LAVERY FAHERTY PATTERSON

225 Market Street, P.O. Box 1245 • Harrisburg, PA 17108-1245 • 717.233.6633

PENNSYLVANIA TORT CLAIMS ACT

Attorney Robert G. Hanna, Jr.
rhanna@laverylaw.com

Disclaimer

The text in this document is taken from Purdon's Statutes, a private organization that publishes most, but not all, of Pennsylvania's statutes. Most, but not all, of the sections of the Act are included. The cases are illustrative examples, but represent only a few of the many reported decisions. The brief summaries by the author are hopefully useful, but a review of the full text of the case should be undertaken before citing any decision used in a brief.

INTRODUCTION

The Pennsylvania Governmental Immunity Statute is divided up into three sections.

1. Subchapter (a) – Definitions
2. Subchapter (b) – Commonwealth Agency Liability
3. Subchapter (c) – Local Agency Liability

A. DEFINITIONS

§ 8501

"Employee" – Any person who is acting or who has acted on behalf of a government unit whether on a permanent or temporary basis, whether compensated or not the whether within or without the territorial boundaries of the government unit, including any volunteer fireman and any elected or appointed official, member of a governing body or other person designated to act for the government unit. Independent contractors under contract to the government unit and their employees, agents, and persons performing

tasks over which the government unit has no legal right of control are not employees of the government unit.

- Patterson v. Lycoming County, 815 A.2d 659 (Pa. Cmwlth. 2002). Here the Court holds that a foster care couple to be "employees" under the Political Subdivision Tort Claims Act. See §8501.

- Sciotto v. Marple Newtown School District, 1999 U.S. Dist. LEXIS 14497 (9/23/99). High school wrestler at a practice with a school alumnus; fractures neck, rendered ventilator dependent quad. For the jury to determine whether the individual falls within the Act's definition of "employee".

- Murray v. Zarger, 642 A.2d 575 (Pa. Cmwlth. 1994). Volunteer assistant coach at a high school qualified as an employee.

- Wilson v. Miladin, 553 A.2d 535 (Pa. Cmwlth. 1989). High school football player was an employee entitled to immunity from suit stemming from contact with spectator at football game.

- Kniaz v. Benton Borough, 642 A.2d 551 (1994). Guinn v. Alburtis Fire Co., 614 A.2d 218 (1992). Local agency applies to volunteer fire companies created pursuant to relevant law that are legally recognized as the official fire company.

- Higby Dev. LLC v. Sartor, 954 A.2d 77 (Pa. Cmwlth. 2008). Reversed on other grounds. Yerkes, an associate of Yerkes Ass. Inc. performed duties of a code enforcement officer and Sartor, an employee of Gilmore & Asso., Inc., who performed duties of a township engineer, held to be "employees" under Section 8501.
- Walls v. Hazelton State Hospital, 629 A.2d 232 (Pa. Cmwlth. 1993). Independent contractor doctor held to be an employee.

- County of Schuylkill v. Maurer, 536 A.2d 479 (Pa. Cmwlth. 1988). County solicitor Frederick Hobbs held to be an "employee".

- Pettit v. Namie, 931 A.2d 790 (Pa. Cmwlth. 2007). Section 1938 verdict $1 nominal damage, $100,000 punitive damages. Common Pleas jury held "reckless conduct" not willful misconduct and employee is entitled to full indemnification.

- Patterson v. Lycoming County, 815 A.2d 659 (Pa. Cmwlth. 2002). Foster parents held to be employees under Section 8501.

"**Local Agency**" -- A government unit other than the Commonwealth government. The term includes, but is not limited to, an intermediate unit; municipalities cooperating in the exercise or performance of governmental functions, powers or responsibilities under 53 Pa. C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation); and councils of government and other entities created by two or more municipalities under 53 Pa. C.S. Ch. 23 Subch. A.

Snead v. SPCA of PA, 985 A.2d 909 (Pa. 2009). SPCA is not a local agency.

B. EXCEPTIONS TO SOVEREIGN IMMUNITY

§ 8521 --Sovereign immunity generally

(a) General Rule.—Except as otherwise provided in this subchapter, no provision of this title shall constitute a waiver of sovereign immunity for the purpose of 1 Pa. C.S. §2310 (relating to sovereign immunity reaffirmed; specific waiver) or otherwise.

(b) Federal Courts.—Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

§ 8522(a) Liability Imposed

The General Assembly, pursuant to Section 11 of Article 1 of the Constitution of Pennsylvania, does hereby waive, in the instances set forth in subsection (b) only and only to the extent set forth in this subchapter and within the limits set forth in Section 8528 (relating to limitations on damages), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity.

§ 8522(b)(1) Vehicle Liability

The operation of any motor vehicle in the possession or control of a Commonwealth party.

- Bottoms v. Septa, 805 A.2d 47 (Pa. Cmwlth. 2002). Bottoms was a passenger on Septa Bus which had stopped to discharge passengers. The bus was positioned a foot and a half to two feet from the curb. Instead of stepping down onto the street, Bottoms took a "giant step over" directly to the curb and fell, rupturing her Achilles tendon and requiring surgery. Alleged negligence because the bus was too far from the curb and because the bus driver failed to "kneel" the bus. A stationary vehicle is not "in operation" within the meaning of 8522(b)(1). Case dismissed.

- Schreck v. Commonwealth, 749 A.2d 1041 (Pa. Cmwlth. 2000). Plaintiff's husband badly injured when car in which he was a passenger, collided with Defendant's attenuator truck, a slow-moving vehicle used to protect pothole repair crews. Plaintiffs contend that the truck was moving, and therefore, in operation at the time of the accident, rendering the vehicle exception

applicable. DOT asserts that the truck was stopped, rendering the exception inapplicable. This dispute is for the jury.

- Williams v. SEPTA, 741 A.2d 848 (Pa. Cmwlth. 1999), Collision occurred between SEPTA bus and automobile driven by Bernard Williams (decedent). Wrongful death and survival action dispute over who had the red light. Jury verdict of $1.367M on the survival action and $280,000 wrongful death – molded wrongful death verdict of $168,000.00 and $820,200.00 in survival action reduced to $250,000.00, delay damages added. Final award $676,709.38.

- Commonwealth v. Howard, 536 A.2d 476 (Pa. Cmwlth. 1998). Police driving high rate of speed not using siren when entering intersection in violation of Emergency Vehicle Statute – held liable.

- Royal v. SEPTA, 10 A.3d 927 (Pa. Cmwlth. 2010). Royal boarded a SEPTA bus at 55th and Chestnut Streets, Philadelphia, PA. Realizing she had boarded the wrong bus Royal requested the driver to let her off at the next stop. She asked the bus driver to "kneel" the bus. Believing the driver had heard and complied with the request, she left the bus but the driver did had "kneeled" the bus. Royal, who uses a cane to walk, fell as she left the bus. Immunity granted, SEPTA bus was not in "operation." No movement of the bus, part of the bus, or attachment to the bus caused Royal's injury.

§ 8522(b)(2) -- Medical Professional Liability

The acts of health care employees of Commonwealth agency medical facilities or institutions, or by a Commonwealth party who is a doctor, dentist, nurse or related health care professional.

- Beaty v. Lt. Crawford, 22 A.3d 1089 (Pa. Cmwlth. 2011). Beaty injured little finger, right hand playing basketball at SCI – Graterford. Examined by physician, ordered pain medication and an X-Ray. Second opinion needed. On April 15, 1998, Beaty received a class 1 misconduct because a urine sample tested positive for drugs. Lt. Crawford would not allow Beaty to keep his doctor appointment. On May 14, 1998, Orthopedist tells Beaty because of the delay nothing could be done for the finger, meaning the finger would be deformed and disfigured for life. Beaty loses case because in response to Lt. Crawford's Motion for Summary Judgment because Beaty admitted Crawford was not "related health care personnel" under 8522(b)(2).

§ 8522(b)(3) -- Care-Custody or Control of Personal Property

The care, custody or control of personal property in the possession or control of Commonwealth parties, including Commonwealth-owned personal property, and property of persons held by a Commonwealth agency, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth agency activities involving the use of nuclear and other radio-active equipment, devices and materials.

- Paige v. City of Philadelphia and PennDOT, 25 A.3d 471 (Pa. Cmwlth 2011). Paige lost control of his car allegedly due to black ice caused by the "melt and refreeze" of improperly removed snow and ice from the highway. DOT responds and claims no responsibility because of agreement with City for snow removal. DOT has a general statutory duty to repair and maintain state highways pursuant to the state highway law. However, the state highway law does not impose specific statutory duty on DOT to protect an individual from the natural accumulations of ice and snow resulting from a snow storm, and no such duty exists as common law. Since Paige failed to meet the threshold requirement that the alleged damages would be recoverable under common law or a statute against a party not protected by sovereign immunity, DOT's sovereign immunity is not waived.

- Weckel v. The Carbondale Housing Authority, 20 A.3d 1245 (Pa. Cmwlth. 2011). Decedent, age 67. Decedent was a tenant in a seven-story apartment building operated by the Authority. Weckel claimed that because decedent was able to access the roof, the Authority had been negligent. The Authority's expert concludes that the door to the roof met all applicable industry standards and building codes and did not have to be locked. The door was always kept closed but unlocked because if a fire cut off a stairwell access to residents, the fire department would need to rescue residents from the roof, consequently the fire department and authority decided the fire company and Authority the door to the roof should be left unlocked so that in emergencies residents could be rescued from the roof. Decedent's death was most likely a suicide. Claim barred by immunity because if a defect or dangerous condition merely facilitates an injury which was caused by the acts of a person, the defect or dangerous condition is not actionable.

- Stein v. Pa. Turnpike Commission, 989 A.2d 80 (Pa. Cmwlth. 2010). Decedent injured while driving on Pa. Turnpike where there is a bend in the road. Where the accident occurred, there was 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. Decedent's car hydroplaned and spun off the roadway through the gap in the guardrail onto the grassy hill. The vehicle continued spinning down the hill hitting the "boxing glove" end of the guardrail with such force that the sides folded back creating a sharp chisel like shape impaling decedent's vehicle on the passenger side and amputating decedent's right leg below the knee. Decedent's loss of blood caused the death. The Commission moved for summary judgment asserting no exception for negligently designed or installed guardrail. Summary judgment was granted and affirmed on appeal. As previously held in Fagan, the Commonwealth is immune from suit where the guardrail end treatment folds back and impales a vehicle causing fatal injuries.

§ 8522(b)(4) -- Real Estate, Highways and Sidewalks

A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds 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, except conditions described in paragraph (5).

- Tom Clark Chevrolet v. Pa. Dep't. of Envtl. Prot, et al, 816 A.2d 1246 (Pa. Cmwlth. 2003). DOT alleged to be negligent in failing to properly alter and maintain Long Run Creek by failing to dredge the accumulated sediment. Clark Chevrolet seeks damages for flooding. The Court finds that Clark Chevrolet has failed to demonstrate liability. The Commonwealth adheres to the common law or "common enemy" rule that regards surface waters a common enemy which every land owner must fight to get rid of as best he may. There is: "no liability on the part of a municipal corporation for the flooding of private property from the inadequacy of gutters, drains, culverts, or sewers as long as the municipality has not diverted water from its natural flow". Failure to control the surface waters discharge through a natural channel as a result of the ordinary and reasonable development of the land is not negligence.

- Kosmack v. DOT, 807 A.2d 927 (Pa. Cmwlth. 2002). In February, 1994, an accident occurred in the westbound lanes of State Route 22, a four lane limited access highway which runs through Cambria County. Twenty-six vehicles had either collided or stopped on or adjacent to the paved portion of the highway near the highways Summit Exit, when a tractor trailer owned by National Freight, Inc. and operated by James C. Jones, proceeded into the melee and collided with a van occupied by the Kosmack family, who were killed. At the time of the accident, a white out caused by a snow storm substantially reduced visibility. This case applies the Starr analysis of the duty of a government agency to adopt particular design standards in the first instance. Despite testifying that the location and the design of the road were improper, the experts reported testimony lacked any concrete suggestion as to how and where the road could have been built to prevent snow from blowing over it, let alone any engineering investigation of how such a solution would have been effective and feasible. Since the design of Route 22 was the product of a process which required PennDOT to address a multitude of concerns other than preventing blowing snow, a plaintiff bears the burden of establishing that there is an alternative design which would have addressed all concerns.

Regardless, sovereign immunity barred the claim as an order to fit within the real estate exception, "a claim…must allege that the dangerous condition derived, originated, or had as its source the Commonwealth reality itself." It is undisputed that blowing snow was the direct and proximate cause of the plaintiff's injuries. However, neither the snow nor wind can be considered to have "derived, originated, or had as its source" the highway itself.

- Kahres v. Henry, 801 A.2d 650 (Pa. Cmwlth. 2002). Defendants, John G. and Esther M. Henry, hired Defendants Stump to plow snow from the parking lot of their tavern known as Jack and Snooky's Hillside Haven. He did, on February 12, 1994, pushing the snow across Pricetown Road onto property on the other side. The snow removal created a large mound of ice and snow on the shoulder portion of the north bound lane of Pricetown Road. Kahres' husband was driving a 1988 Nissan Centra

southbound on Pricetown Road with Kahres in the front passenger seat when the car collided with a pick up truck driven by Defendant, Ray Allen Knoll, traveling northbound on Pricetown Road. The snow plow attached to the front of Knoll's pick up truck struck the snow mound causing Knoll to lose control, forcing the left rear of the truck into the southbound lane directly into the path of the Plaintiff's vehicle killing Kahres' husband and injuring Kahres. Prior to the accident, Governor Casey had issued a proclamation of disaster emergency.

DOT has no duty to remove common law ice and snow. DOT has a general duty of snow removal under various statutes, but no specific duty to protect Kahres. No duty is assumed because PennDOT vehicles have begun to remove ice and snow somewhere on the highway. In absence of a common law cause of action or statute, Kahres fails to meet the threshold requirement for a waiver of sovereign immunity.

Kahres' allegations do not fall under the real estate and highways exception 8522(b)(4). A claim for damages for injuries caused by a substance or an object on Commonwealth real estate must allege that the dangerous condition derived, originated, or had as its source Commonwealth reality itself.

- Shimko v. Commonwealth, 768 A.2d 413 (Pa. Cmwlth. 2003) - Shimko was operating motor vehicle West on a State road in the city of Pittsburgh. Vehicle traveling opposite direction came into Shimko's lane and Shimko steered his vehicle off the cartway of the road. Shimko's vehicle struck a "raised portion of asphalt," which catapulted the vehicle into a streambed.

    - PennDOT responsible.
    - Summary Judgment affirmed as to the City.

- Dean v. Commonwealth, 751 A.2d 1130 (Pa. 2000), Dean was a passenger in an 1987 Ford Ranger XLT operated by Bell. The truck fish-tailed on a snow-covered roadway and went over an embankment where it overturned resulting in instant quadriplegia for Dean. "We hold that the failure to erect a guardrail does not constitute a dangerous condition of Commonwealth realty." As the real estate exception does not apply, the Commonwealth Court erred by refusing to grant summary judgment of the Commonwealth.
- Irish v. Lehigh County House. Auth., 751 A.2d 1201 (Pa. Cmwlth. 2000). Irish slipped and fell on ice and snow in a parking lot owned by the Housing Authority. The Authority said it was immune under the Sovereign Immunity Act. The Commonwealth Court affirmed the grant of summary judgment because the "on/of" distinction continues to apply to exceptions containing the "dangerous condition" of language and the sovereign immunity exception for real property.

§ 8522(b)(5) -- Potholes and Other Dangerous Conditions

A dangerous condition of highways under the jurisdiction of a Commonwealth agency created by potholes or sinkholes or other similar conditions created by natural elements, except that the claimant to recover must establish that the dangerous condition

created a reasonably foreseeable risk of the kind of injury which was incurred and that the Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition. Property damages shall not be recoverable under this paragraph.

- Boniscavage v. Borough of Gilberton and Pennsylvania State Police, 2010 Pa. Commw. Unpub. LEXIS 788 (11/19/10). Plaintiff left her home on June 28, 2006 for work. She took the Gilberton on-ramp onto southbound State Route 924 (S.R. 924). Within moments she drove her vehicle into a 50 foot deep and 50 foot diameter sink hole. There were no warning signs or barricades. At that time, SR 924 was closed to all southbound traffic. However, no steps were taken by the Borough or the PSP to make sure that the on-ramps were closed. Plaintiff's problem was to show a duty owed. Although the police "have a common law duty to protect the public…the failure to act generally is not considered a harm to an individual." In affirming judgment on the pleadings, the Commonwealth Court noted they did not establish a "special relationship" between plaintiff and the PSP. There is no allegation that the PSP was aware of her specific and unique situation or voluntarily assumed the duty to protect her. She does not allege that the PSP had actual knowledge of the sink hole, only that they "knew or should have known" that the highway was closed. DOT has "exclusive authority and jurisdiction over all state designated highways" even though the PSP responds to accidents and enforces the laws on an interstate highway. Judgment on the pleadings affirmed.

§ 8522(b)(6) -- Care, Custody or Control of Animals

The care, custody or control of animals in the possession or control of a Commonwealth party, including, but not limited to, police dogs and horses and animals incarcerated in Commonwealth agency laboratories. Damages shall not be recoverable under this paragraph on account of any injury caused by wild animals, including but not limited to bears and deer, except as otherwise provided by the statute.

§ 8522(b)(7) -- Liquor Store Sales

The sale of liquor at Pennsylvania liquor stores by employees of the Pennsylvania Liquor Control Board created by and operating under the act of April 12, 1951 (P.L. 90, No. 21), known as the "Liquor Code", if such sale is made to any minor, or to any person visibly intoxicated, or to any insane person, or to any person known as a habitual drunkard, or of known intemperate habit.

§ 8522(b)(8) -- National Guard Activities

Acts of a member of the Pennsylvania military forces.

§ 8522(b)(9) -- Toxoids and Vaccines

The administration, manufacture and use of a toxoid or vaccine not manufactured in this commonwealth under the following conditions:

(i) The toxoid or vaccine is manufactured in, and available from, an agency of another state.

(ii) The agency for the other state will not make the toxoid or vaccine available to private persons or corporations, but will only permit its sale to another state or agency.

(iii) The agency of the other state will make the toxoid or vaccine available to the Commonwealth only if the Commonwealth agrees to indemnify, defend and save harmless that agency from any and all claims and losses which may arise against it from the administration, manufacture or use of the toxoid or vaccine.

(iv) A determination has been made by the appropriate Commonwealth agency, approved by the Governor and published in the Pennsylvania Bulletin, that the toxoid or vaccine is necessary to safeguard and protect the health of the citizens or animals of this Commonwealth.

(v) The toxoid or vaccine is distributed by a Commonwealth agency to qualified persons for ultimate use.

§ 8523 -- Venue and process

(a) Venue.--Actions for claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the Commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose. If venue is obtained in the Twelfth Judicial District (Dauphin County) solely because the principal office of the Commonwealth party is located within it, any judge of the Court of Common Pleas of Dauphin County shall have the power to transfer the action to any appropriate county where venue would otherwise lie.

(b) Process.--Service of process in the case of an action against the Commonwealth shall be made at the principal or local office of the Commonwealth agency that is being sued and at the Office of the Attorney General.

§ 8524 -- Defenses

The following common law defenses are available:

(1) An official of a Commonwealth agency or a member of the General Assembly or the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, defenses which have heretofore been available to such officials.

(2) An employee of a Commonwealth agency or a member of the General Assembly or of the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, the defense that the employee was acting pursuant to a duty required by a statute or statutorily authorized regulation.

(3) An employee of a Commonwealth agency or a member of the General Assembly or of the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, the defense that the act was within the discretion granted to the employee by statute or statutorily authorized regulation.

§ 8525 -- Legal assistance

When an action is brought under this subchapter against an employee of the Commonwealth government, and it is alleged that the act of the employee which gave rise to the claim was within the scope of the office or duties of the employee, the Commonwealth through the Attorney General shall defend the action, unless the Attorney General determines that the act did not occur within the scope of the office or duties of the employee. In the latter case, if it is subsequently determined that the act occurred within the scope of the office or duties of the employee, the Commonwealth shall reimburse the employee for the expense of his legal defense in such amounts as shall be determined to be reasonable by the court. If an action is brought against a Commonwealth government employee for damages on account of injury to a person or property, and it is not alleged that the act of the employee which gave rise to the claim was within the scope of his office or duties, and he successfully defends the action on the basis that the act was within the scope of his office or duties, and he has given prior notice to the Attorney General and the Attorney General has refused to defend the action, he shall likewise be entitled to the reasonable expenses of the defense.

§ 8526 -- Counterclaim by the Commonwealth

In any action initiated under this subchapter, the Commonwealth may set forth any cause of action or set-off which it has against the plaintiff. A counterclaim need not diminish or defeat the relief demanded by the plaintiff. It may demand relief exceeding in amount or different in kind from that demanded by the plaintiff.

§ 8527 -- Indemnity relating to inmate health care

The Commonwealth shall indemnify against liability a municipal corporation for a claim against the municipal corporation arising from an act or omission of the municipal corporation, its officials, its employees or agents when participating in a program for the provision of medical treatment in a health care facility to inmates from a Commonwealth correctional facility pursuant to a program authorized by the Department of Corrections. This indemnification shall not extend to claims of medical malpractice against any person nor to claims against the health care facility, its employees or agents nor to claims against the municipal corporation that are the result of gross negligence, wanton and reckless acts or intentional misconduct by the municipal corporation, its officials, employees or agents.

§ 8528 – Limitations on Damages

(a) Amount Recoverable - $250,000 in favor of any Plaintiff, or $1,000,000 in the aggregate.

(b) Types of Damages Recoverable

1. Past and future loss of earnings and earning capacity
2. Pain and suffering
3. Medical and dental expenses
4. Loss of consortium
5. Property losses, except for Section 8522(b)(5)

- Allen v. Mellinger, 784 A.2d 762 (Pa. 2001). Overrules Woods v. Commonwealth, Dep't of Transp., 612 A.2d 970 (Pa. 1992). Delay damages: General rule is Rule 238 delay damages awarded against all Defendants in a negligence action are properly aggregated with the verdict such that the Defendants are jointly and severally liable for the aggregated delay damages. **But**, delay damages recoverable from Commonwealth parties are limited to those calculated based upon the statutory cap. Commonwealth parties are not jointly and severely liable for delay damages which exceed those calculated on the statutory cap.

- Griffin v. Septa, 757 A.2d 448 (Pa. Cmwlth. 2000). This is the latest or most recent attack on the statutory cap on damages. John Griffin and the Septa driver had a verbal confrontation on a bus. The driver indicated he would not pick up John Griffin again. The following day, Griffin was at the bus stop. The driver with whom he had the disagreement refused to stop to pick him up. John ran alongside the bus and was run over. A verdict for the Estate was returned in the amount of $2.163M molded to the statutory cap of $250,000. The cap was again affirmed.

C. LOCAL AGENCY LIABILITY

§ 8541 --Governmental immunity generally

Except as otherwise provided in this subchapter, no local agency shall be liable for any 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. 1980, Oct. 5, P.L. 693, No. 142, § 221(i), effective in 60 days.

§ 8542 -- Exceptions to governmental immunity

(a) Liability imposed.—A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under Section 8541 (relating to governmental immunity generally) or Section 8546 (relating to defense of official immunity).

- Lindstrom v. City of Cory, 763 A.2d 394 (Pa. 2000). "We hold that a local agency has no common law duty to a fleeing driver."

- The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). As used in this paragraph, "negligent acts" shall not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

§ 8542(b) – Exceptions to Governmental Immunity

(a) Acts which may impose liability – The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

(1) Vehicle Liability – the operation of any motor vehicle in the possession or control of the local agency, provided that the local agency shall not be liable to any plaintiff that claims liability under this subsection if the plaintiff was, during the course of the alleged negligence, in flight or fleeing apprehension or resisting arrest by a police officer or knowingly aided a group, one or more of whose members were in flight or fleeing apprehension or resisting arrest by a police officer.

OPERATION

- Love v. City of Philadelphia, 543 A.2d 531 (Pa. 1988). Elderly passenger fell while exiting the City-owned van. "To operate something means to actually put it in motion." Vehicle exception not applicable.

- N. Sedwickley Twp. v. Lavalle, 786 A.2d 325 (Pa. Cmwlth. 2001). A motorcycle riding southbound struck a police car stopped in southbound lane facing oncoming traffic with high beams on, but no overhead lights activated. Vehicle not in operation, case dismissed.

- Regester v. County of Chester, 797 A.2d 898 (Pa. 2002). Regester suffered cardiac arrest. The family telephoned the local emergency services number and requested an ambulance and provided the correct address. The Chester County Emergency Services System relayed the correct directions, but there was a mix-up in directions given to the ambulance personnel delaying their arrival. The volunteer fire company was created pursuant to relevant law and legally recognized as the official fire company for political subdivision as a local agency. The claim did not fit under the vehicle liability exception, hence the vehicle was not actually driven in a negligent manner, and no causal relationship existed between its physical operation and the harm to Mr. Regester.

- Phillips v. Washington County Transportation Authority, 986 A.2d 925 (Pa. Cmwlth. 2009). A mildly retarded plaintiff prior to April 15, 2005 accident was able to live independently. Many facts disputed such as whether he had just gotten off the bus and was walking around from behind the bus when hit. Serious injuries, permanent neurological impairment, with a pre-accident IQ 57 and a post-accident IQ 48. Unable to care for himself or live independently. It was undisputed that the bus was not moving when accident occurred, therefore the vehicle exception does not apply.

- Mannella v. Port Authority of Allegheny County, 982 A.2d 130 (Pa. Cmwlth. 2009). Bus driver negligently deployed the bus wheelchair ramp unevenly with the ground causing plaintiff to fall out of his wheelchair, sustaining serious injury. Commonwealth Court stated "we have declined to apply the vehicle liability exception in cases that did not involve the actual movement of the vehicle." Consistently holding that a passenger's act of alighting from the steps of a bus does not involve the "operation" for purposes of vehicle liability exception.

NEGLIGENCE DEFINED

- Johnson v. City of Philadelphia, 808 A.2d 978 (Pa. Cmwlth. 2002). Police Officer Eric Bullock broadsided Johnson's vehicle while responding to a police call for backup assistance. The lights and siren on Bullock's police car were turned on at the time of the accident.

  "This is the first Pennsylvania Appellate Court attempt at providing a standard of care to be used in analyzing a vehicle exception claim where the defense is that the police were operating their vehicle under emergency conditions. We hold that the standard of care for a driver of an emergency vehicle is negligence under emergency circumstances."

- Crowell v. City of Philadelphia, 613 A.2d 1178 (Pa. 1992) and Powell v. Drumheller, 653 A.2d 619 (Pa. 1995). Established that a governmental party is not immune from liability when its negligence, along with a third party's negligence, causes harm.

- Jones v. Chieffo, 700 A.2d 417 (Pa. 1997) and Aiken v. Borough of Blawnox, 747 A.2d 1282 (Pa. Cmwlth. 2000). A jury can find that a government's actions were a substantial factor causing harm despite the fact that the criminal behavior of another was also the cause.

  Whether a criminal act is so extraordinary as to constitute a superseding cause is normally one to be made by the jury.

MOTOR VEHICLE

- Harding v. City of Philadelphia, 777 A.2d 1249 (Pa. Cmwlth 2001). A bicycle is not a motor vehicle.

§ 8542(b)(2) – Care, Custody or Control of Personal Property

The care, custody or control of personal property of others in the possession or control of the local agency. The only losses for which damages shall be recoverable under this paragraph are those property losses suffered with respect to the personal property in the possession or control of the local agency.

§ 8542(b)(3) – Real Property

The care, custody or control of real property in the possession of the local agency, except that the local agency shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of a local agency.

- Lingo v. Philadelphia Housing Authority, 820 A.2d 859 (Pa. Cmwlth. 2003). This matter involved a slip and fall accident that occurred as Carla Lingo was descending an exterior stairwell that led to a basement entrance to a building owned by the PHA. Lingo contended that she fell due to leaves and other debris (including, but not limited to a dead cat) accumulated in the stairwell, as a result of which she sustained serious bodily injury. Immunity for PHA governed by sovereign immunity. Plaintiff's claim failed because she did not allege that the above described conditions were in any manner derived from the stairs of the stairwell. Her injuries were caused by naturally accumulating debris.

- Cureton v. Philadelphia School District, 798 A.2d 279 (Pa. Cmwlth. 2002). On October 11, 1996, Cureton permanently disfigured his right index finger during the course of a shop class at Fels High School. At the time, he was a 13 year old, ninth grade student. He went to his scheduled shop class, gathered equipment, and then proceeded to the scroll saw. The saw was dirty with sawdust, so he gathered a hand broom and dust pan in order to clean the saw. The shop teacher had instructed students to keep the pulleys of the saw free from dust. He was given permission by his teacher to clean the saw. Although on prior occasions, the teacher had turned off the main power switch to the machines in order to allow the students to clean them. The power was not turned off on that occasion. After cleaning the saw, Cureton reached over the saw and turned it on to see if there was any dust remaining in the pulleys. When he turned on the saw, his untucked shirttail became caught in the saws pulleys. While attempting to dislodge his shirttail, his right index finger got caught in the pulleys and the pulleys amputated a portion of his right finger. The trial court found the scroll saw was realty and not personalty. In order to maintain a negligence claim under the real property exception, the injured party must prove that the injury resulted from the dangerous condition arising from the care, custody and control of the real property by a local governmental agency. The dangerous condition which causes the injury must arise from the property itself or the care, custody, and control of it. The negligence of the District consisted of the failure to turn off the main power supply while Cureton was cleaning the scroll saw and allowing the students to access the pulley belts of the scroll saw, when it was foreseeable that such a use posed a danger.

- Tackett v. Pine Richland School District, 793 A.2d 1022 (Pa. Cmwlth. 2002). Tackett was a junior at Pine Richland High School enrolled in an advanced chemistry class. During the course of a chemistry experiment, he sustained severe burns when classmates ignited ethyl alcohol. The experiment was not conducted under the classroom's fume hood, a fixture designed to exhaust flammable vapors. The Court reasoned that Tackett's injury did not result from a dangerous condition arising from the custody and control of real property, but as the result of alleged negligent supervision. The latter is not covered by the real property exception.

- Sweeney v. Merry Mead Farm, Inc., 799 A.2d 972 (Pa. Cmwlth. 2002). Civil action against the Montgomery County Health Department for injury suffered due to an alleged exposure to E-Coli bacteria. The Health Department is a County Department of Health created by Montgomery County which the Commonwealth Court holds that for purposes of immunity is a local agency. The Commonwealth Court rejects claim as the claim fits under the real property exception. Prior case law of the Commonwealth Court ruled that possession under the real property exception means total control over the premises by the local agency; limited control or mere occupation for a limited period of time is insufficient to impose liability.

- Sherman v. City of Philadelphia, 745 A.2d 945 (Pa. Cmwlth. 2000) (en banc decision). Sherman was injured when she tripped and fell on a section of defective sidewalk striking her head while walking in front of City Fire Department Administration Building. New standard created at that time by Commonwealth Court: "we now hold the real property exception must be read as intending to exclude from the definition of real property, sidewalks, except where those sidewalks are part of the real property owned by the local agency." Majority opinion by President Judge Doyle with vigorous dissent by the Honorable Doris A. Smith (*See*, Jones v. SEPTA, cited under Section 8522(b)(4)).

- Greiff v. Reisinger, 693 A.2d 195 (Pa. 1997). "Employee" of volunteer fire department spilled paint thinner, ignited by refrigeration motor, and Greiff was severely burned. Claim falls under "care, custody, or control of real property."

- Kilgore v. City of Philadelphia, 717 A.2d 514 (Pa. 1998). Walter Kilgore, employee of Federal Express, injured at Airport. Co-worker lost control of the motorized tug, crushing his foot. Kilgore alleged that the City failed to remove snow and ice – fits under "care, custody or control of real property." The Supreme Court reversed immunity finding and held that a fact issue existed as to whether the City was negligent under this exception.

§ 8542(b)(4) – Trees, Traffic Controls and Street Lighting

A dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems under the care, custody or control of the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

- Tina L. Glenn v. Timothy F. Horan and Septa, 765 A.2d 426 (Pa. Cmwlth. 2001). William T. Glenn (Decedent) was a pedestrian crossing a street owned and maintained by the Township in order to reach a SEPTA bus stop.

    - While crossing the street, he was killed by an automobile driven by Horan.

- A crosswalk is properly characterized as a marking which serves the dual purpose of guiding pedestrians and warning motorists of the presence of a pedestrian crossing point.

- These markings plainly fall into the definition of "official traffic control device" in Section 102 of the vehicle code.

- The crosswalk qualified as a traffic control device for purpose of Section 8542(b)(4). When a municipality installs a traffic control device, the municipality may be held liable for negligently maintaining it.

- Star v. Veneziano, 747 A.2d 867 (Pa. 2000). This opinion by Justice Sailor contains both the blueprint for the Plaintiff and the blueprint for the Defendant as to how to prosecute or defend intersectional accident cases involving disputes over signaling devices.

  - Star brought her automobile to a stop at the intersection of Sandy Hill Road, a road maintained by Richland Township and Route 8, a four-lane highway.

  - To turn left into the South bound lanes of Route 8, Star was required to cross over the two North bound lanes. As Star entered the state highway, her vehicle was struck broadside by a truck traveling in the North bound lanes of Route 8.

  - The Township had, on two occasions, asked PennDOT to study the intersection and install a traffic signal. PennDOT suggested other remedial measures, such as a sign prohibiting left turns, a flashing beacon, or campaign of vigorous enforcement of the speed limit. PennDOT also offered to conduct an engineering and traffic study related to a no left-turn sign, pre-requisite to PennDOT approval. The Township never accepted PennDOT's offer to perform a study, nor did it submit a specific request to PennDOT. The obligation to employ appropriate traffic control devices is particularly appropriate where the governmental entity has already taken measures to regulate traffic at the particular location.

  - The Court found, to establish a duty of care on the part of a municipality related to the installation of a traffic control device, a Plaintiff must demonstrate that: (1) the municipality had actual or constructive notice of the dangerous condition that caused the Plaintiff's injuries; (2) the pertinent device would have constituted an appropriate remedial measure; and (3) the municipality's authority was such that it can fairly be charged with the failure to install the device.

  - Under the vehicle code, the Commonwealth and its subdivisions may not erect traffic control devices unless it is first determined, **based upon a traffic and engineering investigation**, that a particular device is an appropriate means of regulating traffic. Expert opinion expressed with a

reasonable degree of engineering certainty is generally required for the Plaintiff to meet this requirement.

- In this case, Plaintiff's expert's opinion was deemed insufficient because it was unsupported by any traffic or engineering investigation of the intersection, or the system of intersections along the route in question. Moreover, the expert failed to offer even a conclusory opinion on the larger issue of whether a left turn prohibition was appropriate. No expert opinion evidence was offered to establish the feasibility of a no left-turn sign, or that the net effect of a left-turn prohibition, upon the larger system of traffic control in the vicinity of the intersection, would have been beneficial.

- Finally, a Plaintiff would be required to prove that, more likely than not, PennDOT's approval would have been forthcoming.

- Carpenter v. Pleasant, 759 A.2d 411 (Pa. Cmwlth. 2000). Traffic light is green at an intersection in all directions! Automobile accident occurs in the intersection. In order to prevail, a plaintiff is required to provide expert opinion to prove: (1) that traffic lights without a conflict monitor constitute a dangerous condition; (2) that City had a duty to place a conflict monitor at the intersection; and (3) that a conflict monitor would have definitely functioned properly and would have prevented the accident. Plaintiff also required to prove the existence of and reasonableness of notice that the traffic control was dangerous without a conflict monitor in order to exclude plaintiff's expert.

§8542(b)(5) – Utility Service Facilities

A dangerous condition of the facility's steam, sewer, water, gas or electric systems owned by the local agency, and located within rights-of-way…

- Jackson v. City of Philadelphia, 782 A.2d 1115 (Pa. Cmwlth. 2001). At the time, for the exception to apply, the municipal entity must own the defective equipment or object causing the injury.

- Leone v. Commonwealth, 780 A.2d 754 (Pa. Cmwlth. 2001). Plumbers ditch originated on private property and extended into Torresdale Avenue. The leak was on private property and not on property owned by the city. The utility exception does not apply.

- Primiano v. City of Philadelphia, 739 A.2d 1172 (Pa. Cmwlth. 1999). Water meter located in basement of Primiano's home failed causing extensive property damage. Jury verdict for Plaintiff affirmed.

§ 8542(b)(6) – Streets

(i.) A dangerous condition of streets owned by the local agency…

(ii.) A dangerous condition of streets owned or in the jurisdiction of the Commonwealth agency (if the local agency has entered into a written contract).

- Paige v. City of Philadelphia and Pennsylvania Department of Transportation, 25 A.3d 471 (Pa. Cmwlth. 2011). Plaintiff lost control of his car while driving on black ice allegedly caused by the "melt and refreeze" of improperly removed snow and ice from the highway. Since Paige merely argues snow and ice was improperly removed and not that the black ice was caused by the improper design, construction, deterioration, or defective street itself, the exception does not apply.

- Smith v. Mason, 806 A.2d 518 (Pa. Cmwlth. 2002). The Pennsylvania Supreme Court's decisions in Dean and Lockwood are companion cases that address the question of whether a governmental entity's failure to erect a guardrail along the roadway might constitute a dangerous condition resulting in the imposition of liability on the governmental entity.

  Smith was a passenger in a vehicle driven along a street at a high rate of speed at which time one of its wheels left the roadway. The vehicle tilted to the side with its undercarriage scraping along a wedge curb. As the driver attempted to return the vehicle to the road, it collided with a utility pole. Smith, like the plaintiffs in Dean and Lockwood, does not allege that his injuries were caused by the condition of any portion of the street that is intended for travel. The wedge curb cannot be said to be any more of a dangerous condition resulting in a reasonably foreseeable injury to Smith than the failure to install guardrails in Dean and Lockwood.

- Granchi v. Borough of North Braddock, 810 A.2d 747 (Pa. Cmwlth. 2002). **When is a street not a street? Answer: A street remains a street despite temporary secession of vehicular traffic.** Granchi was injured while volunteering at a fire department fundraiser held on a blocked off public street on which the fire department had taken temporary control. While retrieving bingo cards from what normally was the middle of the roadway. Granchi tripped over a box protruding from underneath the table and was injured. The box was placed under the table earlier in the night by a firefighter to be used as a trash receptacle. Granchi attempted to bring the claim under the real property exception since streets are specifically excluded from the real property exception to immunity. The court found that "rights and responsibilities relating to streets arise as a matter of real property law. These rights and responsibilities exist independent of the presence or absence of vehicles, pedestrians, organized race participants, protest marchers, parades, vendor wagons or other moveable objects."

- Griffith v. Snader, 795 A.2d 502 (Pa. Cmwlth. 2002). A collision occurred at the intersection of three roads, two state highways and a road owned by Kennett Township. The drivers involved in the collision were traveling on the state highways when the accident occurred. Here, the driver argued before the Commonwealth Court that there was a duty on the part of the Township to provide a remedy and/or recommend the replacement of a flashing beacon with a three-way traffic-control system. In rejecting this argument, the Commonwealth Court found that the mere fact that the Township road was part of the intersection where the accident occurred, did not, in and of itself, render the Township potentially liable for the driver's injuries. Any alleged dangerous condition that was the proximate cause was exclusively on State roads. No negligent act of the Township could have caused the injuries where a Township road was not in

anyway involved in the accident. The fact that the Township subsequently recommended improvements to the intersection was an inadmissible subsequent remedial measure.

- Lockwood v. City of Pittsburgh, 2000 Pa. LEXIS 1213 (5/18/00). Companion case to Dean. Lockwood was a passenger in a vehicle that failed to negotiate a sharp curve in the road. The car traveled off the roadway, went down an embankment, and struck a tree causing fatal injuries to Lockwood. Wilson had a blood alcohol content of .168, and was subsequently convicted of vehicular homicide. "We …hold that the failure to erect a guardrail is not a 'dangerous condition of streets' for purposes of the streets exception to governmental immunity under the Tort Claims Act."

§ 8542(b)(7) – Sidewalks

A dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency (unless the local agency owns the sidewalk, its liability is secondary to the landowner). Must be a condition "of" the sidewalk and not "on" the sidewalk.

- Sherman v. City of Philadelphia, 745 A.2d 95 (Pa. Cmwlth. 2000). This is an *en banc* decision written by President Judge Doyle with a dissenting opinion by Judge Smith. Sherman injured June 9, 1994 – defective sidewalk in front of City's Fire Administration Building on Spring Garden Street. City owns the building. The section of Spring Garden Street abutting the sidewalk is not a City street, but has been designated as a state highway – new legal standard holding the City liable for the dangerous condition (compare with Jones v. SEPTA, decided 2/15/02, summarized under Section 8522(B)(4)).

- Finn v. City of Philadelphia, 1995 WL 560077, (Pa. 1995). Grease on a sidewalk is not a dangerous condition "of" a sidewalk.

§ 8542(b)(7) – Care, Custody or Control of Animals

…in the possession or control of a local agency, including but not limited to police dogs and horses.

§ 8545 -- Official liability generally

An employee of a local agency is liable for civil damages on account of any injury to a person or property caused by acts of the employee which are within the scope of his office or duties only to the same extent as his employing local agency and subject to the limitations imposed by this subchapter.

§ 8546 -- Defense of official immunity

In any action brought against an employee of a local agency for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee, the employee may assert on his own behalf, or the local agency may assert on his behalf:

(1) Defenses which are available at common law to the employee.

(2) The defense that the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law.

(3) The defense that the act of the employee which gave rise to the claim was within the policymaking discretion granted to the employee by law. For purposes of this subsection, all acts of members of the governing body of a local agency or of the chief executive officer thereof are deemed to be within the policymaking discretion granted to such person by law.

§ 8547 -- Legal assistance

(a) Mandatory provision of legal assistance generally.--When an action is brought against an employee of a local agency for damages on account of an injury to a person or property, and it is alleged that the act of the employee which gave rise to the claim was within the scope of the office or duties of the employee, the local agency shall, upon the written request of the employee, defend the action, unless or until there is a judicial determination that such act was not within the scope of the office or duties of the employee.

(b) Optional provision of legal assistance generally.--When an action is brought against an employee of a local agency for damages on account of an injury to a person or property, and it is not alleged that the act of the employee which gave rise to the claim was within the scope of his office or duties, the local agency may, upon the written request of the employee, defend the action, and such undertaking to defend thereafter may be withdrawn only with the approval of the court. If the local agency has refused a written request to defend the action, and it is judicially determined that the act was, or that the employee in good faith reasonably believed that such act was, within the scope of the office or duties of the employee and did not constitute a crime, actual fraud, actual malice or willful misconduct, the local agency shall reimburse the employee for the expenses of his legal defense in such amounts as shall be determined to be reasonable by the court.

(c) Control of Litigation.—When, pursuant to subsection (a) or subsection (b), the local agency defends an action against an employee thereof at the request of the employee, it may assume exclusive control of the defense of the employee, keeping him advised with respect thereto, and the employee shall cooperate fully with the defense, except that in situations where the legal counsel provided by the local agency determines that the interests of the employee and the local agency conflict.

§ 8548 – Indemnity

(a) Indemnity by Local Agency Generally – [When] it is judicially determined that an act of the employee cause the injury, and such act was, or that

the employee in good faith reasonably believed that such act was, within the scope of his office or duties…

(b) Indemnity by Employee Generally - No employee of a local agency shall be liable to the local agency for any surcharge, contribution, indemnity or reimbursement for any liability incurred by the local agency for damages on account of an injury to a person or property caused by an act of the employee which was within the scope of his office or duties or which he in good faith reasonably believed to be within the scope of his office or duties. No employee of a local agency shall be liable to the local agency for any surcharge, contribution, indemnity or reimbursement for any expenses or legal fees incurred by the local agency while defending the employee against a claim for damages on account of an injury to a person or property caused by an act of the employee.

This section comes into play frequently in connection with professional liability claims. A police officer, for example, maybe sued for excessive use of force, malicious prosecution, assault and battery, intentional infliction of emotional distress, and other intentional torts arising out of his duties as a police officer. Often insurance policies do not provide full coverage for these claims, especially where punitive damages are requested.

Our Pennsylvania Supreme Court has visited this section twice, where police officers have sought indemnity for judgments rendered in 42 U.S.C. § 1983 excessive force type claims.

- Indemnity Ins. Co. of N. Am. v. Motorist Mut. Ins. Co., 710 A.2d 20 (Pa. 1998). This Pennsylvania Supreme Court case briefly summarizes the controlling cases on indemnification.

- Wiehagen v. Borough of North Braddock, 594 A.2d 303 (Pa. 1991). Officer Wiehagen got into a fight at the police station with an intoxicated suspect. A jury awarded compensatory damages on the basis that the officer used excessive force in subduing the suspect, a Fourth Amendment violation. Wiehagen was held to be entitled to indemnification from the Borough.

- Renk v. City of Pittsburgh, 641 A.2d 289 (Pa. 1994). The rationale in Wiehagen was extended to provide indemnification for punitive damages.

- Ferber v. City of Philadelphia, 661 A.2d 470 (Pa. Cmwlth. 1995). The Commonwealth Court distinguished Renk, holding where police officer intentionally used excessive force and where the officer knowingly arrested without probable cause – indemnity not required.

§ 8549 - Limitation on damages

In any action brought against an employee of a local agency for damages on account of an injury to a person or property in which it is judicially determined that the act of the employee caused the injury and that such act was, or that the employee in good faith reasonably believed that such act was, within the scope of his office or duties, damages shall be recoverable only within the limits set forth in this subchapter.

§ 8550 – Willful Misconduct

In any action against a local agency or employee thereof for damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such acts constituted a crime, actual fraud, actual malice or willful misconduct, the individual loses his or her immunity, and supposedly, his or her right to indemnity. (Also, the cap no longer applies.)

- Barrie Jo Moyer v. Borough of N. Wales, 2000 U.S. Dist. LEXIS 16082 (11/7/00) 42 U.S.C. §1983 claim with pendent state law claims. Count VI – laundry list of state law torts: malicious prosecution, official oppression, false arrest, assault and battery, obstruction of justice, intentional infliction of emotional distress, abuse of process. Defendant Borough dismissed because a municipality may not be held liable for the willful or wanton misconduct of its employees. See, Berde v. City of Philadelphia, 862 F.Supp. 1329, 1336 (E.D. Pa. 1994)

- Blast Intermediate Unit 17 v. CNA Insurance Cos., 674 A.2d 687 (Pa. 1996) Insurance carrier must indemnify school district for judgment resulting from inadvertent violation of federal discrimination statutes.

§ 8553 – Limitations of Damages

(a) Amounts Recoverable – … $500,000 in the aggregate.

(b) Types of Losses Recognized

1. Past and future loss of earnings and earning capacity.
2. Pain and suffering in the following instances:
   (i) Death; or
   (ii) Only in cases of permanent loss of a bodily function, permanent disfigurement, or permanent dismemberment where the medical and dental expenses are in excess of $1,500.
3. Medical and dental expenses ("includes prosthetic devices, ambulance, nursing, physical therapy, …").
4. Loss of consortium.
5. Loss of support.
6. Property losses.

(c) Insurance Benefits

If a claimant receives or is entitled to receive benefits under a policy of insurance other than a life insurance policy as a result of losses for which damages are recoverable under subsection (c), the amount of such benefits shall be deducted from the amount of damages which would other wise be recoverable by such claimant.

- Wendy Gloffke v. Melvin Robinson and Lehigh and Northampton Transportation Authority, 2003 Pa. LEXIS 198 (2/20/03). On February 20, 2003, the Pennsylvania Supreme Court granted an appeal limited to the question of whether

the Sovereign Immunity Provision (42 Pa. C.S. § 528), and the Local Governmental Immunity Provision (42 Pa. C.S. § 553) violate the due process and equal protection clauses of the Pennsylvania and U.S. Constitutions.

The sovereign immunity section has a split cap $250,000/$1,000,000 whereas the local agency cap has a single limit of $500,000. The sovereign immunity requires only pain and suffering to recover while the local governmental immunity provision allows for recovery for pain and suffering only if there is a permanent loss of bodily function or permanent dismemberment.

- Allen v. Mellinger, 784 A.2d 762 (Pa. 2001). Overrules Woods v. Dept. of Transportation. The Court held that "delay damages recoverable from Commonwealth parties are limited to those calculated based upon the statutory cap. Additionally, we hold that as is the case with compensatory damages, Commonwealth parties are not jointly and severally liable for delay damages which exceed those calculated on the statutory cap."

- Lake v. Bracy, 776 A.2d 1022 (Pa. Cmwlth. 2001). Discussing permanent loss of a bodily function. Plaintiff argued that she has suffered "a permanent loss of a bodily function" in that she can no longer oversee students on the school bus again or work as many hours as she did before the accident. She asserted that she has lost the full use of her neck, back, right arm and left leg since the accident. She also presented reports from numerous medical experts showing that she suffered some injury as the result of the accident. The Court found that the case presented a question of fact appropriately addressed by a jury.

- Walsh v. City of Philadelphia, 585 A.2d 445 (Pa. 1991) permanent loss of a bodily function means that Plaintiff as a proximate result of the accident can no longer perform a physical act or acts which she was capable of performing prior to injury,…loss is permanent… for remainder of her life.

  Also, noticeable half-inch difference in size of left quadricep is permanent disfigurement.