

## Challenge to State Damages Cap Lands Back in Commonwealth Court After High Court Denies Immediate Review

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Civil Appeals

Aleeza Furman

The state Supreme Court has declined to fast-track a challenge to Pennsylvania's liability cap for state agencies on Wednesday, instead returning the dispute over a gutted verdict against SEPTA to the Commonwealth Court.

The court denied plaintiff Hayley Freilich application for extraordinary relief, which sought to place the appeal of a Philadelphia judge's reduction of a \$7 million verdict directly before the justices.

**"I'm disappointed that a case of this public importance, especially as it pertains to the unfairness to Hayley Freilich, that the Supreme Court didn't take it now rather than later," said Kline & Specter's Thomas Kline, who represents Freilich alongside Charles Becker, Colin Burke and Ruxandra Laidacker.**

Freilich reached a stipulated verdict against SEPTA in October 2021, but in March, Judge James Crumlish III of the Philadelphia Court of Common Pleas molded the award to \$250,000, the maximum an individual plaintiff can receive from a state agency under current law. In his opinion, Crumlish said the reduction was "profoundly unfair," but he said he was bound by the law to enforce it.

A team of attorneys from Offit Kurman, Green, Silverstein & Groff and Duane Morris are defending SEPTA in the case, captioned Freilich v. SEPTA. A SEPTA spokesperson declined to comment.

**With the next phase of the fight set to play out in the Commonwealth Court, Kline said the denial of the plaintiff's application simply creates a longer path toward the high court ultimately changing the cap. Kline said five justices have already indicated their disapproval of the limit in prior opinions, and he said he is optimistic that his challenge will succeed.**

**"I believe that the cap is so grotesquely unjust and so obviously unconstitutional that there will come a day when the Supreme Court will agree with my now 22-year odyssey to have the court agree formally," said Kline.**

**Kline led a previous challenge to the \$500,000 cap on local governments' liability in Zauflik v. Pennsbury School District. The state Supreme Court upheld the limit in a 2014 ruling, but now-Chief Justice Max Baer filed a concurring opinion recommending legislative action to examine the cap. Baer later reiterated the request in a 2019 concurrence in Grove v. Port Authority of Allegheny County.**

The General Assembly answered Baer with Senate Resolution 2021-246, which directed the Legislative Budget and Finance Committee to conduct a study of the current limitations on liability.

The committee issued its report in June, recommending the General Assembly consider adjusting limits for catastrophic claims to match the purchasing power the caps had at the time of their 1978 creation. While the report suggested adjusting the cap for catastrophic cases, it advised that the current limit remain at its current amount for lesser claims.

The committee examined case studies of several plaintiffs impacted by the cap, including Freilich, and sought input from government entities.

The report's survey found over 90% of local government entities "agree or strongly agree that insurance coverage will become prohibitively expensive in Pennsylvania if damage caps are eliminated or increased based on inflation."

"For municipalities, their budgets would suddenly become chaotic to say the least," said Robert Heim of Dechert, who represented a group of state and city entities seeking to file an amicus curiae brief opposing extraordinary relief for

the plaintiff. The high court's Wednesday order denying the plaintiff's application dismissed the would-be amici's filings as well.

Heim said his clients opposed the attempt to circumvent the usual appellate progression, and they do not currently intend to get involved with the Commonwealth Court case. If the case goes to the Supreme Court, he said, they may revisit the matter.

The General Assembly report also found that between 2010 and 2020, 0.2% of 72,337 claims against the state neared the statutory cap, while 91% resulted in payments of \$4,999 or less.

"While that may be the case in a good part of the commonwealth, I think in the major cities, or at least in Philadelphia, that's not the case at all," said Heim. He said he does not think those numbers reflect how common three-digit verdicts are in venues like Philadelphia.

According to the report, an adjustment for purchasing power would raise the state cap to about \$1.04 million and the local government cap to about \$2.09 million.

**"In my view that's not the same as making someone whole ... and it's' not what were arguing for in the courts, but it would be a step forward," said Kline.**