

## Pennsylvania Court Ominously Lowers the Bar for Asserting Actionable Punitive Damages Claims

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*Litigation Alert*

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The legal concept of punitive damages was created to address extraordinary circumstances involving truly outrageous and reckless conduct. In cases where such conduct is demonstrated, punitive damages may be awarded to punish the defendant and to deter similar conduct in the future. Traditionally, Pennsylvania Courts have very narrowly construed the circumstances in which the application of punitive damages may be considered. However, a recent ruling in a Pennsylvania motor vehicle accident case suggests that the scope of matters eligible for the award of punitive damage may be widening, and that the standard for sustaining them may be easing.

In *Clauss-Walton v. Gulbin*, venued in the Lackawanna County Court of Common Pleas, the Defendant allegedly lost consciousness at the wheel and crossed a double-yellow line, resulting in a head-on collision with the Plaintiff. Defendant's loss of consciousness was purportedly due to a urinary tract infection that had worsened to the point of sepsis (a more severe form of infection). Plaintiff's Complaint alleged that the Defendant knew, or should have known, that failing to treat her infection could result in her losing consciousness and becoming a hazard on the road. According to the Plaintiff, this conduct rose to a level of recklessness that could support a claim for punitive damages.

The Defendant filed Preliminary Objections to the Complaint, seeking dismissal of the claim for punitive damages on the basis that the factual allegations could not support such a claim as a matter of law. Judge Terrence R. Nealon overruled the Preliminary Objections, finding that the Plaintiff's general averments of wanton, willful and reckless conduct were sufficient to sustain the claim at this stage. In so ruling, Judge Nealon focused on the allegations that the Defendant was experiencing known symptoms of a urinary tract infection and knew, or should have known, that allowing the condition to go untreated could cause fainting or dizzy spells.

This decision raises red flags as to the type and volume of cases that could be subject to active punitive damages claims. The *Clauss-Walton* matter, which involves a medical condition not traditionally associated with unconsciousness and imputes advanced medical knowledge upon a lay person does not fit the typical mold of a case ripe for punitive damages. Nonetheless, the Court permitted the claim to proceed based on alleged conduct that does not necessarily "shock the conscience of the public," a formerly high standard that appears to be gradually eroding.

If plaintiffs are permitted to generally allege the existence of the state of mind required to support a punitive damages claim, it is not difficult to envision a growing breadth of matters in which such claims could survive. While punitive damages may ultimately be deemed unrecoverable further along in the litigation (such as at the summary judgment stage), their presence through discovery would still result in additional time, effort, and expense. It would also cause added trepidation for defendants, given that claims for punitive damages are not typically covered by insurance. Opinions like *Clauss-Walton* therefore warrant close attention, particularly because a single occurrence can quickly become a trend.

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