STATE OF NEW HAMPSHIRE

ROCKINGHAM, *ss.* SUPERIOR COURT

CASE NO. 217-2020-CV-00026
and all consolidated YDC and YDSU CASES
DAVID MEEHAN

v.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.

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**(IN RE YDC AND YDSU LITIGATION)**
**(JUDGE SCHULMAN ASSIGNED CASES)**

**OBJECTION TO THE STATE'S MOTION TO STAY ALL TRIALS**

*"The best way to avoid trying cases is to try cases."*
*--Schulman, J. (quoting an unidentified former superior court judge)*

In August 2024, shortly after the landmark $38 million verdict in *David Meehan v. State of New Hampshire, et al.*, the first verdict in the YDC/YDSU consolidated litigation, and following extended briefing and argumentation regarding how this Court should process the hundreds of similar regrettable cases that would follow, the Court publicly acknowledged an axiom well known to all trial lawyers—the only way to clear an enormous backlog of cases is to schedule them for trials. By applying pressure to both parties, the Court would force them to either resolve their differences or present them to a jury.

The Court's resulting Case Structuring Order of August 15, 2024 ("August 2024 CSO"), set in place an ambitious discovery and trial schedule for all cases assigned to Judge Schulman.[1]

[1] Per the Court's direction at the January 27, 2025, status conference, Plaintiffs recently filed a motion to amend the August 2024 CSO to propose a specific slate of plaintiffs for the trial dates previously listed by the Court in 2025 and 2026. Not surprisingly, the State objected to that motion. Plaintiffs' reply in further support of their case scheduling proposal will be filed contemporaneously with this objection as Plaintiff anticipates the Court will wish to consider both motions together.

In the seven months since that order, the parties have worked diligently to comply with its demanding requirements. The State's present motion to stay all trials is in effect a motion to reconsider the Court's thoughtful and reasonable August 2024 CSO. This Court should summarily deny the State's motion for the reasons set forth below:

1. The State asks the Court to stay all YDC/YDSU trials but allow the parties to proceed in all other litigation tasks and preparations (i.e., discovery) until the New Hampshire Supreme Court decides the two *Meehan* appeals. The State anticipates the Supreme Court will provide guidance on the appropriate construction of the term "single incident" for purposes of applying the sovereign immunity cap in RSA 541-B:14, I (instituting a damages cap of $475,000 per claimant "per any single incident"). The State's argument on appeal is that the "incident" in these YDC abuse cases is the State's breach of its duty of care, such that a breach of fiduciary duty can only be considered a single incident even if it caused many separate harms. Under the State's theory, a child raped 200 times by State employees would be limited to recovering only $475,000. In other words, the State would get a pass on 199 rapes—an absurd result. For example, in Mr. Meehan's case, the State seeks to slash the jury's award of $38 million down to $475,000.

2. For purposes of the present motion, the State argues that proceeding with trials while this legal question remains pending with the Supreme Court will result in wasted effort by the parties and the Court. The State proposes to use the idle time without trials to proceed with discovery and other appropriate pre-trial preparations.

3. The State's arguments are disingenuous and reveal, once again, the State's sole unifying strategy for dealing with these cases: **delay**. In its August 2024 CSO, this Court already considered these issues and unambiguously declared its view (paraphrased here) that justice delayed is justice denied. The August 2024 CSO instituted a thoughtful plan for moving the

YDC/YDSU cases forward on a reasonably timely basis, and the State did not object or move to reconsider it at the time. Nothing has changed in the seven months since that order that would warrant the Court reversing course now.

4. The Court's August 2024 CSO implicitly recognizes that each of the more than 1,300 plaintiffs in the YDC/YDSU consolidated cases (all of whom allege various forms of child abuse while in the custody and control of the State) have an important substantive right, under part 1, article 14 of the New Hampshire Constitution, to a "prompt" judicial remedy. *See Pet. of N.H. DCYF*, 175 N.H. 596, 601 (2023) (holding that the constitutional right to tort recovery is an "important substantive right" that may only be impaired if the government can satisfy intermediate scrutiny); N.H. Const. pt. 1, art. 14 ("Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; *promptly*, and *without delay*; conformably to the laws.") (emphasis added).

5. The New Hampshire Supreme Court has specifically recognized that "the lapse of time inherent in extended litigation [can] rise to a constitutional violation in a given case." *Opinion of the Justices*, 137, N.H. 260, 268 (1993); *see also Commonwealth v. Beckett*, 366 N.E.2d 1252, 1256 (Mass. 1977) (construing analogous "prompt justice" provision of the Massachusetts Constitution and declaring "we will not tolerate court congestion as an adequate ground for denying a reasonably prompt trial to a defendant who actively pursues his constitutional right to such a trial").

6. These constitutional imperatives were surely in mind when the Court admonished the parties that their dueling case scheduling proposals were both too anemic for different reasons. *See* August 2024 CSO at 1-4 (rejecting the parties' proposals and invoking the "the law's delay"

from *Hamlet* and the fictional *Jarndyce v. Jarndyce* from *Bleak House*). The Court's literary references sent a clear message: this Court would do its level best to ensure that justice is **not** denied by delay. While the Court's scheduling approach requires a great deal of work by both plaintiffs and defendants and their respective teams of lawyers (not to mention the Court and its staff), the Court noted that Plaintiffs' counsel had "signed on for this work" and the State "certainly has the means to litigate tort claims against its constituent agencies." *Id*. at 1. The Court is correct.

7. In the face of the massive backlog of plaintiffs seeking to prove their claims in a judicial forum, this Court exercised its broad discretion[2] to devise a demanding but equitable plan. The State got some of what it had asked for—an aggressive schedule to obtain substantive disclosures and other reasonable discovery across the class of plaintiffs—while Plaintiffs got some of what they asked for—an aggressive but reasonable trial schedule that would give as many as 13 Plaintiffs the opportunity for a trial over nine trial dates between March 2025 and October 2026, including at least one consolidated trial. *See* August 2024 CSO at 11-25. Plaintiffs were given the opportunity to start the process of moving some bellwether claims forward in court (with earlier-filed claims generally getting higher priority), while the State was given the opportunity to kick the tires on the broader class of plaintiffs, but not to such an extent that the State could effectively disable Plaintiffs' counsel under a tsunami of discovery. *See id*. at 10.

[2] New Hampshire trial courts have "broad discretion" to manage the proceedings on their docket. *In re Conner*, 156 N.H. 250, 252 (2007) (citing *Murray v. Developmental Servs. of Sullivan County*, 149 N.H. 264, 268 (2003) (broad discretion afforded the trial court in managing and supervising discovery and ruling on the conduct of the trial); *Blevens v. Town of Bow*, 146 N.H. 67, 72 (2001) ("The manner and timing of the trial of all or part of the issues in an action is a question of justice and convenience within the discretion of the trial judge")); Gordon J. MacDonald, *Wiebusch on New Hampshire Civil Practice and Procedure* § 45.01 (4th Ed. Matthew Bender & Co.) (2024) (stating that the "conduct and control of the trial is committed to the discretion of the judge" and that the trial judge's "rulings and orders relating to the conduct of the case will not be overturned except for error of law or the unsustainable exercise of discretion").

8. The State's present motion to stay trials asks the Court to renege on that deal by taking away Plaintiffs' path to trials while allowing the State to continue to harry Plaintiffs with endless discovery without the promise of any trials at the end of that discovery. The State's purpose is clear—delay and burden. The State seeks to break Plaintiffs' ability and resolve to pursue relief through a torpid and costly war of attrition. Already we have seen this play out in tangible ways. For example, forty-five Plaintiffs in the YDC/YDSU consolidated litigation have died over the past three years. They will never see their day in court. Similar attrition has also occurred amongst the witnesses and perpetrators of the abuse. Of the eleven abusers indicted because of the YDC Task Force investigation, one of them (Gordon Thomas Searles) died last year, and another (Frank Davis) was adjudged incompetent to stand trial. The longer Plaintiffs wait for trials, the more their claims age in ways that prejudice their ability to prove their claims.

9. Furthermore, the State's stated purpose for its proposed stay—avoiding wasteful retrials that might become necessary if the Court applies erroneous jury instructions regarding the meaning of the term "single incident" as applied to the sovereign immunity cap in RSA 541-B:14, I—is pretextual and was already considered and rejected by this Court. *See* August 2024 CSO at 5 ("While it would be preferable to have precedential New Hampshire Supreme Court rulings on [several important disputes of law], the lack of such rulings is not grounds to delay these cases[.]"). Regarding the "single incident" issue in particular, the Court observed that even if the Supreme Court rejects this Court's construction of "single incident" and adopts the State's view, "new trials would not be required, because the cap could easily be applied." *Id*. That is to say, if the *Meehan* appeals result in a Supreme Court ruling that a "single incident" is the State's breach of its duty of care, there will be no factual issue necessitating a retrial. Any cases decided during the pendency

of the *Meehan* appeal could be reopened or remanded for the Court to apply the cap in accordance with the Supreme Court's guidance.

10. There are at least three other possible outcomes of the *Meehan* appeals. First, it is possible that the Supreme Court avoids ruling on the "single incident" question. Second, it is possible (perhaps even probable) that the Supreme Court affirms this Court's analysis, which reasonably charted a middle ground between the State's and Plaintiffs' competing constructions. *See Meehan v. State*, Order of May 22, 2024 ("May 2024 Order"), at 32-34. In either of these two scenarios, a stay of all trials will accomplish nothing but wasting time. Likely a year or more would pass without having moved any cases to trial.

11. Third, the Supreme Court may adopt Plaintiffs' construction of "single incident," or a similar construction that is more analogous to the standard employed in charging assaults criminally. *See* May 2024 Order, at 27-31 (analyzing Plaintiffs' proposed jury instruction on the "incident" question); *C.J. v. State, Dep't of Corr.*, 151 P.3d 373, 383 (Alaska 2006) (holding that each of three different forms of penetration that all occurred during one attack constituted a separate "incident" under Alaska's sovereign immunity damages cap). But even in this scenario, careful trial preparation and jury instruction can mitigate the distant risk of any need for retrials.

12. Determining how many tortious "incidents" occurred is a mixed question of law and fact that need not be submitted to the jury. *See* Gordon J. MacDonald, *Wiebusch on New Hampshire Civil Practice and Procedure* § 48.03 (4th Ed. Matthew Bender & Co.) (2024) ("Mixed questions of law and fact are decided by the judge when the issue of law predominates over the factual part of the question.") (citing *Great Lakes Aircraft Co. v. Claremont*, 135 N.H. 270, 282 (1992) (applying the deferential "clearly erroneous" standard of review in affirming trial court's ruling on a mixed question of law and fact)). But even to the extent the Court prefers to separate

the law from the facts, it can craft the special verdict form so that the jury finds the specific predicate facts—i.e., the precise number, nature, and timing of assaults—without asking them to make the legal conclusion as to the number of "incidents." Armed with the jury's factual findings as to the predicate facts, as well as post-trial briefing and arguments by the parties, the Court can then determine the number of "incidents" proven at trial. To the extent the Supreme Court later disagrees with this Court's legal construction, a retrial would be unnecessary as the jury's special verdict form would supply the facts needed for the Court to re-calculate the number of incidents under the Supreme Court's construction—a purely legal undertaking.

13. Moreover, this discussion presupposes that a trial plaintiff would pursue an appeal based on the number of incidents where the plaintiff had already won a verdict, and the cap was applied utilizing this Court's interpretation. Many things could happen post-verdict, including a potential settlement, or a plaintiff satisfied with their verdict waiving their appeal to streamline the appellate process and avoid any risk of the case being remanded for a new trial. This is all to say that the State's concern here is highly speculative. Even if the Supreme Court disagrees with this Court's construction of "incident," it remains very unlikely that any case tried pending the appeal would require a second trial.

14. In sum, while it is difficult for a trial court to foresee all contingencies and predict exactly what the reviewing court will ultimately command, the parties and the Court, all of whom are well informed regarding the hotly contested issues, can take reasonable steps to minimize the likelihood of a need for retrials. In fact, it is highly speculative and unlikely that a future Supreme Court decision will cause a need to retry cases. Considering Plaintiffs' constitutional rights to prompt justice, and because the State's concerns about inefficiency and waste are highly

speculative and remote, this Court should waste no time in denying the State's motion and should instead act quickly on Plaintiffs' motion to amend the August 2024 CSO.

WHEREFORE, for all the foregoing reasons, Plaintiffs respectfully request that the Court DENY the State's motion to stay and grant such other relief as the Court deems necessary and just.

Respectfully submitted,

**PLAINTIFFS**

By and through counsel,

Dated: March 24, 2025


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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2025, a true and accurate copy of this Objection has been served electronically through the Court's e-service system on all attorneys and all other parties who have entered electronic service contacts (e-mail addresses) in this case.

*/s/ W. Daniel Deane*
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