

Posted: Friday, May 25, 2012

Judge reduces \$14 million jury award to \$500K in 2007 school bus accident suit

In an almost apologetic tone, a Bucks County judge Thursday ordered that the \$14 million verdict awarded a Falls woman injured in a 2007 Pennsbury school bus accident be reduced to \$500,000.

In his seven-page opinion, Judge Robert Mellon wrote that he had no choice but to follow state law in the civil case "... effectively reducing the jury's determination of fair and adequate compensation for the damages (Ashley) Zauflik suffered as a result of Pennsbury School District's negligence by 96 percent."

Zauflik, 22, lost part of her left leg after a school bus ran over her when she was a 17-year-old student at Pennsbury High School.

Pennsylvania limits the amount of civil damage awards against local governments and school districts to \$500,000 per incident. The liability cap has been a central issue in the civil case and it's one that Mellon commented on repeatedly in his opinion.

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

Mellon added that Pennsbury "voluntarily" undertook the responsibility of providing busing services for students, which is not required under state law. "In essence it chose to run its own private busing company," he wrote.

Had Zauflik been injured in a school district that outsourced transportation services to a private bus company, she likely would recover the entire jury award, he added.

The judge also added it was 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.

In his order, Mellon tacked on an additional \$2,661.63 in “delay damages” for a total judgment against Pennsbury of \$502,661.63.

He also found that Pennsbury officials intentionally withheld information in 2008 about a \$10 million excess insurance policy and ordered the district pay a \$5,000 penalty to Zauflik’s lawyers.

“I am pleased that Judge Mellon agreed with the \$500,000 limit on liability that our state Legislature had deemed appropriate,” Pennsbury school board President Allan Weisel said.

The school board will be addressing the issue of the \$5,000 fine with David Cohen, the attorney for the third-party claims administrator that is representing Pennsbury in the case. But the board had not decided if it’ll ask the insurance company to pay, Weisel added. He declined to comment on whether he thought the sanction was fair.

The Courier Times was unsuccessful in reaching Cohen for comment Thursday.

Pennsbury vehemently denied it intentionally withheld information about the umbrella insurance policy. It also argued that the policy’s existence was moot since jurors were not allowed to hear about any insurance coverage during the trial.

Zauflik’s lead attorney, [Tom Kline](#), expressed disappointment with the \$5,000 sanction against Pennsbury. He had requested Mellon sanction the district by striking down its reliance on the state cap as its defense in the lawsuit.

“The sanctioning is a finding that the school district did something wrong, but as everyone who has followed the case knows, my view is the sanction is disproportionate to the wrong that was done here,” Kline said.

As expected, Kline said he will appeal the order reducing the verdict to meet the state cap. He hopes to take the case before the state Supreme Court, which last addressed — and upheld — state law limiting civil liability for state and local governments in 1986.

Kline added that he found many points that Mellon wrote in his opinion encouraging and helpful in further pursuing the case in the higher courts.

“Judge Mellon is a very highly regarded jurist in our commonwealth and he didn’t say that a re-evaluation of the constitutionality is something that would be preferable or something that they should consider, he says in one word, it is necessary,” Kline said. “We couldn’t agree more.”