

## A Look at What's to Come: Looming Changes to the Pennsylvania Statutory Liability Caps

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Perhaps unsurprisingly for plaintiffs' and defense attorneys who have been following the ongoing saga related to statutory damages caps, the Pennsylvania Supreme Court granted an appeal in *Freilich v. SEPTA*, 302 A.3d 1261 (Pa. Commw. Ct. 2023) which seeks to challenge the constitutionality of the state's current caps on damages. Current Pennsylvania law, 42 Pa. C.S.A. § 8528 limits the damages recoverable against Commonwealth agencies by placing a statutory cap at \$250,000 per occurrence. Likewise, 42 Pa. C.S.A. § 8553 imposes a statutory cap of \$500,000 against a local political subdivision. The outcome of this long-anticipated appeal and further review by the Supreme Court could drastically change the current caps which have stood for the last 46 years.

In *Freilich*, the plaintiff was struck by a SEPTA bus which resulted in multiple surgeries, including a partial foot amputation. *Id.* at 1. Eventually, the parties agreed to a \$7,000,000 stipulated verdict. *Id.* at 3. Thereafter, SEPTA's post-trial motion to mold the verdict to conform with the \$250,000 cap was granted, and Plaintiff appealed to the Commonwealth Court. On appeal, Plaintiff argued that the §8528 cap was an unconstitutional violation of Plaintiff's right to a jury trial under Article I, Section 6, and a violation of her right to a remedy under Article I, Section 11 of the state Constitution because the entire molded verdict would be consumed by costs, fees, and insurance reimbursement claims. *Id.* at 8-9. Even though the Commonwealth Court affirmed the trial court's decision, the Court noted that it was empathetic to Plaintiff's cause; yet bound by the Supreme Court's decision in *Zauflik v. Pennsbury Sch. Dist.* *Id.* at 16-17. *Zauflik* was a similar case, argued by the same plaintiffs' firm, where both alleged constitutional violations put forth in *Freilich* were addressed. *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096 (Pa. 2014). There, the Pennsylvania Supreme Court in 2014 affirmed a decision to mold a \$14,000,000 verdict to the \$500,000 damages cap in 42 Pa. C.S.A. § 8553. *Id.* at 64. However, the majority noted in their opinion that state's General Assembly was better suited to address a potential change. *Id.* Despite rumors of a change from the General Assembly in recent years, the law has remained constant. In his concurring opinion in *Zauflik*, the late Chief Justice Bear felt it important to highlight his concerns regarding the statutory cap. Specifically, he noted the \$500,000 statutory cap on damages, which has not been increased since its enactment in 1978, violates the right to a jury trial as guaranteed by Article I, Section 6 of the Pennsylvania Constitution because it creates an onerous procedural barrier to an individual's right to a jury trial. *Id.* at 64-65. He also noted that extraordinary costs associated complex civil suits have exponentially increased since the statute's inception. *Id.* at 66.

Justice Baer's concerns from almost a decade ago may soon be the reason for change. Just this week, the Pennsylvania Supreme Court granted Plaintiff's appeal in *Freilich* to again contest the liability cap. Presumably spurred by the General Assembly's inactivity, the Pennsylvania Supreme Court has chosen to strike first. With multiple courts expressing frustration in their opinions, it will be interesting to see whether the Supreme Court attempts to elevate the caps to account for inflation, eliminates the caps as unconstitutional and mandates that the General Assembly re-fashion the statutes or places further limits on the application of sovereign immunity in tort actions.

Absent a new bright line ruling from the Supreme Court, we can surely expect plaintiffs' attorneys to continue to push for the elimination and/or elevation of these caps. State agencies and political subdivisions will quickly feel this effect, particularly when involved in a suit with multiple alleged tortfeasors, thus presenting another unique challenge. Our team at White and Williams LLP will continue to monitor developments in this case. In the meantime, state and local agencies should be cognizant of a looming change which could further increase their exposure in catastrophic injury cases.

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