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In \$7M Stipulated Verdict Against SEPTA, Kline Sees Vehicle to Challenge Damages Cap

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Attorneys for a plaintiff injured in a bus accident have secured a \$7 million verdict against SEPTA, the regional transit agency, in the Philadelphia Court of Common Pleas.

And Tom Kline of Kline & Specter, who represents the plaintiff, sees that win as a possible vehicle to mount a successful challenge to municipal damage caps in Pennsylvania.

Recent pronouncements from the state Supreme Court raised questions about caps on state or municipal liability. Kline said that raises the potential to finally break those caps, which have been in place for 40 years.

In the agreement, reached Friday, the Southeastern Pennsylvania Transportation Authority admitted negligence in a bus accident that injured plaintiff Hayley Freilich and agreed to the multimillion-dollar stipulated verdict. Because of limitations on recovery against the state or state agencies, however, that number is set to be reduced to \$250,000, the most an individual

can recover from the state under current law.

Kline, a founding partner at Kline & Specter, said he intends to challenge that cap, with an eye toward fast-tracking the case to the state Supreme Court. He said he and co-counsel Colin Burke and Chip Becker will appeal in the likely circumstance that SEPTA successfully submits a motion for the trial court to mold the verdict, at which point the plaintiff will file a petition for the high court to exercise immediate jurisdiction on the case.

The petition would be the plaintiff's second attempt to present the case to the state Supreme Court. The court denied an earlier request, which the plaintiff's attorneys submitted early in the litigation, before any trial had taken place.

If the justices agree to take up the case, captioned Freilich v. SEPTA, it would go before several justices who in past opinions voiced doubts over the fairness of statutory caps.

In a concurring opinion for the 2014 case Zauflik v. Pennsbury School District (which Kline also tried), now-Chief Justice Max Baer recommended legislative action revisiting the \$500,000 cap on recovery from political subdivisions.

Justices Debra Todd and Correale Stevens joined Baer in that opinion.

Baer again urged the General Assembly to reconsider the limit in another concurring opinion, joined by Justices Christine Donohue, Kevin Dougherty and Sallie Mundy, in the 2019 case Grove v. Port Authority of Allegheny County. Baer wrote that he viewed the cap as "a substantial injustice, and perhaps a constitutional violation."

"In the event that the Legislature does not so act," he wrote, "this court may be faced with a developed challenge to the statutory caps as violative of the constitutionally guaranteed right to a jury trial. If a plaintiff properly constructs a record to establish that the statutory caps place an onerous burden on his or her right to a jury trial, this court may be compelled to strike the cap, which could leave the commonwealth or the local governments exposed to full liability if, and until, new legislation is passed."

Kline said he hopes to present that challenge with Freilich. He said that the small fraction of the verdict covered by the \$250,000 allowed by current law creates a situation where "it's as though

there's no recovery at all. The right to recovery and the right to trial by jury is completely abrogated." He said that his team will continue to formulate more arguments for the appeal, but the constitutional right to a trial by jury will be at the center of his claim.

According to Kline, this case is more likely to succeed where prior cases have not because several justices have already acknowledged a need to examine the issue. "The Supreme Court has essentially invited a re-review of it," he said. He also noted that Freilich is unique in that SEPTA agreed that the verdict was reasonable, making challenges to the fairness of the compensation unlikely.

"I have always believed that the cap is unjust and unfair," said Kline, "and by limiting the amount of damages that a tortfeasor needs to pay that is less than the value that would be imposed by a jury promotes and encourages reckless behavior and negligent behavior."

Meanwhile in the General Assembly, a report is underway examining the liability caps. The \$250,000 limit from the state and the \$500,000 limit from local government entities were established in 1978 and 1980, respectively, and have since remained unchanged. That fact in conjunction with Baer's recommendations that the caps be reviewed led to a Senate resolution in June directing that a study be conducted.

That study, along with corresponding recommendations to the Pennsylvania Senate, is set to be released in April 2022.

Mark Gottlieb and Megan Shannon of Offit Kurman and Joshua Groff of Green, Silverstein & Groff represented SEPTA. Repre-

sentatives of SEPTA declined offer comment on the record.

Judge James Crumlish presided over the case.