



TRANSPORTATION LAW UPDATE

PENNSYLVANIA

PUNITIVE DAMAGES

“DON’T GIVE UP THE SHIP”



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Pennsylvania law provides that “punitive damages are an extreme remedy available only in the most exceptional circumstances.” Generally when assessing the propriety of the imposition of punitive damages, the state of mind of the actor is vital. The act or the failure to act must be intentional, reckless or malicious. Punitive damages are not awarded for mere inadvertence, mistake or errors of judgment in a way which constitutes ordinary negligence.

Although this remedy is purportedly only available in “exceptional circumstances”, the recent trend is that virtually every Complaint filed against a commercial motor carrier has claims of outrageous conduct or reckless indifference to the rights or safety of others to purportedly justify a claim of punitive damages against the driver and motor carrier.

The majority of federal and state courts in Pennsylvania seem to allow discovery to proceed on the negligent hiring, supervision, entrustment and retention claims in order to potentially ferret out evidence to support these claims. We recommend that when discovery is completed, aggressive action must be taken to dismiss the punitive damage claims at the

dispositive motion stage of the case so that the judge must rule on whether this information is admissible at trial. This not only saves expense by streamlining the litigation, but it also protects clients from intrusive and unnecessary discovery into financial matters.

In our opinion, there is no doubt that many jurists try to utilize the claim and its continued presence in the litigation as “leverage” on defendants to resolve the case or to falsely legitimize an inflated settlement demand. However at some point, we suggest that it is necessary to force the court to examine the evidence and determine whether the case is one of those “exceptional circumstances.”

We have seen a number of cases where punitive damages have been alleged for talking on a cell phone, speeding, failing to stop at a red light and even viewing a GPS. It also appears that some judges believe the issue of whether the conduct rises to reckless indifference is one that should always be a question for the jury, instead of a preliminary question of law for the judge. In our experience, we question and continue to challenge whether this view is appropriate. If the information is admitted during the plaintiffs’



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case in chief and then a motion for a directed verdict or dismissal of the punitive damages claims is made after the plaintiffs conclude their case, the information has already been presented, the jury has been unnecessarily tainted, and it is impossible to “un-ring the bell.”

Recently, two cases were decided in which the trial judge dismissed the punitive damages claims on the eve of trial with the filing of motions *in limine*. In *Schmidt v. City Centre Annex*, decided November 28, 2011 in the U.S. District Court for the Eastern District of Pennsylvania (Philadelphia) at Civil Action No. 10-1963, U.S. District Court Judge Thomas N. O’Neill, Jr. dismissed plaintiff’s claims for punitive damages and any evidence of defendant’s wealth was excluded.

In *Schmidt*, a delivery man backed his truck into a loading dock at a Courtyard Marriott Hotel. The dock was in a raised position, but when Schmidt attempted to lower it by stepping on it, the dock allegedly sprang up and struck him in the back. Plaintiff argued reckless indifference based on the defendant’s alleged knowledge that the loading dock leveler had been malfunctioning, and video evidence showed that the loading dock “snapped up” on six prior occasions when delivery personnel attempted to use it. Further, a loss

prevention officer for the defendant also testified that a malfunctioning dock leveler is a “potential safety hazard.” The federal judge relied on the fact that even though this information showed evidence of negligence, this was not one of the “exceptional cases in which the conduct is so outrageous that punitive damages are appropriate” and he granted the defendant’s motion *in limine*.

More recently, we were successful in a motor carrier case in having the punitive damage claim dismissed by way of a motion *in limine* in *Lavan v. Dart Transit Company*, which was tried in the Luzerne County Court of Common Pleas in Wilkes-Barre, Pennsylvania. Judge Michael T. Vough initially reviewed the evidence and determined that these claims would not be permitted during the plaintiff’s case in chief and no argument could be raised that our driver or the company’s actions were outrageous or reckless.

As a result, we recommend that you “don’t give up the ship” with regard to claims for punitive damages remaining in the case. Where a motion for partial summary judgment to dismiss punitive damages is unsuccessful, motions *in limine* addressing specific evidence may bar the evidence in support of these claims. In the end, the claim for punitive damages is essentially dismissed from the case.

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