



WHO PAYS THE PUNITIVE DAMAGES AWARD?

Pursuant to the Political Subdivision Tort Claims Act (“Act”), the general rule is that no local agency shall be held liable for damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person. See 42 Pa.C.S. § 8541 (West 2004). Eight exceptions exist for the general rule. See id. at § 8542(b) (specifying that liability may be imposed upon the local agency for damages resulting from the following acts: the operation of a motor vehicle; the care or custody of personal or real property of others in the possession of the agency; dangerous conditions resulting from trees, traffic controls or street lighting; dangerous conditions resulting from utility service facilities; dangerous condition of streets and sidewalks; and the care or custody of animals in the possession of the agency).

Individual defendants are similarly immune from liability for acts performed within the scope of their employment to the same extent as the employing agency, except that employees can be held liable if their conduct amounts to actual fraud, crime, actual malice or willful misconduct. See id. at §§ 8545 & 8550. The damages cap that normally applies does not apply in cases involving willful misconduct.

While the employer is generally immune from having to pay punitive damages under the Act, an employee may lose this protection if there is a judicial determination that the employee’s act(s) constituted willful misconduct. See id. at § 8550. Other sections of the Act, however, may provide relief to the employee and require the employer to indemnify the employee for punitive and other type damages, fees and costs.

(To review the applicable sections of the Act, [click here.](#))

Two Pennsylvania Supreme Court cases dealing with the above issues are worth noting:

Wiehagen v. Borough of North Braddock, 594 A.2d 303 (Pa. 1991): Officer Wiehagen who was employed by the Borough of North Braddock (“Borough”), arrested a suspect for public intoxication. While in custody, the suspect attempted to strike Wiehagen. In response, Wiehagen struck the suspect, knocking him to the ground. Subsequently, the suspect filed a lawsuit against Wiehagen and the Borough in federal court pursuant to 42 U.S.C. § 1983. The Borough was granted a summary judgment. A jury, however, held Wiehagen liable for excessive force, and awarded compensatory damages. The Court then ordered Wiehagen to pay attorney’s fees and costs. Wiehagen sought indemnification from the Borough pursuant to § 8548 of the Act. The Pennsylvania Supreme Court ordered the Borough to indemnify Wiehagen for the compensatory damages, fees and costs.

Renk v. City of Pittsburgh, 641 A.2d 289 (Pa. 1994): A bus driver requested assistance from Officer Renk, who was employed by the City of Pittsburgh. Officer Renk removed a passenger from the bus and subsequently arrested the passenger for disorderly conduct. At the police station, a scuffle occurred, which ultimately resulted in the passenger filing a lawsuit in federal court. The jury found that neither the City nor Renk violated the passenger's federal civil rights; however, the jury held Renk liable for the state tort claims of assault, battery, false imprisonment, and emotional distress, and awarded compensatory and punitive damages. The Pennsylvania Supreme Court held that an award of punitive damages alone is insufficient to establish willful misconduct pursuant to § 8550, since reckless conduct may be sufficient to support such an award. The Court ordered the municipality to indemnify Renk for both the compensatory and the punitive damages.

A. WILLFUL MISCONDUCT – APPLYING RENK

Kuzel v. Krause, 658 A.2d 856, 890 (Pa. Cmwlth Ct. 1995: The Commonwealth Court, in reviewing a wrongful termination case involving township supervisors, explained that according to Renk “willful misconduct,” as used in 42 Pa.C.S. § 8550, means “willful misconduct aforethought.”

Ferber v. City of Philadelphia, 661 A.2d 470 (Pa. Cmwlth Ct. 1995): The Commonwealth Court explained that since the trial court judicially determined that the police officer's actions, e.g., in suborning perjury and fabricating evidence, were willful misconduct and criminal, applying Renk, the officer was not entitled to indemnification.

King v. Breach 115 Pa. Commonwealth 355, 540 A. 2d 976, 981 (1988), the term "willful misconduct" is synonymous with the term "intentional tort".

Owens v. City of Philadelphia, 6 F. Supp. 2d 373, 394 (E.D.Pa. 1998): The District Court declined to apply Renk in a wrongful death case arising out of an inmate suicide. The Court explained that although the conduct at issue was that of law enforcement officers, it was not “police misconduct” in the sense used by Renk.

Miller v. Webber 1997 U.S. Dist. Lexis 7752: applying King instead of Renk where conduct complained of was performed part of Defendant's duties to administer a part-time employment program at a public school]). A number of cases, including Kuzel have applied Renk in non-police cases and have failed to note the distinction made in Renk. (See Samerica Corp. of Delaware, Inc. v. City of Philadelphia 142 Fed. 3d. 582, 600-01 [3rd Circuit 1998] [applying Renk to the members of the Philadelphia Historical commission]).

CAN THE GOVERNMENTAL ENTITY USE AN INSURANCE POLICY TO SATISFY ITS DUTY TO INDEMNIFY?

A. Supervisors of Lewis Township v. Employers Mutual Casualty Company 523 Atlantic 2d. 719 (1987).

This lawsuit began as a Declaratory Judgment Action filed by the Township against its insurance carrier. The Township Supervisors sought coverage for certain amounts of money for which they had been surcharged. While the Court concluded that the Insurance Policy did not encompass the losses sustained by the Township, it did analyze the problem. "We hold that where the conduct is negligent, [Lewis] Township may seek insurance coverage for the loss occasioned

either Township or its Officials. But where the surcharge arises from the willful or fraudulent misconduct of an Official, the Township may insure only its loss and may not purchase coverage for the Official. The problem here remains the definition of willful. Under Renk, Kozel, and Ferber, we understand willful misconduct under §8550 to mean willful misconduct aforethought. Under Supervisors of Lewis Township, it would appear that so long as the conduct is defined as less than willful misconduct, the Punitive Damage Claim could be insured.

PUNITIVE DAMAGES - THE JUDGE'S CHARGE

A. Section 1983 Claims

While Punitive Damages are not available against municipalities for §1983 violations (See City of Newport v. Fact Concerts 453 U.S. 247, 69 L. Ed. 2d. 616, 101 Sup. Ct. 2748 [1981]), Punitive Damages are available against individual state actors upon a showing that the conduct was "motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade 461 U.S. 30, 56, 75 L. Ed. 2d 632, 103 Sup. Ct. 1625 (1983) (See also Keenan v. City of Philadelphia 983 Fed. 2d 459 [3rd Circuit 1992]; Basista v. Weir, 340 Fed. 2d 74 [3rd Circuit 1965]). "The purpose of Punitive Damages is to punish the Defendant for his willful or malicious conduct and to deter others from similar behavior." Memphis Community School District v. Stachura, 477 U.S. 299, 306 note 9, 910. Ed. 2d 249, 106 Sup. Ct. 2537 (1986).

The Renk Court concluded that since Punitive Damages under Federal law could be imposed based upon reckless conduct, that a Punitive Damages award might not necessarily be willful misconduct as defined in the Tort Claims Act.

B. State Law Claims

Punitive Damages may be available against individual Defendants. The Supreme Court of Pennsylvania has adopted the restatement (2nd) of Torts, §908 (2) which permits Punitive Damages for "conduct that is outrageous because of the Defendant's evil motive or his **reckless indifference** to the rights of others." Rizzo v. Hanes, 520 Pa. 484, 555 A. 2d 58, 69 (Pa. 1998) ("Rest.) 2d (Torts §908 2) A Court may award Punitive Damages only if the conduct was malicious, wanton, reckless, willful, or oppressive. Chambers v. Montgomery, 411 Pa. 339, 192 A. 2d 355, 358 (Pa. 1963) The actor's state of mind is also relevant: "The act or omission must be intentional, reckless, or malicious." Id, Feld v. Merriam 506 Pa. 383,485 A. 2d 742, 748 (Pa. 1984).

Please recall that in Renk., a jury found Renk liable on the State Tort claims of Assault, Battery, False Imprisonment, and Emotional Distress. Both Compensatory and Punitive Damages were awarded. The Supreme Court of Pennsylvania held that Renk was entitled to indemnification for both Compensatory and Punitive Damages.

The key word in the Renk decision is "reckless". "Nor is the award of punitive damages sufficient to establish willful misconduct, since reckless conduct may be sufficient to support such an award." Renk at 77.

