

## Governmental Immunity & Municipal Liability

Traditionally, under the doctrine of governmental immunity, a local governmental unit in Pennsylvania was immune from tort liability, i.e., for damages resulting from an injury caused by the municipality's negligent violation of another person's rights, when the municipality was acting in a governmental rather than a proprietary role.<sup>1</sup>

After the courts abrogated the common-law doctrine of governmental immunity, the tort liability of local governments became the subject of statute, first set forth in what is commonly referred to as the Political Subdivision Tort Claims Act and now contained in the Pennsylvania Consolidated Statutes, Title 42 (Judiciary and Judicial Procedure), Part VII (Civil Actions And Proceedings), Chapter 85 (Matters Affecting Government Units), Subchapter C (Actions Against Local Parties).<sup>2</sup>

The Legislature has established the following exceptions to governmental immunity,<sup>3</sup> providing that a municipality may be liable for acts in eight limited areas:

- (1) Vehicle liability.
- (2) Care, custody or control of personal property
- (3) Real property.
- (4) Trees, traffic controls and street lighting.
- (5) Utility service facilities.
- (6) Streets.
- (7) Sidewalks
- (8) Care, custody or control of animals.

The statutory provisions relating to governmental immunity set forth in Title 42 of the Pennsylvania Consolidated Statutes do not afford immunity against suits under federal laws like those protecting civil rights. Also, no immunity would exist where the Commonwealth specifically has allowed in another law for the possibility that civil damages may be recoverable, as is the case, for example, under Act 169 of 1986, the Whistleblower Law.<sup>4</sup>

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<sup>1</sup> For a discussion of the distinction between governmental and proprietary functions of a governmental unit, *see* the *Deskbook* article entitled "Can a Municipal Governing Body Enter Into a Contract That Will Bind Future Governing Bodies?"

<sup>2</sup> 42 Pa.C.S. § 8541 et seq.

<sup>3</sup> A more complete description of these exceptions to the statutory immunity is provided in 42 Pa.C.S. § 8542(b).

<sup>4</sup> 43 P.S. § 1421 et seq.

**Application: a vehicle in the possession and under the control of a municipality collides with a private vehicle.** A citizen whose car has been damaged as a result of the negligent operation of a municipal vehicle often is surprised when the municipality states it is liable for damages only to the amount of the deductible of the citizen's collision insurance coverage.

**The municipality is correct.** Although "vehicle liability" is one of the eight limited areas in which a municipality may be held liable for its negligent acts, the law that permits this liability also limits a person's recovery to the extent that the person either receives or is entitled to receive insurance benefits (other than life insurance) for damages resulting from a municipality's negligence.<sup>5</sup>

In effect, the amount of these insurance benefits is deducted from the amount of damages that would otherwise be recoverable. Thus, the citizen whose vehicle was damaged can recover only the amount of the deductible on his or her insurance.<sup>6</sup>

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<sup>5</sup> See 42 Pa.C.S. § 8553(d)

<sup>6</sup> The deduction of insurance benefits is applied to a jury verdict or judgment of damages before it is "molded" to the statutory cap on damages. See *Fernandez v. City of Pittsburgh*, 643 A.2d 1176 (Pa. Cmwlth. 1994), *appeal denied*, 675 A.2d 1253 (Pa. 1996).