

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

BRENT STRAMARA, Administrator : CIVIL ACTION  
of the Estate of :  
CHRISTOPHER V. STRAMARA, :  
deceased :  
v. :  
DORSEY TRAILERS, INC. : NO. 96-CV-7361  
\_\_\_\_\_ :

FRED M. ELLMAKER, JR. : CIVIL ACTION  
Administrator of the Estate :  
of RAYMOND ELLMAKER, deceased :  
and MELISSA RISSER, Mother :  
and Natural Guardian of :  
RAYMOND MICHAEL ELLMAKER :  
and ROCHELLE LYNN ELLMAKER, :  
Minor Children of the Deceased :  
RAYMOND ELLMAKER :  
v. :  
DORSEY TRAILERS, INC. : NO. 96-CV-7362

**MEMORANDUM AND ORDER**

**J.M. KELLY, J.**

**OCTOBER 28, 1998**

Presently before the Court is Defendant Dorsey Trailer's ("Dorsey") Motion for Partial Summary Judgment (Document No. 51). For the reasons that follow, Dorsey's motion is denied.

Dorsey argues in its memorandum that summary judgment is appropriate because liability in design defect cases is determined at the time the product is sold, not after, and the manufacturer cannot become liable in the event some better design subsequently becomes available. Dorsey claims that the Court therefore must evaluate Plaintiffs' punitive damages

claim in view of the applicable standards at the time it sold the trailer involved in the accident. Because, it argues, its trailers complied with all federal standards in 1986, Plaintiffs cannot prove Dorsey's conduct was such to warrant punitive damages. Further, apparently in reference to Plaintiffs' negligence claim, Dorsey argues Plaintiffs have not created a factual record that shows Dorsey acted willfully or recklessly.

Plaintiffs, however, argue that compliance with safety standards does not preclude recovery for a design defect. They claim Dorsey knew years before it sold the trailer that retro-reflective materials were available at a minimal cost. Plaintiffs further claim that Dorsey knew of similar accidents more than one year before the one here occurred. Moreover, and also more than a year before the accident, Plaintiffs allege Dorsey circulated a memorandum to its dealers discussing a new federal standard requiring the retro-reflective materials on all new trailers. Plaintiffs state that these facts at least show there is a genuine issue of material fact that Dorsey was reckless when it failed to retrofit its trailers, and therefore summary judgment is inappropriate. Plaintiffs also claim that punitive damages, clearly available in its negligence action against Dorsey, additionally are available in its strict liability action.

Pennsylvania law permits the recovery of punitive damages where a defendant has acted outrageously, conducting himself with a bad motive or a reckless indifference to the interests of others. See Hoffman v. Sterling Drug, Inc., 485 F.2d 132, 145 (3d Cir. 1973) (quoting Restatement of Torts § 908(1) cmt. b, and recognizing that Pennsylvania has adopted the Restatement's rules governing punitive damages); see also Feld v. Merriam, 485 A.2d 742, 747-48 (Pa. 1984). A defendant has acted with bad motive, or wilful misconduct, when it desires to bring about the result that follows, or at least is substantially aware that the result would occur.

See Evans v. Philadelphia Transp. Co., 212 A.2d 440, 443 (Pa. 1965); Antonace v. Ferri Contracting Co., 467 A.2d 833, 835 (Pa. Super. Ct. 1983). A defendant has acted recklessly when it intentionally commits an act in disregard of a risk it knew or, due to its obvious nature, should have known likely would cause great harm.<sup>1</sup> Evans, 212 A.2d at 443. Finally, actual knowledge is not required for a defendant's action to be reckless; if the defendant realized or was aware of facts to lead a reasonable person to conclude a danger exists, and had sufficient time to make a reasonable attempt to avoid the accident, the defendant knew enough to have acted recklessly. See id. at 444.

Dorsey correctly states liability in a design defect case is measured at the time the product is sold, Josephs v. Harris Corp., 677 F.2d 985, 988 (3d Cir. 1982), but incorrectly concludes punitive damages are unavailable here. The lawsuits brought against Dorsey alleging the same design defect, the availability of retro-reflective materials and their apparent pervasive use in the industry, and the memorandum Dorsey created and distributed about the materials all demonstrate a genuine issue of material fact about Dorsey's knowledge of the risks of not retrofitting its trailers and what harm potentially could result. But cf. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (finding summary judgment appropriate where no genuine issue of

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<sup>1</sup>In its memorandum Dorsey suggests that this requirement of an intentional act means the defendant must have acted with an intent to cause harm.

“Reckless indifference to the interest of others” . . . means the actor has intentionally done an act of an unreasonable character, in disregard of the risks known to him or imputed to his knowledge to [sic] their obvious nature, and so great as to make it highly probable that harm would follow. Even a cursory review of facts established in this civil action would convince any reader that nowhere is there a factual description of any intentional act of such character by defendant.” (Mem. Supp. Mot. Def. Partial Summ. J., at 5-6.) This argument seems to equate recklessness with wilful misconduct, but intent in the context of recklessness is more focused on the voluntariness of the defendant's action.

any material fact existed). The Court therefore cannot say as a matter of law that punitive damages are unavailable here. Further, in response to Plaintiffs' arguments, punitive damages are assessable in both their negligence and strict liability claims. See Neal v. Carey Canadian Mines, Ltd., 548 F. Supp. 357, 378 (E.D. Pa. 1982), aff'd, 760 F.2d 481 (3d Cir. 1985). Cf. Acosta v. Honda Motor Co., 717 F.2d 828, 839 (3d Cir. 1983) (rejecting arguments against awarding punitive damages in strict liability action based on Virgin Island law, which, like Pennsylvania, follows the Restatement); Kriscuinas v. Union Underwear Co., No. 93-4216, 1994 WL 523046, at \*6-\*7 (E.D. Pa. Sept. 27, 1994) (permitting punitive damages in an action involving both strict liability and negligence claims).

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DORSEY TRAILERS, INC. : NO. 96-7362

**ORDER**

AND NOW, this 28th day of October, 1998, in consideration of Defendant's Motion for Partial Summary Judgment, and Plaintiffs' response thereto, it is hereby **ORDERED** that Defendant's motion (Doc. No. 51) is **DENIED**.

BY THE COURT:

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JAMES McGIRR KELLY, J.