A Comprehensive Guide to the Pennsylvania Political Subdivisions Tort Claims Act

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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 authors 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

Pa. R. Civ. P. 238 provides, in relevant part: (1) at the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damage, damages for delay shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the Plaintiff in the verdict of a jury, in the decision of the Court in a non-jury trial, or in the award of arbitrators appointed under §7361 of the Judicial Code, 42 Pa. C.S. §7361, and shall become part of the verdict, decision, or award; (2) damages for delay shall be awarded for the period of time from the date one year after the date original process was first served in the action up to the date of the award, verdict or decision; (3) damages for delay shall be calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus one percent, not compounded.


Delay damages are recoverable from Commonwealth parties, limited to those calculated based upon the statutory cap. In Marlette v. State Farm Mut. Auto. Ins. Co., 57A.3d 1224 (2012), a Plaintiff’s recovery of delay damages under Pa. R. Civ. P. 238 is limited to the amount of the legally-recoverable molded verdict as reflected by the insurance policy limits.

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, and 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 quadriplegic. For the jury to determine whether the individual falls within the Act’s definition of “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.


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

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• **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.

• **Allen v. County of Wayne**, 2013 Pa. Commw. Lexis 375 (2013). In September 2009, Plaintiff, while performing yard work as an inmate of the County correctional facility, sustained serious injuries when another inmate, Jason Hicks (hereinafter “Hicks”), backed into him with a lawn tractor causing Plaintiff’s right leg to become pinned underneath. The Court found that Hicks was acting on behalf of, and/or at the direction of, the County when he injured Plaintiff. The Court found Hicks falls squarely within the clear and unambiguous language of 42 Pa. C.S. § 8501, and must be considered to be a county employee for purposes of governmental immunity.

• **Bubba v. Commonwealth of Pennsylvania**, 2013 Pa. Commw. Lexis 67 (2013). Commonwealth Court concluded DOT is an administrative agency of the Commonwealth and a “Commonwealth party” pursuant to §8501. However, the Court also noted that Commonwealth agencies, including DOT, are generally immune from tort liability pursuant to §8521 except (a) where: 1) damages would be recoverable under common law or statute creating a cause of action; and 2) the action caused by the negligent act of a Commonwealth party falls within one of the nine (9) exceptions under §8522(b).

“**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.

- Muldrow v. SEPTA, 2014 Pa. Commw. Lexis 120 (February 26, 2014). On December 22, 2009 at approximately 8:45am Muldrow was a passenger on SEPTA’s Route H bus. While attempting to disembark, Muldrow fell down the stairs leading to the street level, allegedly sustaining injuries to her head, neck, back, right leg, and right knee. The Commonwealth Court reaffirmed its prior holding that a stopped bus “was not in operation” for purposes of sovereign immunity.

- Knox v. SEPTA, 81 A.3d 1016, 2013 Pa. Commw. Lexis 466 (November 12, 2013). A SEPTA bus was rear-ended by an uninsured motorist. While stopped to discharge passengers. The Commonwealth Court concluded Section 8522(b)(1) of
the Sovereign Immunity Act requires that the motor vehicle must be in “operation” in order for this exception to apply. The Court further reasoned that for uninsured motorist benefits to apply, there must be a claim that fits under one of the exceptions of the general grant of immunity. Since none existed, the Plaintiffs lost.

- **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. The Complaint alleged negligence because the bus was too far from the curb and because the bus driver failed to “kneel” the bus. Unfortunately for Plaintiff, 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. The Court determined such was a dispute 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. The jury rendered a verdict of $1,367 million on the survival action, and $280,000.00 in the wrongful death. A molded wrongful death verdict of $168,000.00 plus $820,200.00 in the survival action was then reduced to $250,000.00, with delay damages added. In total the final award amounted to $676,709.38.


- **Royal v. SEPTA, 10 A.3d 927 (Pa. Cmwlth. 2010).** Royal boarded a SEPTA bus at 55th and Chestnut Streets, Philadelphia, Pennsylvania. 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. However, the driver had, in fact, not “kneeled” the bus, and Royal, who uses a cane to walk, fell as she departed. Immunity was
granted, as the SEPTA bus was not in “operation.” No movement of the bus, part of the bus, or attachment to the bus had 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.

- Beatty v. Lt. Crawford, 22 A.3d 1089 (Pa. Cmwlth. 2011). Beatty injured the little finger of his right hand playing basketball at SCI – Graterford. He was examined by a physician, who ordered pain medication and an X-Ray, determining a second opinion was needed. On April 15, 1998, Beatty received a class 1 misconduct because a urine sample tested positive for drugs. Lt. Crawford refused to allow Beatty to keep his doctor’s appointment. On May 14, 1998, an Orthopedist told Beatty because of the delay, nothing could be done for the finger, and it would be deformed and disfigured for life. In response to Lt. Crawford’s Motion for Summary Judgment, Beatty admitted Crawford was not “related health care personnel” under 8522(b)(2), and lost the case as a result.

§ 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 responded by claiming 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 at 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 was not waived.

- **Weckel v. The Carbondale Housing Authority**, 20 A.3d 1245 (Pa. Cmwlth. 2011). Decedent, age 67, 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 concluded 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 stairwell access to residents, the fire department would need to rescue them from the roof. Consequently the fire department and the Authority decided 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. The Court found the 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 the Pennsylvania Turnpike at 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 sloping upward from the road. At the east end of the gap, the guardrail resumed. 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 applied to a 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).
• Tate v. Tate, 2014 Pa. Commw. Lexis 64 (January 22, 2014). On October 24, 2009, at 11:42pm, two vehicles collided at the intersection of State Routes 51 and 168 in South Beaver Township, Beaver County. PennDOT contended that because it had transferred responsibility for the installation of traffic control devices to the Township where the accident occurred, it could not be held liable for their absence. The Vehicle Code grants authority to both PennDOT and local municipalities to install traffic signals and other traffic control devices on state roads. See 75 Pa. C.S. § 6122. However, a municipality must obtain approval from PennDOT before it installs a traffic control device on a state highway. See id. at (a)(1). Conversely, PennDOT does not need authorization from a municipality to install “stop signs, yield signs, or other official traffic control devices.” 75 Pa. C.S. §6124. The Supreme Court held PennDOT’s regulation did not abrogate its duty to ensure that it’s highways are safe for reasonably foreseen uses. The Court made clear no agency can, by regulation, relieve itself of a duty of care or expand its own sovereign immunity as allowed by the legislature. In summary, the failure to remedy a dangerous condition amounts to a breach of PennDOT’s duty of care, and imposition of liability upon it.

• Oliver v. Tropiano Transp. Inc., 2013 Pa. Commw. Lexis 459 (November 8, 2013). The appealing Defendant was the Philadelphia Parking Authority [“the Authority”]. The trial court found the Authority liable for injuries sustained by Oliver pursuant to the Real Estate Exception to sovereign immunity. Oliver was injured in an Authority parking garage located in the city of Philadelphia. Oliver parked her vehicle on the garage’s third level. When she returned to the garage she boarded a shuttle van which transported her to her vehicle because the garage’s elevator was broken. Upon exiting the shuttle, Oliver sustained fractures to her right foot. The Authority on appeal argued Plaintiff failed to prove the vehicle liability exception applied, and further that Oliver could not recover for pain and suffering, as she did not sustain “permanent loss of bodily function, permanent disfigurement, or permanent dismemberment” as required by §8553(c)(2)(ii). The trial court found the shuttle van was owned and operated by the Authority, and that the driver’s action of letting Oliver off at a point on an incline in the garage was a violation of the Authority’s directives. The Commonwealth Court noted that in the case of an agency, the matter would be governed by the Real Estate Exception, such that plaintiff is not required to have a permanent loss of a bodily function. Here, however, Oliver lost on appeal because the Parking Authority was a local agency, not a Commonwealth agency. As such, Plaintiff is required to demonstrate a permanent loss of a bodily function, permanent disfigurement, or permanent dismemberment, which Oliver did not.
• **Ling v. Commonwealth of Pennsylvania, 2013 Pa. Commw. Lexis 388 (July 18, 2013).** Daniel Ling attempted to make a left hand turn from a private driveway onto State Route 60. Unfortunately, his vehicle collided with an oncoming pickup truck causing injuries to his neck, spine, and legs, as well as post-traumatic stress disorder, and depression. He filed a Complaint against the DOT, as well as the driver of the pickup truck. He alleged DOT was negligent in allowing the private driveway to enter onto State Route 60 with an improper sight distance, failing to prohibit left hand turns from the driveway, failing to warn motorists of the driveway’s existence, failing to increase the sight distance, and failing to permit the unpermitted and unlicensed driveway that created such dangerous condition. Ling lost because in prior cases the Commonwealth had explained that a dangerous condition must exist on the highway itself, not just within the right-of-way in order to invoke the Real Estate Exception. For purposes of the exception, a “highway” encompasses the “cartway,” or the paved and traveled portion of the roadway, as well as the burm, or shoulder. In this case, the location and design of the private driveway combined with the environment/landscape alongside the roadway was the originating source of any sight distance problems or dangerous condition. Having concluded that the driveway immunity provision immunizes DOT from liability, and that the exception from sovereign immunity in §8522(b)(4) did not apply, the Commonwealth Court affirmed the trial court’s Order granting summary judgment.

• **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 leading Clark Chevrolet to seek damages for flooding. The Court found that Clark Chevrolet failed to demonstrate liability. The Commonwealth adheres to the common law majority “common enemy” rule, which regards surface waters a common enemy every land owner must fight to eliminate as best he may. Thus, “no liability on the part of a municipal corporation for the flooding of private property from the inadequacy of gutters, drains, culverts, or sewers” may be imposed so 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 running through Cambria County. Near the highway’s Summit exit, twenty-six vehicles had either collided with or stopped on or adjacent to the
paved portion of the road. As the vehicles sat, a tractor trailer owned by National Freight, Inc., and operated by James C. Jones [“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 Plaintiffs’ injuries. However, neither the snow nor wind can be considered to have “derived, originated, or had as its source” in 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 northbound 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 [“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. The Commonwealth Court that DOT had no duty to remove ice and snow at common law, and only a general duty of snow removal under various statutes, but no specific duty to protect Kahres. The Court rejected the idea any duty is assumed merely because PennDOT vehicles begin to remove ice and snow somewhere on the highway. No recovery was permitted, as in the absence of any common law cause of action or statute, Kahres failed to meet the threshold requirement for a waiver of sovereign immunity.
Additionally, the Court pointed out that the Kahres’ allegations did not fall under Real Estate 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 going West on a State road in the city of Pittsburgh. A vehicle traveling the 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. At the Court level, Penn DOT was deemed responsible for the condition of the road. On appeal, the Commonwealth Court affirmed summary judgment in favor of the city.

  - 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 instantaneous quadriplegia for Dean. The Pennsylvania Supreme Court held the failure to erect a guardrail does not constitute a dangerous condition of Commonwealth reality.” As the real estate exception was deemed inapplicable, the Supreme Court decided that the Commonwealth Court had erred by refusing to grant summary judgment in favor 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 argued 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” language, as well as to 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 (Nov. 19, 2010). Plaintiff left her home on June 28, 2006 bound for her place of employment. She took the Gilberton on-ramp onto southbound State Route 924 (SR 924). Within moments, she drove her vehicle into a 50-foot-deep sink hole with a 50-foot diameter. There were no warning signs or barricades, and indeed 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 difficult arose in the need to show a duty was owed by either entity. The Commonwealth Court stated that 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 Plaintiff failed to establish a “special relationship” between Boniscavage and the PSP. There was no allegation that the PSP was aware of her specific and unique situation or voluntarily assumed the duty to protect her. Plaintiff did not allege that the PSP had actual knowledge of the sink hole, rather only that they “knew or should have known” that the highway was closed. The Court affirmed that the DOT has “exclusive authority and jurisdiction over all state designated highways” even though the PSP responds to accidents and enforces the laws thereupon.

§ 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), overruling Woods v. Commonwealth, Dep't of Transp., 612 A.2d 970 (Pa. 1992). As to delay damages in actions against the Commonwealth the general rule applicable is Pennsylvania Rule of Civil Procedure 238, providing that 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. Nonetheless, 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 based on such limitation on damages.

• Griffin v. Septa, 757 A.2d 448 (Pa. Cmwlth. 2000). Previous to Zelnick, supra, this case was the last attack on the statutory cap on damages under the Tort Claims Act. John Griffin [“Griffin”] and Septa driver had a verbal confrontation on a bus. The driver indicated he would not pick up 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. Griffin ran alongside the bus and was run over. A verdict for his Estate was returned in the amount of $2.163 million, and then molded to the statutory cap of $250,000. The cap was again affirmed by the Supreme Court.

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). The Pennsylvania Supreme Court held unequivocally that a local agency has no common law duty to a fleeing driver. Lindstrom argued his 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 subsection (b). The Court determined that "negligent acts" 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:

  § 8542(b)(1) – Exceptions to Governmental Immunity

  (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**

- **Rebecca Gale v. City of Philadelphia, Philadelphia Police Department, and Jose Garriya**, 2014 Pa. Commw. Lexis 133 (March 4, 2014). On March 16, 2008, Jose Garriya was taken into custody by the Philadelphia Police Department, handcuffed, and placed in the back of a police cruiser. Inexplicably, Mr. Garriya managed to commandeer the police cruiser and drive it onto the Benjamin Franklin Bridge. Meanwhile, Gale was traveling eastbound on the bridge from Philadelphia, heading towards Camden, New Jersey. At about 5:45 o’clock a.m., the police cruiser driven
by Garriya struck Gale’s vehicle from behind. As a result of the collision, Gale sustained serious injury.

Gale’s claims were unsuccessful, as: 1) she must establish that “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,” of governmental immunity or official immunity; and, 2) that the injury was caused by the negligent acts of a local agency or an employee thereof, acting within the scope of his official duties with respect to the one of the categories listed in §8542(b). The vehicle exception permits liability where plaintiff’s injury is due to “[t]he operation of any motor vehicle in possession or control of the local agency.” The word “operation” means “to actually put in motion,” and does not include “preparing to operate a vehicle, or acts taken at the cessation of operating a vehicle.” The Commonwealth in arguing its defense cited *Pana v. SEPTA*, a 1995 decision where an individual boarded a parked, open, running SEPTA authority bus and proceeded to drive the bus through several counties, causing injury along the way. The Commonwealth Court noted the vehicle exception applies only where the agent of the local agency actually operates the vehicle. The Court refused to impose liability under the Vehicle Exception, stating both the language of the statute, and earlier cases made clear that an employee of a local agency retains immunity where they have not acted to put a vehicle in motion.


- **Celeste Sellers and Richard K. Sellers, individually and as Administrators of the Estate of Joshua David Sellers, deceased v. Township of Abbington**, 2013 Pa. Commw. Lexis 180, appeal granted in part, *See Sellers v. Twp. of Abbington and Officer Edward Howley*, 2013 Pa. Lexis 3205 (December 20, 2013). Simmons, the driver of a vehicle in which Sellers was a passenger, was pursued by Abbington Township Police until the vehicle in which the men rode crashed into trees and a parked pick-up truck at the top of a T-intersection. Sellers was ejected from the car upon impact and thrown 20 feet, and died as a result of his injuries. The Supreme Court will consider the legal question of whether the police owe any duty of care to a passenger in a fleeing vehicle. It is well-established that duty of care is owed to
the driver in a pursuit, and the trial court similarly ruled no duty was owed to a passenger. The Pennsylvania Supreme Court granted a review, the result of which is forthcoming.

- **Mary Cornelius, Administratrix of the Estate of Akeem L. Cornelius, deceased v. Roberts**, 2013 Pa. Commw. LEXIS 181 (June 5, 2013) appeal denied in **Cornelius v. Roberts**, 2014 Pa. LEXIS 94 (Pa. January 9, 2014). A Harrisburg police officer operating a police vehicle attempted to pull over Isaac Roberts [“Roberts”] who failed to pull over and stop. Harrisburg police initiated a pursuit. At the intersection of North 7th and Maclay Streets, the vehicle operated by Roberts collided with the right passenger side of a vehicle traveling east, operated by James Peck [“Peck”]. As a result of the collision, Akeem L. Cornelius, who was a passenger in Peck’s vehicle, died from his injuries. The Complaint alleged the officer operated his vehicle in a negligent manner by initiating and maintaining a high speed pursuit in violation of Harrisburg Police Bureau’s regulations, and that the police bureau was negligent in failing to train and supervise the officer. Preliminary objections asserting that the officer owed no duty of care to the decedent were denied. The trial court granted the City’s petition for permission to appeal. The Commonwealth Court denied the appeal, and the Pennsylvania Supreme Court declined to grant a review.

- **Gale v. City of Philadelphia**, 2014 Pa. Commw. LEXIS 133 (March 4, 2014). On or about March 16, 2008, Jose Garriya was taken into custody by Philadelphia P.D., handcuffed, and placed in back of a police cruiser. However, he managed to commandeer the police cruiser and drive it onto the Ben Franklin Bridge. Gale was in her vehicle traveling east on the bridge from Philadelphia and towards Camden. The police cruiser, driven by Mr. Garriya struck her vehicle from behind, causing her serious injury. The Commonwealth Court reasoned that the vehicle exception to governmental immunity permits liability where a Plaintiff’s injury is due to the operation of any motor vehicle *in possession or control of the local agency*. It further reasoned that the local exception applies only where an agent of a local agency actually operated the vehicle in question. Gale has no cause of action under the vehicle exception for the injuries which she sustained as a result of the operation of the vehicle from an escaped or escaping prisoner.

- **Allen v. County of Wayne**, 2013 Pa. Commw. LEXIS 375 (September 13, 2013). Discussed initially under §8501 as the operator of the vehicle, Hicks, was a correctional facility inmate found to be an employer under §8501. The decision also held that the lawn tractor, which was self-propelled, is a “motor vehicle” within the meaning of the act.
• Love v. City of Philadelphia, 543 A.2d 531 (Pa. 1988). An elderly passenger fell while exiting a City-owned van. The Supreme Court held to operate something means to actually put it in motion.” Vehicle exception not applicable.


• 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, providing the correct address. The Chester County Emergency Services System relayed the correct directions, but a mix-up in relaying such to ambulance personnel delayed their arrival. The volunteer fire company was created pursuant to relevant law and legally recognized as the official fire company for the political subdivision as a local agency. The claim did not fit under the Vehicle Exception, as 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 mentally-disabled plaintiff, prior to the April 15, 2005, accident in question was able to live independently. The facts disputed were numerous, including whether he had just departed the bus and walked around it from behind when hit. Serious injuries and permanent neurological impairment resulted, plaintiff having a pre-accident IQ of 57, and a post-accident IQ of 48. Unable to care for himself or live independently. It was undisputed, however, that the bus was not moving when the accident occurred, leading the Court to find inapplicable and immuinely presented.

• Mannella v. Port Authority of Allegheny County, 982 A.2d 130 (Pa. Cmwlth. 2009). Here, a bus driver negligently deployed the bus wheelchair ramp unevenly with the ground, causing plaintiff to fall out of his wheelchair sustaining serious injury. The Commonwealth Court reiterated it has declined to apply the vehicle liability exception in cases that did not involve the actual movement of the vehicle.” The Court held, consistent with previous decisions, 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 [“Bullock”] broadsided Johnson’s vehicle while responding to a police call for backup assistance. The lights and siren on Bullock’s police car were activated at the time of the accident. The Commonwealth Court recognized the case presented “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.” The Court held that the appropriate standard of care for a driver of an emergency vehicle “is negligence under emergency circumstances.”


- 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 individual was also the cause. Whether a criminal act is so extraordinary as to constitute a superseding cause is normally a question to be determined by the jury.

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.

described as a political mess, this suit involves a former borough council member and others spearheading the local fire company’s effort to purchase a new fire truck, who in order to balance the shortfall, re-championed the idea of securing a $100,000.00 advance from the Borough’s Sewer Fund, which was opposed. While most of the case discusses the subject of defamation, there is reference to the Personal Property Exception. The “personal property” that Reed claimed was negligently handled, the Timeline, was a document prepared by the Borough Police Department in the course of its official investigation of the Sewer Fund loan. It was alleged the Borough improperly produced the Timeline to the media pursuant to a Right to Know law request. The Commonwealth Court held the Timeline was not Reed’s personal property, but rather the property of the Police Department. Consequently, the Court found Reed failed to allege any property loss as a result of the Borough’s alleged negligent care of the Timeline. In so finding, the Appellate Court sustained the trial court’s grant of summary judgment on this point.

§ 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.

- Sanchez-Guardiola v. City of Philadelphia, 2014 Pa. Commw. Lexis 156 (March 10, 2014). This matter involves a claim under the Real Property Exception. Under such exception, the claim must arise from the realty itself, or the care, custody, and control of it. The exception in unavailable when the claims derives from the negligent maintenance of personality. In May 2010, Plaintiff tripped and fell at the Philadelphia International Airport while walking between Terminals B and C with her husband and brother. She spotted a statue of the Philly Fanatic, and moved toward it intending to snap a photograph beside the statue, walking between two large flower pots which blocked from view an unmarked platform or stage. The platform was 12-14 inches high, and of a similar color and material as the surrounding carpet. Plaintiff tripped and fell, sustaining serious and permanent back injuries. The City filed a Motion for Summary Judgment which was granted on the basis that the platform or stage constituted personal property in the nature of furniture, neither affixed nor attached to real property. The City asserted maintenance of personal property does not fall within the Real Property Exception, citing Blocker v. City of Philadelphia, 563 Pa. 559, 763 A.2d 373 (2000).
• **Bretz v. Central Bucks School District**, 2014 Pa. Commw. LEXIS 116 (February 21, 2014). Bretz purchased a 31 acre property where she resides with her family, located downstream from and adjacent to the School District’s 66 acre property containing CV East and the Holicong Middle School. Betz alleged that the expansion of the high school and middle school, including the construction of a detention basin, caused an increase in the volume and duration of storm water discharge onto the property resulting in long term and continuous damage. Where surface water is artificially diverted or collected, a plaintiff sustains a cognizable injury if there has been an increase in the total volume of water discharged onto the land, or if the volume remains unchanged, but is “discharged with augmented force.” Here, the legal wrong arose from the artificial diversion or collection of water itself. In such circumstances, plaintiff need only show that a landowner collected and/or concentrated surface water from its natural channel through an artificial medium, and the water was discharged onto the Plaintiff’s property in an increased volume or force, however slight. These principals of law were first explicated by the Pennsylvania Superior Court in LaForm v. Bethlehem Township, 499 A.2d 1373, 1378 (Pa. Super. 1985)(en banc).

• **Mandakis v. Borough of Matamoras**, 2013 Pa. Commw. LEXIS 255 (July 11, 2013). Plaintiff sustained a hip injury, which necessitated surgery, while attending a party at Airport Park that is a public park located within and owned, operated, and maintained by the defendant Borough. Her injury allegedly occurred when she fell over a defective picnic table. In its summary judgment motion, the Borough claimed the picnic table was furniture, movable, and not affixed to the ground, a point of fact conceded by Plaintiff. A claim under the Real Property Exception must arise from the property itself or the care, custody, or control of it. This exception is unavailable when claims arise from the negligent maintenance of personalty such as bleachers, gymnasium mats, or, as argued here, a picnic table. Borough wins!

• **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 [“Lingo”] was descending an exterior stairwell leading to the basement entrance a building owned by the PHA. Lingo contended that she fell, and sustained serious bodily injury, due to leaves and other debris (including, but not limited to, a dead cat) accumulated in the stairwell. The Court found liability 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. Rather, Lingo’s 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 a shop class at Fels High School. At the time, he was a 13-year old, ninth grade student. Cureton 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. Cureton 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. On this occasion, the power was not turned off. 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 saw’s pulleys. While attempting to dislodge his shirttail, Cureton’s right index finger got caught in the pulleys, amputated a portion thereof. 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. Here, the Court found the negligence of the District arose from failing 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 use posed a danger. The Real Property Exception thusly applied.

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, leading the Commonwealth Court to hold that for purposes of immunity under the Act, the Department is a local agency. The Commonwealth Court rejected Plaintiff’s argument that the
claim fit under the Real Property Exception. Prior case law has ruled 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 while walking in front of City Fire Department Administration Building striking her head. In ruling upon her claim, the Commonwealth Court created a new standard, stating: “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, supra* 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. The Supreme Court rules his claim falls under “care, custody, or control of real property exception.”

- **Kilgore v. City of Philadelphia,** 717 A.2d 514 (Pa. 1998). Walter Kilgore, employee of Federal Express, was injured at the Airport when a co-worker lost control of a motorized tug, crushing his foot. Kilgore alleged that the City failed to remove snow and ice, and that such conduct fit under “care, custody or control of real property.” The Supreme Court reversed an immunity finding, holding 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 on
a poorly maintained and thusly barely visible crosswalk he was killed by an automobile driven by Timothy Horan ["Horan"]. The Commonwealth Court defined a crosswalk as “a marking which serves the dual purpose of guiding pedestrians and warning motorists of the presence of a pedestrian crossing point,” such that the markings fell within the definition of "official traffic control device" pursuant to Section 102 of the Vehicle Code. As such, the Court also found the crosswalk qualified as a “traffic control device” for purpose of Section 8542(b)(4) of the Tort Claims Act. Thus, the Court made clear 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 the blueprint both for plaintiff’s, and defendants 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 State Route 8, a four-lane highway. To turn left into the southbound lanes of State Route 8, Star was required to cross over the two northbound lanes. As Star entered the state highway, her vehicle was struck broadside by a truck traveling in the northbound lanes. 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 a 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. Considering these facts, Justice Sailor noted that 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 that 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: (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 a 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 even if any 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, to prevail 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.

§ 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.


§ 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).
Hunter v. City of Philadelphia, 2013 Pa. Commw. Lexis 478 (November 20, 2013). Hunter filed suit against the City and St. John the Evangelist Catholic Church [“Church”] alleging she sustained a fractured left foot/ankle, multiple contusions and abrasions, and other injuries when she fell on a broken or unlevel sidewalk on the northeast corner of a Philadelphia street. During a deposition, Hunter testified she actually fell in the street. Under §8542(b)(6), a local agency is primarily liable for a “dangerous condition of streets” that it owns.

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 argued snow and ice was improperly removed and not that the black ice was caused by the improper design, construction, deterioration, or defect in the 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 when 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, did not allege his injuries were caused by the condition of any portion of the street 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). Question: 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”, existing 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, one 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 for the crash 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 Court also deemed the fact that the Township subsequently recommended improvements to the intersection an inadmissible subsequent remedial measure.

- **Lockwood v. City of Pittsburgh**, 2000 Pa. LEXIS 1213 (May 18, 2000). 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. The Supreme Court held “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.

- Hunter v. City of Philadelphia, 2013 Pa. Commw. Lexis 478 (November 20, 2013). Hunter filed suit against the City and St. John the Evangelist Catholic Church [“Church”] alleging she sustained a fractured left foot/ankle, multiple contusions and abrasions, and other injuries when she fell on a broken or unlevel sidewalk on the northeast corner of a Philadelphia street. She alleged that the City and the Church allowed the dangerous and defective condition to exist for an unreasonable period of time. However, during a subsequent deposition, Plaintiff testified that she actually fell in the street when her cane went into a hole as she was crossing, and that her Complaint incorrectly stated that she fell on the sidewalk. The matter was later handled under the Streets Exception, and judgment for the City affirmed.

- Shaw v. Thomas Jefferson University Hospital and the City of Philadelphia, 2013 Pa. Commw. Lexis 477 (November 20, 2013). This case discusses the concept of a trivial defect which would allow for summary judgment, and concludes that the sidewalk defect at issue was not so obviously trivial that summary judgment should have been granted.

- Alexander v. City of Meadville and Patrons Mutual Fire Association of Northwestern Pennsylvania, 2012 Pa. Super. Lexis 4082 (December 7, 2012). After a slip and fall accident at the corner of Chestnut and Market Streets in Meadville, complaint was filed against Patrons Mutual, the property owner, and the City. The accident was a result of snow and an accumulation of ice. The trial court granted summary judgment to Patrons Mutual and the City. A pedestrian walking on a public sidewalk is a licensee of the property owner, which in this case was Patrons Mutual. Such a plaintiff must initially prove that Patrons Mutual had notice of the snowy and icy conditions. The evidence offered by Alexander failed to establish such notice, precluding imposition of liability. The instant accident occurred well outside of business hours, on a weekend, when no Patrons Mutual employees were present on the premises. Alexander additionally ailed to satisfy the Hills and Ridges Doctrine, which requires that the snow and ice on the sidewalk have accumulated in ridges or elevations of such size that they unreasonably obstruct traffic travel. City ordinance requires snow and ice removal on the same day that a fall of snow or freezing rain ceases, or within the first five hours of daylight after the cessation of any such fall, whichever period is longer, timing the Court found consistent with the Hills and Ridges Doctrine. The Sidewalk Exception applicable to the City requires proof that in addition to being negligent,
the governmental entity had notice of the dangerous condition, and had an opportunity to remedy that condition but failed to do so. The issue is whether there is a dangerous condition of the sidewalk, as opposed to a dangerous condition on the sidewalk. Here, summary judgment was also affirmed as to the City because Alexander failed to show the injury was foreseeable to the City after it negligently caused the defective condition of the sidewalk, and had notice thereof.

- 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 was injured on June 9, 1994 due to a defective sidewalk in front of the City’s Fire Administration Building on Spring Garden Street, a City owned building. The section of Spring Garden Street abutting the sidewalk is not a City street, but rather is designated as a state highway. Here, the Commonwealth Court explicated a new legal standard, holding the City liable for the dangerous condition (compare with Jones v. SEPTA, decided February 15, 2002, summarized, *supra* under Section 8522(B)(4)).


§ 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 pursuant to 42 U.S.C. Section 1983 excessive force type claims.


- **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 based on their finding 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.


§ 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.)

- Balletta v. Spadoni, 2012 Pa. Commw. Lexis 178. Reaffirms prior case law that to date neither Pennsylvania statutory authority nor appellate precedent has authorized the award of monetary damages for a violation of the Pennsylvania Constitution. On the other hand, it should be noted that for purposes of §8550 of the Tort Claims Act, “willful misconduct” means “willful misconduct of forethought” and is synonymous with “intentional tort.” R.H.S. 936 A.2d at 1230 (citing Renk v. City of Pittsburgh, 641 A.2d 289 (1994).

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).


§ 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 otherwise be recoverable by such claimant.

not timely disclosing the existence of excess insurance policy in the amount of $10 million dollars.


  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. 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 Supreme Court held that “delay damages recoverable from Commonwealth parties are limited to those calculated based upon the statutory cap.” The Court additionally held 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 could no longer oversee students on the school bus, or work the number of hours as previous to the accident. Lake asserted she had 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). Pennsylvania Supreme Court held permanent loss of a bodily function means that a 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, and such or will persist for the remainder of her life. The Court found instantly that a noticeable half-inch difference in size of the left quadricep is permanent disfigurement.