

1st May 2019

By email

To: Minister of Commerce and Consumer Affairs.

Attn: Mr Kris Faafoi

Dear Mr Faafoi,

I had dealings with you last year and you wrote me a very nice letter suggesting that I should make contact with Deborah Salter (Senior Policy Advisor, Financial Markets Policy).

I did contact Deborah and she was lovely!

As I am a retired insurance broker we had lots of 'toing and froing' by email and also by phone.

Every time I emailed her I would finish off with the following suggestion: "Vive Le Commissionaire!". This became a bit of a standing joke; but I stand by what I was saying.

At one time (before I started my own small insurance broking business) I was the National Technical Manager for an International Insurance Broker and part of my job involved drafting the standard policy wordings (Fire and General) used by our company for both commercial and domestic business. So, I still have an interest in technical issues; even though I have not been in the insurance industry since April 2011.

I tried to persuade Deborah that we, in New Zealand, need an Insurance Commissioner with sufficient testicular fortitude, and also power, so that he/she would be able to ensure that Insurers are kept in line. I still believe that we should have one, as other countries have something similar.

I received an eMail from the Ministry yesterday suggesting that I contribute to the current discussions and this has prompted this communication.

What I would like to ask is **how** the proposed changes would have helped to resolved my own issues ~ had these changes already have been enacted?

If I can get caught, so severely, how would other Consumers (who have less insurance knowledge) fare in the same situation?

I offer this history as an example as to why I feel so strongly that we need an insurance commissioner (and *not* to engender any sympathy): -

We bought our house from an elderly uncle and, when we did, our solicitor obtained the usual LIM etc.

We also had the house professionally inspected before buying the house and there were no major problems. Hair-cracks and water ingress in the undeveloped basement were the only issues that bothered us. The surveyor didn't think the issues were major.

We lived in the house for several months and then decided that it really needed to be dolled up; as it was a mess.

We risked most of our savings to do this since we reasoned that we could always move into a smaller house later if we ran out of cash.

We employed a structural engineer (a Fellow) who confirmed our specific instructions in writing (i.e. including that he was to prevent further cracking and prevent water ingress). He also designed and supervised the alterations.

In addition, we decided to develop the undeveloped (and damp) basement ~ and we also wanted a spare bedroom.

The engineer made a major design error which has resulted in four different parties telling us that our home should really be demolished and rebuilt.

We asked G.J. Gardener Homes to look at our issue and this was their comment: -

Conclusion

We will not be involved in any of the above works as we do not believe you can carry out effective remedial repairs to the existing dwelling, that will come up to a standard sufficient to allow council to approve a Code Compliance Certificate, and more importantly without a CCC this home will be uninsurable and unsaleable.

As stated I don't think you will find any builder who is prepared to touch it , and if you do, I doubt they will be in business for long .

Our own Construction Risks Insurance policy (along with most Insurers) **excludes** damage due to faulty design.

That meant that we had to recover from the Structural Engineer.

Fortunately, he had an Errors & Omissions policy to protect him from liability arising out faults in design etc.

However, his E&O Insurers have the right to defend our claim against the engineer and *a/so* to act on his behalf.

Our construction contract was to have been completed at the end of September 2014 and we have been haggling with the E&O Insurer ever since.

The E&O Insurer arranged for a specialist repair company to cost the repairs (he obtained real quotes from real contractors!).

When they got this costing, the E&O Insurer simply ignored it! Their logic (without any further pricing or logic) was that they felt that the parties had raised the prices because they didn't simply didn't want the job!

As our house is one unit of three, up a long right-of-way which is steep and does not offer easy access I feel sure that many contractors would do much the same (per G.J. Gardner)!

The beggars know that it will costs us about \$200,000 to take action in court ~ so they leave us wiggling.

In summary, it is not our Insurer who was at fault - it is the fact that we can't really afford to sue the Structural Engineer (although we may now have to go down that path and thus put ourselves further at risk financially).

We reckon that the cost of getting reports from the various professionals (just in order to obtain a proper repair quotation) will be in the region of \$75,000 to \$100,000 alone and that is far too much for we septuagenarians; let alone the cost of going to court.

What makes it even worse to my mind is that that the E&O Insurers HAVE already accepted liability AND apologised on behalf of the Structural Engineer. BUT, that letter was headed as being "Without Prejudice" - so it won't stand up in court.

We know that the repairs/costs will be \$700,000 to \$800,000 (at least) but the offer we have been made is around \$410,000.

However, until we spend the \$75,000 or so to prepare the technical data necessary in order to obtain a proper Contract Price we can't submit proper figures to the E&O Insurer.

Until they agree to accept liability unconditionally (which they should if they had any sense of honour) we risk spending \$100,000 and *then* losing our court case. Joy!

We are now working towards getting the E&O Insurer to accept liability fully ~ before we throw any more money away.

Whilst, of course, the E&O Insurer must have the right to defend themselves, it does appear that in practice this can put recovery through the courts way out of reach of many ordinary people such as ourselves.

The E&O Insurer employed a specialist company called Focus to look at our house and to come up with repair costs.

From their website: The Focus Remediation team carries out building repair and reconstruction projects on a broad range of building types, ranging from apartment and office blocks, retail premises to schools and hospitals.

The fact that the E&O Insurer is ignoring their *own* remediation specialist (and his costings) is quite extraordinary.

The gentleman at Focus told me that he too felt that our house should be rebuilt!

There is absolutely no reason WHY Insurers should exclude liability arising out faults in design since the Insurance Company already has "Rights of Subrogation" that enables

them to recover from the responsible party (e.g. the architect, Engineer etc).

If cover had applied under own Construction Risks policy that would have meant that our Insurer could have repaired our house years ago and *they* could have taken up the battle (and expense) against the Structural Engineer (and his Insurer).

SUMMARY

Whilst, of course, an insurance policy has to contain exclusions and conditions I believe an Insurance Commissioner is necessary: -

- To ensure that the exclusions contained in insurance policies are fair and reasonable to BOTH parties (Insurer and Client).
- To ensure that the behaviour of both Insurers and Insurance Brokers is fair *and* transparent.

I look forward to hearing your thoughts.

Privacy of natural persons

Auckland