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Attorneys Poised for High Court Appeal in Arguments Over State Damages Cap

Kline & Specter's Thomas Kline said his firm took on the case "to prove a point."

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What You Need to Know

- The Commonwealth Court heard arguments Monday in a challenge to Pennsylvania's cap on state liability.
- Plaintiffs attorney Thomas Kline said the case was crafted to answer the state Supreme Court's call for an as-applied challenge to the cap.
- Defense attorney Robert Palumbos said the high court already rejected the plaintiff's arguments in a previous case.

In oral arguments before a three-judge Commonwealth Court panel, **Kline & Specter's Thomas Kline** positioned his fight for plaintiff Hayley Freilich as a step toward victory in a decades-long struggle to challenge Pennsylvania's caps on state liability.

Monday's arguments, he acknowledged, were a pit stop on the road toward all but inevitable consideration from the state Supreme Court. He said the case, captioned *Freilich v. SEPTA*, was tailored specifically to answer the high court's call for an as-applied challenge to the liability caps.

He said his firm took on the case "to prove a point."

"Your job," he told the Commonwealth Court panel, "is to look at the case and say, 'Is this statute unconstitutional?'"

He told the judges he believed the case was bound to ultimately go before the justices, whom he predicted would find in his favor.



Thomas Kline, founding partner, Kline & Specter.

Pennsylvania law caps the state's liability at \$250,000 per individual and local governments' liability at \$500,000 per incident. The limits have remained the same since their creation in 1978.

Kline argued that the cap, as applied to Freilich, was "grossly unfair."

Freilich had reached a \$7 million stipulated verdict with SEPTA in October 2021, in which the transit agency admitted negligence for injuries she sustained in a bus crash. But, under the state liability cap, SEPTA moved to mold the award to \$250,000, and in March 2022, a Philadelphia judge said he was bound by the law to do so.

Kline contended that the expense of litigation in conjunction with the low liability caps make pursuing a jury trial in a suit against a governmental entity untenable. He argued that that violates Freilich's right to a jury trial and her right to seek a meaningful remedy for her injury.

SEPTA, represented by Duane Morris partner Robert Palumbos, argued that the high court had already closed the door on the plaintiff's arguments in a prior case

The plaintiff's arguments intentionally mirror the ones **Kline** and his team made in *Zauflik v. Pennsbury School District* nearly a decade ago, when the high court upheld the government liability cap and several justices wrote a concurrence inviting an as-applied challenge.

But Palumbos said nothing in *Freilich* would create a different outcome than *Zauflik*. He argued that Freilich did not present an as-applied challenge showing that the cap held her back from litigating her case because she had access to counsel willing to bring the case to trial.

Judge Michael Wojcik, at least, was not convinced, pointing to the fact that the case was explicitly crafted as a challenge to the liability cap.

Still, Palumbos argued that considering Freilich within an as-applied framework “would create a completely unmanageable situation for the judiciary.” He cautioned that judges would have to determine awards on a case-by-case basis, which “would result in complete variation across the board.”

Senior Judge Bonnie Brigance Leadbetter had voiced similar wariness of what damages would look like without the cap, saying to **Kline**, “You make a very persuasive argument, but what remedy can we impose?”

Kline said the stipulated verdict makes the remedy simple since SEPTA already agreed that Freilich’s injuries were valued at \$7 million.

“The only thing at issue here is whether an unconstitutional statute should stand in the way,” he said.