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 the compensatory and punitive damages or any recognition of the relevance of the wealth of the defendant. The only apparent constraint was that the court could review the jury's findings to determine if the amount was so excessive as to shock the conscience of the court.

Because state law did not define critieria for assessing punitive damages, the court felt that due process was violated. Minimally, due process requires that a person be capable of understanding the consequences of the law and his actions in relation to that law. Delegation to the jury of a decision without standards for making that decision does not comport with the requirements of due process. The South Carolina standards did not meet minimal due process requirements since the jury could award any amount it felt was appropriate to punish or deter without any meaningful limitation on that authority.

Moreover, there was no effective check on the jury's discretion. First, the law did not indicate when a verdict was excessive. Second, a federal court, bound by the Seventh Amendment of the Constitution, could not order a reduction in damages as a South Carolina state court might. Under the Seventh Amendment of the Constitution, the federal court could only accept the finding or throw it out and order a new trial.

Interestingly, the South Carolina Supreme Court modified the standards for assessing punitive damages after this action began. In its modification, the state supreme court adopted the multiple factor test the United States Supreme Court approved in *Pacific Mutual Life Insurance Co. v. Haslip*. In *Haslip*, the Court concluded that a court's post-verdict review of the defendant's culpability, the duration of the conduct, the defendant's awareness of the conduct, the existence of prior similar conduct, the likelihood of deterrence and other factors were sufficient to protect the due process rights of the defendant. Under the Seventh Amendment, however, the district court could not revise the jury's findings. The court, therefore, remanded the case for another trial and directed the district court to instruct the jury on the limitations suggested in *Haslip* as a way of limiting jury discretion.

Liability for Suicide–Failure to Warn Parents

Eisel v. Board of Education of Montgomery County, 597 A.2d 447 (Md. 1991).

In this case, the Maryland Court of Appeals held that a school and its counselors may have a duty to report a student's suggestion of suicide to her parents. The parent sued the school system and its counselors after his daughter committed suicide. In the week before the suicide, the daughter told several friends and fellow students that she was thinking about taking her own life. The students told one of the school's counselors who in turn told the daughter's counselor. The daughter denied she made the statement when the counselor confronted her. The counselor took no further action. The daughter then took her own life in an apparent murder-suicide pact with