

## MUNICIPAL LAW ALERT

### LOCAL GOVERNMENTS REJOICE: PENNSYLVANIA SUPREME COURT REAFFIRMS THE CONSTITUTIONALITY OF THE STATUTORY CAP ON DAMAGES IMPOSED BY THE POLITICAL SUBDIVISION TORT CLAIMS ACT

On November 19, 2014, the Pennsylvania Supreme Court issued a landmark ruling reaffirming the constitutionality of Section 8553 of the Political Subdivision Tort Claims Act. The case -- *Zauflik v. Pennsbury School District*, 1 MAP 2014 -- involved a then-teenage girl, Ashley Zauflik, who sustained severe and permanent injuries when a school bus owned and operated by an employee of Pennsbury School District ("Pennsbury") accelerated out of control onto a sidewalk and struck her. The jury returned a verdict in excess of \$11 million in favor of Zauflik and against Pennsbury. The common pleas court, however, molded the verdict to \$500,000.00 pursuant to Section 8553, which limits the amount of damages recoverable against a local government under the statute to an aggregate amount of \$500,000.00. The Pennsylvania Commonwealth Court affirmed on appeal.

On further review, a divided Pennsylvania Supreme Court affirmed. Zauflik raised various constitutional challenges to Section 8553, including that it violated Article III, Section 32 of the Pennsylvania Constitution and the Fourteenth Amendment to the United States Constitution. According to Zauflik, this was because, "[b]y classifying tort victims depending on the identity of the tortfeasor, the liability cap violates equal protection principles under strict scrutiny, intermediate scrutiny, and even 'rational basis' review." Appellant had also maintained that Section 8553 violated equal protection principles of the Pennsylvania and United States Constitutions "by preventing [her] from recovering at least \$11 million in applicable insurance that Pennsbury voluntarily purchased."

Writing for a unanimous Court, Chief Justice Castille disagreed. Preliminarily, Chief Justice Castille held that the existence, or availability, of insurance coverage was not relevant to the issue of whether Section 8553 passed constitutional muster. On this point, Chief Justice Castille reasoned that,

Obviously, Pennsbury -- which is currently protected under Section 8553 from tort liability in excess of \$500,000 in individual cases -- purchased its excess insurance coverage for risks other than lawsuits arising from personal injuries like [Zauflik's]. The mere purchase of such insurance coverage, aimed at other kinds of risks, does not entitle [Zauflik] to its proceeds as a constitutional matter. Nor does the purchase of such coverage somehow act as a waiver of the statutory cap.

*Zauflik v. Pennsbury School District*, 1 MAP 2014, *slip op.* at 39 (citation omitted).

Chief Justice Castille next rejected Zauflik's contention that the Court should employ a strict scrutiny standard of review when addressing the merits of her equal protection challenge. Chief Justice Castille noted that the Pennsylvania Supreme Court confronted a virtually identical

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constitutional challenge to Section 8553 in *Smith v. City of Philadelphia*, 516 A.2d 306 (Pa. 1986), and that a plurality of the Court adopted an intermediate scrutiny standard. Finding the rationale of the *Smith* plurality persuasive, Chief Justice Castille determined that intermediate scrutiny should be employed where Section 8553 is challenged on equal protection grounds.

Applying that standard, Chief Justice Castille wrote:

While we have genuine sympathy for [Zauflik's] individual situation (and particularly in light of the fact that the amount of the cap has not been increased, or adjusted for inflation, in the thirty-six years since its adoption), we conclude that [Zauflik] has not shown that the classification created by the Sections 8553 damages cap -- distinguishing between plaintiffs suing public tortfeasors and those suing private defendants -- clearly, palpably and plainly violates equal protection principles. The protection provided by the cap for local governments entities is closely related to important and legitimate legislative objectives[.]

*Zauflik v. Pennsbury School District*, 1 MAP 2014, slip op. at 43 (emphasis in original).

Chief Justice Castille therefore held that Section 8553's limitation on damages was constitutional under Article III, Section 32 of the Pennsylvania Constitution and the Fourteenth Amendment to the United States Constitution. Chief Justice Castille also found that Section 8553 was constitutional under Article I, Section 6, Article I, Section 11, Article III, Section 18, and Article V, Section 1 of the Pennsylvania Constitution.

For his part, Justice Baer authored a concurring opinion, in which he joined the majority opinion in its entirety, but wrote separately to explain a hypothetical scenario in which a personal injury victim could be able to prove that the statutory cap violated the victim's right to a jury trial, as guaranteed by Article I, Section 6 of the Pennsylvania Constitution.

The *Zauflik* decision represents a significant victory for local governments across the Commonwealth of Pennsylvania -- many of which have been burdened with rising costs, looming pension liabilities, and ever-shrinking finances in the wake of the Great Recession. Had the Pennsylvania Supreme Court found Section 8553 unconstitutional and overturned more than 25 years of precedent, the Court would have foisted upon local governments an uncapped tort liability scheme. This, in turn, would have exacerbated the fiscal problems presently facing local governments in Pennsylvania and could have driven some to bankruptcy. Local governments across the Commonwealth should thus breathe a collective sigh of relief.

*This **Municipal Law Update** is intended to keep readers current on developments in municipal law and is not intended to be legal advice. If you have any questions, please contact **Casey A. Coyle** at 215.851.6626 or [ccoyle@eckertseamans.com](mailto:ccoyle@eckertseamans.com).*