IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KENNETH STEWARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. NO. N10C-07-111 VLM
	)	
HONEYWELL INTERNATIONAL INC.,	)	
	)	
Defendant,	)	

OPINION

Date Submitted: August 1, 2014
Date Decided: August 28, 2014

Upon Consideration of Defendant's Motion For Summary Judgment on the Issue Of Punitive Damages, **GRANTED**

Matthew R. Fogg, Esquire, and Arthur M. Krawitz, Esquire, Doroshow Pasquale Krawitz & Bhaya, 1208 Kirkwood Highway, Wilmington, DE 19805, Attorneys for Plaintiff.

Nicholas E. Skiles, Esquire, Mintzer Swartz Campbell LLC, 300 Delaware Avenue, Suite 1410, Wilmington, DE 19899, Attorney for Defendant.

MEDINILLA, J.

INTRODUCTION

This personal injury action arises from a chemical release from Defendant Honeywell International, Inc.'s ("Defendant") facility on July 31, 2008. Kenneth Steward, ("Plaintiff"), was exposed to dangerous amounts of BF_3 (Boron Trifluoride) while employed on a neighboring property. Plaintiff seeks both compensatory and punitive damages as a result of the accident. Plaintiff's compensatory damage claim is not considered for the purposes of this motion. As to punitive damages, Plaintiff argues that his claim is warranted because Defendant's actions and inactions demonstrate a reckless indifference or conscious disregard for the rights of Plaintiff. Defendant argues entitlement to judgment as a matter of law on Plaintiff's claim for punitive damages. This Court finds that Plaintiff fails to meet his burden in establishing a genuine issue of material fact to submit to a jury that would justify an award for punitive damages. Therefore, Defendant's Motion for Summary Judgment is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

On July 31, 2008, approximately 60 pounds of BF_3 gas, a poisonous hazardous chemical, was released from Defendant's chemical plant in Claymont, Delaware. Plaintiff was performing his employment duties as part of a railroad crew for Railroad Construction, Inc. on Epsilon's property ("Epsilon"), located across the street from Defendant's premises. The gaseous chemical cloud traveled

downwind to the Epsilon property and Plaintiff alleges that the inhalation of the BF_3 gas has resulted in various respiratory and pulmonary ailments.

The facts in this case indicate that Defendant took immediate action as part of its emergency response plan to address the chemical release. Specifically, Defendant used an internal radio system to contact onsite employees and activated its mobile system. A deluge system which used a water spray to mitigate the release was activated within one to two minutes following the release.[1] Defendant made telephone calls to the police (911) and neighboring properties including Sunoco, General Chemical and Sunoco Polymer, known also as Epsilon.[2] Employees of Defendant were "immediately asked . . . to isolate the roadway . . . [and] stop traffic until the police arrived."[3] However, an evacuation of the plant was not ordered. Defendant contends that an evacuation was not ordered because the people on the premises had been notified through either the plant radio or person-to-person communication, as was its normal procedure.[4]

The facts also show that Defendant employed various safety precautions prior to the release. Specifically, Defendant held monthly safety meetings and provided continuing training to both employees and visitors entering the plant. The safety orientation training provided information regarding the chemicals

[1] *Timothy Love Dep. Tr.* (Jan. 6, 2012) at 97:1-18.
[2] *Id.* at 115: 3-18; 63: 17-23.
[3] *Timothy Love Dep. Tr.* (June 1, 2012) at 23:8-24.
[4] *Id.* at 20:13-19; 21:8-11.

located on the property and appropriate responses in the event of a chemical release. Plaintiff had entered Defendant's facility "a lot" of times and had participated in safety orientations on more than one occasion.[5]

Plaintiff filed a personal injury action on July 13, 2010. The original Complaint did not contain a claim for punitive damages. Following discovery, Plaintiff filed a Motion to Amend the Complaint to include a claim for punitive damages which was granted on August 8, 2012.[6] Plaintiff filed his Amended Complaint on August 9, 2012. Defendant filed this Motion (for Summary Judgment) to Dismiss Plaintiff's Claims for Punitive Damages and an Opening Brief on May 9, 2014.[7] Plaintiff filed his Answering Brief on May 21, 2014. Defendant filed a Reply Brief on June 6, 2014. Oral arguments were presented on August 1, 2014.

After consideration of the written and oral arguments of the parties, the Court finds that Summary Judgment is appropriate for the reasons set forth below.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to

[5] *Kenneth Steward Dep. Tr.* (Nov 15, 2011) at 119:16-23; 124:7-24; 125:1-24; 126:1-23.
[6] *See* Amended Complaint at ¶19.
[7] While captioned as a motion to dismiss, this motion is substantively a motion for summary judgment governed by Rule 56 of the Superior Court Rules of Civil Procedure, as agreed to by the parties during oral arguments.

any material fact and that the moving party is entitled to a judgment as a matter of law."[8] In considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party.[9] The moving party bears the initial burden of establishing that material facts are not in dispute.[10] If, after discovery, the non-moving party cannot make sufficient showing of the existence of an essential element of his or her case, summary judgment must be granted.[11] If, however, material issues of fact exist, summary judgment is inappropriate.[12]

DISCUSSION

Punitive damages are fundamentally different from compensatory damages both in purpose and formulation.[13] The former aims to make a plaintiff whole or correct a private wrong while the latter implicates societal policies.[14] As such, punitive damages are intended to act as a deterrent to defendants rather than compensation to a plaintiff.

The imposition of punitive damages has been sanctioned in situations where a defendant's conduct, though unintentional, has been particularly reprehensible,

[8] Super. Ct. Civ. R. 56(c).
[9] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).
[10] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[11] *Burkhart*, 602 A.2d at 59.
[12] *Sternberg v. Nanticoke Mem'l Hosp., Inc.*, 2012 WL 5830150 (Del. Super. Feb. 13, 2012) *aff'd*, 62 A.3d 1212 (Del. 2013) (citing *Ebersole v. Lowengrub, 180* A.2d 467, 470 (Del. 1962)).
[13] *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 528 (Del. 1987).
[14] *Id.*

i.e., reckless, or motivated by malice or fraud.[15] They are a special class of damages, reserved for defendants who exhibit an "I don't care attitude" or a wilful or wanton disregard for the rights of others.[16] Wilfulness and wantonness involve an awareness, either actual or constructive, of one's conduct and a realization of its probable consequences, while negligence lacks any intent, actual or constructive.[17]

> The penal aspect of public policy considerations which justify the imposition of punitive damages require the Court to impose these damages only after a close examination of whether the defendant's conduct is outrageous because of evil motive or reckless indifference to the rights of others. But inadvertence, mistakes or errors of judgment which constitute mere negligence will not suffice.[18]

There is no contention in this case that Defendant's conduct was wilful, intentional or malicious. Therefore, this Court considers Defendant's actions under the standard of recklessness to determine if the evidence is sufficient for submission to the jury on the issue of punitive damages. That is, whether Defendant's conduct demonstrates a reckless indifference to the rights of others.[19] Here, since the claim of recklessness is based on an error of judgment (i.e. failure

[15] *Jardel Co., Inc.*, 523 A.2d at 529.
[16] *Cloroben Chem. Corp. v. Comegys*, 464 A.2d 887, 891 (Del. 1983).
[17] *Jardel Co., Inc*., 523 A.2d 518, 530 (Del. 1987).
[18] *Eby v. Thompson*, 2005 WL 486850 (Del. Super. Mar. 2, 2005) (internal citations omitted).
[19] *Id.* at 530.

to adequately warn Plaintiff or call for an evacuation), Plaintiff's burden is substantial.[20]

This Court is guided by the reasoning in *Jardel Co., Inc. v. Hughes*, where the Supreme Court of Delaware found that in order to permit punitive damages it must be shown that the harm which occurred was not only reasonably apparent but consciously ignored in the formulation of the judgment.[21] Similarly, in order for a jury to consider the imposition of punitive damages in this case, there must be a factual basis to show that Defendant not only made its emergency response decisions with knowledge that the railroad crew may have been working on the neighboring property, but consciously ignored a reasonably apparent harm of chemical exposure.

Plaintiff argues that he has made out a *prima facia* case for punitive damages through testimony presented via the deposition of Timothy Love ("Love"), Defendant's Health, Safety and Environmental Manager. Love testified regarding Defendant's knowledge of the railroad construction team that was working in the vicinity of its property.[22] Plaintiff suggests that Defendant knew that the chemical cloud was going to exit the plant and travel downwind toward the Plaintiff and the railroad crew. Plaintiff further argues that Defendant's failure to sound an alarm

[20] *Id.* at 531.
[21] *Id.*
[22] Plaintiff's Response at 7 (citing *Timothy Love Dep. Tr.* (Jan. 6, 2012) at 16).

system, warn Plaintiff or evacuate the surrounding areas rises to the level of wanton or reckless disregard. This Court disagrees.

While Love's testimony touched on Defendant's vague knowledge that a railroad crew worked in the surrounding area, there is no evidence in this record that suggests Defendant consciously or recklessly disregarded the rights of Plaintiff, or the railroad crew as a whole. In other words, Defendant's knowledge that Plaintiff may have been working in the area does not establish that Defendant consciously disregarded an apparent harm to Plaintiff in making its decision.

Whether Defendant met the appropriate standard of care for the purposes of the underlying negligence action remains an open question but on the evidence before this Court, it cannot be said that Defendant's conduct was reckless, or that it turned its back on a known risk.[23] The facts show that Defendant actively responded to an urgent situation. Defendant used an internal radio system, activated its mobile and deluge systems, and called 911 and its neighboring properties which included Epsilon. It is undisputed that the alarm system was not designed to alert off-site properties.[24] Defendant elected to inform on-site personnel through means other than sounding its alarm or ordering an evacuation. While a jury may need to subsequently determine if these decisions were errors of

[23] *Jardel Co., Inc.*, 523 A.2d at 531.
[24] *Timothy Love Dep. Tr.* (June 1, 2012) at 22; *Timothy Love Dep. Tr.* (Jan. 6, 2012) at 48.

judgment, there is no evidence indicating they were made with reckless disregard of Plaintiff's rights.

CONCLUSION

Based on the foregoing reasons, Defendant's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ Vivian L. Medinilla
Judge Vivian L. Medinilla

cc: Prothonotary