

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

NELLIE MARTIN : CIVIL ACTION  
 :  
 v. :  
 :  
 :  
 GOODYEAR TIRE AND RUBBER COMPANY : No. 99-CV-80

O R D E R - M E M O R A N D U M

AND NOW, this 8th day of February, 1999, defendant Goodyear Tire and Rubber Company's motion to dismiss the claim for punitive damages is denied. Fed. R. Civ. P. 12(b)(6).<sup>1</sup> Jurisdiction is diversity. 28 U.S.C. § 1332.

In this personal injury action, which is based on negligent servicing of plaintiff's automobile, both compensatory and punitive damages are claimed. Defendant maintains that punitive damages are not recoverable here given the lack of a sufficient allegation of outrageous conduct. Pennsylvania substantive law governs.

In Pennsylvania, "punitive damages are appropriate when the act committed, in addition to causing actual damages, constitutes 'outrageous conduct,' either through reckless indifference or bad motive." Donaldson v. Bernstein, 104 F.3d 547, 557 (3d Cir. 1997). "Neither mere negligence, nor even gross negligence, shows sufficient culpability to justify a punitive

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<sup>1</sup> Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle her to relief. See Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

damages award." Takes v. Metropolitan Edison Co., 440 Pa. Super 101, 116-17, 655 A.2d 138, 144 (1995) (citations omitted); see also Martin v. Johns-Manville Corp., 508 Pa. 154, 170, 494 A.2d 1088, 1097 (1985) ("Punitive damages may not be awarded for misconduct which constitutes ordinary negligence such as inadvertence, mistake and errors of judgment.").

The complaint asserts nine specific ways in which the servicing was negligent – and then, without more, characterizes such conduct as "wanton, reckless, and outrageous." Compl. ¶¶ 15, 23. Although the acts alleged are more consistent with ordinary negligence than outrageous conduct,<sup>2</sup> the general rule is that notice pleading is sufficient. Fed. R. Civ. P. 8. Moreover, as to scienter, "[m]alice, intent, knowledge, and other condition of a person may be averred generally." Fed. R. Civ. P. 9(b). It may be doubtful that plaintiff can show a fact basis for exemplary relief; and there are instances in which such a claim has been disallowed at the pleading state. See In re One Meridian Plaza Fire Litig., 820 F. Supp. 1460, 1489 (E.D. Pa.) (dismissing punitive damages claim because allegations only involved negligent conduct), rev'd on other grounds sub nom. Federal Ins. Co. v. Richard I. Rubin & Co., 12 F.3d 1270 (3d Cir. 1993); McDaniel v. Merck, Sharp & Dohme, 367 Pa. Super. 600, 622, 533 A.2d 436, 447 (1987) (affirming trial court's dismissal of punitive damages claim because plaintiff had pleaded "nothing but conclusory statements that the conduct of the defendants was 'wilful, wanton, and reckless' . . . without

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<sup>2</sup>E.g., failure to inspect and install the lug nuts and wheels. Compl. ¶ 15.

allegations of fact in support thereof" (quoting trial court)). Nevertheless, given the large breadth of the Rule 12(b)(6) standard, the claim will be permitted to proceed subject, of course, to the sanctionable constraints of Fed. R. Civ. P. 11(b)(3) ("the allegations . . . have evidentiary support or, if specifically so identified, are likely to have evidentiary support . . .").

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Edmund V. Ludwig, J.