



Judge sends warning to insurers with \$4.5-million award to disabled welder

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Luciano Branco's work ethic was so entrenched that, after severely injuring his toes on a frigid mine site, he washed away the blood, packed his foot with snow and finished his shift.

When surgery later failed to restore his mobility and the insurers covering Mr. Branco's workers' compensation and long-term disability refused to provide him with full benefits, the welder, now 62, embarked on 10-year legal odyssey.

It has concluded in punitive damages that smashed the previous ceiling for such awards – a total of \$4.5-million levied against two prominent insurance companies.

Expressing the hope that the award will put a chill into the insurance industry, Saskatchewan Court of Queen's Bench Justice Murray Acton ordered Zurich Life Insurance to pay \$3-million. He ordered American Home Assurance to pay Mr. Branco \$1.5-million.

The highest previous punitive damage award was \$1-million, granted to an Ontario couple – Keith and Daphne Whiten – who were treated cavalierly by Pilot Insurance Co. after their home burned down.

"Although Canadian courts believed that the \$1-million in the Whiten case would catch the attention of the insurance industry and the court's disapproval of such actions, it is apparent that \$1-million was not sufficient," Justice Acton observed.

He said the insurers went to great lengths to thwart the plaintiff's legitimate claims and compel him to accept low settlement offers.

"The fact that Branco was able to continue to withstand this pressure for so many years on two different fronts is truly remarkable and almost superhuman, even though his resistance may have resulted in irreparable mental distress which may last for the remainder of his lifetime," the judge said.

Mr. Branco was injured on Dec. 25, 1999, while working high in the mountains of Kyrgyzstan for Kumptor Operating Company, a subsidiary of Cameco Corp.

Gulu Punia, a lawyer with Fasken Martineau LLP, which represented Mr. Branco, said his client had spent his life toiling on isolated, dangerous job sites without ever taking a sick day.

"This was not a guy who you could ever claim was a malingerer, yet the insurance companies fought this like crazy," Mr. Punia said.

After his accident, Mr. Branco completed a 28-day stint in Kyrgyzstan before joining his mother at her home in Portugal. His pain worsened and was not relieved by surgery. Doctors predicted he would never recover.

Over the next few years, Judge Acton said, the insurers made various demands that he undertake retraining or vocational rehabilitation, sometimes in far-off locations and for dubious work skills.

His family – a wife and two children – became destitute and survived on loans from relatives. His marriage almost came apart.

"This total lack of income caused severe mental stress upon Branco, disabling him further," Justice Acton said. "Branco was shamed that he was unable to support himself and his family, which went to the root of his personal self-worth and integrity."