



*By Matt Fair*

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## **Pa. Municipal Tort Cap Violates Constitution, Court Told**

Law360, Philadelphia (May 06, 2014, 2:25 PM ET)  
-- A law that caps damages for political subdivisions in Pennsylvania at \$500,000 unconstitutionally barred a girl who suffered catastrophic injuries in a 2007 school bus accident from receiving the entirety of a \$14 million jury award in her favor, the state Supreme Court heard Tuesday.

**Thomas Kline of Kline & Specter PC, an attorney for plaintiff Ashley Zauflik, told the seven justices that the state Political Subdivision Tort Claims Act, which limits the liability of towns, counties, school districts, and other governmental entities to \$500,000 in damages, ran afoul his client's right to full compensation for her injuries as enshrined in the Pennsylvania Constitution's so-called open courts provision guaranteeing legal remedy for all individuals.**

**“Here, we have a classic case of discrimination based on the identity of the tortfeasor,” he said, noting that the trial judge in the case had taken note of the manifest unfairness of the legislative mandate that required him to reduce the \$14 million verdict. “You have the legislature holding the pen requiring him to do the remittitur.”**

A 17-year-old Zauflik was forced to have one leg amputated above the knee in January 2007, after she was struck by a runaway bus whose driver confused the gas and brake pedals. Zauflik filed suit in the Bucks County Court of Common Pleas in December 2011, and a jury awarded her \$14 million in damages.

However, a trial judge later granted post-trial motions by the district reducing the damage award to the \$500,000 allowed under the Tort Claims Act. He also agreed to add \$2,600 in delay damages to the \$500,000 award and \$5,000 in sanctions for the district's failing to disclose the existence of an \$11 million excess insurance policy that attorneys said they were not made aware of until after the jury trial concluded.

On appeal to the Commonwealth Court, a split three-judge panel upheld the modified damage award and rejected Zauflik's argument that the Tort Claims Act unconstitutionally prevented Pennsylvanians from winning compensation for injuries sustained at the hands of public entities. She argued that the ban infringed on her equal protection and due process rights.

The appeals court, however, pointed to a separate portion of the open courts provision, which allows claims to be brought against the state “in such manner, in such courts, and in such cases as the legislature may by law direct,” as grounds for upholding the General Assembly's ability to establish liability caps for political subdivisions.

Stephen Cozen of Cozen O'Connor, an attorney for the district, argued that the justices were bound by previous state Supreme Court decisions upholding the legislature's authority to place conditions on sovereign liability.

“Is this court prepared to ignore the rights of the General Assembly?” Cozen asked. “The legislature has an absolute, unfettered and unlimited right.”

Kline, however, said that the open courts provision applied strictly to the commonwealth's liability and not to the liability of political subdivisions.

Meanwhile, Justices Thomas Saylor and J. Michael Eakin questioned at what level the cap would represent a rational policy decision by the General Assembly so as to survive equal protection scrutiny.

“If the commonwealth allows suits but caps damages at a dollar, would that be rational or not?” Justice Saylor asked.

Cozen countered that the legislature could rationally set the cap at any amount given its recognized authority to entirely abolish liability under the open courts provision.

“If they can abolish liability, they can set it at any level,” Cozen said. “I'm not here to argue the rationality of \$1 or \$100,000.”

Cozen added that as a public policy matter, allowing unlimited damages against political subdivisions would create severely jeopardize their ability to buy and maintain insurance coverage. He noted that 34 states across the country have similar caps in place.

The justices said they would take the matter under advisement.

**Zauflik is represented by Thomas Kline of Kline & Specter PC.**

Pennsbury is represented by Stephen Cozen of Cozen O'Connor.

The case is Zauflik v. Pennsbury School District, case number 1 MAP 2014, in the Pennsylvania Supreme Court.