

the uninsured motorist provision of his automobile insurance contract accrues on the date that the insured receives notice of the insolvency." Thus, the court found that a contractual provision, which would purportedly extinguish a claim for uninsured motorist coverage by establishing a limitations period which expired before or shortly after the accrual of the right of action for such coverage, is per se unreasonable and violative of Ohio public policy. The case was reversed and remanded.

Rental Car Company Liability For An Unlicensed Driver

Drinkall v. Used Car Rentals, Inc., 32 F.3d 329 (8th Cir. 1994)

Bayles, a Nebraska resident, rented a car from a rental car office in Nebraska. Bayles had formerly lived in Iowa, but at the time of the accident he did not have a valid drivers license. Bayles' car was being repaired at a Hyundai dealership, which arranged for him to obtain a rental from Used Car Rentals. An employee of Used Car drove to the Hyundai dealership, picked up Bayles and a friend, and drove them to the rental car office. The employee then began filling out a rental agreement. The back of the agreement provided that the rental car could only be operated by licensed drivers over the age of 21 and that if the car was obtained by misrepresentation, all use of the vehicle was without the rental car company's permission.

The rental car employee then asked Bayles for his drivers license and Bayles indicated that it was in his car at the dealership. Bayles' friend was also asked for her drivers license and she indicated that it was at the dealership as well. The manager of the rental car agency was asked if they should return to the dealership to obtain the drivers licenses, but the manager told the employee to go ahead and complete the rental agreement.

In April, 1991, the plaintiff, Drinkall, an Iowa resident, was injured in an accident in Iowa involving a car driven by Bayles. Because Bayles and Used Car were residents of Nebraska and Drinkall was an Iowa resident, the case was heard in federal court under "diversity of citizenship" jurisdiction.

The case was tried in the Federal District Court for the Southern District of Iowa. The jury found the rental car company liable. The trial court had instructed the jury that in order to find Used Car liable it had to find that Used Car had consented to Bayles' use of the vehicle at the time of the accident. Iowa law provides that, where damage is done by any motor vehicle by reason of its negligence of the driver and the auto is driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage.

On appeal, defendant Used Car argued that the district court should not have used Iowa law but rather Nebraska law, which does not provide for owner liability. The appellate court found that the district court was correct in using Iowa law. In conflicts of law situations, the federal court is to use the conflicts of law that is prevailing in the state in which it sits. Iowa uses the significant relationships test, a theory that the court should use the law of the

state which has the most significant relationships to the matter and parties involved in the litigation.

The appellate court also found that there was sufficient evidence to submit the issue of consent to the jury and that by its conduct Used Car had consented to Bayles' use of the car. Defendant Used Car had demonstrated little interest in the provisions of the rental agreement limiting persons permitted to operate the car. Used Car did nothing to determine whether Bayles had a valid drivers license and did not inform Bayles about the terms and conditions on the back of the rental agreement. Additionally, Bayles was to call Used Car and give his drivers license number, which he did not do and Used Car did not follow-up on this conversation. The appellate court affirmed judgment in favor of the plaintiff.

Punitive Damages For Subsequent Claims

W. R. Grace & Co.-Conn. v. Waters, 638 So.2d 502 (Fla. 1994)

Plaintiff Waters and his wife filed suit against W. R. Grace & Co. seeking compensatory and punitive damages. Waters had worked as a tile setter for approximately 28 years. He alleged that he developed asbestosis as a result of exposure to the defendant's products at various job sites. On the question of the rationale for punitive damages, the Florida Supreme Court wrote, "Punitive damages are appropriate when the defendant engages in conduct which is fraudulent, malicious, deliberately violent or oppressive, or committed with such gross negligence as to indicate a wanton disregard for the rights of others." The court also noted that the public policy underlying punitive damages is "punishment and deterrence."

Defendant W. R. Grace argued that the Florida court should limit imposition of punitive damages in the context of mass tort litigation or asbestos cases. Grace argued that the interests of punishment or deterrence are not advanced by continued imposition of punitive damages, and that multiple awards of punitive damages would result in asset depletion threatening the solvency of corporations and would result in the unavailability of even compensatory damages for future claimants. In essence, Grace was arguing that, because it had been assessed punitive damages in previous asbestos cases, it had been punished enough.

The court cited other cases which had recognized the potentially devastating impact if all plaintiffs are awarded punitive damages. The courts also discussed the suggested solution to this problem which would be the "first comer theory," under which an award of exemplary damages to one plaintiff would preclude the recovery of punitive damages to subsequent plaintiffs in successive litigation arising out of a continuing episode.

The Florida Supreme Court indicated that there was a potential for abuse in these situations, yet the court was unable to devise "a fair and effective solution." The court also indicated that, if it did adopt the first comer theory, it

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