

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EGIDIO and ROSEMARY SCIULLI, h/w,

Petitioners

vs.

CITY OF PHILADELPHIA,

Respondent.

CORRECTED
APPLICATION FOR EXTENSION OF TIME
TO FILE WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
IN RESPONSE TO PENNSYLVANIA SUPREME COURT ORDER
DATED MAY 27, 2026

Mary Catherine Baur, Esquire
United States Supreme Court Bar No. 252020
Counsel of Record for Petitioners
P.O. Box 2561
Philadelphia, PA 19147-0561
mbaur@sisna.com
(215) 285-9484

**APPLICATION TO JUSTICE SAMUEL A. ALITO, Jr., THIRD CIRCUIT,
TO EXTEND TIME TO FILE
PETITION FOR CERTIORARI**

JURISDICTIONAL STATEMENT

The Order of the Pennsylvania Supreme Court was entered on May 27, 2026. Reconsideration was not requested. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 and the 14th Amendment of the United States Constitution.

RELIEF SOUGHT

Egidio Sciulli and Rosemary Sciulli, Petitioners, requests that Justice Alito, Justice for the Third Circuit, extend the time for filing a Petition for Writ of Certiorari to the United States Supreme Court in the matter of Egidio Sciulli and Rosemary Sciulli, h/w v. City of Philadelphia, Pennsylvania Supreme Court No. 22 EAL 2026, for a period of 60 days, or until October 24, 2026, as the Court cannot grant more than sixty (60) days.

GROUND FOR RELIEF

Judgments Below

1. On August 15, 2023. (Exhibit "A") Philadelphia Court of Common Pleas, Case I.D. # 220201300 entered an arbitration award. Finding for Defendant, City of

Philadelphia with no opinion. There was no mention of the contract between the City of Philadelphia and the federal government.

2. Petitioners appealed the award. (Exhibit "B")

3. Philadelphia Court of Common Pleas, Case I.D. # 220201300 granted Defendant City of Philadelphia Summary Judgment on February 21, 2024. There was no hearing. (Exhibit "C")

4. Petitioners appealed to the Commonwealth Court of Pennsylvania, 333 CD 2024, citing in their Pa.R.App.P. Rule 1925 Statement they were denied Constitutional due process. (Exhibit "D")

5. The Philadelphia Court of Common Pleas, Case I.D. # 220201300 issued a Decision in response to Petitioners' Pa.R.App.P. 1925 Statement. (Exhibit "E")

6. The Commonwealth Court of Pennsylvania, 333 C.D. 2024, affirmed the Decision of the Philadelphia Court of Common Pleas, Case I.D. # 220201300 and issued an Order (Exhibit "F") and Unreported Opinion on December 17, 2025. (Exhibit "G")

7. Petitioners Petitioned the Pennsylvania Supreme Court, 22 EAL 2026, for an Allowance to file an Appeal which was denied on May 27, 2026. (Exhibit "H")

8. The Court ignored the federal contract with the City of Philadelphia that did not include the Commonwealth of Pennsylvania and chose instead to only enforce the Pennsylvania Tort law.

Reasons Why Relief From Time Limit Needed

9. Under United States Supreme Court Rule 13.1, the time for filing a Petition for Writ of Certiorari in this matter expires on Tuesday, August 25, 2026.

10. Petitioners request a 60 day extension of time or until October 24, 2026.

11. Petitioners' counsel, Mary Catherine Baur, Esquire, was diagnosed with two forms of cancer, had 2 strokes and had surgery for 2 PAVMs in 2025. Petitioners' counsel's most recent PET SCAN shows no sign of lymphoma as of June 25, 2026. On July 18, 2026 Petitioners' Counsel suffered from a severe asthma attack resulting in bronchitis and pneumonia. Petitioners' counsel is allergic to penicillin and has a diminished immune system response due to the chemotherapy used to successfully treat the lymphoma. Barring relapse, Petitioners' counsel feels capable of preparing an acceptable Writ of Certiorari on behalf of Petitioners.

12. In an abundance of caution, Petitioner's counsel, Mary Catherine Baur, Esquire, requests a sixty (60) day extension of time to file the Writ of Certiorari on behalf of Petitioners by October 24, 2026.

Persuasive Grounds for Certiorari in This Case

13. Petitioners believe there is a federal question and that Petitioners' Constitutional Rights are being ignored. Petitioners sustained a physical injury

due to a condition on the street created pursuant to a contract between the federal government and the City of Philadelphia which is being ignored.

14. Petitioners believe this case deserves review.

WHEREFORE, in the interests of justice, Petitioners request this extension of time in order to present federal and Constitutional claims that were ignored by the Commonwealth of Pennsylvania.

Dated: 9-4-2026

Mary Catherine Baur, Esquire
Mary Catherine Baur, Esquire
700 Mollbore Terrace
P.O. Box 2561
Philadelphia, PA 19147-0561
mbaur@sisna.com
(215) 285-9484
Attorney of Record for Petitioners

EXHIBIT "A"

First Judicial District of Pennsylvania
Philadelphia Court of Common Pleas

EC1010 Sciulli and Rosanna Sciulli, h/w February Term, 2022, 220201300
(Month) (Year) (No.)

1851 FORESTAL ST.
PHILA, PA 19145

Arbitration

(Please indicate type of action)

☐ Motor Vehicle

(Date of Accident) _____

☐ Delay Damages (Prime Rate +1)

☐ Contract

☐ Delay Damages (Legal Rate = 6%)

☐ Assessment of Damages

☒ Other PREMISES LIABILITY

Versus

CITY OF PHILADELPHIA
1515 ARCH ST, 12TH FLOOR
PHILA, PA 19102

Report and Award of Arbitrators

And Now, this 15TH day of AUGUST, Year 2023, we the undersigned arbitrators having been duly appointed and sworn, make the following award:

WE FIND IN FAVOR OF DEFENDANT, CITY OF PHILADELPHIA

Please name the parties if there are more than one plaintiff and/or defendant. Please address all counterclaims and cross claims. Please complete percentage of negligence on reverse side if applicable.

Carol V. Turetti
Chairperson
Charles Devar
Arbitrator
Eileen Hogan
Arbitrator

Carol V. Turetti, 22215
Please Print Name, Address and I.D. No. 22215
CHARLES DEVAR
1700 MARKET ST, PHILA, PA 19103
Please Print Name, Address and I.D. No. 28205
Eileen Hogan, 100 S. Broad St. 19102
Please Print Name, Address and I.D. No. 309808

List Attorneys of Record and Unrepresented Parties Who:

Appeared at the hearing:

Did Not Appear:

MARY CATHARINE ROUL, ESQ., ROUL, ROUL, ESQ., ROUL, ESQ.
RANDY J. KIR, ESQ., KIR, ESQ., KIR, ESQ.

AWFFD-Sciulli Etal Vs City Of Philadelphia



Questions to be Answered by the Arbitrators in Negligence Cases

Instructions:

Taking the combined negligence that was a substantial factor in bringing about any or all of the plaintiff's injuries, damage or losses as 100%, answer the following questions and state in percentages the causal negligence attributed to each party you have found causally negligent.

Do you find that any defendant or additional defendant was negligent? *NO*
If so, state the name of the party and percentage of negligence attributable to that party.

_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Do you find that any plaintiff was negligent?
If so, state the name of the party and percentage of negligence attributable to that party.

_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Total 100 %

Notice of Entry of Award

And Now, this _____ day of _____, Year _____, at _____, _____ m., the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

(Arbitration compensation to be
paid on appeal \$225.00)

By:

Prothonotary

DOCKETED

AUG 15 2023

M. EAGEN

Separate Appeals must be filed with the Prothonotary pursuant to P.A. R. Civ.P.No.1308, and the requisite fees paid, if two or more cases are consolidated for Trial and/or Discovery purposes. Only those cases which are appealed will be scheduled for a *de novo* hearing. Awards in cases not appealed will become final upon expiration of the appeal time.

EXHIBIT “B”

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

Egidio Sciulli and Rosemary Sciu

1851 Forrestal St., Philadelphia, PA 19145

Plaintiff(s)

vs.

City of Philadelphia

1515 Arch St. 17th Floor, Philadelphia, PA 19102

Defendant(s)

February 13, 2022
Filed and Accepted by the
Office of Judicial Records
(month, day, year)
13 SEP 2023 08:35 pm
& No. 220201300
B. MERCEDES

NOTICE OF APPEAL FROM THE AWARD OF THE BOARD OF ARBITRATORS

Notice is given that Plaintiffs appeals from the award of the Board of Arbitrators entered in this case on August 15, 2023

A jury trial is demanded ☐ (Check box if a jury trial is demanded. Otherwise a jury trial will be waived)

Number of jurors if a jury trial is demanded

I hereby certify that the compensation of the arbitrators has been paid.

Mary Catherine Baur Esquire
Appellant or Attorney for Appellant

Mary Catherine Baur, Esquire
Print name of Appellant or Attorney

Date:

EXHIBIT "C"

FILED
02 JAN 2024 10:29 am
Civil Administration
J. BOYD

EGIDIO SCIULLI AND
ROSEMARY SCIULLI
VS.

CITY OF PHILADELPHIA

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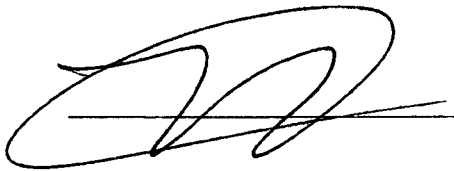
COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

FEBRUARY TERM, 2022
NO. 1300

ORDER

AND NOW, this th15 day of Feby, 2023, upon consideration of the Motion for Summary Judgment of Defendant City of Philadelphia, and any response thereto, it is hereby **ORDERED** and **DECREED** that judgment is entered in favor of the City of Philadelphia on all claims.

BY THE COURT:


J.

220201300-Sciulli Etal Vs City Of Philadelphia



22020130000060

Court of Common Pleas

FEB 21 2024

J.M. STEWART
Complex Litigation Center

EXHIBIT "D"

Mary Catherine Baur, Esquire
Attorney I.D. No. 50492
mbaur@sisna.com
P O Box 2561
Philadelphia, PA 19147-0561
(215) 285-9484

Attorney for Appellant

COMMONWEALTH COURT OF PENNSYLVANIA

EGIDIO SCIULLI and : CCP: February TERM 2022
ROSEMARY SCIULLI, : No. 1300
:
Appellant, :
v. : 333 CD 2024
:
CITY OF PHILADELPHIA, :
:
Appellee. :

**CONCISE STATEMENT OF ERRORS
COMPLAINED OF ON APPEAL**



1. This Concise Statement of Errors Complained of on Appeal is filed pursuant to the Order of this Court dated, June 10, 2024 and Pa.R.A.P. 1925.

2. The matters complained of by Appellant on Appeal are as follows:

- a) Appellants have been denied due process of law because they have been denied a hearing.

- b) Appellants have been prejudiced by the actions of counsel for Appellee. Pursuant to the Case Management Order issued September 29, 2023 discovery ended on December 4, 2023, however, Defendant issued an "Addendum to Subpoena" dated December 8, 2023, without consulting the Court or opposing counsel prior to its issuance. Pa. Rule of Discipline 3.4
- c) It is an error of law for the Common Pleas Court Judge to dismiss an action where no hearing was held and conclude that no issue of fact or law could be established by means of further discovery or expert witness. (See Exhibit "A" through "E" attached.)
- d) Wherefore, Appellant has sought to appeal to the Commonwealth Court to afford Appellants their Constitutional right to due process of law.

Respectfully submitted,

By: Mary Catherine Baur, Esquire
Mary Catherine Baur, Esquire
Counsel for Appellants

Dated: 7-1-24

EXHIBIT “E”

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

EGIDIO SCIULLI AND

ROSEMARY SCIULLI

v.

CITY OF PHILADELPHIA

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**FEBRUARY TERM, 2022
NO. 1300**

**Trial Division
Civil Section**

**SUPERIOR COURT
333 CD 2024**

FILED

2024 OCT -4 PM 1:42

**JUDICIAL RECORDS
1ST JUDICIAL DISTRICT PA**

OPINION

MOORE, J.

October 4, 2024

I. INTRODUCTION

Egidio Sciulli and Rosemary Sciulli (“Appellant”) bring forth this appeal challenging the Court’s denial of their Summary Judgement Motion. On January 2, 2024, appellant filed a motion for summary judgment. On February 1, 2024, appellant filed a response to Defendant’s motion for summary judgment. On February 9, 2024, the appellee filed a motion in support of its summary judgment.

On appeal, appellant alleges that the Honorable Court erred and identifies the following issue(s) to be raised on appeal:

1. Appellants have been denied due process of law because they have been denied a hearing.

OPFLD-Sciulli Etal Vs City Of Philadelphia [VKS]



2. Appellants have been prejudiced by the actions of counsel for Appellee. Pursuant to the Case Management Order issued September 29, 2023 discovery ended on December 4, 2023, however, Defendant issued an “addendum to Subpoena” dated December 8, 2023, without consulting the Court or opposing counsel prior to its issuance. Pa. Rule of Discipline 3.4.
3. It is an error of law for the Common Pleas Court Judge to dismiss an action where no hearing was held and conclude that no issue of fact or law could be established by means of further discovery or expert witness.
4. Wherefore, Appellant has sought to appeal to the Commonwealth Court to afford Appellants their Constitutional right to due process of law.

II. FACTUAL HISTORY

On February 13, 2020, Plaintiffs allege that, at approximately 7:30 PM appellant Egidio Sciulli was crossing the northbound lanes of West Moyamensing Avenue in Philadelphia, PA. Plaintiff claims he was in the crosswalk as he crossed the street.

During that day, there were icy conditions with snow on the streets.

Appellant reached the concrete island in the middle of West Moyamensing Avenue which divides the northbound lanes from the southbound lanes of vehicular traffic. The appellant stepped on the island as part of the crosswalk.

Specifically, Appellant stepped on the handicapped pad on the island and allegedly slipped and fell on his back into the northbound lanes of West Moyamensing Avenue.

Appellant claims he suffered injuries as a result.

III.

OPINION

A. The motions court did violate the Plaintiff's Due Process rights by granting the Defendant's Motion for Summary Judgment on the pleadings.

Plaintiffs appeals from the denial of a hearing following the Case Management Order issued September 29, 2023, holding that discovery in this case ended on December 4, 2023.

However, Defendant issued an “addendum to Subpoena” dated December 8, 2023. Plaintiffs contend that the denial of a hearing following such addendum was a denial of their due process of law.

As a threshold matter, the Motions Court was not involved in the Case Management process in this matter. This Court was tasked only with deciding the Defendant's Summary Judgement Motion.

Under Pennsylvania law, “our standard of review of the trial court's grant of judgment on the pleadings is *de novo* and our scope of review is plenary. Judgment on the pleadings is properly entered where the pleadings and documents admitted in the pleadings established that there are no disputed issues of fact and that the defendant is entitled to judgment as a matter of law [,] or where accepting the well-pleaded factual averments of the plaintiff's complaint as true, the defendant is entitled to judgment as a matter of law. *Grabowski v Carelink Community Support Services, Inc.*, 230 A.3d 465, 470 (Pa. Super 2020).

Following, “due process requirements in administrative hearings are not as stringent as in normal judicial proceedings.” See *Mobil Exploration & Producing U.S. Inc. v. Kan. Corp. Comm'n*, 258 Kan. 796, 821, 908 P.2d 1276, 1294-95 (1995). “Procedural due process in an administrative action simply requires notice and the opportunity to be heard.” See *Martel v. City of Newton, Kan.*, 72 F. Supp.2d 1256, 1263 (D.Kan.1999).

As seen here, the Motion court was only responsible for denying the summary judgment motion. The defendant issuing an addendum to subpoena to a Case Management Order in this matter was not overseen by this Court, thus this Court shall not be held to unreasonable due process requirements.

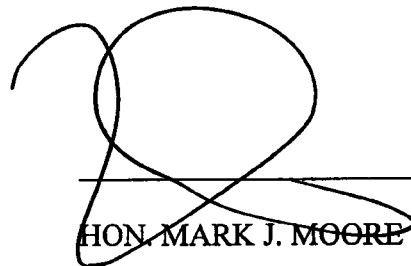
The Motion's Court's granting of Summary Judgement against the Defendants was proper as the pleadings filed contained no genuine issues of material fact for the factfinder to consider.

Even though Plaintiffs claim they had no opportunity to be heard via a hearing, they had every opportunity to be heard through their court filings. The Motions Court reviewed both parties' Court filings in this case and determined that granting the Defendant's Summary Judgement Motion was proper since there were no genuine issue of material facts.

IV. CONCLUSION

Therefore, for reasons stated herein, this Court respectfully asks the Superior Court to affirm the trial court's decision in this case.

BY THE COURT:



HON. MARK J. MOORE

Dated: October 4, 2024

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

EGIDIO SCIULLI AND

:

**FEBRUARY TERM, 2022
NO. 1300**

ROSEMARY SCIULLI

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**Trial Division
Civil Section**

v.

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SUPERIOR COURT

CITY OF PHILADELPHIA

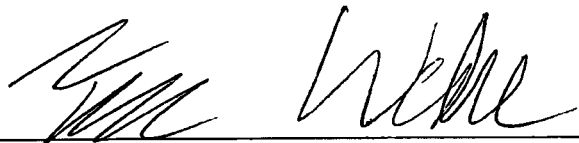
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PROOF OF SERVICE

I hereby certify that I am on this 4th day of October 2024, serving the foregoing Opinion on
the persons indicated below by first class mail:

Randy Kim, Esq.
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

Mary Catherine Baur, Esq.
P.O. Box No 2561
Philadelphia, PA 19147



Tanvi Walia
Judicial Law Clerk to Honorable Mark J. Moore

EXHIBIT “F”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Egidio Sciulli and Rosemary Sciulli,	:	
Appellants	:	
	:	
v.	:	
	:	No. 333 C.D. 2024
City of Philadelphia	:	

ORDER

AND NOW, this 17th day of December, 2025, the February 15, 2024 order of the Court of Common Pleas of Philadelphia County granting summary judgment in favor of the City of Philadelphia is AFFIRMED.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

EXHIBIT "G"

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Egidio Sciulli and Rosemary Sciulli, :
Appellants :
 :
v. :
 : No. 333 C.D. 2024
City of Philadelphia : Submitted: November 6, 2025

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: December 17, 2025

Egidio Sciulli and Rosemary Sciulli (Sciullis) appeal from a February 15, 2024 order of the Court of Common Pleas of Philadelphia (Trial Court) that granted summary judgment in favor of the City of Philadelphia (City) on the Sciullis' tort claim. Upon review, we affirm the Trial Court's order.

I. Background

The Sciullis' complaint alleged that on February 13, 2020, Egidio Sciulli slipped and fell on an icy ridged composite tile, a detectible warning surface for the visually impaired, in the median while crossing West Moyamensing Avenue at its intersection with West Oregon Avenue in the City. Supplemental Reproduced Record (S.R.R.) at 9b-10b. The Complaint alleged negligence by the City related to the icy condition of the tile and averred that Egidio Sciulli suffered a torn rotator cuff as a result of the fall. *Id.* at 11b.

The Complaint sought damages in an amount not exceeding \$50,000. S.R.R. at 11b-12b. Accordingly, the case proceeded to compulsory arbitration pursuant to Section 7361 of the Judicial Code,¹ 42 Pa.C.S. § 7361. *See* S.R.R. at 4b. The arbitrators entered an award in favor of the City, and the Sciullis appealed *de novo* to the Trial Court. *Id.*; *see also* Section 7361(d) of the Judicial Code, 42 Pa.C.S. § 7361(d).

Following discovery, the City filed a motion for summary judgment in the Trial Court. S.R.R. at 16b-22b. In the motion, the City argued that it could not be liable because it enjoyed governmental immunity under the portion of the Judicial Code commonly known as the Political Subdivision Tort Claims Act (Tort Claims Act).² Further, the City explained that the so-called “street exception” to governmental immunity under the Tort Claims Act was the only potentially applicable exception to the City’s immunity, and it would not apply here because caselaw has established that ice or snow is not a condition “of” the street within the meaning of the street exception. *Id.* at 21b (citing *Walinsky v. St. Nicholas Ukrainian Cath. Church*, 740 A.2d 318 (Pa. Cmwlth. 1999); *see also* Section 8542(b)(3)(iii) of the Tort Claims Act, 42 Pa.C.S. § 8542(b)(3)(iii). The City further observed that, in any event, the Sciullis did not allege that any exception to immunity was applicable. S.R.R. at 20b-21b. Moreover, the City averred that, even if the street exception were otherwise applicable, the City could not be liable to the Sciullis because the section of West Moyamensing Avenue where Egidio Sciulli fell is a state highway, not a street owned by the City, and there is no contract between the City and the Commonwealth of Pennsylvania requiring the City to maintain the state-owned part

¹ 42 Pa.C.S. §§ 101-9914.

² 42 Pa.C.S. §§ 8541-8542.

of the street. *Id.* at 18b-20b & 41b-42b; *see also* Section 2(11) of what has been referred to as the State Highway Act of 1941 (Highway Act),³ 36 P.S. § 961-2(11).⁴

The Trial Court issued an order granting the City's summary judgment motion. The Sciullis then appealed to this Court.

II. Issues

On appeal,⁵ the Sciullis present three issues for review, which we reorder and summarize as follows.

First, and related to their other two arguments, the Sciullis maintain that an issue of fact precluded summary judgment in that they dispute the City's assertion that it has no contract with the Commonwealth to maintain the relevant portion of West Moyamensing Avenue. We note that the Sciullis do not argue that the City is not entitled to governmental immunity generally. Although they also do not

³ Act of May 7, 1937, P.L. 589, *as amended* by the Act of July 10, 1941, P.L. 345, 36 P.S. §§ 961-1 – 961-16 (repealed in part).

⁴ In its new matter filed in response to the Sciullis' complaint, the City additionally averred that the complaint was barred because the Sciullis failed to give the written notice of their claim within six months after it accrued, as required by Section 5522 of the Judicial Code. *See* 42 Pa. C.S. § 5522 (requiring written notice to a municipality, within six months after an injury, of intent to commence a civil action, and providing that if such advance notice is not provided, any claim filed thereafter shall be dismissed "and the person to whom any such cause of action accrued for any injury to person or property shall be forever barred from proceeding further thereon . . ."). Notably, the original record contains no reply by the Sciullis to the City's new matter. The City, however, did not include the alleged notice defect as a basis for relief in its subsequent motion for summary judgment.

⁵ "When reviewing a grant of summary judgment, this Court's standard of review is *de novo*, and our scope of review is plenary." *Brown v. City of Oil City*, 263 A.3d 338, 342 n.1 (Pa. Cmwlth. 2021). We apply the same summary judgment standard as the Trial Court, in that summary judgment is proper only "where the record clearly shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (additional quotation marks and citation omitted).

expressly posit that any exception to that immunity applies here, such a position may be inferred from their arguments concerning the City's alleged responsibility to maintain the portion of West Moyamensing Avenue where the incident occurred. The Sciullis point to a settlement agreement in an unrelated federal action, suggesting that it "demonstrated that there is a contract." Sciullis' Br. at 11 (citing *Liberty Res., Inc. v. City of Phila.*, Civ. Action No. 19-3846 (E.D. Pa., Oct. 14, 2022), Doc. # 144).⁶ The Sciullis ask this Court to take judicial notice of the federal settlement.

Second, the Sciullis assert that they were denied due process because they were not able to cross-examine the City's witnesses. This argument appears to concern the City's contention that it does not own or maintain the part of West Moyamensing Avenue where Egidio Sciulli fell.

Third, the Sciullis contend that the City violated the case management order in this matter by amending a subpoena after the closing date of discovery. This argument appears to be related to their first argument, in that it concerns the City's denial that it installed or was responsible for the detectible warning tile in the median. The Sciullis insist that the City agreed to install the detectible warning tile pursuant to the settlement agreement in the federal case.

III. Discussion

Section 8541 of the Tort Claims Act provides: "Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on

⁶ The Sciullis' brief apparently cites the preliminary approval of the settlement agreement in the federal action, which is not available through either Lexis or Westlaw. The federal court's final approval of the settlement is referenced below. See *Liberty Res., Inc. v. City of Phila.*, Civ. Action No. 19-3846, 2023 U.S. Dist. LEXIS 75914 (May 13, 2023).

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. § 8541. Section 8501 of the Judicial Code defines a “local agency” as “a government unit other than the Commonwealth government.” 42 Pa.C.S. § 8501. As defined in Section 102 of the Judicial Code, a “government unit” includes “any government agency,” and a “government agency” is defined as including “any political subdivision.” 42 Pa.C.S. § 102. Thus, the City, as a political subdivision, is a “local agency” entitled to immunity under the Tort Claims Act, unless a specifically listed exception to immunity applies.

The exceptions to governmental immunity are set forth in Section 8542 of the Tort Claims Act. 42 Pa.C.S. § 8542(b). The exceptions relate to negligence involving, in summary, (1) the operation of a motor vehicle in a local agency’s possession or control; (2) a local agency’s care, custody, or control of the personal property of others; (3) the care, custody or control of real property (expressly excluding, *inter alia*, streets) in the possession of a local agency; (4) a dangerous condition of trees, traffic controls, or street lights or street lighting systems under the care, custody or control of a local agency; (5) a dangerous condition of a utility service facility owned by a local agency; (6) ***a dangerous condition of a street owned by a local agency, or of a street owned by the Commonwealth where the agency has a written contract with the Commonwealth for the maintenance and repair of the street***; (7) a dangerous condition of a sidewalk owned by a local agency; (8) the care, custody, and control of animals in the possession or control of a local agency, such as police horses and dogs; and (9) certain sexual abuse arising from negligence of a local agency. 42 Pa.C.S. § 8542(b). Exception (6), relating to streets, is manifestly the only exception to governmental immunity that is even

arguably at issue in this case. Thus, to overcome the City's immunity, the Sciullis had to establish that the City either owned or had a written contract with the Commonwealth to maintain and repair the section of West Moyamensing Avenue where Egidio Sciulli fell. They failed to do so.

In support of its motion for summary judgment, the City cited and produced a copy of Section 2(11) of the Highway Act, which designates the city streets taken over by the Commonwealth, including, in the City, the following:

(11) Beginning at an intersection of South 80th Street with Penrose Ferry Road, thence northeasterly on Penrose Avenue to an intersection with Moyamensing Avenue, thence over Moyamensing Avenue to an intersection with South Broad Street, a distance of about 3.50 miles.

36 P.S. § 961-2(11). The City's official interactive street map indicates that the intersection of Oregon Avenue with West Moyamensing Avenue, the location at which Egidio Sciulli fell, lies between the intersection of Penrose Avenue with West Moyamensing Avenue and the intersection of West Moyamensing Avenue with South Broad Street. See <https://openmaps.phila.gov/> (last visited December 16, 2025).⁷ Thus, under Section 2(11) of the Highway Act, the Commonwealth, not the City, indisputably owns the street where Egidio Sciulli fell. See *Leiphart v. City of Philadelphia*, 972 A.2d 1239, 1243 (Pa. Cmwlth. 2009) (*en banc*) (observing that a

⁷ Rule 201(b)(2) of the Pennsylvania Rules of Evidence allows a court to take judicial notice of "a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Pa.R.E. 201(b)(2). This Court has previously taken judicial notice of a township zoning map as constituting such a fact. See *Dimattio v. Millcreek Twp. Zoning Hearing Bd.*, 147 A.3d 969, 976 n.3 (Pa. Cmwlth. 2016). The City's interactive map is likewise a proper subject of judicial notice. See also *Lyons v. City of Philadelphia*, 632 A.2d 1006, 1009 (Pa. Cmwlth. 1993) (observing that "the legal status of a road as a state highway is a matter of state law, and not a fact to be admitted or denied . . ."); *Jackson v. Se. Pa. Transp. Auth.*, 566 A.2d 638, 641 (Pa. Cmwlth. 1989) (concluding that a "trial court did not err in taking judicial notice of the State Highway Act of 1961" and further observing, "as a rule universally recognized," that courts will take judicial notice of statutes).

state highway within the City is not owned by the City, but by the Commonwealth, which must repair and maintain it). Further, the median is deemed to be part of the state highway. *See Slough v. City of Philadelphia*, 686 A.2d 62, 64 (Pa. Cmwlth. 1996) (holding that a median was part of the state highway that the Commonwealth was responsible to maintain) (first citing 75 Pa.C.S. § 102; and then citing 67 Pa. Code § 211.1), *aff'd per curiam*, 720 A.2d 485 (Pa. 1998). Because the City does not own the street at issue, it is immune from liability. *See Lyons v. City of Philadelphia*, 632 A.2d 1006, 1009 (Pa. Cmwlth. 1993).

Notwithstanding the Commonwealth's clear ownership of the street at issue, the Sciullis insist that a contract existed between the City and the Commonwealth for the City to maintain and repair the street. However, they failed to produce evidence before the Trial Court to create a genuine issue of material fact on that question.

The City pointed out that the record contained no evidence of any contract between itself and the Commonwealth regarding repair and maintenance of the street and detectible warning surface at issue. The Sciullis argue that this constituted only "evidence of no evidence" and that they were denied any opportunity to test the veracity of such "evidence." Sciullis' Br. at 8. We discern no merit in this argument. The Sciullis could have sought and obtained a copy of any alleged contract between the City and the Commonwealth for maintenance of the street at issue, through a discovery request, a request for a public record under Section 701 of the Right-to-Know Law,⁸ 65 P.S. § 67.701, or both. They produced

⁸ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104. Section 701 of the Right-to-Know Law provides:

no such alleged contract in their opposition to the City's summary judgment motion. Instead, the Sciullis ask this Court to take judicial notice of certain terms of a settlement stipulation in a federal action between private plaintiffs and the City relating to installation of detectible warning surfaces for the visually impaired like the surface at issue here. Sciullis' Br. at 11 n.2 (citing *Liberty Res.*). We decline to do so for several reasons.

First, a court generally will not take judicial notice of the terms of a settlement in another case. This Court, quoting the Pennsylvania Supreme Court, has explained:

A court is bound to decide the case before it based upon the evidence presented to it by the parties; it has no authority to seek out additional testimony in the records of unrelated cases on the matters at issue before it. [The Pennsylvania Supreme] Court, in a case involving a claim of *res judicata*, noted that ["a court may not ordinarily take judicial notice in one case of the records in another case even though the case arose in the same court and the contents of those records are known to the court."] *Callery v. Mun[.] Auth[.] of [Twp.] of Blythe*, . . . 243 A.2d 385, 386 ([Pa.]1968). *A fortiori*, a court may not base a decision upon evidence of record in another unrelated case. *Cf. Commonwealth v. Young*, . . . , 317 A.2d 258, 264

(a) GENERAL RULE.— Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act. A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records, legislative records or financial records shall be available for access during the regular business hours of an agency.

(b) CONSTRUCTION.— Nothing in this act shall be construed to require access to any computer either of an agency or individual employee of an agency.

([Pa.]1974) ([“]An appellate court may consider only the facts which have been duly certified in the record on appeal.[”]).

Muretta v. Williams Twp. Bd. of Sup’rs (Pa. Cmwlth., No. 1933 C.D. 2011, filed Oct. 24, 2012),⁹ slip op. at 28-29 (quoting *Commonwealth v. DePasquale*, 501 A.2d 626, 630, n. 4 (Pa. 1985) (additional quotation marks omitted)). Here, the Sciullis ask this Court to take judicial notice of a settlement in a completely unrelated case in a federal court. Judicial notice in this situation is not appropriate.

Moreover, the settlement agreement expressly applies only to streets in the Local Streets Network. Sciullis’ Br., Appendix F at 12. The settlement agreement defines the term “Local Streets Network” as “the network of streets within the City’s geographic boundaries for which the City is solely responsible for resurfacing and funding as identified in the City’s geographic information system.” *Id.* at 5. Accordingly, any intersection owned by the Commonwealth, such as the intersection at issue here, is expressly excluded from the federal settlement agreement unless there is an agreement between the City and the Commonwealth for the City to maintain the intersection. The settlement agreement itself is not evidence of such an agreement between the City and the Commonwealth. The settlement agreement is between the City and private parties. It is not a contract between the City and the Commonwealth by which the City agrees to maintain any streets or medians owned by the Commonwealth, including detectible warning surfaces.

Further, the settlement agreement offered by the Sciullis post-dates Egidio Sciulli’s injury by well over two years. As set forth above, Egidio Sciulli fell in February of 2020. The United States District Court for the Eastern District of

⁹ We cite this unreported opinion as persuasive authority pursuant to Section 414(a) of this Court’s Internal Operating Procedures, 210 Pa. Code § 69.414(a).

Pennsylvania approved the settlement agreement initially on October 19, 2022 and, after adjudicating objections to the proposed settlement, entered an order of final approval on May 13, 2023. *Liberty Res., Inc. v. City of Phila.*, Civ. Action No. 19-3846, 2023 U.S. Dist. LEXIS 75914 (May 13, 2023). Thus, the settlement agreement has no relevance here for this additional reason.

Finally, the attachment by the Sciullis of a purported excerpt from the settlement agreement is presented without context and, as such, is incomprehensible. There is no indication that the intersection at issue in this case is on the list, what the list means, or indeed, that the page presented is even part of the settlement agreement. Simply put, as presented, it is meaningless.

In short, in order to overcome the City's immunity, the Sciullis, as the plaintiffs, had the burden to demonstrate that a contract existed between the City and the Commonwealth for the City to maintain the median at issue. The Sciullis offered no evidence whatsoever relevant to that issue. Accordingly, they failed to establish a genuine issue of material fact, and the Trial Court properly entered summary judgment in favor of the City. *Accord Leone v. Dep't of Transp.*, 780 A.2d 754, 758 (Pa. Cmwlth. 2001) (affirming the entry of a nonsuit in favor of the City where the plaintiff failed to produce any evidence of a contract for the City to repair and maintain a state highway).

The Sciullis also insist they were denied due process because they were not able to cross-examine any City witnesses. This argument is without merit. If the Sciullis wished to examine witnesses verbally, their recourse was to take depositions during discovery, which they evidently did not do. *See* Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, Pa.R.Civ.P. 4007.1.

The Sciullis further assert that the City violated a case management order by revising a subpoena several days after the discovery deadline had passed. The original record demonstrates that the City provided notice to the Sciullis on December 8, 2023 of its intent to serve the addendum to the subpoena. Original Record at 72.¹⁰ The record, however, contains no objection by the Sciullis to the proposed service of the addendum after the close of discovery. Therefore, any such objection was waived and cannot be raised for the first time on appeal. *See Porta v. Unemployment Comp. Bd. of Rev.* (Pa. Cmwlth., No. 1950 C.D. 2008, filed May 12, 2009), slip op. at 8 n.4 (observing that failure to object to untimely issuance of a subpoena waived the objection). Accordingly, this argument is waived.

IV. Conclusion

Based on the foregoing discussion, the Trial Court's order granting summary judgment in favor of the City is affirmed.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

¹⁰ This citation to the original record uses the electronic page number.

EXHIBIT "H"

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

EGIDIO SCIULLI AND ROSEMARY SCIULLI,	:	No. 22 EAL 2026
	:	
Petitioners	:	
	:	
v.	:	Petition for Allowance of Appeal
	:	from the Order of the
	:	Commonwealth Court
	:	
	:	
CITY OF PHILADELPHIA,	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 27th day of May, 2026, the Petition for Allowance of Appeal is
DENIED.

APGEN-Sciulli Etal Vs City Of Philadelphia [MVR]



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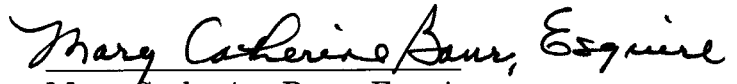
A True Copy Steven Rothermel, Esquire
As Of 05/27/2026

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

VERIFICATION

I, Mary Catherine Baur, Esquire, counsel for Petitioners Egidio Sciulli and Rosemary Sciulli, h/w, certify under penalty of perjury that, to the best of my knowledge, information, and belief, the allegations set forth in this Corrected Application to Extend Time to File a Petition for Writ of Certiorari, are true and correct and that this Corrected Application to Extend Time to File a Petition for Writ of Certiorari is not interposed for delay or other improper purposes.

Dated: 9-4-2026


Mary Catherine Baur, Esquire
Counsel of Record for Petitioners
Egidio Sciulli and Rosemary Sciulli, h/w