Case may break new ground

No matter what Bucks County Judge Robert Mellon decides, it seems clear the Pennsbury school bus crash case is headed to an appeal and potentially to the state Supreme Court.

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Follow the established state law or break unexplored legal ground — that is the choice facing a Bucks County judge as he mulls whether to reduce a more than $14 million jury verdict in the infamous Pennsbury school bus accident case.

Robert Mellon hinted Tuesday that it would take quite a bit of "self-discipline" on his part not to write a legal opinion. No matter what Mellon decides, it seems clear the case is headed to an appeals court and potentially the state Supreme Court, which last addressed — and upheld — state law limiting civil liability for state and local governments in 1986.

Ashley Zauflik

Post-trial arguments were held Tuesday in the case involving Ashley Zauflik, the Falls woman who lost part of her left leg after a school bus ran over her in 2007 while she was a 17-year-old student at Pennsbury High School. Among the issues Mellon will decide is whether to reduce the jury award to meet a $500,000 state cap for civil awards or strike down the school district's reliance on the state cap for its defense.

At the heart of the civil case involving Zauflik, 22, the most seriously injured of the 20 students hurt in the accident, is whether Pennsbury has a legal obligation to pay Zauflik the $14

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(*continued from page A1*) million verdict a jury awarded her last December. With interest, the total award is nearly $16 million.

Her attorneys believe the district is obligated, and maintain it could tap a $10 million excess liability policy it has to cover a substantial portion of the verdict.

Pennsbury, though, argued Tuesday that state law is clear. Its legal liability is limited to $500,000 per incident and Mellon must issue an order reducing the verdict to that amount, said attorney David Cohen, who represents the district through its third-party claims administrator.

Cohen added that the core issue that Zauflik's attorneys have raised post-trial — whether the cap is constitutional — is something that can be addressed by an appellate judge, not the trial court judge.

Whether the district had excess liability coverage of $1 or $10 million is irrelevant, Cohen said, since the state Supreme Court has held the purchase of insurance is not a waiver of the state cap. He also pointed out that civil plaintiffs do not have a "fundamental right" to full recovery of a verdict in a tort suit.

Zauflik's lead attorney, Tom Kline, however, argued that in providing student transportation services, Pennsbury acted outside its "core" education function, so the state cap should not apply in this case.

If Pennsbury contracted with a private bus service to transport students, the state cap would not apply, so by allowing Pennsbury to apply the cap means his client was not given equal protection under the law, Kline argued.

Cohen countered that his position is that Pennsbury has blanket protection under the state cap since all its functions are education-related.

In a separate motion Tuesday, Kline's co-counsel David Caputo also laid out why Mellon should penalize Pennsbury for failing to reveal the existence of the excess liability coverage in 2008 when it was required.

Caputo told the judge that Philip Silverman, a previous lead attorney for the district in the case, was told about the existence of an excess insurance policy less than a week after the bus accident. He cited as evidence two emails between the insurance adjuster and the insurance broker where Silverman was copied. Also copied in the email was the person in charge of the excess insurance policy.

In defense motions, Silverman has claimed that he had no recollection of being told the district has excess insurance coverage.

Caputo also pointed out that retired district business administrator Isabelle Miller admitted in a post-trial deposition that she did not review the discovery responses before she verified them in 2008. The responses failed to disclose the excess insurance coverage, which Miller knew existed, Caputo said.

"Did she know what she was signing?" Mellon asked.

"No," Caputo replied.

When asked by Mellon why lifting the state cap would be an appropriate penalty, Caputo replied that any sanction needs to have "teeth" to send a message to the legal community.

Pennsbury has vehemently denied it intentionally withheld information about the excess insurance policy. It also maintains that the existence of the policy is moot since jurors were not allowed to hear testimony about any insurance coverage during the trial.

The district also has previously pointed out that umbrella coverage only can be used to pay claims that fall outside the parameters of the state cap, such as a federal civil award.

On Tuesday, Cohen acknowledged that a third party — an independent insurance broker — notified the excess insurance carrier about its potential exposure six days after the bus accident, but district administrators and school board members did not know the policy existed until after the civil trial ended.

Cohen also argued that his predecessor Silverman only was copied on the emails that Caputo referred to. He also described the omission of the excess insurance policy information as unintentional, blaming the mistake on an insurance adjuster who failed to provide the information to attorneys.

"What they sent you is what they have at that point," Cohen said.

But his argument did not appear to sit well with Mellon. He asked Cohen whether he believes he had no obligation as the attorney to double-check the information to make sure it was complete and how it was obtained.

Cohen responded that he believes once the request is made to provide the information, his legal obligation is fulfilled.

When Mellon asked Cohen for his opinion on an "appropriate" sanction against Pennsbury, he initially replied "none," repeating the insurance policy had no bearing at trial.

Mellon responded by asking Cohen if he was suggesting the court should ignore that wrong information was provided a plaintiff?

"No harm, No foul? It's OK?" Mellon said, prompting Cohen to suggest a "minor" monetary sanction could serve as punishment.