



**Stein v. Pennsylvania Turnpike Commission**  
**2010 Pa. Cmwlth. LEXIS 70**  
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**By: Robert G. Hanna, Jr., Esquire**  
**Lavery, Faherty, Young & Patterson, P.C.**  
**225 Market Street, Suite 304**  
**P. O. Box 1245**  
**Harrisburg, PA 17108-1245**  
**(717) 233-6633**  
**[rhanna@laverylaw.com](mailto:rhanna@laverylaw.com)**

Section 8522(b)(4) of the Pennsylvania statute providing for sovereign immunity provides:

(b) Acts which may impose liability. - - the following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

\* \* \*

(4) Commonwealth real estate, highways, and sidewalks. - - a dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, lease holds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency.

42 Pa. C.S.A. § 8522(b)(4).

Pennsylvania's governmental immunity statute is divided up into three parts. The first part contains a series of definitions. The second part lifts the cloak of immunity for a Commonwealth agency when the claims asserted against it fall within the specific exceptions to the general grant of immunity set forth therein. The third part applies to local agencies such as Pennsylvania cities,

boroughs and townships. Typically, we see PennDOT as the Commonwealth agency defendant where the claims asserted implicate Section 8522(b)(4). However, this section of the statute also applies to the Pennsylvania Turnpike Commission.

Pennsylvania Courts have considered the issue of sovereign immunity for claims arising from the absence or condition of guardrails on several occasions, beginning with the landmark case of *Dean v. Department of Transportation*, 751 A.2d 1130 (2000). The accident in *Dean* occurred when a vehicle fishtailed on a snow-covered roadway, left the road, traveled down a steep embankment, and overturned, seriously injuring the passenger. Claims were asserted based upon the absence of any guardrails at the accident location. In *Dean*, our Supreme Court reasoned that the absence of a guardrail is not a dangerous condition of Commonwealth realty because the lack of guardrails “does not render the highway unsafe for the purposes for which it was intended, i.e., travel on the roadway.” *Id.* at 1134.

In the present matter, litigation was commenced by Pamela Stein, on behalf of the Estate of Paul Stein, Deceased. The decedent was injured while driving eastbound on the Pennsylvania Turnpike near Exit 56, the Monroeville interchange, where there is a bend in the road. The eastbound highway surface consists of asphalt and has two travel lanes along with a paved berm the width of a travel lane. Where the accident occurred, there is a gap in the guardrail on the outside edge of the road, leaving the highway open to an adjacent hill that slopes upward from the road. At the east end of the gap, the guardrail resumes. However, it does not resume at the side of the road; rather, it resumes in the adjacent hillside and then turns down the hill to meet the road. From the viewpoint of the driver traveling east on the Turnpike, the guardrail is turned back at a near right angle from the road. The end of the guardrail located in the hillside is protected by a U-shaped piece of metal known as a “boxing glove”.

The accident took place the afternoon of September 15, 2003, during a heavy rain. Decedent’s car hydroplaned and spun off of the roadway, through the gap in the guardrail and onto the grassy hillside. The vehicle continued spinning as it turned down the hill, hitting the “boxing glove” end of the guardrail with such force that the sides of the “boxing glove” folded back, creating a sharp, chisel-like shape. The folded back metal impaled Decedent’s vehicle on the passengers’ side and drove into the vehicle. In so doing, the guardrail amputated Decedent’s right leg below the knee. Decedent’s loss of blood resulted in his death.

Pamela Stein filed a wrongful death and survival action against the Turnpike Commission in which she alleged negligence, particularly with respect to the design of the guardrail. She also alleged that the roadway surface at the point of the accident is “polished asphalt” and that the “polished roadway, very heavy rain, and slow drainage of the Turnpike over the flat road surface were factors that resulted in a hydroplaning situation triggering the event of this accident.” The Commission moved for summary judgment, asserting that there was no exception to sovereign immunity for a negligently designed or installed guardrail and that Stein failed to show that the Commission negligently maintained the road surface.

The trial court, relying on its prior decision in *Fagan v. Department of Transportation*, 946 A.2d 1123 (Pa. Cmwlth. 2008) (en banc), granted the Commission’s motion for summary judgment. The *Fagan* matter involved a claim brought against PennDOT on the theory that it negligently designed and maintained a guardrail, in which summary judgment was entered in PennDOT’s favor. On appeal, the Pennsylvania Supreme Court affirmed the trial court’s grant of summary judgment in favor of PennDOT relying upon *Dean* and *Simko v. County of Allegheny*, 869 A.2d 571 (Pa. Cmwlth. 2005), where the Commonwealth Court previously considered whether pedestrians may bring a tort claim against a local government for damages arising from the absence of a guardrail. The trial court’s judgment in *Fagan* was affirmed because in *Dean* and every other case involving a guardrail, whether alleged to be negligently absent or negligently designed, it is the highway exception that governs the sovereign immunity analysis. Accordingly, the focus is whether the guardrail in question rendered the highway unsafe for its intended purpose of travel.

In granting the Commission’s motion for summary judgment, the Commonwealth Court noted that Stein did not direct the Court to a single case, from any jurisdiction, where a state or local government has been held liable for a negligently designed guardrail on the theory that the absence or condition of the guardrail made the land adjacent to the highway unsafe, as opposed to the highway itself. In fact, Plaintiff Stein’s argument was expressly rejected in *Simko*.

Secondly, the Court pointed out that it has been held that where a state or local government installs a safety fixture that it has no affirmative duty to provide, there can be no liability for negligent installation of that fixture. *See, Gardner v. Consolidated Rail Corporation*, 573 A.2d 1016 (1990).

**HOLDING:**

“We hold the Commonwealth to be immune from suit where the guardrail entry folds back, impales a vehicle, causing fatal injuries.” Because decedent’s only injury was caused by the guardrail, and the Commission cannot be held liable for damage caused by the guardrail, it is irrelevant why decedent left the roadway.