Insurance Contract Law Review

To: Financial Market Policy

Building Resources and Markets

MBIE

PO Box 1473

Wellington 6140

From: [redacted]

[redacted]

16/05/2019

To whom it may concern

Introduction to a Submission to the Insurance Contract Law Review Paper

It is stated that we can **'Have Our Say'**; we are therefore submitting this in the form that for us best expresses out disgust at the Insurance Companies (IC) seeming total lack of moral compass and compassion. They cannot be unaware that the resulting human cost is likely to impinge favourably for them in reducing their settlements. They deliberately abuse or ignore their Policy conditions and legal avenues designed to provide some levelling of an inherently unlevel playing field to exacerbate the power disparity in their favour. They exhibit no qualms about this as they calculate that there are no legally effective deterrents rendering their behaviour uneconomic. We therefore hope and request that this Submission is accepted.

We are providing this Submission on account of the (IC) systematic and clearly deliberate failure to abide by their own requirement for Good Faith with the obvious intention of short paying legitimate EQ Claims. Since the ICs have largely increased their profits following the quakes financial restraints are plainly not the reason for their behaviour. This can be reasonably attributed to the ICs overarching imperative to provide their shareholders with good returns. These can be generated through a reduction in anticipated claims liabilities.

Our experience is that this has been achieved by the simple expedient of short paying proper entitlements under the policy. In such a cataclysmic event as the earthquakes the savings on thousands of claims would be enormous. The ICs are well aware that only an insignificant number of claimants can afford lawyers and court costs. Those that end up there are a small cost relative to the savings from the short payments. They are also well aware that Govt. Safeguards such as the Consumer Guarantees Act, the Commerce Commission and the Serious Fraud Office are largely ineffectual without legal help to present a case. We have not seen one reported in the Media unlike sundry minor cases which regularly appear. Where an Insurance Case goes to court gagging clauses imposed by the insurers prevent dissemination of the iniquitous issues that initiated it. This practice should be stopped or limited in scope.

In the past ICs have of necessity been brought to book. It is difficult to see how law changes can affect the issues here, for the reasons above, but when the Govt. backed State Insurance was introduced many years ago it had the salutary effect required until it was privatised. Since then ICs have reverted to their big business instincts.

Given all the ICs poor reputations there is little merit in transferring insurance to another company. In any case the ICs are clearly indifferent about losing such business because they benefit from a captive market that is in essence an essential service and enjoy a stream of new business from sundry agencies – particularly IAG with some 50% of the market. It is axiomatic that businesses do not treat valued clients with contempt, dishonesty or misrepresentations. The treatment that has been meted out to Mr and Mrs Average Householder is clearly indicative of where they stand. Justice should surely question that private shareholders enjoy boosted returns funded from short settled claims from an essential service for which claimants have paid full premiums and for which no practical means of redress is available. That this occurs at a time of major catastrophe is reprehensible. It is hard to see how law changes can affect the issues when the ICs clearly ignore existing laws and safeguards with impunity. Following this national disaster what should have been the ICs finest hour, it was instead a period of infamy that must live in this country's corporate history.

A vey workable option is proposed by Sarah- Alice Miles, a highly qualified person in her well researched book, "The Insurance Aftershock"- The Christchurch Fiasco, 2010-2016. It is to be hoped that this will be considered if the injustices of the settlements as currently

practised is to stop. Government intervention was required years ago – perhaps it should be reconsidered here.

We would request that those persons named in our submission (with whom we have no quarrel) be not used or publicised in any way without their express authority.

Submission to the Insurance Tribunal

We wish to submit to the Tribunal some of our experiences over house insurance earthquake repairs, since our insurer [redacted] has significantly breached their Policy Contract that would be unacceptable by any reasonable measure. We detail below some of the more straight forward issues where this has occurred and provide some additional information to demonstrate some of their settlement practices and behaviour. The ramifications of these breaches extend beyond any failure of repair strategies. It has significantly affected the health and lives of many, particularly those vulnerable people involved and includes wrecking the lives of elderly people for years which should have been their right to enjoy. It also destroyed families and is causing ongoing psychological stress well beyond what should be anticipated following the disastrous quakes. The following is based on our experience but is closely mirrored by others with whom we have contact, and mostly are still seeking a settlement with some resorting to court action.

1. The [redacted] Policy says that it will treat you fairly within the terms of the Policy – they have not as is shown below and attached herewith.
2. **"If we decline your claim we will clearly explain why."** On numerous issues our claims have been obviously and deliberately incorrectly and unreasonably declined. We note some examples which are attached. These declinations cannot be reasonably justified nor be due to inexperienced staff under stress from the extraordinary circumstances of the quakes.
   See also enclosed pages A, E and F + 6 below.

3. **"Getting our permission first."** This section refers to insurers' rights to acquire the "rights and remedies" of the insured to protect their interest during the repair process. To avoid misunderstanding we were also required to hand over these rights for EQC settlements. This Deed of Assignment clearly stated it is " **including**...claims... against EQC." This clearly did not and could not replace the Policy condition. By relinquishing these rights to the insurer they are obliged to protect the insured's interests – this is stated in the Policy. We asked [redacted] to protect us against the failings and shoddy work of their preferred builder that they required us to accept. They replied that these rights only applied to EQC matters. This is clearly incorrect as they cannot renege or discount Policy conditions after the event. They also said that as they had assumed responsibility for the claim it was unnecessary to acquire the rights and remedies. In practice this responsibility was off loaded to the builder with cash settlements without our knowledge. When asked to remove the builder due to breaches of the Contract they said that this was impossible as they were not party to the Building Contract (BC) . This gives the lie to their "responsibility." They were not only a party to the BC – particularly Clause 15 – but their Agents have the right to supervise and terminate the Contract. Furthermore we are aware of at least 3 other cases where [redacted] has removed those builders. We consider all this to be outright misrepresentation and a breach

of the clear intention of the Policy contract, which also states : [redacted] can take action or negotiate any claims against the Policy in the insured's name. This is clearly a condition that they had no intention of fulfilling. **See B 2-7**

4. **"Honesty is the key".** There is a requirement to be honest with each other. We consider this has been largely lacking from [redacted] with "dishonest" being a fair description of their behaviour – eg their failure to even attempt to recover some of our costs and expenses from the builder whose incompetence resulted in those incurred costs, even when in one case they were forced to reimburse us reluctantly and only following a lawyer's letter. This indicates an agreement that [redacted] would not pursue such issues. Nor did they tell us that they had an agreement to cash settle with the builders for repairs having previously told us that they would manage our repairs. By any measure such relevant information should have been advised to us under the principle of "the utmost good faith". If we had had this information we would have sought the 2nd option offered us to cash settle our claim and claimed for several chimneys to be rebuilt costing tens of thousands of dollars and used those funds to repair the house to as near possible as new. We opted to forgo rebuilding the chimneys believing that [redacted] would use the funds towards a good repair "as new, a legitimate expectation under insurance practice since it would not increase their liability. Instead their repairs were obviously based on indemnity value at best and they effectively pocketed the chimney money (**see also 5 below and D 11).**
5. **The Policy to repair the house to "as near new as possible using current materials and methods".** They did not and repairs were aimed apparently to no more than indemnity value, anything above that being deemed " betterment". As an example under the Policy terms the house required the damaged exterior to be repainted – they allowed about 50% of the actual cost. Furthermore they approved and paid for noncompliant repairs that not only did not comply with the Building Code but also failed to properly meet the Code of Compliance. Referral to [redacted] Complaints Dept. on this issue achieved nothing after over a year when our claims file was closed presumably to massage claims settlements and to justify charging us full premiums on our unrepaired house with thousands of dollars work still to be done.

   See C 8-11

6. **The Policy said they would meet necessarily incurred engineers, legal and consultants' fees etc.** In view of their declinations in various significant and structural issues based on inadequate and biased reports, such expenses were incurred by us to provide the true picture and which therefore should have been accepted. None of such costs were paid nor were some of the inadequacies of their own reports acknowledged. In the end we accepted a cash settlement which fell well short of their contractual obligations. The alternative was court proceedings we could not afford even if our life span could afford to wait.

   By way of example we show correspondence relating to some roofing problems which were declined on the basis of an [redacted] commissioned Report from [redacted] **Note" (see E and F)** shows some of the shortcomings of the Report which concluded "usefully" for [redacted] but was obtained only after further enquiry from [redacted] that the damage to the roof and battens above the 'hump' was pre-existing since - : **1.** They could have occurred at any time.**2.** Photos of the house being lifted show no indication of causing damage.

Apart from the comments in [redacted] Note, the following was not considered or discounted as irrelevant. **1.** The original engineers' SOW required that any loose fittings in the roof should be fixed. They were not. **2.** The difference between the straight roof tile and guttering pre quake and post quake photos showing the roof undulations and hump in the gutter was discounted. **3.** The quake shaking of the roof which had also wrenched the guttering apart by the hump did not warrant consideration. **4.** The "possibility" of the hump being caused by the original foundations may be discounted. A pre-requisite for this is that the wall below it must now rest on the new foundation. It is in fact raised above it in sympathy with the hump so that could not have pushed it up by the foundations. **5** The hump caused the waterflow on either side of it to reverse for half the house. The report deemed this insignificant but not so by RAS Technical Team engineer, [redacted] (The guttering issue was finally settled after a year during which time it had been incorrectly declined twice and suffered through 6 failed repairs.) Following our comments on the report [redacted] obfuscated and required clarification of whether the damage was due to quake or house lifting. As the cost was not great RAS recommended we authorise repairs which we did. They were never reimbursed other than through the final cash settlement. We are aware of one other case where an [redacted] Report was overturned. We consider our view of biased reports not unreasonable. **Refer E and F**

7. It is worth noting that had the house been totally lost stress payment of $1000 would have been payable. The repairs and re-repairs having dragged on for some 4 ½ years during which time, through totally inappropriate settlement and repair practices, including being bullied into accepting inadequate repairs, the stresses of which well exceeded those of a rebuild, but no such offer was made by [redacted] If however we had taken the case to court, as our lawyer was recommending, it seems likely that some such cost for stress would have been awarded. This highlights the disparity between those who can afford or are able to fight their corner to obtain their rights and those who cannot. It seems that [redacted] settlement practices aim to provide their main savings from short changing the vulnerable who would be unable to "achieve" their full entitlements. Surely justice in insurance settlements should not be dependent on influence or wealth. **See D.**

RAS has provided us with invaluable help and was largely responsible for us obtaining a settlement that we accepted rather than face a court decision – a course recommended by them before we were obliged to seek our own lawyer to submit our claim as RAS could do no more for us, [redacted] Since we could not afford lawyers we were appreciative of the services they provided. We were however mystified by the fact that they clearly were not prepared to challenge [redacted] over their blatant misrepresentations and breaches of the clear intentions of the Policy and BC – Clause 15 particularly. The reason was provided by EMPOWERED CHRISTCHURCH. **(See A)** Funding for RAS at that time was largely from insurance companies whose brief to RAS was to keep claimants from going to court. If RAS began making embarrassing challenges over such matters of integrity and honesty funds would soon dry up. When [redacted] could no longer pretend that our repairs were properly compliant they resorted to the practice of dealing only with our lawyer. Being a free service we felt unable to ask RAS, against their wishes, to confront [redacted] over their behaviour which was totally at

odds with the contracts they had initiated. Had they done so we may well have forced a better settlement In the event we were effectively fighting our case with one hand behind our back. This seems another example of [redacted] and other insurers exercising undue pressure on an organisation to limit their helping abilities without RAS being able to tell us. Surely another example of failure in "utmost good faith". **See A.**

[redacted]