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Bucks County Jury Awards \$14 Mil. for School Bus Accident

But Bigger Potential Battle Lies Ahead

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Of the Legal Staff

A record-breaking \$14 million Bucks County Common Pleas Court verdict awarded to a teenager who was run over by a school bus could turn into a test case

for Pennsylvania's \$500,000 cap on claims made against municipalities.

Plaintiffs' attorney Tom Kline, of Kline & Specter, said, "I always viewed [*Zauflik v. Pennsbury School District*] as a case that would be a vehicle for testing the cap" set out in a 1980s law.

According to the verdict sheet, the jury unanimously awarded Monday \$338,580.49 in past medical expenses, \$2,597,682.90 in future medical expenses and \$11.1 million in non-economic damages.

Kline argued that the cap encourages "negligent conduct."

While the cap was upheld by the state Supreme Court in 1986 on a 4-3 vote, Kline said that the issue may be ripe to be tested again, especially with a significant verdict arising out of a "conservative" jurisdiction like Bucks County.

While the General Assembly sets the law for statutory caps, "the courts ultimately determine whether a cap is just or unjust."

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(continued from page 1) Kline said.

Bucks County Common Pleas Court Judge Robert J. Mellon presided over the trial.

The defense attorneys were David S. Cohen and Kristy Fischer, of Mintzer Sarowitz Zeris Ledva & Meyers. Cohen, as well as the Pennsbury School District, did not respond to a request for comment Tuesday.

Plaintiffs' co-counsel were David J. Caputo of Kline & Specter and William L. Goldman, a Doylestown, Pa., attorney.

Plaintiff Ashley Zauflik lost her leg six inches above the knee, had fractures in her pelvis and her spinal column, and her abdomen crushed, because of the injuries caused after she was waiting for a school bus ride home on Jan. 12, 2007, when bus driver John McCleary put his foot on the wrong pedal and Zauflik and other students were run over by the bus, according to a transcript of Kline's opening to the jury. Zauflik was 17 at the time of the accident.

Because Zauflik was facing a spreading infection in the soft tissue of her leg, her parents "were literally given a choice between her leg and her life, and they chose to take her leg off," Kline said in his opening statements.

The school district stipulated to liability right before openings to the jury, Kline said in his opening.

The school district also stipulated that Zauflik had the \$338,000 in recoverable medical bills, Kline said in an interview.

Cohen, according to a transcript of his opening, said: "We agree, Ashley deserves reasonable compensation for her injuries. ... But one of the things and one of the reasons why you're all here is because you promised that you would be able to put aside the sympathy at the end of the day, at the end of the trial, and make a decision on the damages that were reasonable and necessary."

Cohen said that it would be most reasonable for Zauflik to receive damages for the use of two prostheses, one to wear in the shower and one to wear the rest of the day, and that Zauflik's pain and suffering damages should be tempered by the consideration that she has been able to return to ambulation, graduate from high school on time and take a trip with her family to Alaska, according to Cohen's closing to the jury.

At issue in the case then were Zauflik's damages.

Zauflik did not use the original prosthesis she was outfitted with, Kline said in an interview.

He told the jury in his opening that "she hated it. I could put it more politely and I could dress it up, but she hated it. She didn't like the way it smelled. She didn't like the way it felt."

There's a new technologically advanced prosthesis that Zauflik wants to use, Kline said in an interview, but the defense argued that "maybe she won't even wear it anyway."

The defense also said the new prosthesis would cost \$1.5 million, while the plaintiff said it would cost \$2 million, Kline said in an interview.

No offers were made, Kline said in an interview.

The school district is insured up to \$1 million, even though the statutory cap is \$500,000, Kline said in an interview.

Kline and his co-counsel plan to ask the school district board to make an exception from the statutory cap and to "compensate a horribly injured kid," Kline said.

Otherwise, they plan to challenge the legality and constitutionality of the cap, he said.