You must determine the amount of damages based solely on the evidence in this case. You must not consider, discuss or speculate on any events, factors, possibilities or other matters not admitted in evidence.

The rules of evidence prohibit either party from introducing into evidence the existence or nonexistence of insurance coverage. This includes health insurance, disability insurance, liability insurance, motor vehicle insurance, worker's compensation benefits, and unemployment compensation. No inference may be drawn from the failure of the parties to mention the existence or nonexistence of insurance coverage.

Likewise, you may not consider or speculate on whether the plaintiff has received benefits from other sources in connection with the alleged injury or harm. This includes health insurance coverage, any benefits provide through the Veteran's Administration and any other insurance benefits. The law does not permit you to make any deduction from the plaintiff's damages to reflect benefits he may have received from other sources. This is so because plaintiff may be required to repay such other sources from any award made in this case. Your duty is to determine damages based only on the evidence presented at trial and the legal instructions I give you.

You may not consider any publicity, advertisements or news articles about lawsuits in general or the effect, if any, that your verdict might have on others.

In other words, on the issue of damages, the only proper consideration is what amount of money will fully, fairly and adequately compensate the plaintiff for the injuries Mr. Meehan has sustained as you find from the evidence.

Statements Of Counsel: The amount of damages suggested by counsel is not evidence in this case. A specific request for a total dollar amount made by plaintiff's counsel is simply a request for recovery. In the event you find for the plaintiff, the amount of the verdict must be based solely on the evidence presented during the course of the trial and the law, which I have given to you.

XII. Conclusion

In conclusion, ladies and gentlemen, let me say that this case is important to all of the parties. The principles of law that I have given to you are intended to guide you in reaching a fair result. You are to exercise your judgment and common sense, with honesty, understanding and due deliberation. As I said before, you should decide this case without fear, without passion, without prejudice, and without sympathy. It is your highest duty as officers of this Court to conscientiously determine a fair and just result in this case.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each and every juror agree with the verdict. In other words, your verdict must be unanimous; all twelve jurors must agree.

As you deliberate, try your best to work out differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

You should each think for yourself about the evidence and the law. You should each speak up and let your fellow jurors know your opinions, views, and positions. You should each listen carefully and keep an open mind as to what your fellow jurors have to say. And you should make a reasonable effort to reach a unanimous agreement.

In a few moments, we will randomly select a foreperson. The foreperson acts much like the chair of a committee. He or she should make sure that you take up the issues that I have described, and should make sure that each juror has full opportunity to present his or her opinions and arguments.

If any questions concerning the law should arise during your deliberations, the foreperson should write the questions out and hand them to the court officer. The officer will bring them to me, and I will respond.

Unlike verdicts in criminal cases, which are delivered in open court, a verdict in a civil case such as this one is given in writing and delivered to me by the court officer to be opened in the presence of counsel in chambers. When you have reached a verdict, knock on the door of the deliberation room and deliver the written verdict to the court officer in the furnished envelope.

May 3, 2024



Andrew R. Schulman,
Presiding Justice

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

VERDICT FORM

Part I: Limitations

Question 1

Does the jury unanimously find that plaintiff David Meehan has proven by a preponderance of the evidence that, prior to January 11, 2017:

He did not discover, and would not have discovered through the exercise of reasonable diligence, both:

(i) That he had been injured; and

(ii) That DHHS's conduct (i.e. "actions," "failures to act" and/or "customs and practices") caused his injuries.

_____ Yes

_____ No

Explanation

-A "Yes" means that this suit timely in its entirety.

-A "No" answer means that this lawsuit is untimely and will be dismissed.

Instructions

If you answered "No," then skip Parts II, III, IV and V of this form. The foreperson should sign the last page of this form.

If you answered "Yes," go onto Part II.

Part II: Liability

Question 2

(Do not answer this question if your answer to Question 1 was “No.”)

Does the jury unanimously find that plaintiff David Meehan has proven by a preponderance of the evidence that:

(a) He was injured during the time he was a resident at YDC; **and**

(b) DHHS’s Negligence and/or Breach of Fiduciary Duty was a substantial factor in bringing about one or more of his injuries (i.e. a legal cause of the injury). (Please see the jury instructions for an explanation of “legal causation,” “negligence” and “breach of fiduciary.”)

_____ Yes

_____ No

Explanation

A “Yes” answer means that you have found DHHS liable.

A “No” answer means that you have found that DHHS not liable.

Instructions

If you answered “No,” please skip Parts III, IV and V. The foreperson should sign the last page of the verdict form.

If you answered “Yes,” please go on to Part III.

Part III (Damages)

Question 3

(Do not answer any questions in this Part III (e.g., Questions 3, 4 or 5) if your answer to either Question 1 or Question 2 was “No.”)

Please state the full amount of money (in words and numbers) that the jury unanimously finds Mr. Meehan has proven to be full, fair and adequate compensation for his injuries.

\$ _____ (in numbers)

_____ (in words)

* * *

Question 4

Does the jury unanimously find that David Meehan has proven, that he is entitled to enhanced compensatory damages?

_____ Yes

_____ No

INSTRUCTION

If your answer to Question 4 was “No,” skip Question 5 and go on to Part IV.

If you answer to Question 4 was “Yes,” please answer Question 5.

* * *

Question 5

6. Please state the full amount of money (in words and numbers) that the jury unanimously finds as enhanced compensatory damages.

\$ _____ (in numbers)

_____ (in words)

PART IV (Apportionment)

Question 6

(Do not answer any questions in this Part IV (e.g., Questions 6, 7, 8 and 9 if your answer to either Question 1 or Question 2 was “No.”)

With respect to only those injuries for which you have found DHHS liable,

Were David Meehan’s injuries caused by DHHS’s knowing and active participation with others in a common plan or design that caused harm to David Meehan.

_____ Yes, as to all injuries for which DHHS is liable

_____ No, as to all injuries for which DHHS is liable

_____ Yes, as to one or more but not all of the injuries for which DHHS is liable.

Explanation

A defendant is liable for 100% of the monetary damages for injuries caused by its knowing and active participation with others in a common plan or design that caused harm to the plaintiff. Please also see the explanation following Question 9.

Instruction

If you answered “Yes, as to all,” skip Questions 7, 8 and 9 and go on to Part V of this verdict form.

If you answered “No, as to all” skip Question 7 and go on to answer Question 8.

If you answer “Yes, as to one or more,” go on to answer Question 7.

* * *

Question 7

(Answer only if the answer to Question 6 was “Yes, as to one or more.”)

Viewing all of the plaintiff’s injuries for which DHHS is liable as a whole, what percentage of plaintiff’s injuries were caused by DHHS’s knowing and active participation in a common plan or design?

_____ %

Question 8

With respect to **only** those injuries for which (a) you found DHHS liable, but (b) were **NOT** caused by DHHS's knowing and active participation with others in a common plan or design,

Has DHHS proven by a preponderance of the evidence that any of the conduct (acts and omissions) of any of the following individuals was **also** a substantial factor in bringing about the injuries:

Bradley Asbury	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Frank Davis	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Jeffrey Buskey	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Stephen Murphy	<input type="checkbox"/> Yes	<input type="checkbox"/> No
James Woodlock	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Richard Brown	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Gordon Thomas Searles	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Instruction

If you answered "No" with respect to all seven of these individuals, please skip Question 9 and go to Part V.

If you answered "Yes" with respect to one or more of these individuals, please go on to Question 9.

QUESTION 9

With respect to only those injuries for which (a) you found DHHS liable, but (b) which were **NOT** caused by DHHS’s knowing and active participation with others in a common plan or design,

What is the proportionate share of fault in bringing about the injuries that you attribute to each of the following entities and individuals. You must state your answer in percentage terms. The total number must equal 100%.

Please place a zero or the abbreviation “N/A” (for not applicable) for individuals whose conduct you did not find, in response to Question 7, to be a substantial factor in bringing about any of the injuries.

Name	Percentage
DHHS	%
Bradley Asbury	%
Frank Davis	%
Jeffrey Buskey	%
Stephen Murphy	%
James Woodlock	%
Richard Brown	%
Gordon Thomas Searles	%
ALL TOGETHER	100%*

*Of that portion of plaintiff’s compensable injuries that was not the result of DHHS’s knowing and active participation in a common plan or design that caused harm to the plaintiff.

EXPLANATION

For injuries that were not caused a defendant’s active and knowing participation with others in a common plan or design that caused harm to the plaintiff:

The defendant is liable for 100% of the monetary damages if the defendant’s proportionate share of fault is 50% or greater.

However, if the defendant’s proportionate share of fault is less than 50%, the defendant is liable for only its proportionate share of the monetary damages based on fault.

Part V

Question 10

How many “incidents” does the jury unanimously find the plaintiff has proven by a preponderance of the evidence. For the purpose of this instruction an “incident” is 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 claims in response to question 1.

_____ (numerals)

_____ (words)

DATE: _____

Jury Foreperson for a unanimous jury