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 would not be binding in other states, and thus would put Floridians on unequal footing with residents of other states regarding their right to recover damages.

The court wrote that prior punitive damages assessed against the defendant would not preclude subsequent awards against the same defendant for injuries arising out of the same conduct.

Duty To Defend

McCostis v. Home Insurance Company of Indiana, 31 F.3d 110 (2nd Cir. 1994)

McCostis, the plaintiff, was a partner in a law firm. He had purchased professional liability insurance from the Home Insurance Company. A former client filed suit against McCostis alleging violations of the Racketeer Influenced and Corrupt Organizations Act, common-law fraud, and breach of fiduciary duty. The former client sought to recover fees paid to McCostis in an allegedly fraudulent overbilling scheme. McCostis asked his insurer to defend. The trial court found that the insurer had no duty to defend, and McCostis appealed.

The policy in question provided that Home Insurance would defend against any claim seeking damages to which the insurance applied even if the allegations were groundless, false, or fraudulent. The term "damages" was defined to include a monetary judgment or settlement that does not include fines or statutory penalties or sanctions, whether imposed by law or otherwise; also excluded were the return of or restitution of legal fees, costs, and expenses. Home determined that there was no coverage because the suit was one for the return of or restitution of legal fees, costs, and expenses.

The appellate court found New York law provided that an insurer's duty to defend is exceedingly broad and is separate from and more expansive than the covenant to indemnify. The appellate court found the policy exclusion language ambiguous and remanded the case to the trial court so that it might consider extrinsic evidence to determine the actual intent of the contracting parties. The court found the exclusion did not unambiguously apply to all client billing controversies. The court wrote that the language in the policy seemed to indicate that the exclusion would pertain only to situations where the insured received the disputed funds and is forced to repay the monies to the client.