Insurer ordered to pay punitive damages

By Barbara Woller
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--John Calagna, Department state Insurance

A New Castle couple whose house was destroyed by fire in 1989 won a landmark decision for New Yorkers when a jury ordered their insurance company to pay them punitive damages.

"This is the first time that such a ruling (awarding punitive damages) has been allowed," state Insurance Department spokesman John Calagna said yesterday about the case of Jack and Jane Fox Riordan vs. Nationwide Mutual Fire Insurance Co. of Columbus, Ohio. "It's a big, involved case."

"It's been two years, four months and five days, but who's counting?" said Jack Riordan, commenting on the time between the fire and the decision. "Jane and I are very pleased."

Jonathan Wilkofsky of Manhattan, the Riordans' attorney, said that Nationwide offered the couple $53,000 to repair their seven-room redwood house if they would accept $20,000 for the contents. Under the terms of their policy, however, the couple said they were entitled to $160,000 for their contents.

Wilkofsky said he argued in court that the Riordans were not an isolated example but, rather, that Nationwide acted unfairly to its policyholders on a regular basis.

To do so, he brought in Nationwide policyholders from other parts of the state. They included a correction officer from upstate Batavia, who was forced to live in an unheated trailer during the winter, and an elderly couple from Long Island who had to move into a hotel for the homeless.

Nationwide spokesman Lou Fabro yesterday called the $150,000 award for punitive damages "totally unjustified" and said the company would appeal that portion of the decision.

"Nationwide made an honest effort to establish a reasonable cost of loss to the home, contents and additional living expenses and made a fair offer to the policyholders," he said, adding that the award was "unsupported by the evidence."

Wilkofsky said the punitive damages were awarded because of the company's unfair claims settlement practices. He said the jury also awarded attorney fees, plus $200,000 in compensatory damages, representing the actual damage to the home caused by the fire on July 17, 1989.

The trial took place before U.S. District Court Judge Charles Brieant in White Plains because the two parties were from different states.

Ralph Stein, a professor of law at the Pace University School of Law in White Plains, said the fact a federal court awarded the punitive damages could also affect its ultimate outcome. Stein said New York courts are free to ignore findings of the federal judge because the state is a separate jurisdiction. And he said there has never been a clear decision in New York courts as to whether punitive damages are permitted in the state.

Calagna of the state Insurance Department said it is questionable whether the case should even have gone to trial. He said that only one of state Supreme Court's four divisions has said that policyholders can sue for punitive damages. But in these cases, the claims were settled before they came to trial.

"So, what you have," said Calagna, "is a federal court agreeing with one division of state Supreme Court, saying that you can sue for punitive damages."

Robert Hunter, president of the National Insurance Consumers Organization, an advocacy group in Alexandria, Va., said about 20 states allow policyholders to sue for punitive damages and hailed New York's verdict as "very good for consumers."

"It's been my observation in states that allow these punitive-damage verdicts for bad faith (have) done more to discipline insurance companies than 150 years of state regulation by 50 states."