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## *Municipal Newsletter*

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### The Political Subdivision Tort Claims Act

In Pennsylvania, the Commonwealth is protected from certain legal actions by the doctrine of sovereign immunity, while local political units are protected by governmental immunity by the Political Subdivision Tort Claims Act (“PSTCA”). It is important to note these safeguards for local governments, although similar to those enjoyed by state government, are not entirely equal to them.

Exceptions to the PSTCA may subject a local agency to liability for damages if certain conditions are satisfied and the injuries qualify as one of the exceptions to governmental immunity.

A claimant must first prove “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... a defense [of]... governmental... or... official immunity.” 42 Pa.C.S. §8542(a)(1). That is, the damages of the tortious action would be collectable against a local governmental agency had such been committed by a person not affiliated with the governments as an official or employee.

The claimant must next prove the “injury was caused by the negligent acts of the local agency or... employee... acting within the scope of his [or her] duties” as specified by one of the categories detailed hereinafter; the negligent acts, though, do not include conduct constituting a crime, actual fraud, actual malice or willful misconduct. 42 Pa.C.S. §8542 (a)(2).

If the claimant is able to prove the two conditions outlined above, the claimant must then prove his/her injuries constitute one of the following exceptions to governmental immunity as specified in 42 Pa.C.S. §8542(b):

1. Operating any motor vehicle in the possession or control of the local agency, unless the plaintiff is fleeing from the police, attempting to avoid apprehension by the police or assisting someone with eluding the police or evade capture

by law enforcement personnel at the time the injury occurs.

2. When the local agency has in its possession or control the care, custody or control of the real or personal property of others. However, with regard to real property, if an injury is sustained by a person deliberately trespassing on the property, then there is no exception to governmental immunity.
3. Damages and injuries caused by trees, traffic controls and street lighting under the care, custody and control of the local agency, provided these items created a reasonably foreseeable risk of the damage or injury incurred, the local agency had actual notice of the risk; and the agency had a sufficient amount of time prior to the incident so as to prevent the incident.
4. Utility service facilities and streets owned by the local agency, like Number 3 above, must contain a realistically predictable danger of the harm suffered, the local agency had actual notice of the potential danger and had such notice in a sufficient amount of time prior to the incident in order to guard against the occurrence.
5. Sidewalks owned by the local agency, as mentioned above, must have a rationally anticipated hazard of the detriment experienced and the local agency had definite warning at an acceptable period of time before the happening to avoid the event from coming to pass. Furthermore, when the local agency is liable for damages by reason of its power and authority to require installation and repair of sidewalks under the

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care, custody and control of others, the local agency is secondarily liable while the owner of the sidewalk is primarily liable.

6. The care, custody or control of animals in the possession or control of a local agency, such as police dogs and horses, though wild animals such as bears and deer are excluded from this exemption to governmental immunity, except where provided elsewhere in the statutes.

Once it is confirmed the local government or its employee cannot claim governmental immunity, the would-be litigant must give written notice of the injury to the political unit in the required time period, which is six months. Regardless of the type of incident giving rise to the cause of action, the claimant is limited in the damages he/she can be awarded: up to a total of \$500,000.00. 42 Pa.C.S. §8553(b). These damages may be recoverable strictly for the following:

1. Past and future loss of earnings and earning capacity;
2. Pain and suffering relative to death or permanent loss of bodily function or permanent dismemberment where medical and dental expenses exceed \$1,500.00;

3. Medical and dental expenses;
4. Loss of consortium;
5. Loss of support; and
6. Property losses.

42 Pa.C.S. §8553(c). But then, “if the claimant receives or is entitled to receive benefits under a policy of insurance [except] life insurance... as a result of losses for which damages are recoverable... the amount of such benefits shall be deducted from the amount of damages which would otherwise be recoverable by such claimant.” 42 Pa.C.S. §8553(d). Accordingly, a potential award is lessened by the amount received by the injured individual per his/her insurance policy relative to losses mentioned above. Moreover, should the claimant be successful in obtaining a judgment against either the local agency or the employee of the local agency, the claimant is barred from pursuing a legal action against the other for the same subject matter. 42 Pa.C.S. §8557.

Under certain circumstances, through the Political Subdivision Tort Claims Act, local governments in Pennsylvania have immunity from liability for particular legal actions, so long as specific conditions are met, and only if such actions adhere to a particular category. In this article, we named those categories and presented not only the limits of damages a person may seek against the local government or its employee, but also the types of losses the person may seek to collect damages for. It should be noted, this subject is broader than what has been summarized here, and the items presented herein should not be relied upon exclusively.

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