

SPECIFIC INSTANCE COMPLAINT: MESSRS R&J / ARROW INTERNATIONAL FINAL STATEMENT BY THE NEW ZEALAND NATIONAL CONTACT POINT

Summary of the Outcome of the Specific Instance

This Final Statement concludes consideration by the New Zealand National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) of a Specific Instance submitted by Mr R and Mr J regarding alleged conduct towards them by the firm Arrow International in relation to the repair of their house following the 2010/11 Canterbury earthquake sequence.

After reviewing the Specific Instance application and consulting the parties, the NCP offered its good offices to facilitate discussion and a settlement between them. However, this did not prove possible due to what emerged to be essentially irreconcilable differences between them over matters of fact, and a consequent lack of agreement to meet given these differences. The NCP therefore decided to conclude the Specific Instance process.

In accordance with the Guidelines, this Final Statement briefly describes the issues raised, the procedures the NCP initiated in assisting the parties, and the outcome.

Substance of the Specific Instance/Guidelines Provisions cited

In June 2014, a Specific Instance application by Messrs R&J was submitted to the NCP under the OECD Guidelines through their representative, the Wider Earthquake Communities Action Network (WECAN). The application cited Part IV (2) of the Guidelines relating to human rights, that Enterprises should... *Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

The application alleged that Arrow International, engaged by Messrs R&J's insurance company to determine damage assessments and repair or rebuild strategies, had failed to conduct timely geotechnical investigations and adequate investigations of their dwelling's foundations, or formulate what they considered to be an appropriate repair strategy for their situation. This was alleged to have had affected their right to adequate housing. The applicants also contended that resulting delays to the repair/rebuild sought of their house foundations had caused them stress and discomfort and adversely affected their mental and physical wellbeing, thus affecting their right to housing and health and dignity. The vulnerable situation of the applicants was stressed. Arrow International was also alleged to have lacked a human rights policy or due diligence process, as promoted by the Guidelines.

Initial Assessment/Good Offices

After reviewing and considering the information provided by the parties, the NCP decided that the issues raised by the applicants were bona fide and relevant to the implementation of the Guidelines and merited further investigation. A particular factor in this was the vulnerable situation claimed by the applicants. The NCP accepted the Specific Instance in December 2014 and subsequently met with both parties over 2015 to exchange perspectives and obtain further information, as well as to isolate key points of similarity and difference over the issues presented and promote dialogue between the parties. This process was delayed by issues arising between the parties and with the NCP over access to information that each had previously provided the NCP with in support of their positions.

Over this time, it became increasingly clear to the NCP that both parties had essentially

irreconcilable differences over matters of fact. Arrow International maintained that its damage assessments and advice to the applicants' insurer on a repair strategy for Messrs R&J's property were done professionally and in accordance with the terms of their insurance policy. It held that extensive and successive investigations and analysis had found that foundations of the house of the applicants did not suffer significant structural damage, nor were affected by land issues as alleged, and that any delays resulted from the fact that R&J did not accept this in their dispute with their insurer.

Similarly, they disagreed that the applicants had been deprived of any of the essentials for shelter and denied any associated claims of adversely affecting the applicants' rights to health, housing, or dignity under the Guidelines. In the circumstances, the company did not see the use of the good offices of the NCP as desirable or productive. However, it did intend to formulate an external social responsibility and due diligence policy (which had been one point raised by the applicants).

For their part, Messrs R&J continued to maintain their claims throughout regarding land, foundation and associated issues, citing their own experiences and documentation.

The NCP carefully considered the issues raised throughout this process, alongside the supporting documentation provided by the applicants and Arrow International, and the content of meetings and correspondence had with them. In March 2016, the NCP wrote to WECAN noting the information submitted and considered by the NCP to date. The NCP noted that Arrow International had informed it that it did not wish to meet with the applicants, essentially because it considered that their allegations had been fully responded to, and there was no substance to them. However, Arrow International had indicated that it was willing to agree to an outcome sought by the applicants in terms of the development of a corporate responsibility and due diligence policy.

WECAN responded in late January 2017. In their response WECAN requested that the NCP facilitate dialogue between them and the company over this policy. The NCP subsequently learnt that the policy had been developed and promulgated to Arrow International staff over late November/early December 2015 and informed WECAN of this fact. As the policy had already been developed and publicly issued, and Arrow International did not favour any engagement with the applicants, the NCP did not intend to pursue this case any further and would proceed to conclude the case. The case was concluded in September 2017.

Conclusion

The Specific Instances Procedure is not a legal process and the NCP does not undertake an adjudicative or arbitral role. The conclusion of this Specific Instance does not imply a particular view or conclusion by the NCP about the validity of the issues originally raised by the applicants in their complaint, or the position taken by Arrow International on those matters. Rather, this case was concluded as the NCP's good offices did not succeed in facilitating a dialogue or consensus between the parties over the issues between them.

The NCP welcomes the development and promulgation by Arrow International of an external social responsibility policy and due diligence policy. The NCP sees this as a positive consequence of Arrow International's involvement in the Specific Instance process. The NCP wishes to clarify that although the prior lack of such a policy was cited by the applicants in their complaint, this cannot, and should not, be characterised as a 'breach' of the Guidelines.

**New Zealand National Contact Point for the OECD Guidelines for Multinational Enterprises
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