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

DAIMLERCHRYSLER CORP.	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM ASKINAZI, GREITZER & LOCKS, and BRIAN LIPSCOMB	:	NO. 99-5581
Defendants	:	

MEMORANDUM AND ORDER

YOHN, J. June , 2000

Plaintiff DaimlerChrysler Corp. ["DaimlerChrysler"] filed a claim for wrongful use of civil proceedings under 42 Pa. Cons. Stat. § 8351 against defendants William Askinazi and Greitzer & Locks ["lawyers"], as well as defendant Brian Lipscomb ["class representative"]. DaimlerChrysler's suit stems from a class action in which DaimlerChrysler, Ford Motor Co., General Motors Corp., and Saturn Corp. ["class defendants"] were named as defendants. This class action was filed by the lawyers on behalf of the class representative and all others similarly situated. Pending before the court are the motions to dismiss (Doc. Nos. 11, 12) of Askinazi and the class representative ["moving defendants"]. Because it is not "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of DaimlerChrysler's complaint, the court will deny the motions to dismiss. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

I. Background

The complaint contains the following allegations. In June 1999, the lawyers filed a class action ["*Lipscomb*"] against the class defendants in the Court of Common Pleas of Philadelphia County on behalf of the class representative and all others similarly situated. *See* Compl. (Doc. No. 1) ¶ 11. At its core, the *Lipscomb* complaint claimed that the seat recliner mechanisms ["mechanisms"] were defective in certain vehicles manufactured by the class defendants. *See id*. The *Lipscomb* complaint contained seven counts but failed to allege that the class representative owned a DaimlerChrysler vehicle with an allegedly defective mechanism, had any contact with DaimlerChrysler, or suffered any damages that were caused by DaimlerChrysler. *See id*. ¶ 13. Indeed, the class representative had never owned a DaimlerChrysler car with an allegedly defective mechanism. *See id*.

The complaint also contains allegations that before filing *Lipscomb*, the lawyers failed to make any reasonable inquiry as to the ability of the class representative to represent the putative class. *See id*. ¶ 13. At that time, it was apparent to the lawyers and the class representative that the class representative had not suffered any damages at all. *See id*. ¶ 15. Additionally, the lawyers and the class representative failed to make any reasonable pre-filing inquiry as to the accuracy of the facts alleged in the *Lipscomb* complaint. *See id*. ¶ 14. As a result, the *Lipscomb* complaint contained allegations that would have been revealed as false with minimal investigation. *See id*. Examples of such allegedly false allegations include the following: the seats in 1996 Dodge Intrepids use the allegedly defective mechanism; the seats in 1994 Dodge Neons and 1996 Dodge Intrepids are the same; and the class defendants conspired with respect to the allegedly defective mechanisms. *See id*.

On October 20, 1999, the *Lipscomb* claims against DaimlerChrysler were dismissed.[1] *See id*. ¶ 16. This suit resulted.

II. Legal Standard

The moving defendants have filed motions to dismiss for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12 (b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). At this stage of the litigation, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon*, 467 U.S. at 73. In deciding a motion to dismiss, a court also may consider exhibits attached to the complaint and matters of public record. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

The Federal Rules of Civil Procedure do not, however, require detailed pleading of the facts on which a claim is based. Instead, all that is required is "a short and plain statement of the claim showing that the pleader is entitled to relief," enough to "'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" Fed. R. Civ. P. 8(a)(2); *Rannels v. S.E. Nichols, Inc.*, 591 F.2d 242, 245 (3d Cir. 1979) (quoting *Conley v. Gibson*, 355

[1]The issue of whether Judge Levin's Order of October 20, 1999, dismissed all *Lipscomb* claims against DaimlerChrysler will be examined herein.

U.S. 41, 47 (1957)). For example, the Appendix of Forms to the Federal Rules of Civil Procedure contains a sample negligence complaint that satisfies Rule 8(a)(2) that includes only a statement of jurisdiction, a description of injuries, and an allegation that "defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway." App. of Forms to Fed. R. Civ. P., Form 9.

III. Discussion

The Pennsylvania wrongful use of civil proceedings statute describes this cause of action in the following manner:

> **(a) Elements of action.**—A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:
>
> (1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and
>
> (2) The proceedings have terminated in favor of the person against whom they are brought.

42 Pa. Cons. Stat. § 8351(a). The moving defendants give two reasons for the court to dismiss DaimlerChrysler's claim.[2] They argue that DaimlerChrysler's complaint should be dismissed because the *Lipscomb* claims have not terminated in favor of DaimlerChrysler and because

[2]Each moving defendant's memorandum of law makes only one of these two arguments and incorporates by reference the argument made in the other memorandum. *See* Def. William Askinazi's Mem. of Law in Supp. of his Mot. to Dismiss Pl.'s Compl. Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 12) ["Askinazi Mem."] at 14 (incorporating by reference the class representative's improper purpose argument); Def. Brian Lipscomb's Mem. of Law in Supp. of his Mot. to Dismiss Pl.'s Compl. Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 11) ["Lipscomb Mem."] at 5 (incorporating by reference Askinazi's lack of favorable termination argument). For simplicity, I will cite only one memorandum for a particular argument even though the other memorandum incorporates that argument by reference.

DaimlerChrysler has failed to allege that the *Lipscomb* claims against DaimlerChrysler were brought for an improper purpose.[3] *See* Askinazi Mem. at 7-13; Lipscomb Mem. at 5-9. Because DaimlerChrysler's complaint is sufficient to satisfy the notice pleading requirements of Fed. R. Civ. P. 8(a)(2), and because the moving defendants have not demonstrated that DaimlerChrysler cannot recover on its claim, the court will deny the motions to dismiss.

A. Favorable Termination

A wrongful use of civil proceedings plaintiff may not bring such a claim unless and until the civil proceedings complained of have terminated in his favor. *See* 42 Pa. Cons. Stat. § 8351(a)(2). The moving defendants attack both parts of the favorable termination requirement. They argue that the underlying proceedings have not terminated. *See* Askinazi Mem. at 4-5, 8-9. Alternatively, they contend that if the underlying proceedings have terminated, then the termination was not favorable to DaimlerChrysler. *See id*. at 10-13.

1. Termination

In arguing that the underlying proceedings have not terminated, the moving defendants claim that Judge Levin's Order of October 20, 1999, dismissed only the class representative's individual claims against DaimlerChrysler and not the class claims. *See id*. at 8-9. To support

[3]The moving defendants also argue that DaimlerChrysler cannot show a lack of probable cause because the class claims against DaimlerChrysler have not been terminated. *See* Askinazi Mem. at 9-10. Because I conclude that all claims against DaimlerChrysler, including the class claims, have been terminated, *see infra* Part III.A.1, this argument is inapposite. Therefore, I do not reach it.

this contention, they point to the language of the order. *See id*. at 8-9 (citing Askinazi Mem. Ex. B). The text of the Order of October 20, 1999, is as follows:

> AND NOW, this *20th* day of *October*, 1999, it is hereby ORDERED that *the claim brought by Brian Lipscomb, individually, is dismissed as to Ford Motor Company and DaimlerChrysler Corporation with prejudice. Further, plaintiff is hereby given leave to file an amended complaint.*[4]

Askinazi Mem. Ex. B (emphasis to show handwritten portions of the order). Because the Order of October 20, 1999, expressly dismisses the class representative's individual claims against DaimlerChrysler but does not expressly dismiss the class claims against DaimlerChrysler, the moving defendants argue that these class claims "are still pending."[5] Askinazi Mem. at 9.

This argument is belied by Judge Levin's recent Order of May 4, 2000. On April 19, 2000, the class representative filed a motion in *Lipscomb* asking Judge Levin to clarify whether any claims against DaimlerChrysler survived the Order of October 20, 1999. Specifically, the class representative requested that the *Lipscomb* court "vacate its October 20, 1999 Order and

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[4]Although the Order refers only to "claim" (singular), both DaimlerChrysler and the moving defendants treat the Order as if it had referred to "claims" (plural). *See* DaimlerChrysler Corp.'s Br. in Opp'n to Defs. William Askinazi's and Brian Lipscomb's Separate Mots. to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 13) ["DaimlerChrysler Mem."] at 7 (stating that "all of the claims made by Lipscomb (the only named plaintiff) have been dismissed, *with prejudice*, as to DaimlerChrysler"); Askinazi Mem. at 8 (describing the Order of October 20, 1999, as "dismissing the named plaintiff's *individual* claims against DaimlerChrysler"). Consequently, I will treat the Order of October 20, 1999, as if it had referred to "claims."

[5]Interestingly, DaimlerChrysler claims that since the Order of October 20, 1999, it has not been served with any order or notice by the *Lipscomb* court nor with any pleadings by the moving defendants. *See* DaimlerChrysler Mem. at 6 n.6. Although this claim is unsubstantiated and cannot be considered by the court in deciding the motions to dismiss, its truth would belie the moving defendants' argument regarding the pendency of the *Lipscomb* class claims against DaimlerChrysler.

allow Lipscomb and the plaintiff class, at their option, to file an amended complaint." DaimlerChrysler Corp.'s Supplemental Br. in Opp'n to Defs. William Askinazi's & Brian Lipscomb's Separate Mots. to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 51) ["DaimlerChrysler Supp'l Br."] Ex. A at 12. Alternatively, the class representative sought both modification of "the October 20 Order so that the dismissal is 'without prejudice' and [leave for] Lipscomb and the plaintiff class, at their option, to file an amended complaint." *Id*. On May 4, 2000, Judge Levin denied the class representative's motion without comment. *See* DaimlerChrysler Supp'l Br. Ex. C. This denial suggests that the moving defendants incorrectly interpret the Order of October 20, 1999.

Even without the benefit of these recent events, however, the court would not accept the moving defendants' argument. They do not cite any cases that support the idea of class claims continuing despite the class representative's lack of standing, and controlling Pennsylvania law leads the court to the opposite conclusion.[6]

In *Nye v. Erie Insurance Exchange*, 470 A.2d 98 (Pa. 1983), the Supreme Court of Pennsylvania rejected the very argument advanced by the moving defendants. The *Nye* class representative brought claims against thirty-one insurance companies both individually and on behalf of a class of all others similarly situated. *See id*. The *Nye* court acknowledged that "[a] party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action." *Id*., 470 A.2d at 100. The court held that, with respect to the defendants with which the class representative had had no contact, the class representative lacked individual standing and that this lack of standing was fatal to both his

[6]None of the parties addresses the controlling law on this issue in a thorough manner.

individual claims and the claims brought on behalf of the putative class. *See id*. (reversing "the Superior Court's order that [the class representative] may institute a class action against all defendant insurance companies" because the class representative's "complaint fails to allege that *he* has been aggrieved by the conduct of any of the defendant insurance companies except [the one with which he had contact]" (emphasis added)).[7] Thus, in Pennsylvania, it appears to be clear that "[i]f the named plaintiffs in a class action do not have standing, they cannot maintain a class action." *Citizens for State Hosp. v. Pennsylvania*, 553 A.2d 496, 498 (Pa. Commw. Ct. 1989) (citing *Nye v. Erie Ins. Exch.*, 470 A.2d 98 (Pa. 1983)).

DaimlerChrysler and the moving defendants agree that the reason for dismissal of the class representative's individual claims against DaimlerChrysler in the Order of October 20, 1999, was his lack of standing as to DaimlerChrysler. *See* Askinazi Mem. at 8-9; Compl. ¶ 16. Therefore, Pennsylvania law dictates that the Order of October 20, 1999, terminated not only the class representative's individual claims against DaimlerChrysler but also the class claims of DaimlerChrysler vehicle-owners against DaimlerChrysler. *See Nye*, 470 A.2d at 100.

The moving defendants contend that the Order of October 20, 1999, does not address whether GM vehicle-owners have standing to pursue claims against DaimlerChrysler through the conspiracy claim against GM, in which DaimlerChrysler is named as a conspirator. *See* Askinazi Mem. at 4-5. In support of this contention, the moving defendants identify portions of the transcript of the hearing on October 20, 1999, that suggest that Judge Levin did not intend to

[7]A person must show he is "'aggrieved'" by the matter challenged in order to have "'standing to obtain a judicial resolution of his challenge.'" *Nye*, 470 A.2d at 100 (quoting *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975)).

address this issue or, interpreted more broadly, that he did not intend to dismiss the GM vehicle owners' conspiracy claim against any defendant, including DaimlerChrysler. *See id*.

The Order of October 20, 1999, tends to contradict the moving defendants' argument. As the moving defendants and DaimlerChrysler agree, the Order of October 20, 1999, dismissed all of the class representative's individual claims against DaimlerChrysler. *See supra* note 4. If, as the moving defendants argue, the class of GM vehicle-owners had standing to assert a claim against DaimlerChrysler by virtue of the conspiracy claim, then the class representative should have had standing, too, because he owned a GM vehicle. *See* Askinazi Mem. at 2-3. The moving defendants and DaimlerChrysler agree, however, that the class representative lacked standing to assert his individual claims against DaimlerChrysler. *See* Askinazi Mem. at 8-9; Compl. ¶ 16.

There appears to be some conflict between what was said in the hearing on October 20, 1999, and the Order of October 20, 1999. On a motion to dismiss, however, the court need not conclusively decide whether the Order of October 20, 1999, addresses the issue of the class of GM vehicle-owners' standing to pursue claims against DaimlerChrysler under the conspiracy count. Discovery or a further order of the Philadelphia Court of Common Pleas may clarify the issue. For the purpose of the pending motion to dismiss, the court will proceed as if all of the underlying proceedings against DaimlerChrysler have terminated as DaimlerChrysler alleges in its complaint.

2. Favorable

The moving defendants admit that "the dismissal of all the plaintiff's claims against a particular defendant would usually be considered a favorable termination." Askinazi Mem. at 10. In this case, however, they argue that even if the Order of October 20, 1999, terminated *Lipscomb* with respect to DaimlerChrysler, this termination was not favorable to DaimlerChrysler. *See* Askinazi Mem. at 10-13. In support of this argument, the moving defendants cite *Robinson v. Robinson*, 525 A.2d 367 (Pa. Super. Ct. 1987), and *Rosen v. Tabby*, No. 95-2968, 1997 WL 667147 (E.D. Pa. Oct. 9, 1997). These cases are, however, distinguishable.

In *Robinson*, the Superior Court of Pennsylvania concluded that a termination was not favorable to the underlying defendant because the underlying plaintiff's claims were dismissed without prejudice to her right to raise the dismissed claims in a contemporaneous action in a different jurisdiction. *See id*., 525 A.2d at 370. The termination of those claims became favorable only after the contemporaneous action ended without the dismissed claims being raised. *See id*., 525 A.2d at 371.

Citing the transcript of the hearing that resulted in the Order of October 20, 1999, the moving defendants point out that when Judge Levin dismissed the claims against DaimlerChrysler due to the class representative's lack of standing, he also noted that the dismissal had no bearing on "anyone else who would therefore have a right to file a suit if they owned the appropriate vehicle." Askinazi Mem. Ex. A. at 4; *see* Askinazi Mem. at 11. According to the moving defendants, the termination is prevented from being favorable to DaimlerChrysler by the fact that someone with standing could bring class action claims against

DaimlerChrysler for damages suffered due to the allegedly defective mechanism. *See* Askinazi Mem. at 11-12.

The biggest difference between *Robinson* and the case at hand is that all of the *Lipscomb* claims were "dismissed as to . . . DaimlerChrysler Corporation *with prejudice*" by the Order of October 20, 1999, Askinazi Mem. Ex. B (emphasis added); *see supra* Part III.A.1, whereas in *Robinson*, the underlying "action did not terminate in appellant's favor because [the underlying plaintiff] was specifically allowed to raise the claims in [a] contemporaneous New Jersey action." *Robinson*, 525 A.2d at 370. Nothing in the Order of October 20, 1999, suggests that the class representative may again assert the *Lipscomb* claims against DaimlerChrysler either individually or on behalf of the *Lipscomb* class in this or in any other jurisdiction.

The moving defendants argue that the ability of the class representative to pursue these claims is irrelevant because, at their essence, the *Lipscomb* claims against DaimlerChrysler were class claims. *See* Askinazi Mem. at 12-13. Thus, because the Order of October 20, 1999, did nothing to prevent the class from pursuing those claims with a proper representative, the termination of those claims was not favorable to DaimlerChrysler. *See id.* The moving defendants cite *Rosen* to support the proposition that ultimate success or failure in "the essence of [a party's] case" determines whether a termination was favorable. *See id*. at 12 (citing *Rosen*, 1997 WL 667147, at *7). This proposition is not, however, supported by *Rosen*.

In granting summary judgment to the defendants on the wrongful use of civil process claim, the *Rosen* court based its decision largely on the existence of probable cause for the defendants to have brought the underlying suit. *See Rosen*, 1997 WL 667147, at *2-*7. In its one-paragraph discussion of § 8351(a)(2)'s favorable termination requirement, the *Rosen* court

does not focus on the fact that the defendants were successful in "the essence of their case." Askinazi Mem. at 12. Instead, the court explains "that the underlying proceedings did not terminate *wholly* in favor of plaintiff" because the plaintiff was unable to recover his costs and fees, as he sought to do, from an escrow account, the entire contents of which were awarded to the defendants at the conclusion of the underlying action. *Rosen*, 1997 WL 667147, *7 (emphasis added). Thus, although the plaintiff was not held liable in the underlying case, the termination was not wholly favorable to him. *See id*.

The Order of October 20, 1999, operated to dismiss all of the *Lipscomb* claims against DaimlerChrysler. *See supra* Part III.A.1. Because the moving defendants admit that in the usual case, "the dismissal of all the plaintiff's claims against a particular defendant would . . . be considered a favorable termination," Askinazi Mem. at 10, and because the cases cited by the moving defendants to differentiate the case at hand from the usual case do not actually support such a differentiation, the court concludes that the termination of the *Lipscomb* claims effected by the Order of October 20, 1999, was favorable to DaimlerChrysler.

B. Improper Purpose

In order to recover on a claim of wrongful use of civil proceedings, a plaintiff must establish that the defendant acted "primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based." 42 Pa. Cons. Stat. § 8351(a)(1). In other words, the underlying proceedings must have been instituted or continued for an improper purpose. The moving defendants claim that DaimlerChrysler has not alleged that the *Lipscomb* claims against DaimlerChrysler were brought

for an improper purpose because the complaint merely tracks the language of § 8351(a)(1) and does not establish underlying facts that would support the contention that the defendants acted with an improper purpose. *See* Lipscomb Mem. at 5-9.

A wrongful use of civil proceedings plaintiff need not specifically allege an improper purpose. Even under Pennsylvania's fact pleading requirements, which set a higher standard than the notice pleading requirements of the Federal Rules of Civil Procedure, if a plaintiff establishes that the defendant filed suit without justification, then an improper purpose may be inferred therefrom. *See Gentzler v. Atlee*, 660 A.2d 1378, 1385 (Pa. Super. Ct. 1995) ("[A]n improper purpose may be inferred where the action is filed without justification."); *Shaffer v. Stewart*, 473 A.2d 1017, 1021 (Pa. Super. Ct. 1984) ("[C]ivil proceedings are initiated for an improper purpose when the proceedings are initiated for the purpose of forcing a settlement that has no relation to the merits of the claim. This occurs, for example when a plaintiff, knowing that there is no real chance of successful prosecution of a claim, brings a nuisance suit upon it for the purpose of forcing the defendant to pay a sum of money in order to avoid the financial and other burdens that a defense against it would put upon him." (internal quotation marks omitted)); *Laventhol & Horwath v. First Pennsylvania Bank*, 18 Phila. 580, 583 (Ct. C.P. 1988) ("[M]alice can be inferred from the lack of probable cause."), *aff'd*, 573 A.2d 626 (1990) (Table).

The complaint gives the defendants fair notice of DaimlerChrysler's contention that they filed the *Lipscomb* claims against DaimlerChrysler with an improper purpose—without justification and without any chance of success. *See Rannels*, 591 F.2d at 245 (recognizing that Fed. R. Civ. P. 8(a)(2) requires a complaint to contain only fair notice of a claim and the basis thereof); Compl. ¶ 1 (stating that *Lipscomb* was filed "without any basis whatsoever"), ¶ 2

(describing *Lipscomb* as "frivolous"). The complaint also sufficiently discloses the basis of this contention.

As previously discussed, in order for one person, on behalf of himself and/or a class of people, to bring a claim against another, that person must have actually been aggrieved by the conduct of the other. *See supra* Part III.A.1 (citing *Nye*, 470 A.2d at 100; *Citizens for State Hosp.*, 553 A.2d at 498). Therefore, a person who has not been aggrieved by the conduct of another would not be justified in pursuing a claim against the other.

DaimlerChrysler alleges that at the time the *Lipscomb* complaint was filed, it was apparent to the defendants that the class representative had not been aggrieved by DaimlerChrysler's conduct. *See* Compl. ¶ 15 (stating that the defendants "knew, or should have known, that Lipscomb never had any damages or manifestation of the alleged defect about which he complained"); *see also id*. ¶ 13 (alleging both that the class representative never owned a DaimlerChrysler car with an allegedly defective mechanism and that there was no reasonable pre-filing inquiry[8] into the standing, or the lack thereof, of the class representative to pursue claims against DaimlerChrysler); *id*. ¶ 14 (claiming that there was no "reasonable pre-filing inquiry to determine the accuracy of the facts . . . alleged" in the *Lipscomb* complaint). Assuming the truth of this allegation, as I must, there was no reason to name DaimlerChrysler as a defendant in *Lipscomb*, and doing so was unjustified.[9]

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[8]It is clear that a claim need not be fully investigated before filing suit. *See Mansmann v. Tuman*, 970 F. Supp. 389, 394 (E.D. Pa. 1997). That is not to say, however, that no pre-filing investigation is ever required.

[9]The class representative argues that the decision to proceed against DaimlerChrysler despite his lack of standing was a strategic decision made by the lawyers and not by him. *See* Lipscomb Mem. at 8. First, the class representative must recognize that "[m]ere claims of

Because the defendants are alleged to have brought claims against DaimlerChrysler without justification, it is reasonable to infer that they brought the claims for an improper purpose, such as to induce a settlement that was unrelated to the merits of the claims. *See Gentzler*, 660 A.2d at 1385; *Shaffer*, 473 A.2d at 1021. Taking as true the allegations in DaimlerChrysler's complaint and the reasonable inferences drawn therefrom, and considering these allegations and inferences in the light most favorable to DaimlerChrysler, *see Jordan*, 20 F.3d at 1261, the court concludes that DaimlerChrysler's complaint sufficiently establishes that the defendants filed the *Lipscomb* claims against DaimlerChrysler with an improper purpose.

IV. Conclusion

The court is unconvinced "that no relief could be granted under any set of facts that could be proved consistent with the allegations" of DaimlerChrysler's complaint. *Hishon*, 467 U.S. at 73. Therefore, the court will deny the motions to dismiss.

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reliance on one's lawyer does [sic] not insulate one from liability for an unfounded lawsuit." *Bannar v. Miller*, 701 A.2d 232, 238 (Pa. Super. Ct. 1997). Second, even if the class representative can produce evidence to prove that he should not be held accountable for bringing unjustified claims against DaimlerChrysler, the appropriate place for such an argument is in a motion for summary judgment, not a motion to dismiss. *See Sturm*, 835 F.2d at 1011 (stating that the purpose of a motion to dismiss is not to test the sufficiency of evidence but to test the legal sufficiency of the complaint). Taking the allegations in the complaint and the reasonable inferences drawn therefrom as true, I must consider the class representative to have been aware of the unjustified nature of the *Lipscomb* claims against DaimlerChrysler. *See Jordan*, 20 F.3d at 1261.

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

DAIMLERCHRYSLER CORP.	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM ASKINAZI, GREITZER & LOCKS, and BRIAN LIPSCOMB	:	NO. 99-5581
Defendants	:	

ORDER

YOHN, J.

AND NOW, this day of June, 2000, upon consideration of the defendants' motions to dismiss (Doc. Nos. 11, 12), the plaintiff's responses thereto (Doc. Nos. 13, 50, 51), and defendant Askinazi's replies thereto (Doc. Nos. 16, 57), IT IS HEREBY ORDERED that the motions to dismiss are DENIED.

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William H. Yohn, Jr.