

SEAN ANDREWS,  
Plaintiff

vs.

WILLIAMSPORT BUREAU of  
TRANSPORTATION,  
Defendant

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:  
:  
: NO. 04-02,125  
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:  
: PETITION FOR LEAVE TO AMEND

*Date: November 7, 2005*

**OPINION and ORDER**

Before the court for determination is the Petition for Leave to Amend Complaint of Plaintiff Sean Andrews (hereafter “Andrews”) filed July 19, 2005. The petition will be granted.

**I. BACKGROUND**

**A. Facts**

The present case arises out of a motor vehicle accident that occurred on August 11, 2003. Andrews alleges that an agent, representative and/or employee of Defendant Williamsport Bureau of Transportation (hereafter “the Bureau”) was operating a bus on Third Street in the city of Williamsport, Pennsylvania on that date. Andrews alleges that the bus struck the rear of his vehicle as it was stopped. Andrews alleges that the agent, representative and/or employee of the Bureau operated the bus in a negligent manner in that she failed to apply the brakes in time to avoid the collision; failed maintain a safe speed; failed to leave an appropriate distance between the bus and Andrews’ vehicle; failed to maintain an assured clear

distance ahead; and failed to maintain adequate control of the vehicle in order to prevent the bus from striking Andrews' vehicle. Andrews alleges that he has suffered significant injuries as a result of this accident.

### **B. Proposed Amendments**

Andrews instituted the following suit by filing a complaint on December 20, 2004. The only count asserted against the Bureau is a vicarious liability cause of action. The vicarious liability cause of action is based upon one of the Bureau's agent, representative and/or employee's allegedly negligent operation of a Bureau bus that caused the motor vehicle accident which injured Andrews.

In the Petition for Leave to Amend Complaint, Andrews alleges that during the course of depositions conducted on June 23, 2005 information was discovered that the Bureau's employee, who was operating the bus at the time of the motor vehicle accident, Patricia Spangler, had been involved in numerous prior motor vehicle accidents. Andrews also alleges that the depositions disclosed information that the Bureau had knowledge of Spangler's driving history. It is based upon this information that Andrews seeks to amend the complaint.

Andrews seeks to amend the complaint to assert an independent negligence cause of action against the Bureau. Andrews seeks to amend the complaint to assert that:

9. The aforementioned accident was caused exclusively and solely by the negligence, carelessness and/or recklessness of Defendant and the activities of the Defendant's agent, representative and/or employee in:
  - a. Defendant's agent, representative and/or employee's operation of the city bus vehicle in violation of the Pennsylvania Motor Vehicle Code, 75 Pa.C.S.A. §4581(a)(2), by operating the vehicle in a careless manner;

- b. Defendant's agent, representative and/or employee's failure to apply the brakes in time to avoid a collision with Plaintiff's vehicle;
- c. Defendant's agent, representative and/or employee's following of Plaintiff's vehicle too closely;
- d. Defendant's agent, representative and/or employee's driving the city bus vehicle at an unsafe speed;
- e. Defendant's agent, representative and/or employee's failure to maintain an assured clear distance ahead;
- f. Defendant's agent, representative and/or employee's failure to maintain adequate control of the vehicle in order to prevent it (sic) from striking the Plaintiff's vehicle;
- g. Defendant's failure to provide adequately trained and skilled drivers;
- h. Defendant's failure to supervise and/or terminate Defendant's agent, representative and/or employee after having notice of said agent's dangerous driving history; and
- i. Defendant's authorization, either express or implicit, that Defendant's agent, representative and/or employee be permitted to drive a route that was under construction, which would require the driver to possess extra skill in maneuvering the vehicle, such skill Defendant had knowledge that the driver did not possess.

Petition for Leave to Amended Complaint, Exhibit A (proposed amended complaint ¶9).

### **C. The Bureau's Argument Opposing the Amendments**

The Bureau opposes the petition. The Bureau argues that the petition should be denied because the requested amendments, proposed sub-paragraphs 9(g) – (i), are against a positive rule of law. The Bureau contends that it has immunity from suit under the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §§ 8541-8542, (hereafter “Tort Claims Act”) because it is a local agency.<sup>1</sup> The Bureau asserts that a local agency will lose immunity from suit only if certain requirements are met. It is to these requirements that the Bureau directs its argument.

The Bureau asserts that the proposed amendments do not come within any of the Tort Claims Act's enumerated exceptions, specifically the vehicle liability exception. The Bureau asserts that the vehicle liability exception only applies to situations involving the actual operation of a motor vehicle. The Bureau argues that proposed subparagraphs 9(g) – (i) do not involve the actual operation of a motor vehicle, but involve the actions of a person prior to any operation since the amendments deal with training, supervision, and discipline. Since the proposed amendments do not fall within the vehicle liability exception, the Bureau argues that the requirements to deprive it of immunity have not been met and the petition must be denied.

### **II. ISSUE**

Whether the proposed amendments regarding the Bureau's alleged failure to train, supervise, discipline, and employ according to her skills a driver of one of its buses fall within

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<sup>1</sup> Andrews does not challenge the Bureau's contention that it is a local agency within the meaning of the Tort Claims Act.

the vehicle liability exception of the Tort Claims Act, and, therefore, are not contrary to a positive rule of law?

### **III. DISCUSSION**

The opinion's discussion will first set forth the general rules regarding the determination of whether to grant leave to amend a complaint. The discussion will then set forth the general rules and principles regarding the immunity provided to a local agency by the Tort Claims Act. The discussion will then apply those principles to determine whether the proposed amendments fall within the vehicle liability exception, and, therefore are not contrary to a positive rule of law.

#### **A. General Rules Regarding Amending a Complaint**

The right to amend a pleading is set forth in Pa.R.C.P. 1033. It provides:

A party, either by filed consent of the adverse party or leave of court, may at any time change the form of the action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or amended.

Pa.R.C.P. 1033. The decision whether to permit an amendment is within the discretion of the trial court. *Debbs v. Chrysler Corp.*, 810 A.2d 137, 148 (Pa. Super. 2002), *app. denied*, 829 A.2d 311 (Pa. 2003); *Sejpal v. Corson, Mitchell, Tomhave & McKinley, M.D.'s, Inc.*, 665 A.2d 1198, 1200 (Pa. Super. 1995). Generally, leave to amend should be liberally granted in order to secure a determination on the merits of the case whenever possible. *Debbs*, 810 A.2d at 150; *Beckner v. Copeland Corp.*, 785 A.2d 1003, 1005 (Pa. Super. 2001), *app. denied*, 805 A.2d 518 (Pa. 2002); *Capobianchi v. BIC Corp.*, 666 A.2d 344, 346 (Pa. Super. 1995), *app.*

*denied*, 674 A.2d 1065 (Pa. 1996). However, an amendment will not be permitted “... where it is against a positive rule of law, where it states a new cause of action after the statute of limitations has run, or when it will surprise or prejudice the opposing party.” *Somerset Cmty. Hosp. v. Allan B. Mitchell & Assocs., Inc.*, 685 A.2d 141, 142 (Pa. Super. 1996).

### **B. General Rules and Principles Regarding Immunity from Liability under the Tort Claims Act**

The Tort Claims Act raises the bar of immunity for local agencies.<sup>2</sup> *Jones v. SEPTA*, 772 A.2d 435, 439 (Pa. 2001). It provides that “[e]xcept 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.” 42 Pa.C.S.A. §8541. The purpose behind the immunity provision of the Tort Claims Act is “... to limit governmental exposure to tort liability for its acts and to preserve the public treasury against the possibility of unusually large recoveries in tort cases.” *Estate of Helsel v. Complete Care Servs.*, 797 A.2d 1051, 1057 (Pa. Cmwlth. 2002).

However, the immunity raised by the Tort Claims Act is not absolute. The Tort Claims Act provides:

**(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 the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

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<sup>2</sup> “A local agency, ... , includes a government unit other than the Commonwealth government. A government unit includes any government agency, which in turn is defined as any political subdivision or municipal or other local authority.” *Cmty. Coll. of Allegheny County v. Seibert*, 601 A.2d 1348, 1351 (Pa. Cmwlth. 1992), *aff’d*, 622 A.2d 285 (Pa.1993); *see also*, 42 Pa.C.S.A. §8501; 42 Pa.C.S.A. §102.

(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); and

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

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

(1) *Vehicle liability* – The operation of any motor vehicle in the possession or control of the local agency, provided that the local agency shall not be liable to any plaintiff that claims liability under this subsection if the plaintiff was, during the course of the alleged negligence, in flight or fleeing apprehension or resisting arrest by a police officer or knowingly aided a group, one or more of whose members were in flight or fleeing apprehension or resisting arrest by a police officer. As used in this paragraph, “motor vehicle” means any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.

42 Pa.C.S.A. §8542(a), (b)(1). Thus, an injured party may recover in tort from a local agency if: (1) the damages would otherwise be recoverable under common law or statute; (2) the injury was caused by the negligent act of the local agency or an employee acting within the scope of his official duties; and (3) the negligent act of the local agency falls within one of the eight enumerated categories. *Regester v. County of Chester*, 797 A.2d 898, 901 n.4 (Pa. 2002); *North Sewickley Twp. v. LaValle*, 786 A.2d 325, 327 (Pa. Cmwlth. 2001), *app. denied*, 797 A.2d 918 (Pa. 2002). A party seeking to impose liability upon a local agency bears the burden

of establishing these three requirements. *Tyree v. City of Pittsburgh*, 669 A.2d 487, 490 (Pa. Cmwlth. 1995).

The exceptions to immunity must be strictly and narrowly construed in order to keep with the General Assembly's intent to insulate political subdivisions from liability. *Leone v. Commonwealth, Dep't of Transp.*, 780 A.2d 754, 757 (Pa. Cmwlth. 2001), *app. denied*, 796 A.2d 984 (Pa. 2002). This strict construction applies to the vehicle liability exception. *Regester*, 797 A.2d at 903.

As used in the vehicle liability exception, the term "operation" means to actually put the motor vehicle in motion. *Love v. City of Philadelphia*, 543 A.2d 531, 533 (Pa. 1988). "Merely preparing to operate a vehicle, or acts taken at the cessation of operating a vehicle are *not* the same as actually operating that vehicle." *Ibid.* (emphasis in original). However, the entire vehicle need not be in motion to establish operation for purposes of the vehicle liability exception. "The movement of parts of a vehicle, or an attachment to a vehicle, is sufficient to constitute "operation."" *Sonnenberg v. Erie Metro. Transit Auth.*, 586 A.2d 1020, 1028 (Pa. Cmwlth. 1991).

The vehicle liability exception requires that the party's injury be caused by a negligent act related to the operation of a motor vehicle. *Mickle v. City of Philadelphia*, 707 A.2d 1124, 1126 (Pa. 1998). The vehicle liability exception "... does not say that liability may be imposed only where the operator's manner of driving is negligent." *Ibid.* For instance, negligence related to the operation of a vehicle also encompasses whether a person should be driving a vehicle in the first place. *Ibid.* Thus, the vehicle liability exception applies when the local agency engages in acts of negligence with respect to the operation of a motor vehicle. *Ibid.*



But for liability to be imposed, the acts of negligence must be closely associated with the physical operation of the vehicle and not the public service involved with the operation of the motor vehicle. *Regester*, 797 A.2d at 904.

**C. The Proposed Amendments Fall Within the Vehicle Liability Exception**

The proposed amendments are not against a positive rule of law and shall be permitted. The proposed amendments fall within the vehicle liability exception because they allege that the Bureau engaged in acts of negligence with respect to the operation of one of its buses. The Bureau's alleged failures in the proposed amendments are closely related with the physical movement of one of its buses because the alleged failures directly affect the physical movement of one of its buses. The proposed amendments allege failures by the Bureau that affected the skill level of a driver who would operate a Bureau bus. The skill level of driver who would operate a Bureau bus would directly affect the safe movement of that bus. Therefore, the Bureau's alleged failures with regard to training, supervision, discipline, and employment of a driver in accordance with her skill affect the safe movement of one of its buses.

All of the allegations in the proposed amendments allege that the Bureau's failures produced the same result – a driver who lacked the necessary skill to safely control the physical movement of a bus. Proposed Paragraph 9(g) alleges that the Bureau failed to provide adequately trained and skilled drivers, which means that the Bureau's drivers lacked the technical knowledge to safely control the physical movement of a bus. Proposed Paragraph 9(h) alleges that the Bureau failed to supervise and/or terminate Spangler after having notice of her dangerous driving record, which means that one of the Bureau's drivers had demonstrated a lack of skill to safely control the movement of a bus and despite this lack of skill continued to

operate a bus for the Bureau. Proposed Paragraph 9(i) alleges that the Bureau allowed Spangler to drive a route that was under construction, which would require driving skills that Spangler did not possess. This means that the skill level of the driver operating the bus on the particular route was not competent to handle the demands involved in controlling the movement of the bus under those conditions.

The skill level of a driver affects the safe movement of a bus. The driver of a vehicle is in direct control over the movement of the vehicle. Her training, skill, and decision making ability have a significant impact on how the movement of that vehicle will affect others. As such, an action that affects the skill level of the driver operating the vehicle will have an impact on how that vehicle is operated. Accordingly, the Bureau's alleged failures affect and relate to the operation of one of its buses and brings the proposed amendments within the vehicle liability exception.

The court is cognizant of the decisions in *Bickert v. Riverside*, 545 A.2d 962 (Pa. Cmwlth. 1988), and *Force v. Watkins*, 544 A.2d 114 (Pa. Cmwlth. 1988) in which the Commonwealth Court held that the failure to train and supervise police officers regarding high speed pursuits of suspects did not fall within the vehicle liability exception. However, these cases pre-dated *Mickle* and *Regester*. The Supreme Court has made it clear that the vehicle liability exception encompasses more than negligent driving. *Mickle*, 707 A.2d at 1126. As such, the vehicle liability exception may encompass failures regarding training and supervision so long as the failures have an impact on the operation of the motor vehicle.

#### **IV. CONCLUSION**

Andrews' Petition for Leave to Amend Complaint is granted.

**ORDER**

It is hereby ORDERED that the Petition for Leave to Amend Complaint of Plaintiff Sean Andrews filed July 19, 2005 is GRANTED

Plaintiff shall file the amended complaint within seven (7) days of notice of this order.

BY THE COURT:

William S. Kieser, Judge

cc: Michael J. Zicoello, Esquire  
Richard Orwig, Esquire  
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Judges  
Christian J. Kalas, Esquire  
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