remedy for defective products. Therefore, the court found that an alternative forum to hear their claims existed.

Second, the court concluded that the plaintiffs' choice of forum was not conclusive. The presumption that the defendant's place of business was a convenient forum for the defendant could be overcome by evidence that an alternative jurisdiction was more appropriate. In part, the presumption was rebutted by the manufacturer's agreement to provide documents and witnesses to the parties. The court also noted that disadvantage would occur to either of the parties wherever the trials were held since the evidence of design problems was in California and the evidence concerning damages was in the foreign countries.

Third, the court considered the public interest in allowing the suit to proceed. The court felt that one of the primary concerns was the demand foreign citizens would place on California courts. At least 235 separate suits had been filed in California concerning the heart valve, and the court felt that the complex litigation would severely tax the courts. Any additional deterrence needed to prevent the dangers of defective products could be achieved in suits brought by Californians.

Finally, the court approved, but did not claim to base its holding on, the notion that improved transportation and the ability to transmit documents allowed the court to move the case out of the jurisdiction. Taken together, the court concluded that the case was properly dismissed.

Punitive Damages Turnover Statute an Unconstitutional Taking

Kirk v. Denver Publishing Co., 818 P.2d 262 (Colo. 1991).

The Colorado Supreme Court concluded that a state statute requiring a plaintiff who won punitive damages to pay one third of those damages to the state exacted an unconstitutional taking. In this case, Kirk successfully sued the Denver Publishing Company for malicious prosecution. In addition to substantial compensatory damages, a jury awarded punitive damages that were reduced by agreement to $118,000. (Under another section of the state tort reform statute that the plaintiff did not challenge, punitive damages were limited to an amount equal to the compensatory damages unless the plaintiff or defendant showed special circumstances.) Kirk challenged the Colorado statute that directed him to turn over a third of the punitive damages to the state's general fund. The trial court held that the statute was constitutional as a proper limitation on a statutorily created right to damages. The supreme court disagreed and reversed.

Initially, the court noted that the limitation was part of a tort reform package the state legislature adopted in 1986. Despite the legislative limitations on the nature of the damages, the court went on to find that the damages were a property right. The court reasoned that a claim for compensatory damages generally gave rise to a property right. The court then suggested that punitive damages were in part reparative. Because these damages served some restorative purpose, they were like compensatory and therefore took on the character of property.

Having found that punitive damages were property, the court addressed whether the statute operated to take Kirk's property right without compensation. Although the court noted that the test of whether a taking has occurred is one of balancing the various private and governmental interests in regulation, the court nonetheless stated that the legislature did not have the authority to take away rights that were vested by a judgment. Unless the state had a clearly related reason for requiring payment of part of the judgment to the state treasury, the regulation failed to meet constitutional requirements.

The court then rejected several justifications for the statute. First, the fee was not a valid penalty because the award was in part reparative and the cost of the fee was assigned to the victim rather than the wrong doer. Second, the fee was not a valid property tax on the plaintiff since it did not operate uniformly. Third, the statute did not operate as a valid excise tax because it did not operate uniformly on all who used the courts. Finally, the court rejected the argument that the statute operated as a user fee, noting that the "fee" did not bear a reasonable relationship to the service provided to successful plaintiffs. As applied, the statute required one group to shoulder a substantial burden of funding that was a responsibility of the public as a whole.

South Carolina Punitive Damages Standards Held Unconstitutional

Mattison v. Dallas Carrier Corp., Case No. 91-3008 (4th Cir. 1991) (Lexis, Genfed lib., usapp file).

Holding that the South Carolina standards for setting punitive damages violated due process, the Fourth Circuit Court of Appeals reversed an award of punitive damages that were about twenty times the net worth of the defendant. In this case, the Mattisons sued for injuries they sustained when they ran into a Dallas Carrier truck that had stopped in the right hand lane of a highway during a severe rain storm. The jury found that Dallas Carrier was negligent and awarded $125,000 in compensatory damages to the Mattisons. Additionally, the jury awarded $100,000 to them as punitive damages. Dallas Carrier challenged the punitive damages award because the court instructed the jury that the amount may be a sum they believed would serve to punish the defendant and deter others from like conduct. The district court refused to throw out the jury's determination, but the court of appeals reversed.

The court first noted that the instruction reflected the then-current South Carolina standards. That state's courts held that punitive damages were available for punishing reckless conduct. The plaintiff in the case had to demonstrate that it was entitled to recover the damages by clear and convincing evidence. The amount of the award, however, was completely in the discretion of the fact finder. There was no limitation on the ratio of