THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Docket No. 217-2020-CV-00026

DAVID MEEHAN

V.

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

THIS PLEADING RELATES SOLEY TO DAVID MEEHAN'S INDIVIDUAL CASE

DEFENDANT'S OBJECTION TO

PLAINTIFF'S MOTION FOR INTERLOCUTORY APPEAL

The Defendant, the New Hampshire Department of Health and Human Services, by and through its counsel, the New Hampshire Department of Justice, respectfully objects to Plaintiff's Motion for Interlocutory Appeal ("*Motion*"). This Court should deny the *Motion* because Plaintiffs have failed to demonstrate that *any* of the requirements of Supreme Court Rule 8(1)(d) are met, and therefore interlocutory review is unwarranted.

A. STANDARD OF REVIEW

Interlocutory review under Supreme Court Rule 8(1)(d) is limited to:

> cases in which 'a substantial basis exists for a difference of opinion' on the legal issue involved and in which an interlocutory review will:
> 1. 'Materially advance the termination or clarify further proceedings of the litigation'; or
>
> 2. 'Protect a party from substantial and irreparable injury'; or
>
> 3. 'Present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.'

Gordon J. MacDonald, *Wiebusch on N.H. Civil Prac. & Procedure* § 60.16 (4th ed. Matthew Bender & Co.) (quoting Sup. Ct. R. 8(1)(d)) (cleaned up).

Interlocutory review is disfavored in New Hampshire. The New Hampshire Supreme Court "has expressed a *strong policy* that 'interlocutory appeals should be limited to *exceptional* . . . circumstances.'" *Plymouth Vill. Water & Sewer Dist., et al. v. Scott*, No. 217-2019-cv-650, 2020 WL 6325762, at *4 (N.H. Super. Ct. July 2, 2020) (quoting *Guyette v. C&K Dev. Co.*, 122 N.H. 913, 918 (1982)) (emphases added). The Supreme Court has "encourage[d] superior court judges to *look less favorably* upon parties' requests for interlocutory appeals in civil cases . . . and to exercise their appropriate function by rendering a final verdict *before* allowing the parties to bring their exceptions to us." *Piane v. Town of Conway*, 118 N.H. 883, 884 (1978) (emphases added). The New Hampshire Supreme Court prefers that a trial court fully develop the factual and legal record *through judgment*, so the parties can appeal in the normal course rather than pursuing interlocutory appeals, because this "policy better applies judicial resources." *Id.*

B. ANALYSIS

It is important that all are aware of the posture of the instant case prior to proceeding into specific analysis. This case was originally brought in 2020 and went to trial on April 8, 2024. On May 3, 2024, a jury verdict was rendered. Significant post-trial briefing immediately began, and continued for the next four months, eventually concluding on September 9, 2024. On November 4, 2024, this Court made its decisions – 1) the statutory cap of RSA 541-B is constitutional; 2) the statutory cap applies to this case; 3) Plaintiff is not entitled to partial judgment notwithstanding the verdict; and 4) Plaintiff is not entitled to an "Incidents" only trial.[1] The Court then stated that judgment would be made final ten days later on November 14, 2024. *See* Order on State Defendants' Motion to Apply Damages Cap Under RSA 541-B:14, I (Nov. 4,

[1] Plaintiff requested this specific relief at least twice. As noted in the Court's order on November 4, 2024, "[t]hat request was denied, and is denied again, for the reasons set forth above." *See* Order on Plaintiff's Motion for Partial Judgment Notwithstanding Verdict (Nov. 4, 2024) ("*Order – PJNOV*").

2024) ("*Order – Cap*"). In other words, the case has reached its conclusion in this phase of the litigation. On November 14, 2024, the day the Court was set to enter final judgment, Plaintiff filed three motions – a motion to reconsider, a motion to approve interlocutory appeal statement, and a motion to stay pending interlocutory appeal.

1. PLAINTIFFS HAVE NOT MET THE REQUIREMENTS OF SUPREME COURT RULE 8(1)(d).

Plaintiffs' *Motion* fails on the merits. As set forth above, interlocutory appeal is limited to circumstances where the appealing party can demonstrate that "a substantial basis exists for a difference of opinion on the question [to be appealed] *and* [that] an interlocutory appeal may materially advance the termination or clarify further proceedings of the litigation, protect a party from substantial and irreparable injury, or present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice." Sup. Ct. R. 8(1)(d) (emphasis added). Neither Plaintiffs' *Motion* nor their *Appeal Statement* passes this test.

a. Plaintiff Has Not Demonstrated a Substantial Basis For a Difference of Opinion.

Plaintiff's *Appeal Statement* is devoid of any meaningful argument related to the first prong of the test. Specifically, Plaintiff's counsel argues that a substantial basis for difference of opinion exists on the constitutionality of the damages cap in RSA 541-B:14, I, the superior court's authority to enter a partial judgment notwithstanding the verdict, and the superior court's authority to allow a partial retrial as to "Incidents" only. *See Appeal Statement* at 18. All of these issues have been settled by the New Hampshire Supreme Court. DHHS will address each in turn.

i. There is no substantial basis for a difference of opinion on the question on the constitutionality of the damages cap in RSA 541-B:14, I.

Plaintiff's sole argument related to the constitutionality of RSA 541-B:14, I is that a substantial basis for a difference of opinion exists because this question is one of first impression

– that the Supreme Court has never addressed the question of "whether the State's sovereign immunity defense can survive a jury finding that the State's conduct against Mr. Meehan was "wanton, malicious or oppressive." *Appeal Statement* at 16. The Plaintiff is incorrect. In *Opinion of the Justices* (1985), the Supreme Court found the statutory cap constitutional and required the waiver of sovereign immunity to allow suits against State actors for intentional torts not grounded on a reasonable belief in the lawfulness of the disputed act while acting within the scope of the actor's employment. *Op. of Justices*, 126 N.H. 554, 565 (1985). The New Hampshire Supreme Court has consistently followed this *Opinion of the Justices* since its issuance. *See* Reply to Second Motion to Dismiss Master Complaint (Index # 153) at 3–18 (discussing at length that Plaintiff's challenge to sovereign immunity generally fails).

Consequently, no substantial basis for a difference of opinion exists. "At the very core of sovereign immunity is the inherent right of the sovereign to be immune from private suit." *Nelson v. La Crosse County Dist. Atty. (In re Nelson)*, 301 F.3d 820, 826 (7th Cir. 2002) (citing *Alden v. Maine*, 527 U.S. 706, 715 (1999)). Part I, Article 7 reserves this right to the people as sovereign for their protection, and RSA 99-D:1 enshrines the right of sovereign immunity in statute.

In our State, waiving sovereign immunity "is the exclusive province of our legislature, subject to certain constitutional constraints." *LaRoche v. Doe*, 134 N.H. 562, 567 (1991). To accommodate these constitutional constraints, in 1985, the legislature passed RSA chapter 541-B, which operates as a broad waiver of the State's sovereign immunity. In doing so, the legislature sought an advisory opinion from the New Hampshire Supreme Court on the constitutionality of this waiver.

In *Opinion of the Justices*, 126 N.H. 554 (1985), a majority of the justices opined that the limitations on recovery under RSA chapter 541-B were constitutional. The opinion reviewed, in part, RSA 541-B:14, I, and the statutory damages caps. *Id.* at 567-69. At the time, the statutory damages cap provided for $250,000 per claimant and $2,000,000 per incident. The justices explained that "[t]he constitutionality of these limitations turns on whether 'the restrictions . . . place[d] on an injured person's right to recover' by these limitations 'be not so serious that [they] outweigh[] the benefits sought to be conferred upon the general public.'" *Opinion of the Justices*, 126 N.H. at 567 (quoting *State v. Brousseau*, 124 N.H. 184, 197 (1983) (Douglas and Batchelder, JJ., concurring specially)). The justices found "that this test is satisfied" and they therefore upheld "the per claimant and the per incident damage ceilings." *Id.* at 567.

In so finding, the justices explained that "[t]he authority of the legislature to set reasonable limits on damages recoverable against governmental entities is well established." *Id.* The justices observed that "the relationship between tort plaintiffs and governmental units was distinguishable from the relationship between plaintiffs and nongovernmental tortfeasors, and therefore held that the two classes of plaintiffs, in this respect, are not similarly situated." *Id.* at 568. "Among these distinguishing features is the fact that citizens have a legal right to influence the policies of their government, including its decisions on safety precautions, employee conduct, and the acquisition of liability insurance." *Id.* "[T]his special characteristic of the government-tortfeasor citizen-plaintiff relationship is present where the tortfeasor is the State." *Id.*

The justices also recognized 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." *Id.* That is certainly true of

the $38 million verdict in this case. "Recognizing the risk posed by unlimited liability exposure, as well as the unique characteristics of the State-tortfeasor citizen-plaintiff relationship," the justices held that "reasonable recovery limits are constitutionally permissible." *Id.* The justices further explained that the $250,000 per claim limitation adequately balanced the competing interests of the State and of the personal injury plaintiff, and that the $2,000,000 per incident limitation constituted a reasonable exercise of the legislature's authority. *Id.* at 568-69. In upholding the $2,000,000 per incident limitation, the justices observed that limitation could create harsh results: "If, for example, a fire attributable to the negligence of the State causes injuries to 100 people, the average amount of damages that could be recovered by each individual would be at most $20,000." *Id.* at 569. Nonetheless, the justices explained that the limit of $2,000,000 per incident was not "'so severe as to be very wide of any reasonable line of demarcation.'" *Id.* at 569 (quoting *Estate of Cargill v. City of Rochester*, 119 N.H. 661, 669 (1979)).

In 2007, the legislature increased the damage limitations in RSA 541-B:14, I to $475,000 per claimant and $3,750,000 per incident. These limitations represent a reasonable exercise of legislative authority in balancing the private, personal interest of a tort plaintiff in redress for their actionable injuries with the greater public interest of the State in predictable financial stability, the financial ability of the State to render important government services for its citizens, and the ability of the State to limit the impact on individual taxpayers. *See Opinion of the Justices*, 126 N.H. at 559-60.

As for the application of enhanced compensatory damages – there simply does not exist any substantial basis for a difference of opinion. RSA 541-B:14, I could not be clearer. RSA 541-B:14, I, provides:

> All claims arising out of a single incident against any agency for damages in tort actions shall be limited to an award not to exceed $475,000 per claimant and $3,750,000 *per any single incident*, or the proceeds from any insurance policy procured pursuant to RSA 507-B, whichever amount is greater; except that no claim for punitive damages may be awarded under this chapter. The limits applicable to any action shall be the limits in effect at the time of the judgment or stipulated settlement.

(emphasis added). Because the jury was expressly asked to find a number of incidents and expressly found one incident, the plaintiff's damages award is capped at $475,000 under RSA 541-B:14, I.

Additionally, and as set forth more fully in DHHS's Motion for Remittitur Relating to Enhanced Compensatory Damages, which DHHS incorporates in full by reference, an enhanced compensatory damages figure of $20,000,000 was simply not supported by sufficient evidence, nor was it consistent with the weight of the evidence. In this case, it amounted to nothing more than punitive damages, which are explicitly disallowed in New Hampshire and under RSA chapter 541-B. *See* RSA 541-B:14, I ("[N]o claim for punitive damages may be awarded under this chapter.").

That this Court reached a legal conclusion with which Plaintiffs are unhappy does not justify an interlocutory appeal, rather than an appeal after final judgment in due course – something Plaintiff have the ability to do not in months or years, but in days. Final judgment needs to be entered, and it can be done promptly.

ii. There is no substantial basis for a difference of opinion on the question of Plaintiff's motion for partial judgment notwithstanding the verdict to strike the one question of the jury's verdict that Plaintiff does not like.

Plaintiff's counsel seeks interlocutory review "with respect to the ruling on Mr. Meehan's motion for partial judgment notwithstanding the verdict," stating that "New Hampshire case law supports using partial judgment notwithstanding the verdict to sever the erroneous part of a

special verdict from the nonerroneous part and enter judgment on the latter." *See Appeal Statement* at 16. Not so. A key aspect to any case against the State or its agencies is the number of incidents. *See* RSA 541:B-14. This is an issue that Plaintiff's counsel have long been aware of. One cannot simply remove the jury's finding of "one Incident" while enforcing the remainder of the verdict because it is a key finding of the verdict – it is the statutorily applied limiting factor. There is simply no difference of opinion on this.

Plaintiff's counsel made the decision to litigate the case as they did and are dissatisfied with the result. The onus was on them to prove their case before the jury, including on the number of Incidents, and, unanimously, the jury found that they proved no more than a single incident by a preponderance of the evidence. As the defendant has previously argued, this finding of a single incident was consistent with the prevailing case law across the country, consistent with the way Plaintiff tried his case and consistent with the structure of the jury instructions as a whole.[2] *See e.g.*, DHHS's Obj. to Pl.'s Mot. for PJNOV or, in the Alt. to Set Aside the Verdict as to Number of "Incidents" (filed May 23, 2024) ("*DHHS's Obj. to PJNOV*") at 1-11; DHHS's Memo in Response to the Court's May 22, 2024, Order (filed August 21, 2024) ("*DHHS's Memo*") at 18-24. Plaintiff's counsel's failure to prove additional incidents is not a reason to undo the jury's verdict.

Plaintiff had a full and fair opportunity to present his case to the jury. His counsel presented a theory of negligent supervision from which one or more injuries flowed. As stated at length in *DHHS's Memo* and *DHHS's Obj. to PJNOV*, the jury could have rationally viewed that evidence as establishing a single Incident. The jury could have also rationally concluded that

[2] This Court even proffered its own reasoning behind the verdict stating, "Indeed, to be honest, although the jury was told to write down the number of 'incidents' it may have just assessed liability based on the gestalt of the evidence. This was certainly how plaintiff's experts when about assessing the breadth and scope of plaintiff's emotional injuries." *See Order – PJNOV* at 10.

Plaintiff's counsel proved no more than one Incident out of several and could have found Plaintiff not credible as to many of his allegations. *See Order – PJNOV* at 9-10. In short, the verdict is supported by sufficient evidence and the weight of the evidence supports the verdict reached.

As for the cases that Plaintiff's counsel cites to – they are all inapposite. For example, in the case of *Plummer v. Currier*, 52 N.H. 287 (1872), the Court ruled that the plaintiff was entitled to judgment based on the jury's itemized valuations of the crops, minus the hay which was improperly included. *Id*. at 295. The Court deducted the price of the hay from the jury's verdict because the hay was attached upon the writ against the plaintiff and there was no exception to it, *id*., meaning that the plaintiff had no rights to the hay and the jury should not have awarded money related to it. *Id*. at 298. Plaintiff's counsel cites to the end of the case where the Court opines that "[i]t is true, they passed upon one matter not involved in the case; but all the facts necessary to a perfect verdict were specially found, and the court can plainly see for what sum judgment should be rendered." *Plummer v. Currier*, 52 N.H. 287, 298 (1872). That is not the case here.

In *Tucker & Stiles v. Cochran*, the Court found that the jury even though it went "beyond their jurisdiction" by awarding costs, it did "not affect the residue of the verdict" as their findings "relating to costs is merely void and may be rejected as surplusage." *Tucker & Stiles v. Cochran*, 47 N.H. 54, 57 (1866). That, too, is not the case here. The question related to Incidents on the jury's verdict is perhaps the most impactful question that they could have answered due to the statutory cap of RSA 541:B-14, I. By altering that finding, the Court would absolutely be "affect[ing] the residue of the verdict." *Contra Tucker & Stiles*, 47 N.H. at 57.

And, lastly, the *DeRoy v. Capp* case arose from a collision between the plaintiff's motorcycle and the defendant's car. *See De Roy v. Copp*, 123 N.H. 13, 14 (1983). At the end of the trial, the jury returned a verdict for the plaintiff in the amount of $5,900[3], but also inserted the words "not guilty" on the verdict form. *Id*. The Supreme Court found that the trial court had erred in limiting a new trial only to damages, as the "not guilty" language on the verdict form and conflicting liability evidence[4] did not resolve the parties' comparative liability with sufficient clarity for the trial court to limit a new trial to the question of damages without risking a miscarriage of justice, stating that "[t]his is therefore not a case where all of the evidence viewed most favorably to the opponent so overwhelmingly favors the moving party that no contrary verdict based upon that evidence could ever stand. *Id*. at 17 (internal quotation marks omitted). This, too, is not the instant case.

None of the federal cases Plaintiff's counsel cited to support any substantial basis for a difference of opinion on this issue either. *Mycogen Plant Sci., Inc. v. Monsanto Co.*, 243 F.3d 1316 (Fed. Cir. 2001) is cited for the premise that "if a jury returns a verdict that contains portions that may be inconsistent, the law does not state that the verdict must be thrown out immediately and a new trial ordered." *See Appeal Statement* at 17 (citing to *Mycogen Plant Sci., Inc. v. Monsanto Co.*, 243 F.3d at 1326). In a few words – that is not what happened in this case. In this case, the Court stated:

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[3] The plaintiff's medical expenses and lost wages were $4,400, and he claimed additional damages for permanent injuries, pain, and suffering. *De Roy v. Copp*, 123 N.H. 13, 14 (1983).

[4] The defendant testified that he had stopped and checked for traffic before proceeding, but did not see the plaintiff's motorcycle – arguing that it was the plaintiff who was liable. *De Roy v. Copp*, 123 N.H. 13, 14 (1983). Plaintiff was unable to testify about the circumstances of the accident because he had lost his memory temporarily as a result of it. *Id*. at 16. Instead, he testified to some general information – his age at the time of the crash, how long he had his license, etc. *See id*.

> 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.

See Order – Cap at 2; *compare to De Roy v. Copp*. 123 N.H. at 17. The Court also stated, in denying Plaintiff's motion for a new trial regarding the number of "incident[s]," that resubmitting the evidence to a new jury for a new finding regarding the number of "incident[s]" could "not be done" because "[t]here is no way to determine what 'incidents' . . . the first jury found were proven by a preponderance of the evidence." Margin Order on Pl.'s Mot. for New Trial as to Number of "Incidents" (October 31, 2024) ("*Order – New Trial*") at 3 (*incorporating by reference* "May 22, 2024 Order").

As for Plaintiff counsel's citations to *Floyd v. Laws*, 929 F.2d 1390, 1397–99 (9th Cir. 1991), and *Am. Cas. Co. of Reading, Penn. v. B. Ciancolo, Inc.*, 987 F.2d 1302, 1305 (7th Cir. 1993), (*Appeal Statement* at 17), the Incident finding was a necessary finding of the jury. The Court cannot simply wipe it from existence as Plaintiff's counsel continue to request as it would completely alter the jury's verdict to one which would be inconsistent, unenforceable, (*contra Floyd v. Laws*, 929 F.2d at 1397–99), and would *not* be a "legitimate or viable finding[ ] of fact." *Contra Am. Cas. Co. of Reading, Penn. v. B. Ciancolo, Inc.*, 987 F.2d 1302, 1305 (7th Cir. 1993).

There is no "perfect verdict" that was "specially found" without the Incident finding of the jury. *See Plummer*, 52 N.H.at 298. Similarly, and contrarily to the cases cited by Plaintiff's counsel, the jury's finding of "one Incident" would indeed "affect the residue of the verdict." *See Tucker & Stiles*, 47 N.H. at 57.

iii. There is no significant basis for a difference of opinion with respect to the ruling on Plaintiff's motion for a new trial as to "Incidents" only.

A new trial on "incidents only" is inconsistent with the law and the facts of this case for at least two reasons. First, the issues of liability and damages are intertwined—the amount of any damages awarded by a new jury would be dependent upon the number of Incidents found to have been legally caused by DHHS. If there is a new trial, it cannot be presumed that $38 million is the amount of damages regardless of the number of proven Incidents.

The *Eichel* and *Wright* cases cited by Plaintiff in their *Appeal Statement*, as well as their *May 13 Motion*, are inapposite because in those cases damages for only one incident were at issue. *Eichel* involved the adequacy of damages to a 22-year-old plaintiff with a life expectancy of 55 years who had suffered permanent disfigurement and injuries in an automobile accident. *Eichel v. Payeur*, 107 N.H. 194, 195-97 (1966). *Wright* similarly involved the adequacy of damages for a single automobile accident. *Wright v. Dunn*, 134 N.H. 669, 674 (1991) (defendant was liable for medical damages during the period of time from his accident with plaintiff up to the time of a separate, second accident in which the defendant was not involved). Therefore, unlike here, the damages in *Eichel* and *Wright* could be tried separately because the amount of damages was not dependent on the number of accidents found by the jury in any new trial. They are here.

Second, to the extent the jury's liability finding and damages award are, as Plaintiff contends, inconsistent, (and, for the reasons explained *DHHS' Memo* and *DHHS' Obj. to*

P.JNOV, which DHHS incorporates by reference in full, they are not) "the inconsistency does not, standing alone, indicate where the error lies." *Daigle v. City of Portsmouth*, 129 N.H. 561, 576 (1987) (addressing the problem of successive inconsistent civil verdicts). Either the liability finding or the damages finding could have been in error and it is not for this Court to guess which one was correct. Rather, any new trial must be on *both* liability and damages – something that Plaintiff refuses. *See Pl.'s Supplemental MOL in Support of (1) Obj. to the State's Mot. to Apply Damages Cap, (2) Mot. for PJNOV, and (2) [sic] Alt. Mot. to Set Aside Verdict* at 9 (" . . . Mr. Meehan does not request (nor agree to) a de novo new trial on liability and damages (or even just on damages) . . . .").

b. Plaintiffs Have Not Demonstrated That Interlocutory Appeal May Materially Advance The Termination or Clarify Further Proceedings of The Litigation.

Even if this Court determines that there is a *substantial* basis for a difference of opinion on the above questions – which it should not as the case law could not be clearer – it should still deny the *Motion* because a substantial basis is a necessary, but not sufficient, condition under Supreme Court Rule 8(1)(d), and Plaintiff's counsel have not satisfied the Rule's other requirements. Plaintiff's counsel have not coherently explained in their *Motion* why any of the other requirements are met. For the reasons set out below, none of the requirements of the Rule is satisfied here.

Plaintiffs must explain "why an interlocutory appeal may [i] materially advance the termination or [ii] clarify further proceedings of the litigation." Sup. Ct. R. 8(1)(d). Interlocutory review of the Court's *Orders* will not terminate Plaintiff's case. What will terminate Plaintiff's case is if this Court simply certified the verdict that is before it and Plaintiff followed the normal course of appealing to the New Hampshire Supreme Court.

Plaintiffs do not seriously attempt to explain why interlocutory appeal will clarify further proceedings in this litigation—at least, why a disfavored, extraordinarily late interlocutory appeal will provide any more or different clarity than an appeal in the preferred, normal course. Immediate resort to interlocutory appeal of every novel question is not the policy of New Hampshire courts. Instead, "superior court judges" are asked "to look less favorably upon parties' requests for interlocutory appeals" in preference for their "exercise [of] their appropriate function by rendering a final verdict before allowing the parties to bring their exceptions to" the Supreme Court. *Piane*, 118 N.H. at 884. *See also, e.g.*, *State v. Doyle*, 117 N.H. 789, 791 (1977) ("Such transfers of questions of law to the supreme court in advance . . . of trial in the superior court under our de novo appeal system where motions may be renewed are a misapplication of judicial resources.").

In fact, allowing an interlocutory appeal would not necessarily have *any* streamlining or clarifying effect on this case because this case is at the end of its superior court path. And, if the Supreme Court does not side with Plaintiffs, or declines "in its discretion" to accept an interlocutory appeal even if this Court allows Plaintiffs to seek one,[5] Sup. Ct. R. 8(1), the case will be remanded for this Court to then resolve Plaintiff's Motion for Reconsideration. The case will simply be delayed by months or years, a result that is not useful to the parties or this Court. The most efficient way to handle this case is for this judge to certify the verdict and let parties bring an appeal in the normal course. *Piane*, 118 N.H. at 884.

[5] And the defendant will oppose the acceptance in the New Hampshire Supreme Court as well.

c. Plaintiffs Have Not Demonstrated That Interlocutory Appeal May Protect Them From Substantial And Irreparable Injury.

Plaintiffs do not argue that this factor compels allowing an interlocutory appeal. Indeed, their *Motion* demonstrates the opposite. The only thing an interlocutory appeal accomplishes, other than to unnecessarily divert time and resources away from a proper appeal, is to keep alive claims for as long as possible. It is hard to conceive how it is a substantial and irreparable injury to Plaintiffs *not* to delay a ruling that would obviate the need for an interlocutory appeal in the first place. The *only* thing that Plaintiff's counsel points to is the potential health implications of a full retrial. *See Appeal Statement* at 19. A full retrial, however, is something that may occur whether there is an interlocutory appeal or not because Plaintiff will have an opportunity to bring the same exact appeal in the normal course once final judgment is rendered. And, although Plaintiff has multiple times expressly rejected the idea of a new trial de novo, (*see e.g.*, *Order – PJNOV* at 10[6] and Pl.'s Supplemental MOL in Supp. of (1) Obj. to the State's Mot. to Apply Damages Cap, (2) Mot. for PJNOV, and (2) [sic] Alt. Mot. to Set Aside Verdict at 9)[7], he has recently (and for the first time) asked for one, albeit in an improper way. *See* Pl.'s Mot. to Reconsider (filed Nov. 14, 2024). In other words, if health implications are the sole basis for this prong, Plaintiff's argument is undercut by his recent request to have a new trial *de novo*. *See id*.

d. Plaintiffs Have Not Demonstrated That Interlocutory Appeal May Clarify an Issue of General Importance in The Administration of Justice.

Plaintiffs argue nothing more than a truism: binding precedent from the Supreme Court will bring consistency to trial courts, who otherwise would engage in their own analysis of the

[6] Where the Court stated, "Plaintiff has asked only for a new trial on the issue of incidents. That request was denied, and is denied again . . . ."

[7] Where Plaintiff, for the third time, requested a trial on "Incidents" only and stated that " . . . **Mr. Meehan does not request (nor agree to) a de novo new trial** on liability and damages (or even just on damages) . . . .") (emphasis added)

relevant law. This is true for every legal issue. It is not an "exceptional" circumstance warranting interlocutory review by the Supreme Court. *Plymouth Vill. Water & Sewer Dist.*, 2020 WL 6325762, at *4. Indeed, as discussed above, these concerns are *less* salient here when the vast majority of the cases are pending in a single court in front of a single judge. And, once the final verdict is rendered, Plaintiff can simply bring his appeal in the normal course in mere days.

The administration of justice is best served by the accretion over time of thoughtful decisions of trial courts, not a premature race to the Supreme Court. As the New Hampshire Supreme Court has instructed, preferring the trial courts' "exercise [of] their appropriate function by rendering a final verdict" is "a policy [that] better applies judicial resources" than a rush to interlocutory appeal. *Piane,* 118 N.H. at 884. *Accord, e.g., Arizona v. Evans,* 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting) ("We have in many instances recognized that when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court."); *see also* Order on Master Motion to Dismiss at 8 ("[T]he last 900 years of practice [has been a period] in which individual cases are decided on concrete facts, one case at a time, allowing for the slow accretion of precedent.").

WHEREFORE, for the reasons set forth above, DHHS respectfully requests that this honorable Court:

A. Deny Plaintiff's Motion for Interlocutory Appeal; and

B. Grant such further relief as the Court deems just and proper.

[*signature block to follow*]

Respectfully Submitted,

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

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: November 25, 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