

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Oscar Dejesus	:	
	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 05-2254
	:	
	:	
Charles Irvine et al.,	:	
	:	
Defendants.	:	

MEMORANDUM-ORDER

Presently pending before the Court is Third Party Defendants’, City of Lancaster and Officer David Ruiz (hereafter collectively referred to as “City Defendants”), Motion for Summary Judgment, and Third Party Plaintiffs’, Charles Irvine, Am-Can Transport Service, Inc. and Ruan Transport Company, Brief in Opposition thereto. The facts are known to counsel and the parties and need not be repeated in detail. City Defendants assert that they are immune from liability under Pennsylvania’s Political Subdivision Torts Claims Act. 42 Pa.C.S. § 8541 (2005). The parties agree that the City Defendants may not be found liable unless one of the eight exceptions under 42 Pa C.S. § 8542(b) (2005) apply. Third Party Plaintiffs assert that the “[t]rees, traffic controls and street lighting exception” applies.¹ *Id.* § 8542(b)(4) (2005).

Third Party Plaintiffs assert that the driver of the 2002 Freightliner (hereafter referred to as Freightliner) placed a reflective triangle (hereafter referred to as Triangle)

¹ The “[t]rees, traffic controls and street lighting” exception allows the government to be liable if there is 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. 42 Pa C.S. § 8542(b)(4).

in front of the Freightliner. Third Party Plaintiffs claim that an Officer moved this Triangle. Th. Par Pl. Br. Opp. Th. Par. Def. Mot. Summ. J. at 2. Third Party Plaintiffs also allege that a police patrol car that was positioned in front of the Freightliner, with its lights on, acted as a warning to approaching vehicles. Id. at 6. Third Party Plaintiffs allege that the Triangle and the patrol car were traffic control devices, as envisioned under 42 Pa C.S. § 8542(b)(4), and moving them created a dangerous condition. Id. at 5.

After reviewing the cases cited, concerning Pennsylvania law, I note that the Supreme Court of Pennsylvania has not had the occasion to rule on the issues presented here. However, it is my prediction that the Supreme Court of Pennsylvania would not conclude that the Triangle was a traffic control device, within the meaning of 42 Pa C.S. § 8542(b)(4), since it was not the property of the City of Lancaster and was not in the care, custody or control of the City as required by the statute. To the extent that the evidence may support a finding that the officer was negligent in moving the Triangle, he is immune from liability under § 8541. Accordingly, City Defendants are not liable for allegedly moving the Triangle since it did not constitute a “traffic control device.”

I also note that there is no evidence that the police car was ever intended, by the City Defendants, to be a traffic control device for any specific period of time or for the time that the Freightliner remained in the position it was found. Accordingly, I predict that the Supreme Court of Pennsylvania would hold that the City Defendants are not liable, for allegedly creating a dangerous condition by moving the police car away from the Freightliner, since there is no evidence to support a finding that the police car was intended to constitute a “traffic control device” or that it in fact became one.

Summary judgment will be granted in favor of the City Defendants. An appropriate order follows.

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ORDER

Presently pending before the Court is Third Party Defendants', City of Lancaster and Officer David Ruiz, Motion for Summary Judgment, and Third Party Plaintiffs', Charles Irvine, Am-Can Transport Service, Inc., and Ruan Transport Company, Brief in Opposition thereto. **AND NOW** this 17th day of August 2006, upon consideration of Third Party Defendants' Motion for Summary Judgment and Third Party Plaintiffs' opposition thereto, **IT IS HEREBY ORDERED** that Third Party Defendant's Motion for Summary Judgment will be **GRANTED**. It is further ordered that any and all claims and/or cross-claims against the City of Lancaster and Officer David Ruiz will be dismissed with prejudice.

BY THE COURT:

**S/ CLIFFORD SCOTT GREEN
CLIFFORD SCOTT GREEN, S.J.**