

## PA Supreme Court Declines to Consider Constitutional Challenge to Statutory Damages Cap Applicable to Commonwealth Agencies

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Pennsylvania law limits the amount of damages recoverable in tort actions against Commonwealth agencies and local agencies under the Sovereign Immunity Act and the Political Subdivision Tort Claims Act, respectively. Pursuant to 42 Pa. C.S.A. § 8528, damages recoverable against a Commonwealth agency are statutorily capped at \$250,000 per occurrence and pursuant to 42 Pa. C.S.A. § 8553, damages recoverable against a local political subdivision are statutorily capped at \$500,000.

As recently as 2014, the Supreme Court of Pennsylvania rejected a challenge to the constitutionality of the damages cap under the Political Subdivision Tort Claims Act and held that this limitation on damages did not violate the Commonwealth or federal constitutions. Accordingly, the court held that the Pennsylvania General Assembly was in a better position to change the law to modify or eliminate the statutory cap on damages in cases against Commonwealth governmental agencies. See *Zauflik v. Pennsbury School District*, 104 A.3d 1096 (Pa. 2014).

Last week, the Supreme Court declined to hear two companion cases, pursuant to the court's "King's Bench" appellate authority, which once again challenged the constitutionality of these statutory damages caps. The court denied these requests in *Freilich v. SEPTA*, 70 EM 2018 and *Schaller v. New Flyer of America, Inc.*, 69 EM 2018 in *per curiam* orders unaccompanied by an explanatory opinion. If they prevail at trial and are awarded damages in excess of the statutory cap, the plaintiffs/appellants in *Freilich* and *Schaller* may still raise their constitutional challenges on direct appeal.

Although the precise basis for the court's denial of the current appeals in *Freilich* and *Schaller* is unknown, given the Supreme Court's prior decision in *Zauflik*, it seems likely that upon further appeal in these cases, the court would, once again, defer to the General Assembly regarding the public policy considerations as to whether the statutory caps on damages recoverable from Commonwealth or local agencies in tort should be modified or eliminated. While the court appears to be resolute in its position, it is anticipated that the challenges will continue until the General Assembly is once again forced to reconsider this important and controversial issue.

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