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Court Awards Attorney's Fees In Insurance Deception Case

BY DEBORAH PINES

A FEDERAL APPEALS panel in Manhattan has approved what is believed the first award of attorneys' fees by a New York court for the cost of litigating a successful claim of deceptive acts and practices against an insurance company.

The ruling by the U.S. Court of Appeals for the Second Circuit affirmed \$174,652 in attorneys' fees and nearly \$200,000 in compensatory damages against Nationwide Mutual Fire Insurance Company for delays and improper tactics in settling claims brought by a Westchester County couple after a 1989 fire destroyed their home, in *Riordan V. Nationwide*, 92-7160.

Written by Judge Roger J. Miner, the opinion also certified to the State Court of Appeals a question of whether, under New York state law, another \$150,000 in punitive damages to the couple, John W. Riordan and Jane Fox, was proper.

Review is necessary because the question of the availability of punitive damages against an insurer under New York Gen. Bus. Law §49 has split the state's intermediate appellate courts, Judge Miner wrote. His Oct. 2 opinion was joined by Second Circuit Judges Ralph K. Winter and Joseph M. McLaughlin.

Mr. Riordan and Ms. Fox, who are married filed suit in 1990 after Nationwide failed to settle their claims within six months of the July 17, 1989 fire in their Ossining, N.Y. home.

In a jury trial, they proved the insurance company failed to acknowledge correspondence from them, refused to accept their inventory of damaged

property and threatened them with an all-or-nothing settlement far below what they deserved under an "Elite II" policy which ostensibly entitled them to extra benefits.

The jury awarded the couple: \$36,692 for repair of their house, \$112,611 for damages to the contents, \$49,000 in living expenses, \$1,000 on the deceptive acts and practices violations and \$150,000 in punitive damages. Southern District chief Judge Charles L. Brieant then awarded the couple \$174,652 in attorneys fees.

On appeal, Nationwide asserted numerous errors. Chiefly, they questioned the sufficiency of evidence against them as well as the applicability of General Business Law §49 to the insurance industry and the availability of attorneys' fees and punitive damages in this case.

In his review, Judge Miner found "ample" evidence that Nationwide mishandled this case and engaged in similar deceptive settlement practices against other policyholders.

He said GBL §49 applies because it covers acts or practices in all industries. He rejected claims that statutes governing insurance companies exempt them from the reach of GBL §49 and that attorneys' fees should be barred because the attorneys for the couple did not submit contemporaneous time records as required in the Second Circuit.

Because state law created the couple's right to attorneys' fees, those fees cannot be deprived by applying the contemporaneous time records rule adopted in the circuit, Judge Miner wrote.

He certified the issue of punitive damages for review by the New York State Court of Appeals because the First and Second Departments have split on this question. The third and Fourth Departments have not ruled on the issue but have implicitly recognized the availability of punitive damages he wrote.

Neal A. Goldberg, Lawrence A. Schulz and Richard J. Cohen of Saperston & day in Buffalo, represented Nationwide. Jonathan J. Wilkofsky, Mark L. Friedman and David L. Karel of Wilkofsky, Friedman, Karel & Cummins represented the Mr. Riordan and Ms. Fox.