

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**MAJOR JAMES D. PEDERSEN, individually
and as next of kin of Carrie G. Pedersen
(deceased) and Lucas J. Pedersen (deceased),
ASHLEY L. PEDERSEN, (a minor), individually,**

Plaintiffs,

v.

No. 2:08-cv-02752-STA-cgc

**P.A.M. TRANSPORTATION SERVICES, INC.,
ANTHONY D. PATRICK, P.A.M. TRANSPORT,
INC., ALLEN FREIGHT SERVICES, INC., CITY
OF MEMPHIS, TENNESSEE,**

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT**

Before the Court is Plaintiffs, Major James D. Pedersen and Ashley L. Pedersen's, Motion for Leave to File Third Amended Complaint (D.E. #118). The instant motion was referred to United States Magistrate Judge Charmiane G. Claxton for determination. (D.E. #119) For the reasons set forth herein, Plaintiffs' motion is GRANTED IN PART AND DENIED IN PART.

I. Introduction

On October 30, 2008, Plaintiffs filed the instant action against Defendants P.A.M. Transportation Services, Inc. ("P.A.M."), P.A.M. Transport, Inc. ("P.A.M. Transport"), and Allen Freight Services, Inc. ("Allen") (collectively "Trucking Defendants") in relation to a fatal automobile accident. The Court entered the parties' joint proposed Rule 16(b) Scheduling Order on January 20, 2009, which set the deadline for filing amended pleadings at March 15, 2009.

Before this deadline passed, Plaintiffs amended their complaint twice—on December 17, 2008 to add additional substantiation to the two-count Complaint, and on February 10, 2009 to add a claim of negligence against Defendant City of Memphis. The District Court set the jury trial in this matter for February 16, 2010.

On August 11, 2009, the parties filed a Joint Motion to Amend Scheduling Order and to Re-Set Trial. The parties requested that the deadlines for initial disclosures of experts and completion of depositions and written discovery be extended. The parties additionally requested postponement of the February 16, 2010 trial date. The District Court granted the parties' joint motion to continue the trial date; however, because the parties could not agree to the terms of the amendments, the District Court referred this issue to the Magistrate Judge. The Magistrate Judge entered an Amended Scheduling Order on September 30, 2009, which set forth amended dates for expert disclosures, expert depositions, and dispositive motions. Additionally, the deadline for the close of discovery was rescheduled to April 22, 2010. This final discovery deadline is currently in effect.

On September 15, 2009, Plaintiffs filed a First Motion to Compel Production of Documents. In this motion, Plaintiffs asserted that the Trucking Defendants raised improper objections and/or refused to produce responsive documents to certain requests for production of documents. The Court held a hearing on the Motion to Compel on December 4, 2009, and the Court granted in part and denied in part Plaintiffs' requests.

Additionally, on December 2, 2009, Plaintiff filed a First Motion for Spoliation Sanctions, alleging the "callous and widespread destruction of material evidence" by the Trucking Defendants and Defendant Patrick. Defendants responded to this motion on December 31, 2009 and later filed a Motion to Strike First Motion for Spoliation Sanctions on January 13, 2010. The Court held a hearing on January 20, 2010 with respect to these motions, and the parties agreed that an evidentiary

hearing on these issues would be proper. The evidentiary hearing is currently set for April 27, 2010.

On February 3, 2010, Plaintiffs filed the instant Motion for Leave to File Third Amended Complaint. Plaintiffs state that they seek to increase their *ad damnum*, add claims for punitive damages against the Trucking Defendants and Defendant Patrick, and add details about the alleged actions. The Trucking Defendants and Defendant Patrick responded that the Court's Scheduling Order set March 15, 2009 as the deadline for amending pleadings, that extensive factual discovery has already occurred, that the final discovery deadline is rapidly approaching, and that Plaintiffs have been in possession of the documents that form the basis of the proposed amendments since before the instant suit was filed.

II. Analysis

Under Rule 15 of the Federal Rules of Civil Procedure, the Court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a). However, such leave should not be granted in cases of "undue delay, undue prejudice to the opposing party, bad faith, dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or futility." Foman v. Davis, 371 U.S. 178, 182 (1962). The Sixth Circuit has held that a litigant requesting leave to amend at a "late stage in the litigation" must bear an "increased burden" to demonstrate some "justification for the failure to move earlier." Duggins v. Steak 'N Shake, Inc., 195 F.3d 828, 834 (6th Cir. 1999) (citing Holland v. Metropolitan Life Ins. Co., 869 F.2d 1490 (6th Cir. 1989)). Further, "delay alone, regardless of length, is not enough" to bar an amendment, and a court must find "at least some significant showing of prejudice to the opponent" to deny leave to amend. Moore v. City of Paducah, 790 F.2d 557, 560-62 (6th Cir. 1986).

With respect to motions for leave to amend filed after a deadline set forth in a scheduling

order, courts have varied in their approach:

The courts disagree about the effect of the pretrial order on the right to amend pleadings. According to some authority, once the district court has filed a pretrial scheduling order, the standards of the Federal Rule of Civil Procedure governing pretrial conferences and scheduling rather than the standards of the provision of the Federal Rules governing amendments of pleadings before trial control the plaintiff's ability to amend the complaint.

Federal Procedure: Lawyer's Edition, 27A, § 62:289. The Sixth Circuit has specifically held as follows: "Once the scheduling order's deadline passes, . . . 'a plaintiff first must show good cause under Rule 16(b) [of the Federal Rules of Civil Procedure] for failure earlier to seek leave to amend' and the district court must evaluate prejudice to the nonmoving party 'before the court will consider whether amendment is proper under Rule 15(a).'"

Upon review of the record, the Court finds that the most appropriate manner of determining whether Plaintiffs new allegations should be permitted is to look directly at the text of the proposed amendments. Specifically, the proposed amendments request four distinct categories of additions: (1) adding additional substantive facts to previously alleged claims; (2) adding a claim of Defendant Patrick's reckless, willful and wanton disregard of other motorists, which includes a request for punitive and exemplary damages; (3) adding a claim for reckless hiring, training and supervision of Defendant Patrick, which includes a request for punitive damages; and (4) increasing the request for compensatory damages as to Plaintiffs Major Pedersen and Ashley Pedersen.

A. Factual Substantiation

First, the Court will consider the proposed amendments adding factual substantiation to the Complaint. Plaintiffs proposed amendments contain fairly extensive additions of new factual bases for the claims, see Pl.s' Prop. Third Am. Compl. ¶¶ 13, 15, 17-19, 20, 23, 29, 30d, 51-54, 56, 59-61, 64, 71-79, and Plaintiffs assert that the motion is timely because this information has been produced

during the discovery process Plaintiffs do not present specific arguments regarding why the Court should permit these factual additions at this late date, and Defendants' response does not specifically address these proposed amendments to the Complaint.

Generally, courts allow parties to amend pleadings to set out the factual basis of a claim with greater precision. See, e.g., Lowenschuss v. Kane, 520 F.2d 255 (2d Cir. 1975). However, in the instant case, the Court is required to make a finding of good cause to amend because the deadline set in the Scheduling Order has passed. Plaintiffs did not present any argument as to why good cause exists to amend the Second Amended Complaint to include this additional factual substantiation, and the Court does not find such good cause exists from a review of the record. Thus, Plaintiffs' request to add this additional factual substantiation is DENIED.

B. Recklessness, Punitive and Exemplary Damages against Defendant Patrick

Next, the Court will consider whether Plaintiffs can add a new claim that Defendant Patrick's actions were "reckless and were taken with willful and wanton disregard for the life of other motorists." In addition, Plaintiffs seek to include a request for punitive and exemplary damages for reckless operation of the vehicle. See ¶¶ 43-46. Upon review, the Court finds that Plaintiffs have included claims that Defendant Patrick recklessly operated the vehicle in the initial Complaint, the First Amended Complaint, and the Second Amended Complaint. See Pl.'s Compl. ¶¶ 32-35, 37; Pl.'s Am. Compl. ¶¶ 34-37, 39; Pl.s' Second Am. Compl. ¶¶ 36-39, 41. Thus, rather than adding a new recklessness claim entirely, Plaintiffs' proposed amendments seek to make two key changes. First, Plaintiffs seek to remove the claims of recklessness from Count I and list them separately in a newly pleaded Count II, which would include not only the previously plead assertions of recklessness but also allege "willful and wanton disregard." Second, Plaintiffs' proposed amendments seek to add a

never-before-plead request for punitive and exemplary damages on this basis.

Under Tennessee law, reckless driving is defined as “[a]ny person who drives any vehicle in willful or wanton disregard for the safety of persons or property.” Tenn. Code. Ann. § 55-10-205. Thus, Plaintiffs’ proposed addition of the phrase “willful and wanton” does not set forth any new allegations but instead merely expounds upon the previously plead theory. As the Court has already concluded that Plaintiffs shall not be permitted to add further specificity to the pleadings the Court will not permit Plaintiffs to add this expounded definition of recklessness and will not permit Plaintiffs to categorize the allegations regarding recklessness in the newly proposed Count II.

Further, as to Plaintiffs’ request to amend the Complaint to add punitive damages, the Court will not permit such an amendment. See Pl.s’ Prop. Third Am. Compl. ¶ 46. As the Court has already noted, Plaintiffs have consistently asserted that Defendant Patrick acted recklessly since the incipience of this litigation. See Pl.s’ Compl. ¶¶ 32-35, 37; Pl.s’ Am. Compl. ¶¶ 34-37, 39; Pl.s’ Second Am. Compl. ¶¶ 36-39, 41. Therefore, Plaintiffs could have requested punitive and exemplary damages on the basis of recklessness when they filed the initial Complaint or when they amended the Complaint twice before the court-imposed deadline for amended pleadings. However, Plaintiffs failed to do so. Although Plaintiffs appear to argue that their factual understanding of this case has significantly developed during the discovery process, this does not change the inquiry. Plaintiffs have alleged that Defendant Patrick acted recklessly since this can began in October 2008. Thus, Plaintiffs have not demonstrated that good cause exists to now seek to designate this as a “new” count to the complaint and request punitive and exemplary damages on the basis of the alleged recklessness nearly one year after the deadline to amend pleadings has passed. Accordingly, Plaintiffs request to amend this claim and to add a request for punitive and exemplary damages

against Defendant Patrick for reckless operation of the tractor-trailer is DENIED.

C. Reckless Hiring, Training and Supervision of Defendant Patrick and Request for Punitive Damages

Third, the Court will consider whether Plaintiffs may add a claim for reckless hiring, training and supervision of Defendant Patrick, which includes a proposed claim for punitive damages. See ¶¶ 69-79. The amendments would allege that Defendants were aware of but consciously disregarded Defendant Patrick’s “chronic, hazardous behavior” and that Defendants should be liable for punitive damages as a result of the reckless and wanton acts of their tractor-trailer driver.

Initially, Plaintiffs reiterate the allegation that “Defendants are liable for punitive damages as a result of the reckless and wanton acts of their driver, Mr. Patrick.” Pl.s’ Prop. Third Am. Compl. ¶ 70. The Court has already concluded that the allegations of Defendant Patrick’s recklessness have been included in this case since the filing of the initial Complaint. See Pl.s’ Compl. ¶¶ 32-35, 37; Pl.s’ Am. Compl. ¶¶ 34-37, 39; Pl.s’ Second Am. Compl. ¶¶ 36-39, 41. Accordingly, Plaintiffs would not be permitted to bring any new allegations at this late date based solely upon Defendant Patrick’s alleged recklessness.

However, Plaintiffs’ Proposed Third Amended Complaint goes beyond the previously filed claims of Defendant Patrick’s recklessness and alleges that “Defendants”—presumably the Trucking Defendants¹—recklessly hired, trained, and supervised Defendant Patrick. The substance of the

¹ The Court initially notes that Plaintiffs’ Proposed Third Amended Complaint does not explicitly set forth against which Defendants they seek to bring this claim. However, the Motion for Leave to Amend Third Amended Complaint states that the proposed amendments would be against all three corporate defendants—P.A.M. Transportation Services, Inc., P.A.M. Transport, Inc., and Allen Freight Services, Inc. Pl.s’ Mot. to Amend at 1. As discussed, *infra*, Plaintiffs shall be required to explicitly list the Defendants to which this claim applies before filing the Third Amended Complaint.

proposed amendments as to reckless hiring, training and supervision state that “Defendants” were aware of, but consciously disregarded, the following: (1) that Defendant Patrick was an unsuitable candidate for employment as a commercial truck driver; (2) that Defendant Patrick was not properly trained as a commercial truck driver given his experience and background; (3) that Defendant Patrick habitually violated the rules of the road and the Federal Motor Carrier regulations; (4) that Defendant Patrick was involved in two “preventable accidents” in the first several months of his employment; (5) that Defendant Patrick habitually falsified his driver logs; and (6) that Defendant Patrick misrepresented his hours on duty, his average speeds, his routes, his inspections, and his times of travel. Pl.s’ Prop. Third Am. Compl. ¶¶ 71-76. As a result, Plaintiffs propose that “Defendants” unjustifiably disregarded the “chronic, hazardous behavior” and allowed Defendant Patrick to continue operating a commercial vehicle. Id. ¶ 77. Plaintiffs propose that this constituted a “gross and reckless deviation from the standard of care expected in the commercial vehicle industry and mandated by the Federal Motor Carrier Safety Administration” and further propose that “Defendants” should be liable for compensatory and punitive damages.

To determine if this proposed amendment should be permitted at this late date, the Court will first consider whether Plaintiffs have established good cause under Rule 16(b). The Court agrees that discovery of additional facts during the discovery process may be considered good cause for a late-filed amendment. In this case, Plaintiffs have described fairly extensive evidence that they received from October until December 2009 that they assert demonstrates a broader scope of Defendant Patrick’s driving violations and a heightened standard of knowledge by the Trucking Defendants. Thus, the Court is satisfied that Plaintiffs meet the threshold requirements of Rule 16(b) for requesting an amendment after the deadline in the Scheduling Order has passed.

Next, the Court must proceed to consider whether Plaintiffs meet the requirements of Rule 15(a), and the Court will begin with a determination of whether Plaintiffs unduly delayed the filing of this amendment. To begin this analysis, the Court will examine the pre-suit discovery exchanged between Plaintiffs and Defendant Patrick and the Trucking Defendants. See Def.s' Resp. to Mot. to Amend, Ex. 3. In the pre-litigation report, the Trucking Defendants and Defendant Patrick voluntarily disclosed extensive information regarding the accident, the driver's hiring, his training, his driving record, and his driving logs. Id. With respect to Defendant Patrick's hiring and training, the pre-litigation report stated that, at the time of his hire in late 2007, Defendant Patrick had a "clean driving record with no moving violations in the previous three year period." Id. at 2.

The report further states that the Trucking Defendants complied with all Department of Transportation regulations that governed the hiring of a truck driver and completed "additional checks and tests which exceeded the trucking industry hiring norms." Id. Specifically, P.A.M. ran a criminal background check, ran a social security number check, ran a computerized employment history check, ran a CSLIS check, confirmed Patrick's past six years of work experience, required Patrick to pass a detailed road test, required Patrick to pass a final seventy-two question test, tested Patrick on "basic logging, map reading, drug and alcohol effects, right turns and left turns, hazardous materials, and accident procedures," and evaluated Defendant Patrick weekly during his 150-hour training program. Id. Additionally, Defendant Patrick was issued a Commercial Driver's License by the State of Arkansas, attended C-1 truck driver training schooling with 120 hours of classroom and road training, participated in four weeks of additional over-the-road training with a certified driver trainer, participated in two and one half days of orientation and training, and completed a successful road test by a company evaluator. Id. Defendant Patrick completed the C1 truck driver

training with a 95% grade, the detailed road test with a 100% grade, and the seventy-two question written test with a 99% grade. Id. at 2-3.

With respect to Defendant Patrick's alleged driving violations, the pre-litigation report disclosed extensive information regarding his driving performance. Specifically, the pre-litigation report stated that Defendant Patrick had been involved in "two minor accidents" during his "early tenure at P.A.M." Id. at 3. The report opined that these should be characterized as "slow speed maneuvering accidents" and further stated that these accidents are "expected from new tractor-trailer drivers who have to learn to maneuver a 70-foot rig around tight spaces at truck stops and delivery locations." Id. Although the report states that many "successful trucking companies consider such minor accidents only to be 'incidents,'" P.A.M. categorized these as accidents and "appropriately placed Mr. Patrick on probation." Id.

The report further stated that a review of Defendant Patrick's December 2007 and January 2008 log sheets shows that he "inaccurately completed the grid section of his log sheets." Id. The report continues by stating that, despite the inaccuracies, it can be determined when and where he was driving during the ten-day period leading up to the accident with GPS positioning data. Id. at 3-4. The report states that Defendant Patrick exceeded the hours-of-service regulations only once in the ten days leading up to the January 6, 2008 accident. Id. at 4. This violation occurred on December 31, 2007, when Defendant Patrick drove an additional forty-five minutes in excess of the permissible eleven hours. Id. However, Defendant Patrick committed this violation after "coming off a 34 consecutive hour off-duty rest period" and did not "run an inordinate number of miles and got plenty of rest in this ten day period." Id. Defendants asserted that the paperwork errors are common for new drivers and that the number of Patrick's log violations was "relatively low given [his] new driver

status.” Id.

Despite the extensive pre-suit discovery provided by Defendants, Plaintiffs assert that the discovery process has yielded additional documents that they believe warrants the amendment of the complaint to add allegations of reckless hiring, training and supervision. Specifically, Plaintiffs state that certain documents that support the allegations of recklessness were produced between September and December 2009. The documents produced in September, 2009 include as follows:² (1) a January 4, 2008 speeding ticket, (2) a June 7, 2009 speeding ticket, (3) Patrick’s personnel file, (4) Patrick’s driver qualification file, (5) Patrick’s “MVR Probation Letter” relating to the January 4, 2008 speeding ticket; (6) a January 23, 2008 Counseling Statement for log violations that occurred on January 4, 2008; (7) an April 1, 2008 Counseling Statement for a February 9, 2008 log violation; (8) Confirmation of Log Briefing; (9) Accident/Incident Detail for the January 6, 2008 collision; (10) Patrick’s Road Test Evaluation; (11) The Driver Road Test Cover Sheet; (12) Certification of Compliance-Notice to Drivers Pertaining to Traffic Violations; (13) Accident/Incident Detail for an accident on May 19, 2008; (14) Patrick’s DOT Driver Qualification File; (15) Driver/Vehicle Examination Report; (16) Accident/Incident Detail relating to the February 9, 2008 accident in Laredo, Texas; (17) Patrick’s February 19, 2008 Driver’s Daily Log; and, (18) August 4, 2008 Counseling Statement for an April 29, 2008 log violation. Pl.’s Reply, Ex. 2. Additionally, the P.A.M. Driver Trainer Manual was produced on December 31, 2009. Id., Ex. 4.³

² The Court notes that, although the documents produced by Defendants are listed in the exhibits to Plaintiffs’ Reply in Support of Motion for Leave to Amend, the actual documents produced by Defendants are not filed as exhibits in the record.

³Plaintiffs contend that further discovery was produced from in October, 2009. Plaintiffs rely on Exhibit 3 as evidence of that discovery, which includes a letter sent from the Trucking Defendants on December 31, 2009 that “produced additional documents” including “Driver’s Daily Logs for November 19 through November 30, 2007.” Pl.’s Reply at 4. Exhibit 3 does list production of certain driver logs; however, the letter only states that the

With respect to this information produced during discovery, the Court does find that Plaintiffs have been made aware of certain new information regarding the scope of the Trucking Defendants' knowledge of Patrick's driving violations. Specifically, the Court is compelled by the discovery production of information regarding speeding tickets, Defendant Patrick's probation letter, and statements regarding Defendant Patrick's driver counseling. However, the Court is concerned that the majority of these documents in the record were produced in September, 2009,⁴ while Plaintiffs' instant Motion for Leave to File Third Amended Complaint was not filed until February, 2010. During this time, discovery was proceeding, the deadline for Plaintiffs' expert disclosures passed, the deadline for Defendants' expert disclosures passed, and the final discovery deadline of April 22, 2010 is rapidly approaching.

Yet despite the troubling delay in filing Plaintiffs' motion for leave to amend, the Sixth Circuit has held that, "delay alone, regardless of length, is not enough" to bar an amendment, and a

Trucking Defendants produced "documents" in response to a request "regarding Mr. Patrick's daily logs." Thus, because Exhibit 3 does not specifically state what drivers' logs were produced, and because Plaintiffs did not include the substance of the produced documents in the record, the Court is unable to consider the impact of their production on whether Plaintiffs should be permitted leave to amend. Likewise, Exhibit 3 references production of other documents; however, because neither a description nor the document itself is included in the record, the Court is not able to consider the substance of those documents in its determination of whether Plaintiffs should be permitted leave to amend.

⁴ While Plaintiffs assert that further documents were provided from October until December 2010, the Court has noted that Plaintiffs' Exhibit 3 does not clearly state what documents were provided in October. See, supra, n.2. Thus, the Court cannot adequately consider the impact of that discovery on whether Plaintiffs should be permitted leave to amend at this date.

Additionally, although the Driver Training Manual, which Plaintiffs characterize as a "virtual smoking gun," was not provided until December 31, 2009, the Court is not convinced that this document alone—which governs how P.A.M. trainers were trained to instruct new drivers—suffices to add new claims of recklessness against the Trucking Defendants. In fact, the Drivers Training Manual specifically instructs that trainers should advise new drivers of navigating bridges by watching posted clearances on bridges and underpasses and slowing when the height of the vehicle is within six inches of the clearing. See Pl.s' Reply, Ex. 4. While Plaintiffs assert in their reply that Defendant Patrick "testified that he did not receive training on low clearance bridges," such testimony was not presented in the record before the Court. As such, the receipt of the Drivers' Trainers Manual would apparently serve to bolster the Trucking Defendants' theory of the case rather than serve as a basis for a heightened standard of recklessness against the Trucking Defendants. Thus, while this document was only produced roughly a month before Plaintiffs' Motion for Leave to File Third Amended Complaint, the Court does not find this document provides an adequate explanation for the delay to file Plaintiffs' Motion for Leave to Amend nearly four months after the bulk of the discovery presented in support of the motion.

court must find “at least some significant showing of prejudice to the opponent” to do so. Moore v. City of Paducah, 790 F.2d 557, 560-62 (6th Cir. 1986). Courts have held that the “prejudice to the opposing party must be undue or substantial prejudice, since almost every amendment of a pleading will result in some ‘practical prejudice’ to the opposing party. Mere inconvenience to the opposing party is not a ground to deny a motion to amend.” Federal Procedure: Lawyer’s Edition, 27A, § 62:278. In exercising its discretion, a district court “must balance the general policy behind the provision of the Federal Rules governing amendments before trial, which is that a controversy should be decided on its merits, against the prejudice that might result from an amendment, and that a motion to amend should be denied only in those instances in which the prejudice outweighs the right to have the case tried on its merits.” Id. “The burden is on *the opposing party* to assert and demonstrate that it will be substantially prejudiced by the proposed amendment; its mere statement that it will be prejudiced if the amendment is allowed is not a sufficient reason for denying leave to amend.” Id.(emphasis added).

In this case, although the Court concludes that Plaintiffs should have filed the motion for leave to amend in a more timely fashion, the Court does not find that Defendants have met their burden of establishing substantial prejudice of the amendment. Specifically, the parties have conducted extensive discovery based upon Plaintiffs’ Second Amended Complaint, which contained allegations of Defendant Patrick’s negligent and reckless operation of the tractor-trailer, as well as allegations negligent hiring, training, and supervision as to the Trucking Defendants. As courts have previously held, a party generally “will not be prejudiced by an amended pleading if the amendment relates to the same conduct, transaction, or occurrence alleged in the original pleading.” Federal Procedure: Lawyer’s Edition, 27A, § 62:278. Thus, while Plaintiffs now seek to allege that the conduct of the Trucking Defendants was reckless, the amendment relates to the same conduct and

occurrence as the previously plead negligence claims, and the factual discovery as to the hiring, training, and supervision of Defendant Patrick will serve as the basis for both the negligence and recklessness allegations. Further, the final discovery deadline has not yet passed in this case, and the Trucking Defendants are able to conduct further discovery on the heightened standard, if necessary.

Additionally, because the Court believes the amendment alleging recklessness should be permitted, the Court finds that Plaintiffs should be permitted to amend the Complaint to allege punitive damages. See Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 (Tenn. 1992) (permitting punitive damages for reckless conduct). Accordingly, Plaintiffs' request for leave to amend to allege reckless hiring, training, and supervision is GRANTED and Plaintiffs' request for leave to amend to allege punitive damages on this basis is GRANTED. The Court ORDERS Plaintiffs to specify, however, the specific Defendants against which this claim is brought before filing the Third Amended Complaint with the Court. See, supra, n.1.

D. Increasing Compensatory Damages as to Plaintiffs Major Pedersen and Ashley Pedersen

Finally, the Court will consider whether Plaintiffs may increase their request for compensatory damages. See Pl.s' Prop. Third Am. Compl. At 19-20, ¶¶ 5, 7. In the instant case, Plaintiffs did not present any argument as to why good cause exists to amend the Second Amended Complaint to increase the *ad damnum*. Further, the Second Amended Complaint requests compensatory damages for Plaintiffs Major Pedersen and Ashley Pedersen "in an amount to be determined at trial, but believed to exceed \$5,000,000." Pl.s' Second Am. Compl. At 16. Thus, because Plaintiffs have already sought an amount in excess of \$5 million for each Plaintiff, which already includes the potential recovery of the \$10 million amount that Plaintiffs propose in the instant

motion, the Court does not find that good cause exists to amend the complaint. Accordingly, Plaintiffs' request to increase the *ad damnum* will be DENIED.

III. Conclusion

For the reasons set forth herein, Plaintiffs' Motion for Leave to File Third Amended Complaint (D.E. #118) is GRANTED IN PART AND DENIED IN PART. Plaintiffs shall be permitted to add a claim for reckless hiring, training, and supervision, but Plaintiffs must specify the particular Defendants against which they assert this claim. Plaintiffs shall be permitted to add a claim for punitive damages on the basis of reckless hiring, training, and supervision. However, Plaintiffs shall not be permitted to add the proposed factual substantiation to the claims, and Plaintiffs shall not be permitted to add a claim for punitive or exemplary damages against Defendant Patrick for reckless operation of the vehicle. Finally, **Plaintiffs shall file the Third Amended Complaint within ten days of the filing of this Order.**

IT IS SO ORDERED this 10th day of March, 2010.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE