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

MARTIN E. PITTMAN, SR. and JOANN N. PITTMAN	:	**CIVIL ACTION**
v.	:	
W.W. TRANSPORT, INC. and JESSIE LEE CLAY	:	**No. 01-882**

MEMORANDUM ORDER

Presently before the court is plaintiffs' Motion to Amend Their Complaint to Include a Count for Punitive Damages. This case arises from a vehicular collision in Reading, Pennsylvania on May 6, 1999 between a van operated by Martin Pittman and a truck operated by Jessie Lee Clay and owned by W.W. Transport.

Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Leave to amend is generally granted absent undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice or futility. See Foman v. Davis, 371 U.S. 178, 182 (1962); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997); Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988); Howze v. Jones & Laughlin Steel Corp., 750 F.2d 1208, 1212 (3d Cir. 1984); Windsor Card Shops v. Hallmark Cards, 957 F. Supp. 562, 571 (D.N.J. 1997).

In their complaint, plaintiffs assert claims for negligence and negligent entrustment. Plaintiffs now state that in response to a request for production of documents, they learned that defendants failed to keep certain records as allegedly required by the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 C.F.R. § 350 et. seq. Plaintiffs seek to add a claim for punitive damages based upon these alleged regulatory violations.

The parties agree that this case is governed by Pennsylvania law. In Pennsylvania, "punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Martin v. Johns-Manville Corp., 494 A.2d 1088, 1097 (Pa. 1985) (quoting Restatement of Torts (Second) § 908(2)). Where a plaintiff relies on a theory of deliberate indifference, he must show that the defendant actually recognized the risk of harm and proceeded to act in conscious disregard or indifference to that risk. Id. at 1097, n.12. See also Burke v. Maassen, 904 F.2d 178, 183 (3d Cir. 1990).

Plaintiffs claim that one or both of the defendants violated three provisions of the FMCSR. The first is § 370 which requires a carrier to maintain delivery manifests, bills of lading and way bills. See 49 C.F.R. § 370.7. The second is § 390 which requires that an accident registrar be completed with all

pertinent information surrounding an accident. See 49 C.F.R. § 390.15. Finally, plaintiffs claim that defendants violated § 395 which requires operators to complete and submit a driver's log for all trips made. See 49 C.F.R. § 395.8.

Plaintiffs' claim is predicated upon defendants' inability to locate and produce these documents during the discovery period in this litigation. There is no suggestion that any failure to maintain these documents is in any way causally related to the accident or injuries sustained therein. Rather, plaintiffs state only allege the failure to produce the documents shows a "clear and intentional violation of the Code of Federal Regulations."

Moreover, the inability of defendants to produce such documents does not evidence any federal regulatory violation. It appears that plaintiffs misapprehend the federal regulations cited.

The regulations set forth in § 370 "govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation." 49 C.F.R. § 370.1 (emphasis added). Section 390.15 requires carriers to maintain an accident registrar only for one year after an accident occurs. See 49 C.F.R. § 390.15(b). The accident in this case occurred on May 6, 1999. This action was not even commenced until February 21, 2001. Similarly, § 395.8 mandates

that drivers maintain records of duty status for every twenty-four hour period only for seven days and that carriers maintain such records only for six months. See 49 C.F.R. § 395.8(k).

The addition of the proposed claim for punitive damages based on the purported regulatory violations would be futile.

ACCORDINGLY, this day of October, 2001, upon consideration of plaintiffs' Motion to Amend Their Complaint (Doc. #13) and defendants' response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

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JAY C. WALDMAN, J.