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Justices Take Up Governmental Damages Cap Case

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The state Supreme Court has taken up the appeal of a student whose \$14 million verdict for injuries suffered when a school bus ran over her was slashed to \$500,000 under a statutory damages cap.

Allocatur was granted late Thursday afternoon in *Zauflik v. Pennsbury School District*, with the court taking up Ashley Zauflik's arguments over the constitutionality of the Political Subdivision Tort Claims Act that limits damages owed by governmental entities.

In her issues raised on appeal, Zauflik argued the liability cap violates equal protection principles by reducing a jury verdict by more than 96 percent solely because it was against a governmental entity and not a private institution. Zauflik further argued Pennsbury purchased \$11 million in liability insurance, paid for by the taxpayers who include her parents. She said she should be able to recover at least as much of the jury award as could be covered by that policy.

In additional arguments on appeal, Zauflik asked the court to

look at whether the liability cap violates her right to a jury trial, usurps the court's inherent power to rule on remittitur requests, violates the open courts provision of the state constitution by denying Zauflik full redress of her injuries and violates the state constitution's guarantee against liability limitations in matters outside of workers' compensation cases.

In July 2013, the Commonwealth Court, in a 2-1 decision, upheld the molding of the verdict to the \$500,000 statutory cap. Judge Renee Cohn Jubelirer, writing for the majority, said the circumstances of the case are tragic but "we are constrained by the precedential case law that has previously upheld the constitutionality of the statutory cap of the Tort Claims Act multiple times. It is the role of the General Assembly, not this court, to make the difficult policy decisions and enact them into law if such decisions receive the support of the necessary majority."

In her dissenting opinion, Senior Judge Rochelle S. Friedman said the cap may have infringed on Zauflik's constitutional right to juries in civil cases and that she would find the cap unconstitutional as it applies to Zauflik.

"This constitutional provision anticipates that a jury's award will not be hollow and that, in the event of a monetary award for a plaintiff, he or she will be entitled to receive the full benefit of the award," the dissent said. "Consistent with the inviolate right by jury is the inviolate right to receive the jury's award."

Thomas R. Kline of Kline & Specter, who represents Zauflik, said the case provides an opportunity for the Supreme Court to address for the first time certain constitutional issues related to governmental immunity.

"This has been a longstanding mission to have a case address the many inequities in the limitation of recovery on behalf of injured victims whose recoveries would not be limited in either other states or other circumstances," Kline said.

Thomas G. Wilkinson of Cozen O'Connor is one of the attorneys representing the school district.

"The Supreme Court has on several occasions in the past upheld the municipal tort claims limitation and there's no basis for altering that ruling now," Wilkinson said. "If the matter is to be re-examined, it would be for the legislature to do so with hearings and input from

the public and from affected municipalities."

A Bucks County jury awarded Zauflik \$14 million for pelvic injuries and the loss of her leg after a school bus driver hit the accelerator instead of the brake, striking her while she was standing on the sidewalk. Zauflik, who had been standing with a group of students, was the most catastrophically injured when the bus jumped the curb.

Among other binding precedent, Jubelirer wrote in July, is *Carroll v. County of York*, in which the Supreme Court held that it was a rationally based legislative judgment to make political subdivisions immune from liability even though the plaintiff in that case was barred entirely from recovery for her son's suicide while in the custody of a county detention home.

In another case, Jubelirer wrote, the Supreme Court held in *Smith v. City of Philadelphia* that the General Assembly could enact limits on political subdivisions' tort liability despite the limitation it placed on recovery for a gas explosion that killed seven.

While "the very tragic circumstances of this case weigh heavily on this court ... as an intermediate appellate court confronting significant and unwavering precedent, our role must be one of restraint," Jubelirer had said.

"In sum, whether the existence of the excess policy or a different governmental interest could be a factor that changes the balance of interests in the constitutional analysis involved in this case is intriguing, and perhaps appealing, it is not within this court's purview."