



HIGH COURT OF NEW ZEALAND

2 September 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Earthquake Commission v The Insurance Council of New Zealand Inc, Vero Insurance New Zealand Ltd, IAG New Zealand Ltd
(CIV-2011-485-1137)

Tower Insurance Ltd v Earthquake Commission
(CIV-2011-485-1116)

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The parties in this proceeding are involved with the insurance of residential buildings, and their contents, in the Canterbury region. Since 4 September 2010 a series of earthquakes have struck the region causing unprecedented damage; the Earthquake Commission (EQC) had received 368,000 claims by the end of June 2011. Approximately 110,000 properties have multiple claims. The parties sought declarations under the Declaratory Judgments Act 1908 to resolve an issue about the extent of cover available to homeowners.

All residential buildings and household contents which are insured under a contract of fire insurance enjoy cover under the Earthquake Commission Act 1993. This cover is, generally speaking, \$100,000 for residential buildings and \$20,000 for their contents. The question arose as to how EQC cover responds to homeowners who have made more than one claim for damage suffered in more than one earthquake where that damage, in aggregate, exceeds \$100,000. The Court considered the question as an issue of cover between EQC and homeowners rather than an issue between EQC and other insurers; the Court was not asked to consider examples of insurance policies between insurers and homeowners, nor was it asked to consider the way in which EQC is administering the claims.

The issue was described as follows: when multiple events cause natural disaster damage to the same property during the term of a fire insurance contract and EQC has not, at the time of later natural disaster damage, made a payment in respect of the earlier natural disaster

damage is EQC liable to pay either (1) up to \$100,000/\$20,000 for each occurrence of natural disaster damage, or (2) up to \$100,000/\$20,000 in total for the aggregate of all natural disaster damage caused by multiple events? It was accepted that if the contract of fire insurance renewed between the two events causing natural disaster damage, or if EQC made a payment in respect of the earlier natural disaster damage prior to the event causing the later natural disaster damage, that the full \$100,000/\$20,000 would be available as cover for the later damage.

The Court was not asked to distinguish between a range of fact situations and did not have evidence about the way claims are being assessed, rather the parties presented three options for statutory interpretation to the Court:

1. **“Continuing cover” or “immediate reinstatement of cover”**

Section 18 provides cover which continues at the \$100,000 level so as to provide continuing cover, so long as the contract of fire insurance is in force, for each event of natural disaster damage. Neither the occurrence of, nor the making of a claim for, an event of natural disaster damage reduces the amount of cover available for a subsequent event of natural disaster damage, at any time either prior to or on payment of a claim for the first event of natural disaster damage, but EQC has the right, on payment of that claim, to charge an additional levy for the period from the date of that first claim to the date of expiry of the policy.

2. **“Prospective reinstatement”**

Section 18 provides an aggregate amount of insurance of \$100,000 for all natural disaster damage occurring during the period of insurance. On the occurrence of a first event of natural disaster damage, the amount of insurance available for a subsequent event of natural disaster damage is reduced by the amount payable on the claim for the first event. That reduction takes effect from the date of the first damage and continues at that level until the earlier of the date of renewal of the contract of fire insurance or the date of payment by EQC of any amount in respect of the first damage. From that date, the amount of insurance is reinstated to \$100,000 for any natural disaster damage occurring after that date.

3. **“Retrospective reinstatement”**

Section 18 provides an aggregate amount of insurance of \$100,000 for all natural disaster damage occurring during the period of insurance. On the occurrence of a first event of natural disaster damage, the amount of insurance available for a subsequent event of natural disaster damage is reduced by the amount payable on the claim for the first event. That reduction takes effect from the date of the first damage. On the payment by EQC of any amount in respect of the first damage, the amount of cover is reinstated to \$100,000. That reinstatement takes effect from either:

- (a) The date of the first damage; or
- (b) The date that the claim for the first damage was reported.

The Court considered that on a proper interpretation of the statute, Option 2 was not an appropriate or available meaning of the relevant sections. Option 3 and Option 1 would produce the same practical result, but the Court considered Option 1, with a slight alteration as to the wording, was the correct interpretation consistent with the plain meaning of the legislation, its purpose and history, and insurance law generally. The parties had earlier agreed to reserve the question of the form of the declaration until delivery of the judgment and were now directed to confer to settle on a declaration for the Court to consider.