

MICHAEL SEES and  
PAMELA SEES, Husband  
and Wife,

Plaintiffs

vs.

PAUL BESWICK and  
KOPPERS, INC.,

Defendants

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 05-00,910

: PRELIMINARY OBJECTIONS

*Date: October 11, 2005*

### **OPINION and ORDER**

Counsel have brought to the attention of the court its failure in its September 30, 2005 opinion and order to address the preliminary objections to Pamela Sees' loss of consortium and punitive damages claims in Counts VI, VII, and VII of the Complaint. The court will now address and grant the preliminary objections to those counts.

### **I. BACKGROUND**

#### **A. Facts**

Michael and Pamela Sees filed a complaint on May 17, 2005. The case arises out of an incident that occurred on May 31, 2003. It is alleged that Paul Beswick (hereafter "Beswick"), an employee of Koppers, Incorporated (hereafter "Koppers"), either failed to stop at a posted stop sign or that he did stop but failed to observe Michael Sees and Mary Jane Phillips riding their bicycles through the intersection of Stein Road and Smoketown Road before he proceeded through the intersection and then struck them with the vehicle he was operating.

The complaint alleges eight counts. Michael Sees asserts Counts I through IV. Count I is a negligence cause of action against Beswick. Count II is a punitive damages claim against Beswick. Count III is a negligent entrustment cause of action against Koppers. Count IV is a punitive damages claim against Koppers.

Pamela Sees asserts Counts V through VIII. Count V is a loss of consortium cause of action against Beswick. Count VI is a punitive damages claim against Beswick. Count VII is a loss of consortium cause of action against Koppers. Count VIII is a punitive damages claim against Koppers.

### **B. Procedural History**

On June 6, 2005, Beswick and Koppers filed preliminary objections to Michael and Pamela Sees' complaint. In the preliminary objections, Beswick and Koppers asserted, inter alia, that the complaint failed to allege sufficient facts that could establish a negligent entrustment cause of action against Koppers and failed to allege sufficient facts that would support an award of punitive damages against Beswick and Koppers. As such, Beswick and Koppers sought the dismissal of Counts II, III, IV, VI, VII, and VIII.

On September 30, 2005, the court issued an opinion and order granting in part and denying in part the preliminary objections. The court determined that the complaint failed to allege sufficient facts that could establish a negligent entrustment cause of action against Koppers and failed to plead sufficient facts to establish that Beswick was intoxicated at the time of the accident. The court dismissed Counts II, III, and IV. The court did not address the request to dismiss Pamela Sees' loss of consortium cause of action and punitive damages claims in Counts VI-VIII.

### **III. ISSUE**

The issues before the court are whether Pamela Sees' loss of consortium causes of action and punitive damages claims must be dismissed.

### **IV. DISCUSSION**

The opinion will first set forth the general principles regarding a loss of consortium cause of action. The court will then apply those principles to determine whether Pamela Sees' loss of consortium claim against Koppers and her punitive damages claims against Koppers and Beswick are viable. The analysis will reveal that they are not.

#### **A. General Principles Regarding Loss of Consortium**

A loss of consortium is a loss of services, society, and conjugal affection of one's spouse. *Darr Constr. Co. v. Workmen's Compensation Appeal Bd.*, 715 A.2d 1075, 1080 (Pa. 1980). A claim for loss of consortium is a claim by the uninjured spouse arising from the deprivation of the injured spouse's society and comfort. *Ibid.* A loss of consortium claim emerges from the impact of the spouse's personal injury upon the other's marital privileges and amenities. *Ibid.*; *Barchfield v. Nunley*, 577 A.2d 910, 912 (Pa. Super. 1990). A loss of consortium claim is derivative of the injured spouse's personal injury claim. *Barchfield*, 577 A.2d at 912.

However, a loss of consortium claim is a separate and distinct cause of action. *Darr*, 715 A.2d at 1080; *Barchfield*, 577 A.2d at 912. A loss of consortium claimant has separate and independent status as a plaintiff in her own right. *Manzitti v. Amsler*, 550 A.2d 537, 542 (Pa. Super. 1988). The damages suffered by the loss of consortium claimant are personal to her. *Barchfield*, 577 A.2d at 912.

Despite the separate and distinct status of a loss of consortium cause of action, its success as a cause of action is dependent upon the injured spouse's right to recover. *Scattaregia v. Shin Shen Wu*, 495 A.2d 552, 554 (Pa. Super. 1985); *Andrus v. Amer. Color & Chem. Corp.*, 4 D. & C. 4<sup>th</sup> 539, 544 (Clinton Cty. 1990) (Claim of spouse for loss of consortium is dependant upon the existence of liability on part of the tortfeasor for other spouse's injury.); *Stutz v. Ludy*, 15 D. & C. 3d 289, 293 (Somerset Cty. 1979) (Liability of a third party to injured spouse is a condition precedent for a loss of consortium cause of action.). “ ‘The consortium claim and the personal injury claim are closely interconnected; together, they represent the total, compensable damages -- direct and indirect -- suffered as a result of the principal plaintiff's injury.’” *Scattaregia*, 495 A.2d at 553 (quoting *Maidman v. Stagg*, 444 N.Y.S. 2d 711, 715 (N.Y. App. Div. 1981)). The loss of consortium plaintiff does not suffer a direct injury and her right to recover is derived, both in a literal and legal sense, from the injury suffered by her spouse. *Id.* at 554.

## **II. Pamela Sees' Loss of Consortium Cause of Action and Punitive Damages Claims**

### **A. Punitive Damage Claim Against Beswick**

Pamela Sees' punitive damages claim against Beswick must be dismissed. In order for Pamela Sees to assert a punitive damages claim against Beswick, she must allege facts that would demonstrate that Beswick acted with an evil motive or with reckless indifference when he struck Michael Sees with the vehicle he was operating.<sup>1</sup> Pamela Sees has attempted to do this by pleading that Beswick was under the influence of alcohol at the time of the accident.

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<sup>1</sup> Punitive damages are only awarded in cases of outrageous behavior, which is conduct that shows an evil motive or reckless indifference to the rights of others. *Slappo v. J's Dev. Assocs. Inc.*, 791 A.2d 409, 417 (Pa. Super. 2002).

However, as determined by this court's opinion addressing the preliminary objection to Michael Sees' punitive damages claim against Beswick, the complaint fails to allege sufficient facts that could establish that Beswick was intoxicated at the time of the accident. Without such factual allegations, Pamela Sees cannot establish that Beswick acted with an evil motive or with reckless indifference when he allegedly injured her husband.

Accordingly, Pamela Sees punitive damages claim against Beswick is dismissed.

### **B. Loss of Consortium Cause of Action Against Koppers**

Pamela Sees' loss of consortium cause of action against Koppers must be dismissed. The complaint had alleged that Koppers was liable for the injuries Michael Sees suffered under the theory that Koppers was negligent for entrusting a company motor vehicle to Beswick. Pamela Sees' loss of consortium cause of action against Koppers is derivative of Michael Sees' negligent entrustment cause of action against Koppers. The court has granted Koppers' demurrer to the negligent entrustment cause of action and dismissed it from the complaint. Absent this cause of action, the complaint fails to assert a cause of action to hold Koppers liable for the injuries Michael Sees sustained. If Koppers is not liable for causing the injuries to Michael Sees, then Pamela Sees may not bring a loss of consortium claim against Koppers based upon the loss of her husband's services and society due to those injuries.

Accordingly, Pamela Sees' loss of consortium cause of action against Koppers is dismissed.

### **C. Punitive Damages Claim Against Koppers**

Pamela Sees' punitive damages claim against Koppers must be dismissed. A claim for punitive damages cannot exist if there is no independent cause of action. *Shanks v. Alderson*,

582 A.2d 883, 885 (Pa. Super. 1990), *app. denied*, 598 A.2d 994 (Pa. 1991). The independent cause of action Pamela Sees asserted against Koppers was her loss of consortium cause of action. The court has dismissed her loss of consortium cause of action against Koppers. Without this cause of action, Pamela Sees' punitive damages claim against Koppers cannot stand

Accordingly, Pamela Sees' punitive damages claim against Koppers is dismissed.

**ORDER**

It is hereby ORDERED that the Preliminary Objections of Defendants Paul Beswick and Koppers, Incorporated filed June 9, 2005 are GRANTED.

Counts VI, VII, and VIII are DISMISSED from the Complaint.

Plaintiffs shall have twenty (20) days to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Scott B. Cooper, Esquire  
209 State Street  
Harrisburg, PA 17701  
Gary L. Weber, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)