

## REVIEW OF INSURANCE CONTRACT LAW June 2019

Submission

### Exemplary Damages

1/. The review document does not offer opportunity to explore exemplary damages as a remedy against breach of contract by dominant parties in the insurance contract.

2/. The present situation in respect of NZ law is taken as set down by the Court of Appeal in *Paper Reclaim Limited v Aotearoa International Limited*. Refer 'Bull of Exemplary Damages Slaughtered' (attached).

3/. NZ contract law effectively encourages insurers to adopt breach of contract as a best business practice for claims management once financial rewards have become sufficiently weighted in their favour.

4/. The Canterbury Earthquake claim experience has demonstrated that there is no effective legal impediment to prevent insurers as wholly unequal parties of an insurance contract from adopting a deliberate strategy of breach of contract in claims management by simply refusing to honour the insurance contract.

### 5/. Case Study

5.1 The insurers behaviour in respect of the Christchurch residential red zone provides an objective measure of the size of the financial reward that the insurer can achieve by a deliberate business practice of refusing to honour the insurance contract.

### 5.2

#### 5.2.1 Site specific rebuild cost

[1] A standard settlement option for the homeowner in the residential red zone who held a typical home replacement policy included allowance for the purchase of another property. This was either provided as an option within the insurance policy itself or later provided as an extension to the insurance contract for those policies that did not include this option (refer 'residential red zone home settlement options for homeowners with houses deemed a total loss – replacement policy').

[2] Without provision of the extension to the insurance contract the homeowner whose house was a total loss and whose policy did not include the option to buy another house would have been left with just two options for effecting reinstatement of their property to the policy standard – either rebuild on the existing site and therefore rebuilding in the residential red zone or rebuild on another site. The practical and/or financial difficulty in procuring alternative land would have meant that rebuilding on the existing site in the residential red zone would have become the only real alternative for the homeowner wishing to uptake their full policy entitlement.

[3] The amount payable to rebuild on another site or to buy another house was defined as representing a similar quantum, this being 'up to the amount which would have



In situations where, like the present, there is no possibility that a repair of a damaged house could possibly be carried out, an insurer like Southern Response must take care especially to ensure that, under a policy like the present one, any settlement for notional repairs provides an amount that would properly represent the cash equivalent of the true cost of fully repairing the house to an “as new” condition

[14] In the residential red zone \_\_\_\_\_ actively worked to ensure that the settlement for notional repairs did not properly represent the cash equivalent of the true cost of fully repairing the house to the “when new” condition as promised in its typical policy.

[15] Our first offer from \_\_\_\_\_ was less than 60% of the true notional rebuild cost of our house when calculated for an assumption of standard foundation cost. Persistent calls by for \_\_\_\_\_ to make a proper estimate of the notional rebuild cost has resulted in \_\_\_\_\_ only gradually lifting its offer for settlement closer to the true notional rebuild cost (standard foundations only).

[16] If an approximate estimate of the gain to \_\_\_\_\_ made by underpaying the notional rebuild cost (standard foundations only) is made from the above information we may conclude that \_\_\_\_\_ may have secured average gains of approximately \$100,000-\$200,000 across its portfolio of total losses in the residential red zone, and therefore may have achieved further gain of  $2000 \times 90\% \times \$150,000$  (\$270M) above the \$900M gained from refusal to meet the cost of site specific foundation design.

### 5.2.3 Total losses by policyholders

[17] In the residential red zone all evidence points to \_\_\_\_\_ having won gains against its policyholders in the range \$1B to \$2B through refusal to honour its insurance contracts in breach of contract.

### 5.2.4 Conclusion

[18] Insurers may hide behind the protection afforded by Paper Reclaim Limited v Aotearoa International Limited which appears to remove Exemplary Damages as a check for keeping the insurer honest where massive fraud may be perpetuated.

[19] There is no effective legal restraint in place to prevent an amoral insurer abusing its corporate dominance over any individual policyholder or group of policyholders.

[20] \_\_\_\_\_ has accordingly felt free to refuse to honour some \$1B to \$2B in payments rightly owing to its some 2000 residential red zone policyholders.

[21] Had an exemplary damages threat multiplier of say 3-5x been properly operative under NZ contract law then \_\_\_\_\_ would have found itself facing the risk of incurring perhaps \$5B of punitive damages for wrong doing committed against the residential red zone policyholders of Canterbury.

Your details

Your name

Your organisation

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Your email address

In what capacity are you making this submission?

- Individual
- Consumer group/advocate
- Business
- Industry group
- Researcher/academic
- Other (Policyholder)

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27 June 2019