

In the Circuit Court of Marshall County, West Virginia

COVESTRO, LLC,
Plaintiff,

v.

Case No. CC-25-2018-C-202
Judge Christopher C. Wilkes

**AXIALL CORPORATION, ET AL,
ALLTRANSTEK LLC,
Superheat FGH Services, Inc.,
Rescar Companies,**
Defendants

ORDER GRANTING MOTION FOR CLARIFICATION

COMES the Court, this 31st day of October, 2023, upon Axiall Corporation's Motion for Clarification Regarding Court's Ruling on Punitive Damages filed October 23, 2023. The Court also considered Covestro's Opposition to Axiall's Motion for Clarification filed October 26, 2023, and Axiall's Reply filed on October 30, 2023.

1. In this Court's Pretrial Conference Order filed October 18, 2023, in which it ruled upon pending motions after the Pretrial Conference in this matter, this Court granted the Defendants AllTranstek LLC and Rescar Companies' Motion for Partial Summary Judgment on Covestro, LLC's Claim for Punitive Damages Against Defendants.

2. The Court notes that Axiall had filed a Joinder in and Response to the Rescar Defendants' Motion for Partial Summary Judgment on Covestro, LLC's Claim for Punitive Damages Against Defendants, asking this Court also enter judgment in Axiall's favor on Covestro, LLC's punitive damages claim in this civil action.

3. By its October 18, 2023 Pretrial Order, in which it granted AllTranstek and Rescar's Motion for Partial Summary Judgment on Covestro, LLC's Claim for Punitive Damages Against Defendants, this Court notes it did not specifically rule on Axiall's

Joinder. Therefore, Axiall now seeks clarification regarding the decision's applicability to Axiall.

4. This matter, in the underlying motion, came before the Court upon a motion for partial summary judgment. Motions for summary judgment are governed by Rule 56, which states that "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c). West Virginia courts do "not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law." *Alpine Property Owners Ass'n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

5. Therefore, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A motion for summary judgment should be denied "even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom." *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

6. However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material fact, then "the burden of production shifts to the nonmoving party 'who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence

showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).” *Id.* at 60.

7. Here, at this stage of the proceeding, looking at the record and discovery in this case and reviewing the record and the evidence of the conduct of Axiall, AllTranstek, and Rescar in the instant case, it is insufficient as a matter of law for a punitive damages claim to go forward. The Court has reviewed the evidence and argument presented here, regarding the conduct of all Defendants, and has looked at what happened in the Pennsylvania action. Nothing on the record as a whole has gleaned evidence that would legally support a punitive damages claim.

8. Although the Court agrees that res judicata as to Covestro does not apply, it is axiomatic that if the conduct was that which amounts to intentional or reckless, that the Pennsylvania jury would not have found AllTranstek or Rescar negligent in their determination of the conduct of the parties. In fact, the Court notes that the majority (60%) of the wrongful conduct was found by the Pennsylvania jury to have been caused by parties other than Axiall.

9. The Court also considers that Axiall has pointed out that Covestro’s negligence counts against Axiall and the Rescar Defendants are identical in “every material aspect”. See Mot., p. 2. Axiall avers this is also true with regard to Covestro’s trespass and nuisance counts against Axiall and the Rescar Defendants. *Id.* This further evidences that the conduct at issue is the same, and does not rise to the level of intentional or reckless to support a punitive damages claim.

10. Covestro argues that there will be “testimony that the tank car should have been scrapped, and that Axiall was playing with fire in how it conducted its business in relation to the tank car. For example, Jeff Wilson, the president of AllTranstek previously testified that Mark Sinclair, the Axiall railcar fleet manager, told

him when the subject of scrapping the tank car came up, 'I should have, but we needed the car.' (citing the Pennsylvania trial transcript). The tank car that ruptured was 40 years old. Whether or not Axiall knew or was indifferent to the condition of the tank car that ruptured can – and should – be considered by the jury in Covestro's case". See Resp., p. 5.

11. This conduct, as evidenced by the fact that Covestro cited to the Pennsylvania trial testimony, is the conduct which was tried in the Pennsylvania matter. Further, AllTranstek and Rescar presented all of the possible evidence of Axiall's actionable conduct in the Pennsylvania in their own defense. See Reply, p. 2. None of that evidence rose to the standard of conduct that would support an award of punitive damages in the Pennsylvania case, and nothing gleaned from the record in this matter causes it to rise to that level.

12. For all of these reasons, the Court concludes no genuine issue of material fact remains.

13. This Court now CLARIFIES that the Covestro is also not entitled to recover punitive damages against Axiall as a matter of law. In this Court's Pretrial Conference Order, this Court found that it was legally insufficient to submit the issue of punitive damages to the jury. The Court now clarifies that this decision applies to all Defendants in this matter, including Axiall. Axiall's joinder is therefore GRANTED.

14. Accordingly, it is ADJUDGED and ORDERED that Axiall Corporation's Motion for Clarification Regarding Court's Ruling on Punitive Damages filed October 23, 2023 is hereby GRANTED and the clarification described above is given.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 31st day of October 2023.

/s/ Christopher C. Wilkes

Circuit Court Judge

2nd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.