

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

SHANNON HOYT Individually, and as)
the Wife of William D. Hoyt, Deceased;)
and as the NEXT FRIEND of)
ANDREW D. HOYT and KYLE)
JOSEPH HOYT, Minor Children of)
William D. Hoyt, Deceased,)
) **Case No. 05-331-WDS**
Plaintiffs,)
)
B&W CARTAGE COMPANY, INC.,)
)
Defendant)
)

ORDER

PROUD, Magistrate Judge:

Before the Court is defendant’s Motion to Strike Punitive Damages Claim. **(Doc. 21).**

This is a claim for damages for the wrongful death of William D. Hoyt. Hoyt died as a result of an automobile accident which occurred in the State of Missouri. The plaintiffs are Mr. Hoyt’s parents, widow, and children. According to the amended complaint **(Doc. 18)**, the plaintiffs are citizens of Alabama and Georgia. Defendant is an Illinois corporation.

Plaintiffs allege in paragraph 12 that the conduct of defendant and its employee “was willful and wanton and in reckless disregard of the rights of others, including William Hoyt, and justifies the imposition of punitive damages.” Plaintiffs pray for actual and punitive damages.

Defendant asks the Court to strike the prayer for punitive damages because punitive damages cannot be recovered under the Illinois Wrongful Death Act, **740 ILCS 180/1 et. seq.**

The amended complaint does not cite the Illinois Wrongful Death Act. Plaintiffs argue that Missouri, not Illinois, law governs, and they are entitled to damages for aggravating circumstances under Missouri law. **See, Doc. 15.**

The issue of choice of law is a substantive issue which will be decided by Judge Stiehl after it has been properly raised and fully briefed. The Court will not decide the issue of choice of law on the instant motion to strike.

Upon consideration and for good cause shown, defendant's Motion to Strike Punitive Damages Claim (**Doc. 21**) is **DENIED**.

IT IS SO ORDERED.

DATE: March 9, 2006.

s/ Clifford J. Proud
CLIFFORD J. PROUD
UNITED STATES MAGISTRATE JUDGE