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.