

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CIVIL DIVISION – LAW**

|   |   |               |
|---|---|---------------|
| BILLIE J. CROYLE AND                    | ) |               |
| BONNIE CROYLE, his spouse,              | ) |               |
|   | ) | No. 2003–2690 |
| Plaintiff,                              | ) |               |
|   | ) |               |
| v.                                      | ) |               |
|   | ) |               |
| RAY F. SMITH AND SUNFLOWER              | ) |               |
| CARRIERS, A DIVISION OF CRETE           | ) |               |
| CARRIERS CORPORATION AND SHAFFER        | ) |               |
| TRUCKING, INC., t/a, d/b/a SHAFFER      | ) |               |
| TRUCKING, A DIVISION OF CRETE           | ) |               |
| CARRIER CORPORATION AND DUANE W.        | ) |               |
| ACKLIE an individual t/d/b/a THE ACKLIE | ) |               |
| COMPANIES AND SUNFLOWER                 | ) |               |
| CARRIERS,                               | ) |               |
|   | ) |               |
| Defendants.                             | ) |               |

*Attorney for Plaintiffs*  
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**OPINION AND ORDER**

**KISTLER, J.**

Presently before this Court is (1) Plaintiffs’ Motion for Leave to Amend the Addendum Clause on Plaintiff’s First Amended Complaint to Add a Prayer for Relief in the Form of Punitive Damages, and (2) Defendants’ Motion for Bifurcation or in the Alternative, Trifurcation, Pursuant to Pennsylvania Rule of Civil Procedure 213(b). These Motions arise out of a recent motorcycle/tractor trailer accident involving plaintiff

Billie J. Croyle's (hereinafter "Croyle") motorcycle and defendant Ray F. Smith's (hereinafter "Smith") tractor trailer. Plaintiffs are seeking punitive damages against the corporate defendants (hereinafter "Defendants"), not Smith individually.

### **Punitive Damages**

With respect to Plaintiffs' Motion for punitive damages, Plaintiffs' believe this Motion should be granted because Smith had an acclivity to drive fast rather than safe. Plaintiffs suggest this acclivity to drive fast is evident from Smith's poor score on a company administered safety test. Plaintiffs also suggest Smith's fatigue played a major role in the accident.

Defendants, on the other hand, argue awarding punitive damages is inappropriate. First, Defendants believe there is no evidence proving Smith was fatigued at the time of the accident. Second, Defendants contend awarding punitive damages would be appropriate only if Smith appreciated the risk and his actions were willful. Defendants argue Plaintiffs have failed to establish proof that either of these allegations are true.

What is involved in this dispute is whether Smith's alleged fatigue and his selection on a safety test suggest he acted with wilful disregard for Croyle's safety at the time of the accident.

Plaintiffs support their position by arguing that Defendants should have known Smith had a reckless indifference to the risk because he did poorly on the safety test. On the test, Smith often chose the fastest option rather than the safest option. Plaintiffs contend Smith also chose the fastest option in the current case.

Plaintiffs also support their position by noting that Smith was on probation for log

violations on the date of the accident. Smith had spent only 17 nights during the previous year sleeping at home. Plaintiffs argue the number of nights spent away from home suggests he was fatigued at the time of the accident.

Defendants, on the other hand, support their position by arguing that neither the safety test nor Smith's alleged fatigue prove he had a wilful disregard for Croyle's safety. Defendants contend forming a connection between the safety tests results and Smith's actions would require an expert's assessment. Ray Coulter, vice president of safety and compliance, stated in a Deposition that the test is intended to "train drivers on reaction . . . and to think quickly under pressure." (Depos. of Coulter, p. 123). The test was an exercise designed to put a driver in the position of answering under pressure, not a test to determine a driver's knowledge (Depos. of Coulter, p. 119).

Defendants also contend the number of nights Smith slept at home is irrelevant. Defendants argue that Plaintiffs have not produced any evidence proving Smith was fatigued at the time of the accident. Defendants also note that Plaintiffs have not presented testimony of any witness or expert to support this claim.

In the current case, this Court believes amending the Complaint to allow for awarding punitive damages would be inappropriate. "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." Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747 (1984) (quoting) Restatement (Second) of Torts § 908(2) (1979). Punitive damages are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct. See SHV Coal, Inc. v. Continental Grain Co., 526 Pa. 489, 587 A.2d 702, 704 (1991); Feld,

485 A.2d at 747 48; See also Restatement (Second) of Torts § 908, comment b. The purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct. Kirkbride v. Lisbon Contractors, Inc., 521 Pa. 97, 555 A.2d 800, 803 (1989); Restatement (Second) of Torts § 908(1). When assessing the propriety of the imposition of punitive damages, "[t]he state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious." Feld, 485 A.2d at 396, 748.

Here, Plaintiffs have failed to show any intentional, reckless, or malicious conduct on Smith's part. Plaintiffs' allegation that Smith was fatigued is not supported by any evidence. The fact Smith spent 17 nights at home within in the past year is irrelevant and does not prove he was fatigued at the time of the accident.

Likewise, this Court is not convinced the safety test shows Smith has a propensity to drive fast rather than safe. There is simply too much uncertainty surrounding the test. Plaintiffs would need an expert to show the causal relation between Smith's test score and his propensity to rush. The test alone is mere speculation as to Smith's propensity to rush, and is not conclusive or reliable evidence. As such, without any evidence showing Smith acted intentionally, recklessly, or maliciously, this Court will decline to allow the amendment seeking punitive damages.

#### **Trial Bifurcation**

With respect to the trial bifurcation, it is Defendants' position that bifurcation is appropriate because it will: (1) promote judicial economy; (2) avoid prejudice to Defendants; (3) obviate the need for the presentation of damage evidence which is otherwise irrelevant unless and until liability is found; and (4) provide for the orderly

presentation of evidence.

Defendants support their position by citing Pennsylvania Rule of Civil Procedure 213(b). Rule 213(b) states:

The court, in furtherance of convenience or to avoid prejudice, may, on its own motion or on motion of any party, order a separate trial of any cause of action, claim, or counterclaim, set-off, or cross-suit, or of any separate issue, or of any number of causes of action, claims, counterclaims, set-offs, cross-suits, or issues.

Plaintiffs argue bifurcation is unnecessary because it will not promote judicial economy, it will not aid in avoiding prejudice to Defendants, it will force Plaintiffs to take most of its damages evidence whether Defendants are found liable or not, and it will lead to a “nightmare of complexity.”

Plaintiffs support their position by first arguing judicial economy will not be promoted by bifurcating the trial. Plaintiffs believe it is inevitable a jury will find Smith more negligent than Croyle, and bifurcating the trial will just create more backlog. Second, Plaintiffs believe bifurcation will not promote prejudice. Alternatively, Plaintiffs believe *they* will be prejudiced by bifurcation because (1) the jury will be tempted to find no liability in order to shorten the trial, and (2) the issues of liability and damages are interwoven. Third, Plaintiffs deny Defendants’ need to present allegedly irrelevant damage evidence. Plaintiffs argue they will be forced to present damages evidence, regardless of whether or not the trial is bifurcated. Finally, Plaintiffs disagree that bifurcation will provide an orderly presentation of evidence. Plaintiffs argue the issues of liability and damages are intertwined, and bifurcating the trial will likely result in a more complex process. Plaintiff concedes that if there is to be bifurcation, the process

requires two distinct juries, to assure fairness.

Having examined the facts and reviewed the relevant legal authority, this Court finds bifurcating the trial to be appropriate. Judicial economy will be served by having one jury hear only the liability evidence, and then determining whether Plaintiff is entitled to recover. If so, a second jury would be selected to determine all remaining issues.

### **ORDER**

AND NOW, this 10<sup>th</sup> day of August, 2005, Plaintiffs' Motion for Leave to Amend the Addendum Clause on Plaintiff's First Amended Complaint to Add a Prayer for Relief in the Form of Punitive Damages is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion for Bifurcation or in the Alternative, Trifurcation, Pursuant to Pennsylvania Rule of Civil Procedure 213(b) is hereby **GRANTED**, and the trial shall be bifurcated. There will be one (1) jury trial for the liability issue, and one (1) jury trial to determine damages.

BY THE COURT:

\_\_\_\_\_  
Thomas King Kistler, Judge

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