UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD RUEHL, Individually and as Administrator of the Estate of Shirley T. Ruehl, deceased,	:	**Civil No. 1:15-CV-168**
Plaintiff	:	**(Judge Kane)**
v.	:	**(Magistrate Judge Carlson)**
S.N.M. ENTERPRISES, INC.,	:	
Defendant	:	

REPORT AND RECOMMENDATION

I. Introduction

This is a negligence action which comes before us for consideration of a motion for partial summary filed by the defendant, SNM Enterprises. (Doc. 44.) That motion seeks dismissal of the Plaintiff's wrongful death claim, and claims for punitive damages, arguing that these two legal claims fail as a matter of law on the undisputed facts in this case. According to the defendant, Ruehl's wrongful death claim fails because there is insufficient evidence to support the Plaintiff's assertion that the injuries suffered by Shirley Ruehl when she fell at the Hampton Inn operated by the defendant in August of 2013 were the proximate cause of her death two years later in January of 2016. In this motion SNM also argues that the undisputed evidence does not support a finding of wanton or reckless behavior such as is necessary to support a claim for punitive damages against SNM.

For the reasons set forth below, it is recommended that this motion be granted, in part, and denied, in part as follows: The defendant's motion for partial summary judgment on the plaintiff's wrongful death claim should be denied, since the issue of causation in this case presents an issue of fact, albeit a challenging factual issue. As to the Plaintiff's punitive damages claims, it is recommended that this motion for partial summary judgment be granted, since the matters cited by the Plaintiff do not demonstrate the requisite wantonness or recklessness to warrant punitive damages.

II. Factual Background

A. Facts Relating to Causation

The factual background of this case, taken from the competing submissions of the parties, (Docs. 44-1 through 44-8; 48-1 through 48-21), reveals that in August of 2013, an elderly couple, Shirley and Edward Ruehl, traveled to Gettysburg, Pennsylvania on a sightseeing vacation trip. At Gettysburg, the Ruehls checked into the Hampton Inn operated by the defendant, SNM Enterprises. The Hampton Inn's main entranceway was marked by automated sliding glass doors, which operated on electronic sensors, opening and closing as persons approached the door and entered or exited the hotel.

On the afternoon of August 13, 2013, Shirley Ruehl attempted to pass through these sliding glass doors. Mrs. Ruehl then fell outside the hotel, within several feet of

the sliding glass doors, striking her head and fracturing her skull. The parties hotly dispute what caused Mrs. Ruehl to fall. For its part, SNM's desk clerk on duty has described Mrs. Ruehl as exhibiting a "steady, slow paced" gait, which made the clerk "nervous." (Doc. 44-5, Ashley Ward statement.) SNM posits that Mrs. Ruehl simply lost her balance and fell as she left the hotel. In contrast, the Plaintiff cites the statements of another hotel guest, Brian Leposki, who has reported that Mrs. Ruehl fell when she was struck on her right side by the closing automatic door as she was entering the hotel. According to Mr. Leposki, the force of this blow caused Mrs. Ruehl to lose her balance and fall, landing in a seated position. Mrs. Ruehl's momentum then carried her over into a prone position and she struck her head upon the concrete. (Id.) Thus, the Plaintiff asserts that the negligent operation and maintenance of the automatic doors caused Mrs. Ruehl's fall.

At the time of this accident, Mrs. Ruehl had a medical history dating back to 2009 which included some past tobacco use and radiographic signs of chronic obstructive pulmonary disease (COPD). (Doc. 44-2.) However, initially her condition was not sufficiently severe to require any form of specific long-term therapy. (Id.) Following this accident, however, Mrs. Ruehl's skull fracture caused seizures and required her to receive emergency intubation and mechanical ventilation to assist her

breathing. According to Mrs. Ruehl's former treating physician, Dr. David Tetrick, she remained on mechanical ventilation for approximately six weeks.

Once she was weaned from this mechanical ventilation, Mrs. Ruehl's treating physican, Dr. Tetrick, documented a series of progressive pulmonary complications which she experienced, which culminated on January 22, 2016 with Mrs. Ruehl's death from COPD. Dr. Tetrick has also provided the Plaintiff with an expert medical report which states, in part, that: "In my professional judgment, it is clear that the traumatic brain injury and the need for prolonged mechanical ventilation compromised [Mrs. Ruehl's] pulmonary status and substantially accelerated and contributed to her death from COPD." (Id., p. 5.) In Dr. Tetrick's view, the prolonged mechanical ventilation compelled by the skull fractures resulting from her August 13, 2013 fall so compromised her pulmonary system that Mrs. Ruehl experienced frequent respiratory infections which led to her death from COPD in January of 2016. Thus, the Plaintiff's wrongful death claim in Mrs. Ruehl's case rests upon this causal chain of events as articulated by Dr. Tetrick: The negligent maintenance and operation of the hotel's doors; negligence which led to Mrs. Ruehl's fall; caused her skull fracture; required her intubation and mechanical ventilation; treatment which compromised her pulmonary system; and led to the aggravation of the COPD which caused her death.

In the instant motion for partial summary judgment, the defendant contends that Dr. Tetrick's proffered opinion is too equivocal and the causal connections it suggests are simply too speculative to establish that the injuries suffered by Mrs. Ruehl in her August 1, 2013 fall caused her death in January of 2016. Therefore, the defendant seeks judgment in its favor as a matter of law on this wrongful death claim.

B. Factual Background of Plaintiff's Punitive Damages Claim

SNM has also moved for summary judgment with respect to the Plaintiff's claims for punitive damages. With the Plaintiff's negligence claims focused upon the operation and maintenance of the hotel's automatic doors, discovery has revealed the following facts which relate to the Plaintiff's punitive damages claim. It appears that the automatic doors at issue in this case were initially installed at the time of the construction of the hotel in 1996. While the plaintiff's complaint alleged that the defendant had taped over and concealed warning stickers on these doors, which called for daily inspections of the doors, discovery revealed no evidence supporting a claim that these safety instructions had been deliberately obscured by any officer or agent of SNM. Instead, it appeared that tape may have been placed over these warning stickers at the time the doors were installed, but never removed from those doors until after the accident involving Mrs. Ruehl.

There was an operator's manual which accompanied these automatic doors. That manual, in part, called for daily inspections of the doors to ensure that they were operating properly, and that the door sensors were properly calibrated to prevent the doors from closing on persons standing in the hotel vestibule. The hotel staff on duty at the Hampton Inn in August 2013 generally were unaware of this manual and its recommended daily inspection requirements for these automatic doors. Hotel staff, however, consistently testified that they informally examined the door's operation on a daily basis by passing through the doors, cleaning the doors, observing their operation and ensuring that they were operating in a correct and safe manner. The hotel also had periodic maintenance done on the doors, as needed, prior to the accident but did not have any systematic program of outside inspection for these doors in place prior to August 2013. None of this periodic maintenance revealed any serious defects in the doors' operation prior to the date of Mrs. Ruehl's fall, and there is no evidence that the doors' operation had previously contributed in any way to a fall by any other hotel guest prior to 2013.

At the time of this August 13, 2013 incident, the desk clerk on duty, Ashley Ward, expressed some skepticism when an eyewitness Brian Leposki, reported that Mrs. Ruehl fell after being struck by a closing door. In this regard, Ward's views were based upon her observations concerning Mrs. Ruehl's unsteady gait coupled with her

lack of any prior experience with reported incidents in which the electronic doors had closed prematurely and struck a hotel patron. However, a subsequent examination of the doors conducted by an expert retained by the plaintiff disclosed that under certain circumstances the doors could strike articles that were poised in the vestibule and entryway into the hotel.

At the time of this incident, the hotel possessed a video monitoring system; however, hotel staff were not trained or knowledgeable regarding how that system could be used to record and retain videos which may have depicted this accident. Therefore, no video was retained at the time of the incident itself. When SNM was subsequently placed on notice of this potential claim, efforts were made to locate the video surveillance footage from August 13, 2013, but that footage was no longer available.

This factual background encapsulates the pertinent facts as they relate to the Plaintiff's prayer for punitive damages.

In its current form, on these facts the Plaintiff's second amended complaint advances two claims: a wrongful death claim and a survivor's action. (Doc. 40.) SNM has now filed a motion for partial summary judgment, (Doc. 44), which seeks dismissal of the plaintiff's wrongful death claim, and claims for punitive damages, contending that these two legal claims fail as a matter of law on the undisputed facts in this case.

According to the defendant, Ruehl's wrongful death claim fails because there is insufficient evidence to establish a causal connection between any injuries suffered by Shirley Ruehl when she fell at the Hampton Inn in August of 2013 and her death two years later in January of 2016. In this motion SNM also argues that the undisputed evidence does not support a finding of wanton or reckless behavior such as is necessary to support a claim for punitive damages against SNM. For the reasons set forth below, we submit that this motion be should granted, in part, and denied, in part. Specifically, we recommend that the defendant's motion for summary judgment on the plaintiff's wrongful death claim be denied, since the issue of causation in this case presents an issue of fact. As for the plaintiff's punitive damages claim, it is recommended that this motion for partial summary judgment be granted, since the matters cited by the plaintiff do not demonstrate the requisite wantonness or recklessness to warrant punitive damages.

III. Discussion

A. Rule 56–The Legal Standard.

The defendant has filed a motion for partial summary judgment regarding Ruehl's wrongful death and punitive damages claims pursuant to Rule 56 of the Federal Rules of Civil Procedure, which provides that the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact

and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. Rule 56(a). Through summary adjudication a court is empowered to dispose of those claims that do not present a "genuine dispute as to any material fact," Fed. R. Civ. P. 56(a), and for which a trial would be "an empty and unnecessary formality." Univac Dental Co. v. Dentsply Int'l, Inc., No. 07-0493, 2010 U.S. Dist. LEXIS 31615, at *4 (M.D. Pa. Mar. 31, 2010). The substantive law identifies which facts are material, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine only if there is a sufficient evidentiary basis that would allow a reasonable fact finder to return a verdict for the non-moving party. Id. at 248-49.

The moving party has the initial burden of identifying evidence that it believes shows an absence of a genuine issue of material fact. Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 145-46 (3d Cir. 2004). Once the moving party has shown that there is an absence of evidence to support the nonmoving party's claims, "the non-moving party must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berckeley Inv. Group. Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006); accord Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If the nonmoving party "fails to make a showing

sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial," summary judgment is appropriate. Celotex, 477 U.S. at 322. Summary judgment is also appropriate if the non-moving party provides merely colorable, conclusory, or speculative evidence. Anderson, 477 U.S. at 249. There must be more than a scintilla of evidence supporting the nonmoving party and more than some metaphysical doubt as to the material facts. Id. at 252; see also, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In making this determination, the Court must "consider all evidence in the light most favorable to the party opposing the motion." A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 794 (3d Cir. 2007).

B. Elements of Wrongful Death Negligence Claims Under Pennsylvania Law–Causation.

As a federal court exercising diversity jurisdiction in this case, we are obliged to apply the substantive law of Pennsylvania to this dispute. Chamberlain v. Giampapa, 210 F.3d 154, 158 (3d. Cir.2000). Under Pennsylvania law, the Plaintiff can maintain a negligent wrongful death claim against SNM only if the Plaintiff establishes all of the elements for a negligence cause of action, which requires proof of the following four essential elements: (1) a duty on the part of the defendant to conform to a certain standard of conduct with respect to the plaintiff; (2) a breach of that duty by the defendant; (3) a causal connection between the defendant's conduct and the injury

suffered by the plaintiff; and (4) actual loss or damage suffered by the plaintiff. Schmoyer by Schmoyer v. Mexico Forge, 437 Pa.Super. 159, 649 A.2d 705, 707 (Pa.Super.1994). Garcia v. Cummings, No. 1:07-CV-01886, 2010 WL 2598305, at *4 (M.D. Pa. Mar. 5, 2010), report and recommendation adopted, No. 1:07-CV-1886, 2010 WL 2597120 (M.D. Pa. June 24, 2010).

For purposes of Pennsylvania tort law:

> "The test to establish causation is whether the Defendant's acts or omissions were a 'substantial factor' in bringing about the plaintiff's harm." Boice ex rel. Rought v. Tyler Memorial Hosp., No. 3:CV–06–1709, 2007 WL 2903424, at *6 (M.D.Pa. Sept. 28, 2007) (internal citation and quotation marks omitted). It is well settled that "[t]he determination of whether the conduct of the defendant was a substantial cause or an insignificant cause of plaintiff's harm should not be taken from the jury if the jury may reasonably differ as to whether the conduct of the defendant was a substantial cause or an insignificant cause." Ford v. Jeffries, 474 Pa. 588, 595, 379 A.2d 111 (1977).
>
> Perez v. Great Wolf Lodge of the Poconos LLC, No. 3:12-CV-01322, 2016 WL 4051282, at *8 (M.D. Pa. July 26, 2016).

Thus, under Pennsylvania law:

> Proximate cause is a term of art, and may be established by evidence that a defendant's negligent act or failure to act was a substantial factor in bringing about the harm inflicted upon a plaintiff. Gradel v. Inouye, 491 Pa. 534, 542, 421 A.2d 674, 678 (1980); Hamil v. Bashline, 481 Pa. at 266, 392 A.2d at 285; Majors v. Brodhead Hotel, 416 Pa. 265, 273, 205 A.2d 873, 878 (1965). A plaintiff need not exclude every possible explanation, and "the fact that some other cause concurs with the negligence of the defendant in producing an injury does not relieve defendant from liability unless he can show that such other cause would have produced the injury independently of his negligence." Majors v. Brodhead Hotel, 416 Pa. at 273, 205 A.2d at 878.

Jones v. Montefiore Hosp., 494 Pa. 410, 416, 431 A.2d 920, 923 (1981).

Further, "[t]he fact that the plaintiff was particularly susceptible to injury . . . does not limit the defendant's liability because negligence causing aggravation of a pre-existing condition subjects a tortfeasor to the same degree of liability as the infliction of an original wound. The tortfeasor must take his victim as he finds him. Fretts v. Pavetti, 282 Pa.Super. 166, 422 A.2d 881, 885 (Pa.Super.1980) (citing Pavorsky v. Engels, 410 Pa. 100, 188 A.2d 731 (Pa.1963); Lebesco v. S.E. Pa. Transp. Auth., 251 Pa.Super. 415, 380 A.2d 848 (Pa.Super.1977))." Brown v. United States, No. CIV.A. 3:07-0621, 2008 WL 2704615, at *8 (M.D. Pa. July 7, 2008). Moreover, in determining the degree to which various factors may combine to contribute to a Plaintiff's injury or death, Pennsylvania courts have relied upon the guidance of Section 433 of the Restatement of Torts (Second).

> Section 433 of the Restatement (Second) of Torts sets forth a method of determining whether concurrent negligent conduct is a substantial factor in producing the injury: The following considerations are in themselves or in combination with one another important in determining whether the actor's conduct is a substantial factor in bringing harm to another:
>
> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;
>
> (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible;

(c) lapse of time.

Restatement (Second) of Torts § 433 (1965).

Henry v. Lehigh & Northampton Transp. Auth., No. C-48-CV-2012-2380, 2014 WL 11226320, at *5 (Pa. Com. Pl. June 11, 2014).

"In order to recover in an action for wrongful death, the plaintiff must prove that the death was caused by violence or negligence of the defendant. See 42 Pa.C.S. § 8301(a). Therefore, liability for wrongful death requires a determination that a defendant's negligence caused the death. . . . . Negligence, however, is only half of the wrongful death equation. A question remains regarding whether the injuries caused by Defendants' negligence eventually caused Decedent's death." Quinby v. Plumsteadville Family Practice, Inc., 589 Pa. 183, 209–10, 907 A.2d 1061, 1077 (2006)(held, causation was an issue of fact in wrongful death action where at least 14 months elapsed between allegedly negligent injury and death). On this score, it is well-settled under Pennsylvania law that "[t]he chain of causation can, of course, be broken by intervening events, but it does not snap merely because of the passage of time or interposition of distance." Thornton v. Weaber, 380 Pa. 590, 593, 112 A.2d 344, 346 (1955). Applying these benchmarks courts in Pennsylvania have permitted wrongful death claims to proceed, even when months, or years, have separated a negligent act and the decedent's passing, provided other evidence supports a finding that the negligent act was a substantial factor in the death of the Plaintiff's decedent. See, e.g., Quinby v. Plumsteadville Family Practice, Inc., 589 Pa. 183, 209–10, 907 A.2d 1061,

1077 (2006)(causation was an issue of fact in wrongful death action where at least 14 months elapsed between allegedly negligent injury and death); Hudak-Bisset v. Cty. of Lackawanna, No. 07-CV-2401, 2014 WL 11032308, at *17 (Pa. Com. Pl. Mar. 19, 2014)(permitting amendment of complaint to include wrongful death claim made relating to death six years after alleged negligence).

Pennsylvania law also recognizes that, in some instances, proving this causation element of a tort claim may require presentation of expert testimony. This requirement is imposed by Rule in professional malpractice negligence actions and requires a certificate of merit from an expert witness to sustain such a claim. See Pa.R.C.P. No. 1042.3. In other complex tort actions, courts have also opined that expert witnesses are often necessary to establish liability. Further, courts recognize that there are consequences which flow from a failure to provide such proof. Where a tort action turns on allegations of a technical nature relating to some alleged defect in a product, and the plaintiff has failed to provide expert proof identifying a causal connection between some allegedly negligent act and the plaintiff's injuries, courts have held that negligence claims fail as a matter of law and must be dismissed. See, e.g., Mays v. Gen. Binding Corp., No. CIV. 11-5836 JBS/JS, 2013 WL 1986393, at *6 (D.N.J. May 10, 2013), aff'd, 565 F. App'x 94 (3d Cir. 2014); Ellis v. Beemiller, Inc., 910 F. Supp. 2d 768, 774 (W.D. Pa. 2012); Mracek v. Bryn Mawr Hosp., 610 F. Supp. 2d 401, 402 (E.D. Pa. 2009), aff'd, 363 F. App'x 925 (3d Cir. 2010); McCracken v. Ford Motor Co.,

392 F. App'x 1, 4 (3d Cir. 2010); Koplove v. Ford Motor Co., 795 F.2d 15, 17 (3d Cir. 1986). The only exception to this general rule under Pennsylvania exists with respect to negligence claims "where the matter is ' "so simple, and (the) lack of skill or want of care so obvious, as to be within the range of ordinary experience and comprehension of even nonprofessional persons."' Berman, supra, 205 F.Supp.2d at 364 (citing Brannan v. Lankenau Hospital, 490 PA 588 (1980))." Hakeem v. Salaam, No. CIV.A. 3:03-0098, 2006 WL 4130488, at *7 (M.D. Pa. July 18, 2006), subsequently aff'd, 260 F. App'x 432 (3d Cir. 2008).

C. Pennsylvania Law Regarding Punitive Damages

Further, Pennsylvania law sets an exceedingly high standard for the award of punitive damages. "Pennsylvania has adopted Section 908 of the Restatement (Second) of Torts, which provides that punitive damages may be 'awarded to punish a defendant for outrageous conduct, which is defined as an act which, in addition to creating "actual damages, also imports insult or outrage, and is committed with a view to oppress or is done in contempt of plaintiffs' rights." ... Both intent and reckless indifference will constitute a sufficient mental state.' Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 235 (3d Cir.1997)(quoting Delahanty v. First Pa. Bank, N.A., 318 Pa.Super. 90, 464 A.2d 1243, 1263 (1983))." W.V. Realty, Inc. v. N. Ins. Co., 334 F.3d 306, 318 (3d Cir. 2003).

As the Pennsylvania Supreme Court has observed:

> The standard governing the award of punitive damages in Pennsylvania is settled. "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)); see also Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355, 358 (1963). As the name suggests, 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; Chambers, 192 A.2d at 358. 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) ("Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future."). Additionally, this Court has stressed that, 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." See Feld, 485 A.2d at 748; see also Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088, 1097 n. 12 (1985) (plurality opinion).

Hutchison ex rel. Hutchison v. Luddy, 582 Pa. 114, 121-22, 870 A.2d 766, 770-71 (2005).

In Hutchinson the Pennsylvania Supreme Court also:

> [S]et forth the standard the courts are to apply when called upon to determine whether the evidence supports a punitive damages award on such a basis. Noting that Comment b to Section 908(2) of the Restatement refers to Section 500 as defining the requisite state of mind for punitive damages based on reckless indifference, this Court turned to Section 500, which states:

> § 500 Reckless Disregard of Safety Defined
>
> The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.
>
> Restatement (Second) of Torts § 500.
>
> Id. At 771.

Noting that Section 500 set forth two very different types of state of mind as to reckless indifference, the Pennsylvania Supreme Court adopted the narrower reading of this state of mind requirement when addressing punitive damage claims, concluding that "in Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk." Hutchison ex rel. Hutchison v. Luddy, 582 Pa. 114, 124, 870 A.2d 766, 772 (2005).

D. The Question of Causation in this Case Presents a Disputed Issue of Fact Which is Not Amenable to Summary Judgment Resolution

Guided by these legal tenets, we turn first to SNM's argument that Ruehl's wrongful death claim fails because there is insufficient evidence to establish a causal connection between any injuries suffered by Shirley Ruehl when she fell at the

Hampton Inn in August of 2013 and her death two years later in January of 2016. On this score we are mindful of the fact that "[t]he determination of whether the conduct of the defendant was a substantial cause or an insignificant cause of plaintiff's harm should not be taken from the jury if the jury may reasonably differ as to whether the conduct of the defendant was a substantial cause or an insignificant cause." Ford v. Jeffries, 474 Pa. 588, 595, 379 A.2d 111 (1977). We also recognize that SNM, like all defendants, must take its victim as it finds her. Fretts v. Pavetti, 282 Pa.Super. 166, 422 A.2d 881, 885 (Pa.Super.1980). Therefore, in this case, SNM is presented with a victim, Shirley Ruehl, who allegedly experienced a largely asymptomatic case of COPD at the time of this accident. Indeed, at that time Dr. Tetrick has stated that Mrs. Ruehl's COPD was not sufficiently severe to require any form of specific long-term therapy.

We also recognize that, under Pennsylvania tort law: "In order to recover in an action for wrongful death, the plaintiff must prove that the death was caused by violence or negligence of the defendant. See 42 Pa.C.S. § 8301(a). Therefore, liability for wrongful death requires a determination that a defendant's negligence caused the death. . . . . Negligence, however, is only half of the wrongful death equation. A question remains regarding whether the injuries caused by Defendants' negligence eventually caused Decedent's death." Quinby v. Plumsteadville Family Practice, Inc., 589 Pa. 183, 209–10, 907 A.2d 1061, 1077 (2006). Further, to establish causation

"plaintiff need not exclude every possible explanation, and 'the fact that some other cause concurs with the negligence of the defendant in producing an injury does not relieve defendant from liability unless he can show that such other cause would have produced the injury independently of his negligence.' Majors v. Brodhead Hotel, 416 Pa. at 273, 205 A.2d at 878." Jones v. Montefiore Hosp., 494 Pa. 410, 416, 431 A.2d 920, 923 (1981). Under the approach adopted by the Restatement Second of Torts, and embraced by the Pennsylvania courts, determination of concurrent causation questions is frequently a fact-bound issue which turns upon the consideration of three factors: "(a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it; (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; [and] (c) lapse of time." Restatement (Second) of Torts § 433 (1965). Yet, while a temporal gulf between alleged negligence and the decedent's passing may be relevant to the determination of causation, it is not in and of itself controlling. Quite the contrary, Pennsylvania law acknowledges that "[t]he chain of causation can, of course, be broken by intervening events, but it does not snap merely because of the passage of time or interposition of distance." Thornton v. Weaber, 380 Pa. 590, 593, 112 A.2d 344, 346 (1955). Accordingly, in Pennsylvania wrongful death claims have proceeded even when years have separated an allegedly

negligent act from the decedent's passing, provided other evidence supports a finding that the negligent act was a substantial factor in the death of the Plaintiff's decedent. See, e.g., Quinby v. Plumsteadville Family Practice, Inc., 589 Pa. 183, 209–10, 907 A.2d 1061, 1077 (2006)(causation was an issue of fact in wrongful death action where at least 14 months elapsed between allegedly negligent injury and death); Hudak-Bisset v. Cty. of Lackawanna, No. 07-CV-2401, 2014 WL 11032308, at *17 (Pa. Com. Pl. Mar. 19, 2014)(permitting amendment of complaint to include wrongful death claim made relating to death six years after alleged negligence).

Applying these guideposts, we find that while Mrs. Ruehl's wrongful death claim may approach the outer limits of legally cognizable causation, this question of causation rests upon disputed issues of fact involving the weight to be given to scientific opinion testimony, and the credibility of witnesses. Furthermore, while the defendant has correctly noted that the Plaintiff may not carry this burden of proof through equivocal or halting expert opinions, the cases which support this proposition all involve instances in which the medical opinions proffered by plaintiffs were highly equivocal. Thus, we agree that in Pennsylvania: "When a party must prove causation through expert testimony the expert must testify with 'reasonable certainty' that 'in his "professional opinion, the result in question did come from the cause alleged." ' McCrosson v. Philadelphia Rapid Transit Co., 283 Pa. 492, 496, 129 A. 568, 569 (1925). See Hamil v. Bashline, supra. An expert fails this standard of certainty if he

testifies ' "that the alleged cause" possibly ", or "could have" led to the result, that it "could very properly account" for the result, or even that it was "very highly probable" that it caused the result.' Niggel v. Sears, Roebuck & Co., 219 Pa.Super. 353, 354, 355, 281 A.2d 718, 719 (1971); Menarde v. Philadelphia Trans. Co., 376 Pa. 497, 103 A.2d 681 (1954); Vorbnoff v. Mesta Machine Co., 286 Pa. 199, 133 A. 256 (1926); Moyer v. Ford Motor Co., 205 Pa.Super. 384, 209 A.2d 43 (1965).' Albert v. Alter, 252 Pa.Super. 203, 225, 381 A.2d 459, 470 (1977)." Kravinsky v. Glover, 263 Pa. Super. 8, 21, 396 A.2d 1349, 1355–56 (1979).

However, where we depart from the defendant is in our understanding of Dr. Tetrick's expert report. That report from Mrs. Ruehl's treating physician at the time of her death stated: "In my professional judgment, it is clear that the traumatic brain injury and the need for prolonged mechanical ventilation compromised [Mrs. Ruehl's] pulmonary status and substantially accelerated and contributed to her death from COPD." (Doc. 44-2, p. 5.) In this case, upon consideration of Dr. Tetrick's opinion we find that it is legally sufficient to create a genuine issue of fact as to causation. Fairly construed, in his opinion letter Dr. Tetrick describes within a reasonable degree of scientific certainty a direct causal connection between Mrs. Ruehl's injury and her demise. Admittedly there are a series of analytical links to this causal chain. Thus, to sustain this claim, the Plaintiff must carry her burden of proof on each of the following elements: (1) negligent maintenance and operation of the hotel's automated doors

which; (2) led to Mrs. Ruehl's fall and; (3) caused her skull fracture, an injury which in turn; (4) required her intubation and mechanical ventilation, treatment which; (5) further compromised her pulmonary system and; (6) led to the aggravation of the COPD which; (7) caused her death. We read Dr. Tetrick's report as attesting within a reasonable degree of scientific certainty to the final four links of this causal chain; namely, that Mrs. Ruehl's skull fracture required her intubation and mechanical ventilation, treatment which further compromised her pulmonary system and led to the aggravation of the COPD which caused her death. Further, we read the report as stating these conclusions in terms that are more definite than opinions couched as a mere possibility or probability. Quite the contrary, the report states: "it is clear that the traumatic brain injury and the need for prolonged mechanical ventilation compromised [Mrs. Ruehl's] pulmonary status and substantially accelerated and contributed to her death from COPD." (Id., p. 5.) Moreover, these opinions are expressed by Dr. Tetrick within a reasonable degree of scientific certainty. We find, therefore, that the doctor has opined that the injury was a substantial and proximate cause of Mrs. Ruehl's death in that it adversely affected a pre-existing condition in a way substantially accelerated and contributed to her death. Thus, we conclude that this report, if credited, is sufficient to establish causation, albeit a chain of causation which may lie at the outer limits of what the law is prepared to recognize.

We also concede that each of the links in this causal chain may be subject to attack as a factual matter. This makes the Plaintiff's path at trial arduous; however, in our view these cumulative factual attacks simply define disputed issues for trial. They do not convert this claim into one which may be dismissed as a matter of law. Therefore, recognizing that questions of causation "should not be taken from the jury if the jury may reasonably differ as to whether the conduct of the defendant was a substantial cause or an insignificant cause," Ford v. Jeffries, 474 Pa. 588, 595, 379 A.2d 111 (1977), we recommend that the court deny the Defendant's motion for partial summary judgment on this wrongful death claim.

E. The Defendant is Entitled to Summary Judgment on the Plaintiff's Punitive Damage Claims Since the Undisputed Evidence Does Not Reveal Conduct that is Outrageous, Because of the Defendant's Evil Motive or Reckless Indifference to the Rights of Others

The Defendant has also moved for summary judgment with respect to the Plaintiff's claims for punitive damages. Such claims must meet precise and exacting legal standards since: "Pennsylvania has adopted Section 908 of the Restatement (Second) of Torts, which provides that punitive damages may be 'awarded to punish a defendant for outrageous conduct, which is defined as an act which, in addition to creating "actual damages, also imports insult or outrage, and is committed with a view to oppress or is done in contempt of plaintiffs' rights." ... Both intent and reckless indifference will constitute a sufficient mental state.' Klinger v. State Farm Mut. Auto.

Ins. Co., 115 F.3d 230, 235 (3d Cir.1997)(quoting Delahanty v. First Pa. Bank, N.A., 318 Pa.Super. 90, 464 A.2d 1243, 1263 (1983))." W.V. Realty, Inc. v. N. Ins. Co., 334 F.3d 306, 318 (3d Cir. 2003). Thus, "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or . . . reckless indifference to the rights of others." Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747 (1984). Further, "in Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk." Hutchison ex rel. Hutchison v. Luddy, 582 Pa. 114, 124, 870 A.2d 766, 772 (2005).

Here, we find that the Plaintiff has not shown the type of outrageous or reckless behavior which would support a punitive damages claim. Instead, the evidence in this case, construed in a light most favorable to the Plaintiff, simply reveals a factually disputed negligence claim which relies upon a convoluted and contested, but legally sufficient, chain of causation. Therefore, it is recommended that the court grant summary judgment in favor of the defendant on these punitive damages claims.

At the outset we agree that there is considerable doubt that the Plaintiff can recover punitive damages on her wrongful death claim since the Pennsylvania Superior Court has long held that: "With respect to the wrongful death action it is clear that punitive damages are not allowed." Harvey v. Hassinger, 315 Pa. Super. 97, 100, 461 A.2d 814, 815 (1983). See Amesbury v. CSA, Ltd., No. 3:10-CV-1712, 2014 WL

279724, at *3 (M.D. Pa. Jan. 23, 2014)(following Harvey). But see Dubose v. Quinlan, 2015 PA Super 223, 125 A.3d 1231, 1246 (2015), reargument denied (Dec. 23, 2015), appeal granted in part, 138 A.3d 610 (Pa. 2016)(questioning Harvey). Therefore, any punitive damages claim on the Plaintiff's wrongful death action likely fails on the threshold ground that such damages are not recoverable under Pennsylvania law in a wrongful death case.

More fundamentally, this claim fails because the undisputed evidence simply does not disclose outrageous, wanton, or reckless conduct undertaken with a subjective appreciation or unreasonable disregard for an immediate risk of harm to others. Rather, the evidence seemed to consistently reveal that the defendant's employees had no subjective appreciation of a danger posed by these automatic doors, but routinely observed and informally tested the operation of the doors in the course of their regular duties at work. Further, the initial allegation that the defendant had deliberately obscured warning labels on the doors to conceal the need for routine testing ultimately was not borne out in the evidence. Instead, that evidence seemed to reveal a lack of familiarity with any recommended testing protocols for the doors, something that may rise to the level of negligence but in our judgment falls well short of outrageous or reckless conduct.

Furthermore, we note that the Plaintiff's efforts to highlight alleged discrepancies in the testimony of various witnesses as evidence of wilfulness are ultimately unpersuasive. To be sure, there are some discrepancies in witness testimony,

as there often are in any case, but read as a whole the statements of SNM's employees are largely consistent and reveal that hotel staff were unaware of the precise inspection protocols and recommendations made by the doors' manufacturer, but felt that they informally tested and observed the operation of these automatic doors on a daily basis. The witnesses also consistently described a fairly unremarkable operations history for these automated doors prior to the August 13, 2013 accident. Thus, there is no evidence which would support a claim that SNM had a subjective appreciation of an unreasonable risk of harm posed by the automated doors prior to August of 2013, but chose to ignore that known danger. Therefore, this evidence simply does not meet the demanding standards prescribed by Pennsylvania law for a punitive damages claim which requires some subjective awareness of an unreasonable risk of danger to others.[1]

Finally, the Plaintiff cites the failure of SNM's employees to timely preserve any video surveillance which may have depicted Mrs. Ruehl's fall as proof of spoliation of evidence, spoliation which the Plaintiff argues may support a finding of an evil

[1]The Plaintiff also tries to bolster this punitive damages claim by arguing that the testimony of the Hampton Inn's desk clerk, Ashley Ward, that she was skeptical of reports that the door struck Mrs. Ruehl causing her fall demonstrates an outrageous indifference to the Plaintiff's safety. We disagree. Read as a whole, Ms. Ward's testimony indicates that she was concerned about Mrs. Ruehl because of her gait, which reminded Ward of her own grandmother who was prone to falling. Further, having observed Mrs. Ruehl's movements, Ms. Ward simply stated the view that she believed the Plaintiff may have lost her balance and fallen. This testimony falls well short of conduct that "is outrageous, because of the defendant's evil motive or . . . reckless indifference to the rights of others." Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747 (1984).

motive and sustain a punitive damages claim. We disagree. In our view, this argument fails to fully consider what conduct constitutes spoliation. "Spoliation occurs where: the evidence was in the party's control; the evidence is relevant to the claims or defenses in the case; *there has been actual suppression or withholding of evidence*; and, the duty to preserve the evidence was reasonably foreseeable to the party." Bull v. United Parcel Serv., Inc., 665 F.3d 68, 73 (3d Cir. 2012). "In assessing a spoliation claim: '[R]elevant authority requires that four (4) factors be satisfied for the rule permitting an adverse inference instruction to apply: 1) the evidence in question must be within the party's control; 2) it must appear that there has been actual suppression or withholding of the evidence; 3) the evidence destroyed or withheld was relevant to claims or defenses; and 4) it was reasonably foreseeable that the evidence would later be discoverable.'" Victor v. Lawler, No. 3:08-CV-1374, 2011 WL 1884616, at *2–3 (M.D. Pa. May 18, 2011), on reconsideration, No. 3:08-CV-1374, 2011 WL 4753527 (M.D. Pa. Oct. 7, 2011).

In practice, spoliation litigation rarely turns on issues relating to the first two aspects of this four-part test. In most instances, and in this case, it is self-evident that: " [1] the evidence was in the party's control; [and] [2] the evidence is relevant to the claims or defenses in the case." Bull v. United Parcel Serv., Inc., 665 F.3d at 73. Rather, the critical issues in assessing whether spoliation inferences are proper typically revolve around the latter two aspects of this four-part test; namely, whether:

"[3] there has been actual suppression or withholding of evidence; and, [4] the duty to preserve the evidence was reasonably foreseeable to the party." Id.

Turning first to the duty to preserve, the applicable benchmark in this regard is whether that duty was "reasonably foreseeable to the party." Id. "[T]he question of reasonable foreseeability is a 'flexible fact-specific standard that allows a district court to exercise the discretion necessary to confront the myriad factual situations inherent in the spoliation inquiry.' Micron Technology, Inc., 645 F.3d at 1320." Bull v. United Parcel Serv., Inc., 665 F.3d at 77-78. Thus, "[a] party which reasonably anticipates litigation has an affirmative duty to preserve relevant evidence. Baliotis v. McNeil, 870 F.Supp. 1285, 1290 (M.D. Pa.1994). Where evidence is destroyed, sanctions may be appropriate, including the outright dismissal of claims, the exclusion of countervailing evidence, or a jury instruction on the 'spoliation inference.' This inference permits the jury to assume that 'the destroyed evidence would have been unfavorable to the position of the offending party.' Schmid v. Milwaukee Elec. Tool Corp., 13 F.3d 76, 78 (3d Cir.1994)." Howell v. Maytag, 168 F.R.D. 502, 505 (M.D.Pa. 1996).

However, a finding that a party had a duty to preserve evidence which was lost will not, by itself, warrant a finding of spoliation. The party seeking a spoliation finding must also prove a culpable state of mind. In this respect:

> For the [spoliation] rule to apply ... it must appear that there has been an actual suppression or withholding of the evidence. *No unfavorable inference arises when the circumstances indicate that the document or article in question has been lost or accidentally destroyed, or where the*

> *failure to produce it is otherwise properly accounted for. See generally* 31A C.J.S. Evidence § 156(2); 29 Am.Jur.2d Evidence § 177 ("Such a presumption or inference arises, however, only when the spoliation or destruction [of evidence] was intentional, and indicates fraud and a desire to suppress the truth, and it does not arise where the destruction was a matter of routine with no fraudulent intent.").
>
> Brewer, 72 F.3d at 334 (emphasis added). Therefore, a finding of bad faith is pivotal to a spoliation determination. This only makes sense, since spoliation of documents that are merely withheld, but not destroyed, requires evidence that the documents are actually withheld, rather than—for instance—misplaced. *Withholding requires intent.*

Bull v. United Parcel Serv., Inc., 665 F.3d at 79 (emphasis added and in original).

In this case, even when we construe the evidence in a light most favorable to the Plaintiff, we find that this evidence does not support a finding of actionable spoliation by SNM because it does not show that anyone at SNM intentionally withheld evidence. Rather, the undisputed evidence reveals that SNM's employees were untrained, and largely unaware of the capabilities of the hotel's video surveillance system. Therefore, they did not immediately preserve the video, but when SNM became aware of a potential claim against the Defendant arising out of this August 13, 2013 mishap, efforts were made to retrieve and preserve the video. Those efforts, however, were unavailing since the video was no longer in existence at the time SNM received notice of this potential claim. In short, the evidence discloses, at most, an accidental and inadvertent failure to timely preserve this video. Since "[n]o unfavorable inference arises when the circumstances indicate that the document or article in question has been lost or accidentally destroyed," id., this inadvertent failure to preserve evidence

does not rise to the level of the type of intentional conduct which constitutes spoliation. Therefore, this legally and factually infirm spoliation claim cannot sustain the Plaintiff's prayer for punitive damages.[2]

Finding that the uncontested evidence, even when cast in a light most favorable to the Plaintiff, does not disclose "conduct that is outrageous, because of the defendant's evil motive or . . . reckless indifference to the rights of others," Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747 (1984), we conclude that the Plaintiff's prayer for punitive damages fails as a matter of law, and should be dismissed.

IV. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the defendant's motion for partial summary judgment (Doc. 44) be GRANTED, in part, and DENIED, in part, as follows: The Plaintiff's prayer for punitive damages should be DISMISSED, but the Defendant's motion for summary judgment on the Plaintiff's wrongful death claim should be DENIED.

---

[2]In addition, we note that this alleged spoliation occurred in the days, weeks and months after the August 13, 2013 accident. Therefore, this after-the-fact conduct sheds little light on the Defendant's state of mind prior to the accident, and does little to advance a claim of reckless or intentional outrageous conduct on August 13, 2013 which would warrant punitive damages. See generally, Freeman v. Wal Mart Stores, Inc., No. 11-CV-3816 DMC JAD, 2012 WL 893085, at *4 (D.N.J. Mar. 13, 2012)(questioning the viability of a claim for punitive damages premised solely upon alleged spoliation of evidence).

The parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 12th day of January, 2017.

S/Martin C. Carlson

Martin C. Carlson
United States Magistrate Judge