THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

No. 217-2020-cv-00026

David Meehan

v.

New Hampshire Department of Health and Human Services et al

THIS DOCUMENT PERTAINS ONLY TO PLAINTIFF MEEHAN'S INDIVIDUAL CASE

THIS DOCUMENT DOES NOT PERTAIN TO CONTRACTOR DEFENDANTS

OBJECTION TO EMERGENCY MOTION FOR HEARING

The Department of Health and Human Services ("DHHS"), by and through counsel, submits this objection to the Plaintiff's Emergency Motion for Hearing:

1. Late on Sunday, May 5, 2024, Plaintiff's Counsel submitted a filing styled "Emergency Motion for Hearing" asking this Court to "promptly convene a hearing on Monday, May 6, 2024 to address" emails purportedly sent to Plaintiff's Counsel by the jury foreperson and another juror after the verdict was rendered and the jury was released. Emergency Mot. p. 4.[1]

2. While Plaintiff's Counsel contend that the jury's unambiguous finding of one "incident" in response to Question 10 on the Jury Verdict Form "is conclusively against the weight of the evidence and is logically inconsistent with the jury's award of $38 million in damages," Emergency Mot. ¶ 10, the Emergency Motion does not seek any relief other than a hearing.

[1] Plaintiff's Counsel filed this motion after an earlier request for a hearing, filed on Saturday, was rejected because it did not comport with the Court's rules.

3. DHHS strongly disagrees that there is any legal basis for relief with respect to the jury's finding of one incident. The jury's response to Question 10 is unambiguous. The emails attached to the Emergency Motion and supplement thereto, if credited, at most suggest that two jurors learned at some point after the verdict was delivered (from press reports or some other source) what that finding means in terms of the statutory cap on damages under RSA 541-B:14, I. This Court expressly ruled in this case that the jury was *not* to be informed about the statutory cap, and this ruling was not anomalous. Under New Hampshire precedents, juries generally are not, for example, informed of existence of an insurance policy, *see, e.g.*, *Zielinski v. Cornwell,* 100 N.H. 34, 37 (1955), or of the penalty a defendant may receive if convicted in a criminal case, *see, e.g.*, *State v. Blair*, 143 N.H. 669, 671 (1999). Courts in other jurisdictions have similarly ruled that juries are not to be informed of the existence of damages caps, *see, e.g.*, *Kodiak Island Borough v. Roe*, 63 P.3d 1009, 1016–17 (Alaska 2003); *Webster v. Grimwood*, No. 12-CV-144, 2013 Colo. Dist. LEXIS 2653, *3 (Mar. 20, 2013); *See Hively v. Edwards*, 278 Ark. 435, 646 S.W.2d 688 (1983) (where the Court stated that it has generally declined to put such information before juries feeling it might affect the outcome of the jury's deliberation to the detriment of one of the parties.); *State v. Bouras*, 423 N.E.2d 741, 744 (Ind. App. 1981); *Miller v. Utah DOT*, 285 P.3d 1208, 1217 (Utah 2012) ("The existence of a statutory cap on personal injury awards against the state . . . was not part of the [Plaintiff]'s theory of the case, nor was it the subject of any evidence relevant to the determination of [Defendant]'s negligence. In rejecting these instructions, the court properly confined the jury's consideration to applicable law."), and some jurisdictions have gone as far as to codify this prohibition in statute, *see, e.g.*, 42 U.S.C.§ 1981(c)(2); Md. Cod. Ann., Cts. & Jud. Proc. § 11-108(b)(2). To the extent Plaintiff's Counsel believe that this Court erred by not instructing the jury on the cap, then they are free to press any

preserved argument to that effect on appeal. But the notion that the jury might have reached a different conclusion as to the number of incidents it found based on the same evidence and the same legal instructions if it had known the legal effect of its finding is not grounds for relief. *See Bunnell v. Lucas*, 126 N.H. 663, 667-68 (1985) (where the Court found that testimony or affidavits of jurors are not admissible to impeach the verdict and are inadmissible when offered as a basis for setting the verdict aside.)

4. In the end, though, the Court should deny the Emergency Motion because it does not request any substantive relief, as required under Superior Court Civil Rule 11.[2]

5. Rule 11 provides "[a] request for court order must be made by motion which must (1) be in writing unless made during a hearing or trial, (2) state with particularity the grounds for seeking the order, and (3) state the relief sought." Super. Ct. Civ. R. 11(a).

6. Plaintiff's Emergency Motion does not contain any request for relief from this Court; it simply asks the Court to convene a hearing.

7. It would not be a good use of this Court's or the parties' time and resources to hold an expedited, seemingly open-ended hearing without any specific request for relief before the Court.

8. Rather, to the extent Plaintiff's Counsel take issue with the jury's verdict, they should clearly articulate and develop those issues and requests for relief in a written motion, and DHHS should have the opportunity to respond.

9. Thus, if Plaintiff's Counsel believe that the jury's unambiguous "finding of only one 'incident' is conclusively against the weight of the evidence and is logically inconsistent

[2] Should the Court require DHHS address all the potential arguments contained within Plaintiff's inadequately pled motion, DHHS requests leave to supplement this objection.

with the jury's award of $38 million in damages," Emergency Mot. ¶ 10—a proposition with which DHHS strongly disagrees—they should explain why they believe that is so and request a specific form of relief. Notably, though, the parties agreed that for this case, "the damages cap under RSA 541-B:14 would be equal to the total number of incidents found by the jury (or the Supreme Court) multiplied by $475,000. (Thus, by way of example, if the jury found 10 incidents, the cap would be $4,750,000). Counsel agreed to this in open court." *See* Order Regarding Stipulation as to the Applicability of RSA 514-B: 14 (*sic*) (May 2, 2024) (attached as Exhibit A).

10. If the relief that Plaintiff's Counsel seek is to poll the jury, as implied by the citations in the Emergency Motion, they are free to try to explain to the Court why they did not ask for a poll after receiving the verdict on Friday. They are further free to explain to the Court why that remedy is appropriate despite the jury's unambiguous finding of one incident on the Jury Verdict Form and the fact that the emails attached to the Emergency Motion, if credited, suggest that at least two jurors have now read press reports related to the case (which they were prohibited from doing during trial and deliberations) and are now aware of the statutory cap under RSA 541-B:14, I (which this Court specifically ruled they were not to be informed of). *See Breck v. Blanchard*, 27 N.H. 100, 103 (1853) (recognizing the danger in allowing "verdicts to be set aside upon a change of opinion by any juror after he had been exposed to improper influences" – a rule which dates back to *Tyler v. Stevens*, 4 N.H. 116 (1827), a case in which the defendant offered in support of his motion for a new trial the affidavits of five jurors indicating their misunderstanding of the trial court's instructions.).

11. Likewise, to the extent Plaintiff's Counsel wish to ask to for a new trial, as may also be inferred from the citations in the Emergency Motion, then they are free to explain to the

Court why that remedy is warranted when their real concern appears to be with this Court's ruling on what constitutes an "incident" for the purposes of RSA 541-B:14, I, and how that ruling is reflected on the Jury Verdict Form, which Plaintiff's Counsel were free to object to and are free to challenge on appeal if an objection was timely made.

12. And to the extent Plaintiff's Counsel want to seek an even more extraordinary remedy, such as allowing the jury to change its verdict as to the number of incidents, then they can try to explain to the Court how *that* is possible when, again, what constitutes an "incident" is a legal question that this Court resolved, the jury's finding of "one incident" is express and unambiguous, and the attachments to the Emergency Motion reflect that jurors have been exposed to press reports and informed of the statutory cap.

13. In the event Plaintiff's Counsel file a motion seeking a specific remedy, then DHHS can respond to any arguments raised and the Court can determine whether a hearing would benefit its analysis.

14. But it makes no sense to schedule a hearing now, with no request for relief before the Court and no clear articulation from Plaintiff's Counsel why they believe any relief is warranted.

WHEREFORE, New Hampshire Department of Health and Human Services, respectfully requests that this Honorable Court:

A. Deny the Plaintiff's Emergency Motion for Hearing; and

B. Grant such other and further relief as justice may require.

Respectfully Submitted,

New Hampshire Department of Health and Human Services; Department of Youth Development Services; Division of Children, Youth, and Families; Division of Juvenile Justice Services; and

Sununu Youth Services Center, a/k/a Youth Development Center and Youth Development Services Unit, f/k/a State Industrial School and Adolescent Detention Center

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: May 7, 2024

/s/ Brandon F. Chase

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CERTIFICATE OF SERVICE

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

/s/ Brandon F. Chase
Brandon F. Chase

Exhibit A

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

ORDER REGARDING STIPULATION AS
TO THE APPLICABILITY OF RSA 514-B: 14

The State takes the position that this individual case involves only a single incident within the meaning of RSA 541-B:14, I.

The plaintiff takes the position that there is a separate incident for each episode of each type of abuse. Thus, in the plaintiff's view an episode involving both sexual and physical abuse would be two incidents.

The court believes that the term "incident" applies to an episode of abuse. Both parties' positions were argued and are preserved.

The State objects to asking the jury to make incident by incident determinations of the amount of damages, in the event the jury rules against the State on limitations and liability. Instead, the State asks for the jury to determine damages for all incidents on a single line.

In return, the State agreed that for this case, in the event that the Supreme Court rejects the State's definition of "single incident," the damages cap under RSA 541-B:14 would be equal to the total number of incidents found by the jury (or the Supreme Court) multiplied by $475,000. (Thus, by way of example, if the jury found 10 incidents, the cap would be $4,750,000).

Counsel agreed to this in open court.

May 2, 2024
Date

Andrew R. Schulman
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 05/02/2024