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Recent Development: Espina v. Jackson: The Local Government Tort Claims Act Limits Local Government's Liability for Constitutional Tort Claims Committed by its Employees; Local Government Employees Acting with Actual Malice Are Liable for Their Own Torts; And Multiple Wrongful Death Actions Arising From the Same Underlying Conduct May Be Aggregated for Purposes of the Damages Cap

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RECENT DEVELOPMENT

ESPINA V. JACKSON: THE LOCAL GOVERNMENT TORT CLAIMS ACT LIMITS LOCAL GOVERNMENT'S LIABILITY FOR CONSTITUTIONAL TORT CLAIMS COMMITTED BY ITS EMPLOYEES; LOCAL GOVERNMENT EMPLOYEES ACTING WITH ACTUAL MALICE ARE LIABLE FOR THEIR OWN TORTS; AND MULTIPLE WRONGFUL DEATH ACTIONS ARISING FROM THE SAME UNDERLYING CONDUCT MAY BE AGGREGATED FOR PURPOSES OF THE DAMAGES CAP.

By: Kristin E. Shields

The Court of Appeals of Maryland held that the damages cap of the Local Government Tort Claims Act (“LGTC”) limits a local government’s liability for damages caused by an employee’s tortious act in violation of the state constitution. *Espina v. Jackson*, 442 Md. 311, 317, 112 A.3d 442, 446 (2015). The court also held that this limitation does not contradict the supremacy of the state constitution. *Id.* at 335, 112 A.3d at 456. Furthermore, the court held the LGTC damages cap is not an unreasonable restriction on the right to remedy under Article 19 of the Maryland Declaration of Rights. *Id.* at 344-45, 112 A.3d at 462. The court clarified that a local government is liable for its employee’s torts committed during the scope of employment, and employees are also liable for their torts if the employee acted with actual malice. *Id.* at 344, 346-67, 112 A.3d at 462-64. Finally, the court held wrongful death actions arising from the same underlying conduct are properly aggregated for determining damages. *Id.* at 353-54, 112 A.3d at 468.

On August 16, 2008, Manuel Espina (“Espina”) and a friend were having a drink outside of his apartment complex. Prince George’s County Police Officer Steven Jackson (“Jackson”) was patrolling the area when he observed them. Jackson believed the two men were drinking, so he drove by twice to encourage them to leave the area. After parking his vehicle, Jackson followed the men into the apartment building. Upon entering the building, a violent encounter occurred between Espina and Jackson. During the encounter, Espina’s son, Manuel, entered the building to help his father. Ultimately, Jackson fatally shot Espina and arrested Manuel.

Espina’s estate (“the Estate”) brought suit in Prince George’s County Circuit Court against Jackson and Prince George’s County (“the County”) for wrongful death and survivorship, along with a claim on Manuel’s behalf for violations of his constitutional rights. The jury entered a verdict for the Estate and Espina’s family and awarded the Estate \$11,505,000. The jury found that Jackson violated Espina and Manuel’s rights under Article 24 of the Maryland Declaration of Rights, assaulted and battered Espina, and wrongfully caused Espina’s death.

On a motion for remittitur, the trial court reduced the jury verdict to \$405,000 according to the limitation of liability provision in the LGTCA. On appeal, the Court of Special Appeals of Maryland affirmed the judgment in part, but reduced the award against the County to \$400,000. The Court of Appeals of Maryland granted the Estate's petition for a writ of certiorari.

The court of appeals held that the LGTCA damages cap applies to all tort claims, including constitutional tort violations. *Espina*, 442 Md. at 331, 112 A.3d at 454. The Estate asserted that Prince George's liability should not be limited by the LGTCA damages cap because "constitutional violations are not torts within the meaning of the LGTCA." *Id.* at 323, 112 A.3d at 449. In affirming the lower court's decision, the court of appeals analyzed the plain language of the statute, the legislature's intent, and prior opinions interpreting the LGTCA and similar statutes. *Id.* at 324-31, 112 A.3d at 450-54. The court found no indication that the legislature intended to exclude constitutional tort violations from the LGTCA damages cap. *Id.* at 331, 112 A.3d at 451.

The Estate further asserted that the limitation of liability contradicted the supremacy of the state constitution because its claims arose from the state constitution. *Espina*, 442 Md. at 332, 112 A.3d at 455. The court of appeals flatly rejected the Estate's supremacy claim finding the Estate relied on unpersuasive case law. *Id.*

Additionally, the court of appeals determined that the LGTCA damages cap was not an unreasonable restriction on the right to remedy guaranteed by Article 19 of the Maryland Declaration of Rights. *Espina*, 442 Md. at 344-45, 112 A.3d at 462. This was the first time that the court addressed such a challenge to the LGTCA damages cap as it pertains to Article 19. *Id.* at 338, 112 A.3d at 458. Article 19's purpose is to protect: (1) the right to remedy for an injury to a person or property, as well as; (2) one's right to court access. *Id.* at 335, 112 A.3d at 457 (quoting *Piselli v. 75th St. Med.*, 371 Md. 188, 205, 808 A.2d 508, 518 (2002)). The Estate argued that applying the LGTCA damages cap to such a claim violated the "basic tenet[s]" of Article 19 because it destroys the remedy allotted for Espina's constitutional violations by 98 percent. *Espina*, 442 Md. at 336, 112 A.3d at 457.

Ultimately, the court of appeals was not persuaded by this argument. *Espina*, 442 Md. at 343-44, 112 A.3d at 462. It held that the reasonable use of the LGTCA damages cap does not hinge on the amount of the award, but on whether the cap leads to no remedy or a "drastically inadequate" or otherwise non-existent one. *Espina*, 442 Md. at 344, 112 A.3d at 462 (quoting *Jackson v. Dackman*, 442 Md. 357, 382, 30 A.3d 854, 868 (2011)(holding that the reasonableness of the damages cap depends on whether the cap leads to a de minimus recovery by the plaintiff)).

Furthermore, the court of appeals addressed the difference between a government's liability on behalf of an employee who acts within the scope of employment with actual malice, versus one who acts without. *Espina*, 442 Md. at 346-47, 112 A.3d at 463-64. The court found no merit in the Estate's argument that because the County admitted liability, it must pay the full award as originally calculated. *Id.* at 346, 112 A.3d at 463. Instead, the court held

that a local government is responsible for tortious actions committed by an employee while in the scope of employment. *Id.* As such, the local government is responsible for the appropriate award up to the LGTCA's cap. *Id.* at 347, 112 A.3d at 463-64. If actual malice is also proven, the employee responsible for committing the tortious actions may be held liable for the rest of the award, minus what was paid by the local government. *Id.*

Finally, the court reaffirmed previous rulings regarding the aggregation of multiple claims into a single claim for the purposes of the LGTCA damages cap. *Espina*, 442 Md. at 354, 112 A.3d at 468. The court referenced multiple decisions in which the difference between a claim and cause of action was defined, and ultimately concluded that aggregating *Espina*'s wrongful death claims and the Estate's survivorship claims was lawful. *Id.* at 347-54, 112 A.3d at 464-68. This decision brought the final recovery amount to \$400,000. *Id.* at 354, 112 A.3d at 468.

In *Espina*, the Court of Appeals of Maryland found that the LGTCA damages cap limits damages for violations of the state constitution. Further, such a limitation does not violate the supremacy of the constitution, nor does it restrict a claimant's right to remedy. The court's decision remained consistent with preceding case law, and reaffirmed the LGTCA's policy of protecting both local governments and their employees, as well as the victims of tortious acts committed within the scope of employment. Practitioners should advise that the damages cap could impact the remedy available to their clients for all tort claims against local governments, including those arising from constitutional violations. It could also reduce the number of claims brought against local governments once similar claims are aggregated. Furthermore, the decision ensures that local governments are protected from burdensome financial liability as a result of their employees, while victims may suffer from a reduction in remedy or receive a lower award in damages for the harm caused by the tortious actions of these employees.