

## Tipping Point! Are PA's Damages Limits for Commonwealth Agencies About to be Eliminated or Changed After 40 Years?

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The Supreme Court of Pennsylvania has continually declined to modify or eliminate these long-standing statutory caps which have remained unchanged since 1978 and 1980, respectively. The high court has previously held that this limitation on damages does not violate the Commonwealth or federal constitutions and determined that changing the law or eliminating the statutory damages caps falls within the purview of the Legislature. See *Zauflik v. Pennsbury School District*, 104 A.3d 1096 (Pa. 2014).

In 2018, the Court declined to hear two cases challenging the constitutionality of statutory caps, one of which is set to be appealed before the Supreme Court for a second time. *Freilich v. SEPTA* was first presented to the Supreme Court in 2018. Despite the fact that the case had yet to be scheduled for trial, the court declined to review it. Now that the case has a stipulated verdict over the statutorily capped amount, the plaintiff plans to appeal it again.

Plaintiff's counsel, Tom Kline, is petitioning for a second attempt to present the *Freilich* case to the state Supreme Court. The plaintiff and the Southeastern Pennsylvania Transportation Authority (SEPTA) reached an agreement wherein SEPTA admitted negligence in a bus accident that injured the plaintiff, Hayley Freilich. The damages resulting from the accident were stipulated to \$7 million dollars. However, because of the statutory caps on recovery against the state or state agencies, this amount will likely be molded by the court and reduced to \$250,000.

Kline plans to argue that the statutory cap on damages deprives a person seriously injured from their opportunity to have a trial by jury. Kline further believes that *Freilich* is unique in that SEPTA agreed that the verdict was reasonable and, therefore, any challenges related to the fairness of the compensation would be moot. Based on comments regarding statutory caps from previous cases decided by Chief Justice Max Baer, Kline believes the court has invited the opportunity for re-review of this matter. Chief Justice Max Baer along with Justices Debra Todd and Correale Stevens, have recommended legislative action revisiting the \$500,000 cap on recovery from political subdivisions. In fact, in a 2014 concurring opinion of *Zauflik v. Pennsbury School District*, Chief Justice Baer opined that caps are "a substantial injustice, and perhaps a constitutional violation."

The Pennsylvania General Assembly is currently reassessing this issue and drafting a report examining the long-standing liability caps. The report, along with corresponding recommendations to the Pennsylvania Senate, is set to be released in April 2022. The pending report from the General Assembly and the second appeal in the *Freilich* case before the Supreme Court appears to be forcing the issue surrounding statutory liability caps to a tipping point. It remains to be seen if there will be legislative or judicial reform on this critical issue of jurisprudence for the first time in over 40 years which would most certainly change the landscape of personal injury litigation in the Commonwealth of Pennsylvania.

If you have questions or would like additional information, please contact David Zaslow (zaslowd@whiteandwilliams.com; 215.864.6844) or Lindsay Miller (millerl@whiteandwilliams.com; 215.864.6294).

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