

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

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MARGOT TOMASELLA, individually and	:	
as administratrix of the Estate of STEPHEN	:	CIVIL ACTION
TOMASELLA, deceased, and MARISSA	:	
TOMASELLA, a Minor, and SHANTELE	:	
TOMASELLA, a Minor, by their parent and	:	
natural guardian and/or guardian ad litem	:	
and/or next friend, MARGOT TOMASELLA,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 99-CV-4016
	:	
GENERAL MOTORS CORPORATION	:	
and JOHN DOES I-X,	:	
	:	
Defendants.	:	
	:	

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**MEMORANDUM**

ROBERT F. KELLY, Sr. J.

MARCH 18, 2002

Presently before this Court are the Partial Motion for Summary Judgment on Plaintiffs' claims of intentional infliction of emotional distress, negligent infliction of emotional distress, fraud, and misrepresentation and the Partial Motion for Summary Judgment on Plaintiffs' claims for punitive damages. This action arises out of a single vehicle roll-over accident where Plaintiffs Shantelle and Marissa Tomasella ("Shantelle" and "Marissa") were the rear passengers in the Tomasella's 1995 Chevrolet Blazer which was being operated by the deceased, Stephen Tomasella ("Stephen"). For the following reasons, the Motions will be granted in part and denied in part. Specifically, summary judgement will be granted in favor of the Defendants on the Plaintiffs' claims of intentional infliction of emotional distress and negligent infliction of emotional distress and summary judgement will be denied on the

Plaintiffs' claims of fraud, misrepresentation and for punitive damages.

## **I. BACKGROUND**

On August 10, 1997, Stephen was driving his 1995 Chevrolet Blazer west on Interstate 84 with his daughters, Marissa and Shantelle, in the rear seat. The Blazer drifted off the south side of the highway, traveled back across both westbound lanes, exited the road on the north side of the highway, struck an earth embankment and rolled over twice. When the Blazer rolled over and the roof collapsed, Stephen sustained fatal injuries, while Marissa and Shantelle sustained minor injuries. The Plaintiffs brought the present action on August 9, 1999, for compensatory and punitive damages alleging that the Blazer was not crashworthy. In their Complaint, the Plaintiffs have alleged negligence, strict liability, breach of warranties, fraud, misrepresentation, intentional infliction of emotional distress, and negligent infliction of emotional distress. The two present Motions for Partial Summary Judgment were filed on February 14, 2002.

## **II. STANDARD**

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323

(1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

### **III. DISCUSSION**

Genuine issues of material fact remain regarding the claims of fraud, misrepresentation and for punitive damages. Therefore, summary judgment on these claims are inappropriate. However, because there are no such issues of material fact regarding the claims for intentional and negligent infliction of emotional distress, summary judgment on those claims is appropriate. The latter two claims will be discussed below.

#### **A. Intentional Infliction of Emotional Distress**

The Plaintiffs concede that because Margot Tomasella (“Margot”) was not present at the time of the accident, she may not maintain claims of intentional or negligent infliction of

emotional distress. Therefore, only Marissa's and Shantelle's claims will be discussed. Under the theory of intentional infliction of emotional distress, "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress." Pavlik v. Lane Ltd./Tobacco Exp. Intern., 135 F.3d 876, 890 (3d Cir. 1998)(citing RESTATEMENT (SECOND) OF TORTS § 46). Furthermore, in a "bystander" case such as this, when outrageous conduct is directed at a third person, the actor is subject to liability for his or her conduct which causes distress to members of the third person's immediate family who are present at the time. Johnson v. Caparelli, 625 A.2d 668, 671 (Pa. Super. 1993)(citing RESTATEMENT (SECOND) OF TORTS § 46(2)).

Outrageous conduct is defined as conduct that is "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Pavlik, 135 F.3d at 890 (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d). Recovery is limited to distress caused by only "the most clearly desperate and ultra extreme conduct." Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998). Satisfaction of this element is a heavy burden for the Plaintiffs to meet. Pavlik, 135 F.3d at 890. Under Pennsylvania law, it is for the court to determine in the first instance whether the Defendants' conduct can be reasonably regarded as so extreme and outrageous to permit recovery. Corbett v. Morgenstern, 934 F. Supp. 680, 684 (E.D. Pa. 1996)(citing Cox. v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988)).

The Plaintiffs argue that the Defendant General Motors Corporation ("GM") engaged in extreme and outrageous conduct when it "marketed and distributed to an unsuspecting public a truck that it knew was inherently dangerous, elected not to make readily

available design modifications, and then tried to conceal the truth about its unsafe vehicle.” (Resp. to Mot. for Summ. J., 6). The Plaintiffs allege that the Defendants knew that the Blazer had a propensity to roll and that if the Blazer rolled, the roof could partially collapse and potentially cause serious injury. The Plaintiffs further allege that although the Defendants knew these facts, it nevertheless deceived consumers into believing that the Blazer was strong and safe, refused to incorporate proper safeguards into the Blazer’s design, and opposed stronger federal roof standards.

This conduct is not the type which would subject GM to liability for intentional infliction of emotional distress and we are unwilling to extend the tort to reach such conduct. See Lee v. General Motors Corp., 950 F. Supp. 170 (S.D. Miss. 1996). Such conduct is not the type which is so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Pavlik, 135 F.3d at 890. Therefore, the Plaintiffs have not made out a *prima facie* case of intentional infliction of emotional distress and summary judgment is appropriate on this Count.

**B. Negligent Infliction of Emotional Distress**

In order to prove a case of negligent infliction of emotional distress, the Plaintiffs must prove that: (1) that they were near the scene of the traumatic event; (2) that shock resulted from a direct emotional impact upon the Plaintiffs from the sensory and contemporaneous observance of the event; and (3) that there was a close relationship between the Plaintiffs and the victim of the event. Sonlin ex rel. Sonlin v. Abington Mem’l Hosp., 748 A.2d 213, 217 (Pa. Super. 2000)(citing Sinn v. Burd, 404 A.2d 672, 685 (Pa. 1979)). Furthermore, the Plaintiffs must also have sustained some bodily harm from the mental disturbance brought on by

observation of the event. Id. (citing Mazzagatti v. Everingham by Everingham, 516 A.2d 672, 677 (Pa. 1986)). Here, the Plaintiffs have not provided any evidence that either Marissa or Shantelle sustained any bodily harm from the mental disturbance. Therefore, their claims for negligent infliction of emotional distress must fail, and summary judgment on that Count is appropriate.

An appropriate Order follows.

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MARGOT TOMASELLA, individually and	:	
as administratrix of the Estate of STEPHEN	:	CIVIL ACTION
TOMASELLA, deceased, and MARISSA	:	
TOMASELLA, a Minor, and SHANTELE	:	
TOMASELLA, a Minor, by their parent and	:	
natural guardian and/or guardian ad litem	:	
and/or next friend, MARGOT TOMASELLA,:	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 99-CV-4016
	:	
GENERAL MOTORS CORPORATION	:	
and JOHN DOES I-X,	:	
	:	
Defendants.	:	

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**ORDER**

AND NOW, this 18th day of March, 2002, upon consideration of the Partial Motion for Summary Judgment on the Plaintiffs' claims of intentional infliction of emotional distress, negligent infliction of emotional distress, fraud, and misrepresentation (Dkt. No. 41) and the Partial Motion for Summary Judgment on the Plaintiffs' claims for punitive damages (Dkt. No. 42) filed by the Defendants, and the Plaintiffs' Responses thereto, it is hereby ORDERED that the Motions are DENIED in part and GRANTED in part. It is hereby further ORDERED that:

1. summary judgment is GRANTED in favor of the Defendants on the Plaintiffs' claims of intentional infliction of emotional distress and negligent infliction of emotional distress and thus Count VII and VIII of the Complaint are DISMISSED with prejudice; and
2. summary judgement is DENIED on the Plaintiffs' claims of fraud,

misrepresentation and for punitive damages.

BY THE COURT:

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ROBERT F. KELLY, Sr. J.