

## **Jury awards mushroom farmer, tenant \$4M damages**

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An Ontario jury last week awarded more than \$4 million in damages to a former mushroom farmer and his tenant on concluding that the insurer had falsely alleged arson and fraud.

The July 16 award, following a 7 1/2-week trial in St. Catharines presided over by Superior Court Justice Anne Bain, included \$2.5 million in punitive damages, which eclipsed the previous Canadian record set in *Whiten v. Pilot Insurance Co.*, [2002] S.C.J. No. 19, where punitive damages of \$1 million were upheld by the Supreme Court.

Plaintiffs' lawyer Alfred Kwinter said that midway through the trial his clients, farmer Frank **Mazza** and tenant Adelia Pereira, offered to settle for \$450,000.

The jury heard that after a fire on August 13, 1993, destroyed the farm operation in Flamborough Township, north of Hamilton, Cobourg-based Hamilton Township Farmers' Mutual Fire Insurance Company, rejected the claim, asserting that the fire had been deliberately set.

"As a result, my client couldn't rebuild anything, since he didn't have the money. And he has been waiting 10 years."

Kwinter said the fire not only destroyed the business enterprise but left **Mazza**, his tenant and his family homeless.

Kwinter attributed his success at trial in large part to having obtained disclosure of the insurer's files, which he said confirmed that the assertions of arson and fraud were baseless.

He said the defendants, represented by Belleville lawyer Wilfred Menninga, raised five different defences, among them an assertion that **Mazza** had made erroneous entries in a proof of loss form which they said constituted fraud.

Kwinter said the evidence showed his client had merely misunderstood initially that the amount

claimed should be the farm's purchase price instead of its replacement value.

"The insurer attempted to show fraud by hiring experts who failed to do a proper and thorough investigation."

Among the jury's awards to **Mazza** and his numbered company were \$300,000 in general damages, \$2 million in punitive damages and \$1.2 million for business interruption, where the claim was for the \$150,000 policy limit. The tenant was awarded \$500,000 in punitive damages in addition to her claim of \$30,000 for contents.