

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

CASE NO. 217-2020-CV-00026

DAVID MEEHAN

v.

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

AND ALL CONSOLIDATED CASES

(IN RE YDC and YDSU CONSOLIDATED LITIGATION)

*\*\* This notice pertains to more than five cases \*\**  
*\*\* This notice pertains to the Contractor Defendants \*\**

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**JOINT NOTICE OF PROPOSED AGENDA FOR  
STATUS CONFERENCE OF NOVEMBER 15, 2024**

In aid of the status conference set for the YDC and YDSU Consolidated Cases (“YDC Consolidated Cases”) on November 15, 2024, Plaintiffs<sup>1</sup> and State Defendants<sup>2</sup> hereby submit the following Joint Proposed Agenda. Plaintiffs and State Defendants submit that the following issues and pending motions should be addressed during the status conference, in addition to whatever other issues the Court wishes to address:

1. **Legal Effect of Entry into YDC Claims Administration and Settlement Fund (“Settlement Fund”)/Notices of Filing of Claim and Partial Stay.** Plaintiffs wish to address the

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<sup>1</sup> For purposes of this motion, “Plaintiffs” means all Plaintiffs in this consolidated litigation represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP.

<sup>2</sup> Although this Joint Notice references various issues relating to the Contractor Defendants, the Contractor Defendants are not parties to this Joint Notice. The Contractor Defendants may have additional issues that they intend to raise at the Status Conference.

Court's recent orders concerning the effect of filing of Notice of Filing of Claim and Partial Stay after a plaintiff elects to enter the Settlement Fund, including the process by which a Notice of Filing of Claim and Partial Stay comes to be filed on the docket.

2. **Status of upcoming trials.**

- a. **March 3, 2025:** The Michael Gilpatrick case (217-2021-CV-00479), which the Court has identified as the presumptive case to be tried in March 2025, remains on track for trial. Plaintiff Gilpatrick has served Enhanced Rule 22 disclosures and expert disclosures, and the State Defendants have served their Enhanced Rule 22 disclosures. By Order dated November 6, 2024, the Court denied the State Defendants' motion to dismiss; the State Defendants have not yet filed an Answer. Discovery remains ongoing. The parties are in the process of scheduling a mediation of the Gilpatrick case.
- b. **May 5, 2025:** Plaintiff Corinne Murphy (217-2021-CV-00499), who the Court identified as the presumptive plaintiff to proceed to trial in May 2025, has elected to pursue a claim in the Settlement Fund. A Notice of Filing of Claim and Partial Stay was filed in her case on November 7, 2024. It is Plaintiffs' position that given Plaintiff Murphy's decision to pursue a claim in the Settlement Fund, the next case to be tried after the Gilpatrick case should be the Natasha Maunsell case (217-2021-CV-00500). Plaintiff Maunsell has served Enhanced Rule 22 disclosures and expects to serve expert disclosures by December 1, 2024. By Order dated November 6, 2024, the Court denied the State Defendants' motion to dismiss the Maunsell case; the State Defendants have not yet filed an Answer.

c. **Subsequent trials.**

1. The parties have not yet stipulated to a case to proceed to trial in August 4, 2025. Thus, it is the State Defendants' position that the trials will proceed in docket order pursuant to this Court's ruling. The Plaintiffs identified in the chart at pages 23-25 of the Court's August 15, 2024 Case Structuring Order have served Enhanced Rule 22 disclosures, except insofar as those Plaintiffs have elected to pursue a claim in the Settlement Fund. It is the State Defendants' position that Enhanced Rule 22 Disclosures should be filed for all plaintiffs whose cases have not been stayed.
2. John Doe #1, who the Court identified as the presumptive plaintiff to proceed to trial following Plaintiff Maunsell, has not yet filed a claim in the Settlement Fund. However, his case was one of the original so-called "Trial 2" cases, the Court's consolidation of which remains on appeal to the New Hampshire Supreme Court. As yet, the Supreme Court has not issued a briefing schedule in that appeal.
3. John Doe #3, who the Court identified as the presumptive plaintiff to proceed to trial following John Doe #1, has not yet filed a claim in the Settlement Fund. His case was not one of the original so-called "Trial 2" cases, and is thus not subject to the pending appeal before the Supreme Court.

3. **Contractor Defendant Issues.**

a. **Status of pending and fully-briefed Contractor Defendant Motions to Dismiss.**

1. At present, Contractor Defendants have filed 269 motions to dismiss in these Consolidated Cases. These 269 motions pertain to 209 individual plaintiffs. 127 motions to dismiss of these motions were filed using the Court's 9A process.<sup>3</sup>
2. At present, 122 of these plaintiffs have objected to Contractor Defendants' motions to dismiss, and, in 99 cases, contractor defendants have replied. The Court has held or scheduled a hearing with respect to 22 cases.
3. State Defendants have not filed motions to dismiss for any individual plaintiffs other than the trial-track plaintiffs identified above.
4. This Court has, thus far, issued only decisions with respect to Contractor Defendants' motions to dismiss. *See John Doe #402 v. State et al.*, No. 217-2022-cv-00905 and *John Doe #533 v. State et al.*, No. 217-2022-cv-00831. In *John Doe #402*, the Court dismissed all of the plaintiff's claims against Mount Prospect Academy, Inc. ("MPA") with prejudice. In *John Doe #533*, the Court dismissed some, but not all, of the plaintiff's claims against MPA with prejudice.
5. Both John Doe #402 and John Doe #533 alleged they were physically assaulted by employees of a Contractor Defendant at the Contractor

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<sup>3</sup> The 9A process was outlined in the Court's procedural order dated December 22, 2023. Plaintiffs and Contractor Defendants have interpreted the stay as applying to all Contractor Defendant motions.

Defendant's licensed, privately-run facility. The crux of the Court's orders appears to be the Court's conclusion that "there is nothing subtle about a punch to the face," and that a Contractor Defendant's employee's physical assault of a child in the open leads, as a matter of law, to the conclusion that the child knew or should of known then of both his injury and its connection to a Contractor Defendant's breach of its fiduciary duty to create a safe environment for children placed at its facilities, negligent breach of its duty to protect children from such physical assaults, and the negligent hiring and supervision of that employee.

6. If the Court's calibration of the discovery rule and the motion to dismiss standard<sup>4</sup> is accurate, then many claims filed by many plaintiffs will be dismissed. If, however, the Court's calibration of the law and the standard is faulty, then these same plaintiffs' claims will not be dismissed.
7. This Court's decisions in *John Doe #402* and *John Doe #533* are at odds with Judge Kissinger's orders in Merrimack County. In that court, Judge Kissinger has denied a large number of motions to dismiss filed by the same Contractor Defendants, including MPA. *See, e.g., John Doe #553 v. State et al.*, No. 217-2022-cv-01081; *Jane Doe #106 v. State et al.*, No. 217-2023-cv-00135. In *John Doe #553*, for example, Judge Kissinger ruled that the plaintiff invoked the discovery rule, that the discovery rule presented a question of fact, and that the court was "unable to determine, as a 'matter of

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<sup>4</sup> While the Court originally envisioned an abbreviated summary judgment process for the Contractor Defendants' motion to dismiss, the Court later vacated that order. Nov. 14, 2023 Order, at 1.

law’ that he ‘discovered or in the exercise of reasonable diligence should have discovered’ the causal connection between his injuries and the defendants’ conduct.” slip op. at 5-7 (citing *Lamprey v. Britton Const., Inc.*, 163 N.H. 252, 258 (2012)).

8. There exists a clear and irreconcilable conflict between this Court and the Merrimack County Superior Court as to whether claims filed by child abuse survivors that fall outside the statute of limitations survive a contractor defendants’ motion to dismiss. Plaintiffs suggest that, as a matter of law, a plaintiff’s claims cannot be pretermitted if the plaintiff did not understand their physical abuse as abuse at the time it occurred (i.e. there *is* something subtle about a smack to the face) and the plaintiff did not understand that their abuser’s employer had an independent obligation to create a safe environment for children or protect a plaintiff from its employees.
9. Plaintiffs have sought two vehicles for appeal of this Court’s orders. In *John Doe #402*, the non-State Contractor Defendants included MPA, Nashua Children’s Home, and Easter Seals New Hampshire, Inc. Late last year, John Doe #402 moved this Court to designate the Court’s order granting MPA’s motion to dismiss as “final” for the purpose of New Hampshire Superior Court Civil Rule 46(c)(1). By doing so, the appeal to the New Hampshire Supreme Court would be considered a mandatory, rather than interlocutory appeal. The Court denied that motion without prejudice on January 18, 2024 on the premise that the Court would resolve the other motions to dismiss filed by Easter Seals New Hampshire, Inc. and Nashua

Children's Home in the meantime. It has been nearly a year since then and these other motions to dismiss are still undecided.

10. In *John Doe #533*, MPA is the only non-State Contractor Defendant. John Doe #533 filed a motion for reconsideration of the Court's order granting MPA's motion to dismiss on September 5, 2024. No. John Doe #533's motion for reconsideration remains pending. Depending on how that case is decided, a mandatory or interlocutory appeal could be taken to the New Hampshire Supreme Court.

- b. **Procedure for addressing Contractor Defendant Motions to Dismiss prospectively.** Given the gateway issues raised by this Court's orders in *John Doe #402* and *John Doe #533*, and the conflict between the courts as to application of the discovery rule, Plaintiffs wish to facilitate an interlocutory or mandatory appeal of the discovery rule issues to the New Hampshire Supreme Court, as well as a more efficient process for resolution of the common timeliness and failure to state a claim issues.
- c. **Trial track for Contractor Defendant cases.** To the undersigned's knowledge, the Court has not yet provided any scheduling orders with respect to Contractor Defendant cases pending in this Court.
- d. **Use of the 9A Process.** The parties understand that the Contractor Defendants would like to discuss reverting to the method for serving and filing motions specified in Superior Court Rule 11.

Respectfully submitted,

November 14, 2024,

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By and through counsel,

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**CERTIFICATE OF SERVICE**

I certify that on November 14, 2024, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (e-mail addresses) in this case.

*/s/ Mark Tyler Knights*

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Mark Tyler Knights, Esq.