At the heart of the court's interpretive problem was the application of the New Jersey no fault statute which directed insurers to cover reasonable and necessary diagnostic services. The insurers argued that the payments should not be made unless the tests were generally accepted by the medical community. In response, the court noted that the legislative purpose in adopting the no fault statute was to balance several competing concerns including compensation, cost containment, and the reduction of litigation. The court rejected the insurers' proposed interpretation because it placed too much emphasis on the goal of cost containment and was inconsistent with the law's recognition of other less scientific forms of treatment such as religious healing. To better strike a balance between the competing factors, the court concluded that a necessary medical expense under the Act is one incurred for a treatment, procedure, or service ordered by a qualified physician based on the physician's objectively reasonable belief that it will further the patient's diagnosis and treatment. The use of the treatment, procedure, or service must be warranted by the circumstances and its medical value must be verified by credible and reliable evidence. That standard was consistent with the reparation objectives of the Act in that it would allow reimbursement for innovative medical procedures warranted by the circumstances that have demonstrable medical value but have not yet attained general acceptance by a majority of the relevant medical community. It would also accommodate reimbursement for promising experimental medical techniques constituting the only realistic means for treatment of certain patients, which the insurers admitted would not qualify under a general-acceptance standard.

Setting the reasonable amount of compensation also proved difficult to the court. After the litigation began, the state established a set of fees which it determined were reasonable but the list did not contain a fee for thermography. Under the regulations concerning services for which there was not an established fee, the fee was to be a reasonable amount considering the fee schedule for similar services in the region where the service was provided. Though the court felt that these regulations provided a guide for setting a reasonable level, they might not be appropriate in this particular case. The court noted that the charges sent to the insurers were facially unreasonable since there was a substantial profit flowing to the limited partnerships whose members ordered the tests and also were owners of the thermography lab. Moreover, the court found a large disparity between the cost of the service and the cost of the equipment to provide the service compared to that of more expensive services such as CAT scans. As a result, the court remanded the determination of the fees' reasonableness to the trial court.

Damages under CERCLA May Reach Four Times Response Costs

United States v. Parsons, 936 F.2d 526 (11th Cir. 1991).

In this case, the Eleventh Circuit Court of Appeals concluded that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provided for damages of up to four times the government's cost of

clean up if the polluter failed to remove hazardous waste when properly requested. Under CERCLA, the government may request a responsible party to remedy a site. If the party fails to clean up the site, the government may direct the clean up and then sue the responsible party for "response costs." The law also provides that the government may recover punitive damages of three times its response costs if the responsible party fails to clean up the site. At issue in this case was whether punitive damages are additional to the recovery of response costs. The district court refused to allow what amounted to quadruple damages, but the court of appeals reversed.

In concluding that punitive damages were additional to recovery of response costs, the court of appeals had only the statutory language as a guide. It initially noted that the legislative history of CERCLA did not discuss how the provisions for response costs and punitive damages were to operate together. Moreover, this case was apparently the first to present the issue although other courts and commentators had indicated that punitive damages were additional to response costs. To solve the interpretive problem, the court tracked the language of the applicable statutes. The provision allowing treble damages described them as punitive. The ordinary meaning of punitive damages is that they are in addition to compensatory damages. Moreover, the provision concerning response costs provided for actual recover of those costs despite recovery under any other provision. To give full effect to both the punitive damages and response cost provisions, therefore, CERCLA permitted a recovery of four times the response costs.

Due Process Permits Punitive Damages Five Hundred Times Compensatory Damages

Eichenseer v. Reserve Life Insurance Co., 934 F.2d 1377 (5th Cir. 1991).

The Fifth Circuit Court of Appeals concluded in a case remanded from the Supreme Court after its decision in *Pacific Mutual Life Insurance Co. v. Haslip* that an award of punitive damages five hundred times the amount of the compensatory damages did not violate due process. In this case, Eichenseer sought to recover damages for the mishandling of her insurance claim. After she filed a claim for medical expenses of a hysterectomy in 1983, Reserve Life failed to make payment and repeatedly delayed resolution of the claim. Eichenseer sued for breach of contract and tort damages. The insurer finally agreed to pay the medical claim, but Eichenseer successfully pursued the tort claim and recovered $1000 in compensatory damages and $500,000 in punitive damages in a trial before a judge sitting without a jury. On an appeal that the judgment was so excessive as to violate due process, the court of appeals affirmed the decision of the trial court.

Under the *Haslip* standard, the court must first determine if the level of punitive damages is reasonable. In this case, the court of appeals noted several facts that indicated that the decision of the trial court was reasonable. First, the action of the insurer was especially egregious. Although it had the information to process the claim properly, it failed to do so for over three