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CASE SUMMARY: PUNITIVE DAMAGES AWARDED AGAINST INSURER FOR FAILURE TO PAY FIRE COVERAGE PROPERTY CLAIM IN TIMELY FASHION

**Insurance law – Property insurance – Business interruption – Loss of profits;
Policies and insurance contracts – Breach of policy – Good faith, breach of; Duties
and liabilities of insurer – Delay; Damages – Income loss – Punitive damages**

J.I.L.M. Enterprises & Investments Ltd. v. INTACT Insurance

Punitive damages awarded against insurer for failure to pay property claim in timely fashion.

[2017] O.J. No. 436

2017 ONSC 357

Ontario Superior Court of Justice

January 16, 2017

W.D. Newton J.

The insured brought an action for damages against its property insurer with respect to a fire which partially destroyed the insured's hotel and restaurant building. No payment was made under the policy until almost three years after the fire. The insurer paid its calculation of the actual cash value of the building and one year later paid the insured for 12 months of business interruption. The insured's policy limited its business interruption insurance to 12 months. The insured had not taken any steps to rebuild and the business had not operated since the fire.

The insured argued the insurer breached its contract by failing to pay the claim promptly and therefore argued it was entitled to the current replacement cost without rebuilding. These amounts exceeded the policy limits. The insured also sought business interruption losses beyond the one year payable under the policy and punitive damages.

The insurer argued the delay in payment of the claim was caused by a reasonable and appropriate arson investigation and by the conduct of the insured in continuing to present claims for items not covered under the policy and not submitting a proof of loss for the actual cash value in a timely fashion.

The court concluded it was reasonable for the insurer to delay the decision to pay for one year while it conducted its arson investigation. However, the failure to pay for another two years was a breach of contract. The court found it was reasonable to increase the replacement cost limit by 3% annually for each year of the delay. The court awarded business losses exceeding the 12 months set out in the policy and awarded punitive damages in the amount of \$217,373.20 on the basis that the insurer acted in a high-handed way.

This case was digested by [Cameron B. Elder](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at celder@harpergrey.com or review his biography at <http://www.harpergrey.com>.