

By Cary Beavers
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Attorney for Pennsbury bus accident victim Ashley Zauflik asks Commonwealth Court to remove cap on government liability

PENNSBURY – A case before the state’s Commonwealth Court involving a Pennsbury student injured in a bus accident in 2007 could have implications on municipal and school district entities throughout the state.

An attorney representing Ashley Zauflik, who was injured when she was struck by a Pennsbury school bus in Jan. 2007, argued on Monday, Feb. 11 that a cap on damages involving governmental entities in Pennsylvania is unconstitutional.

The argument, made in front of the court, stems from the reduction of Zauflik’s original jury award of \$14 million to \$500,000, the maximum allowed under a statutory cap on damages when someone sues a governmental entity in Pennsylvania.

As a result of the accident, which occurred on the campus of Pennsbury High School, Zauflik’s left leg had to be amputated six inches above the knee.

In Dec. 2011, a jury of 8 women and 4 men unanimously awarded her \$14 million, an award Zauflik’s attorney, **Thomas Kline**, expected to be challenged by the school district. Kline was right.

The school district appealed the decision, and Judge Robert Mellon subsequently reduced the damages to \$500,000 in May in accordance with the cap.

“There is no dispute that the circumstances of this case create an unfair and unjust result,” Mellon wrote in his opinion. “Despite the inherent injustice that appears in this case, this court is constrained by precedent.”

But Mellon also wrote that it is his belief that an individual’s right to “full compensatory recovery” in a lawsuit is decidedly not outweighed by the government’s interest to preserve the public against unusually large recoveries in such cases.

“The court is of the opinion that a re-evaluation of the constitutionality of the statutory cap on damages on equal protection grounds is necessary,” he added.

Kline pointed out that Zauflik won’t even see the full \$500,000.

“She has to share the money with the others who were in the accident,” Kline said. “She has to cover the costs of the lawsuit and pay her attorney. She basically ends up with one or two percent of the jury verdict. That’s tantamount to governmental immunity.”

Kline is referring to the 1973 Pennsylvania Supreme Court decision that removed the immunity from lawsuits that government entities, such as a school district, had enjoyed.

In 1980, the state legislature passed a law that limits governmental liability to \$500,000 that still stands today. In 1986, a “divided” State Supreme Court found the cap to be constitutional, according to Kline.

“Prior to Ashley Zauflik, nobody had gotten a jury verdict [above the cap],” Kline said. “The cap is akin to immunity.”

Still, opponents of the cap’s removal say that, quite simply, school districts, townships and boroughs couldn’t afford verdicts as large as Zauflik’s. Further, they say, Zauflik and plaintiffs like her are barking up the wrong governmental tree.

“I suspect that if the cap was declared unconstitutional - notwithstanding 30 years of Supreme Court cases to the contrary - the General Assembly might be convinced to protect the Commonwealth and its subdivisions by adopting complete immunity,” Pennsbury School District attorney Stephen A. Cozen said. “It’s a case of asking for too much. Tom (Kline) and others should be making their case to the legislature, not to the courts.”

According to Kline, though, the legislature already has its fingerprints all over this case.

“The power to reduce verdicts is exclusively in the hands of the courts,” Kline said. “Here the legislature imposed a reduction by statute. The Constitution of the Commonwealth of Pennsylvania prohibits this.” All this led to Kline’s Commonwealth Court appearance last week. Kline vowed not to stop at the Commonwealth Court level, the second rung on the state’s three-level judiciary ladder.

“The next step is an appeal to the (state) Supreme Court, if we are unsuccessful in the Commonwealth Court,” Kline said.

Whether an appeal to the state’s highest court will be necessary might not be known for a while, said Stuart Knade, executive director of the Pennsylvania School Board Association.

“There won’t be a decision anytime soon,” Knade said. “The commonwealth court is pretty quick, but it could still be several months. The [Zauflik] family probably won’t get the decision they want from the commonwealth court.”

Knade referenced an “Amicus Curiae,” or “friend of the court,” filed by the PSBA as part of the case. The document spelled out the organization’s opinion on why the cap should be upheld.

Pennsylvania courts have not only upheld the cap, they have refused to even increase the amount, Knade said. In its Amicus Curiae, the organization said school districts, townships, boroughs and other governmental entities could be headed down a slippery financial slope should the court break from its history of upholding the cap.

“Were this Court to ... find that Section 8553 is unconstitutional ... it would foist a significant financial burden upon local governments -- i. e., the need to account for the prospect of unlimited tort liability -- at a time when they can ill afford it,” the document reads. ‘Further, such a decision would impact every citizen of the Commonwealth of Pennsylvania, since, as taxpayers, they will ultimately foot the bill for these uncapped and potentially boundless jury verdicts.’”

Cozen said if the cap is found unconstitutional, the fallout could negatively impact victims who find themselves in similar unfortunate circumstances.

“Everyone in the future is going to be completely and totally out of luck,” Cozen said.