

Submission to the Review of Insurance Contract Law

Information:

Property Address	s 9(2)(a)
Legal Description	s 9(2)(a)
Name of Owners	s 9(2)(a)
Insured	s 9(2)(a)
Insurer	Tower Insurance/EQC
Date of earthquake	4 th September 2010
Settlement with EQC	March 2015 (4years and 6 months)
Tower appoint case manager	16 th March 2015
Settlement with Tower	June 2017 (6 years and 9 months)

Submission:

Below is the text of a determination made under sections 179-190 of the Building Act 2004. It set out our argument for the reinstatement of our property that was damaged by a natural earthquake event on the 4th September 2010. From that date to final settlement of our insurance claim was 6 years and 9 months.

The insurers (Tower and EQC) carried out a process of delay, deny, defend and deflect. This caused us anguish, sleepless nights, uncertainty and financial loss. In the time it took to settle our claim, we needed to move on, which we did so by moving house.

These are issues that we feel need to be addressed in the review:

- Time taken to settle claims
- The offer by insurance providers that are out of policy
- The power imbalance between the insured (no power) and the insurer.

It is clear to us that the insurance industry is more interested in protecting their share holders and their profits rather than honoring their policies (contracts) and protecting the interests of the policy holder (consumers).

Any revision of the Insurance Contract Law should include:

- A time limit on settlement of claims with penalties for delays.

- A declaration by the insurance company that an offer of settlement or repair is either in policy or out of policy with penalties for wrongful declaration.

The Power imbalance between the insured and the insurers is very evident. The insurers have the power of time and financial superiority over the insured. This imbalance needs to be rectified by providing the insured with pathways to timely and fair settlements of claims.

Text of determination: Background:

The property at s 9(2)(a) sustained damage as a direct result of the 2010-2011 Canterbury earthquake sequence. The most significant damage was to the hard fill supporting the floor slab of the property. The EQC engineer reported that the “settlement of the floor slab can be attributed to vibration compaction of the poorly graded loose hard fill beneath the slab, with the vibration having been caused by recent earthquake activity.”¹ The EQC engineer also reported that “there are gaps of as much as 15-20 mm between the surface of the floor slab and the underside of the bottom plate of the wall frames along part of the hallway.”²

The same engineer suggested that “the floor slab can be brought back within reasonable acceptable building tolerances by applying a self-levelling compound over the floor slab surface to the worst affected areas along the Hall and in the adjacent rooms.” This suggested repair method was severely flawed. It did not address the damage to the hard fill and the fact that the floor slab would remain unsupported due to voids created by the “settlement of the hard fill” ... “attributed to vibration compaction”. EQC engineers also instructed EQR to lay the self-levelling compound to falls and did not consider the manufacturer’s minimum requirements that the product should be a minimum of 3 mm thick. As the owners, we rejected this method of repair.

In March 2015, four and half years after the damage, we were informed that our claim had gone over cap. At this point, it became the responsibility of our insurers, Tower, to settle the claim. In November 2016 we agreed that the way to proceed was for Tower through their agent, Archimetrix Limited, to make an application for a building consent. Prior to this we, as the owners, had supplied specific information to Tower regarding the foundations of the property at s 9(2)(a). We also expressed some concerns regarding the Producers Statement (PS1) supplied by the insurer’s appointed engineer, BLS Consulting Limited. Tower’s agent then amended the standard details, that were not project-specific, but that only partially addressed our concerns. However, these amended drawings were not used in the Building Consent application as, after discovering that the Building Consent had been applied for, we

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EQC Memorandum: GWR-406 Date: 7 June 2012 (20120510-SKONICA Lev12072711500)

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noted that the PS1 was still unchanged. On 6 December 2016 we expressed our concerns to the BCA in an email – included below in blue text.

Hello s 9(2)(a)

Thank you for send the documents through to us.

Background: The consent you have received has been organised by our insurance company (Tower). I have previously reviewed some of the documents and expressed my concerns (below) to them. I am a LBP and was [previously] a building consent officer and inspector with BPDC/CCC.

I have reviewed the consent documents and have concerns that they are not project-specific and rely on standard details that do not sufficiently reflect the actual situation on site.

The standard details provided indicate that the 20/40 tailings are 200 mm deep. The reality is that the tailings are in the range of 600 mm to 700 mm deep.

Also, the PS1 provided by the engineer only covers B1 (Structure) of the code and appears to exclude B2 (Durability) by stating that it “does not provide a guarantee of future foundation settlement will occur.”

To reiterate my main concern is that any work carried out on our property meets the Building Code and provides us with certainty. As the building owners we have a responsibility under the Building Act to ensure any work carried out to the property is Code Compliant.

I enclose a sketch I have done to show the foundations as they are and photo of the ring beam.

Regards

s 9(2)(a)

It is clear that to us that our concerns where ignored and the Building Consent has been granted using generic standard details that do not reflect the actual construction of the building.

It is important for us, as the owners of the property, that the project documents are project-specific and detailed and that they meet the standard required by the Building Act. This is of particular importance as the applicant (Archimetrix Limited) had been instructed by a third party (Tower Insurance). They have ignored the project-specific information that we have provided to them and did not include it in the building consent application.

In a recent court case where Tower Insurance was the defendant the High Court judge David Gendall said: "The plaintiff alleges that withholding the June 2011 report ... which, although only a brief report, did recommend a rebuild of the house, is a serious breach of the defendant's obligation of good faith. We agree."

<http://www.stuff.co.nz/business/money/87667118/rob-stock-the-unfair-business-of-utmost-good-faith>

It is our opinion, considering the judgement of the High Court and our experience to date, that Tower Insurance do not have our best interests and in good faith as their main priority. It would have been our hope that as ratepayers that the Christchurch City Council would have been more diligent in its processing of the Building Consent application.

Discussion:

We know that the finished floor level of the house is 500 mm above the natural ground level. The concrete floor slab is 100 mm thick. This means from the underside of the slab to the natural ground level is 400 mm. Assuming the builder excavated the oversite topsoil by 200 mm, the distance from the underside of the concrete slab to finished ground level is in the region of 600 mm. With the use of x-ray technology this is discoverable.

On the basis that the information should be project-specific, and general phrases, such as “refer to manufacturer’s specification and/or requirements” and “installed in accordance with best trade practice” are insufficient³. As the owners we believe that the use of “typical details” are insufficient when they do not reflect the actual construction details of the existing building.

Our comments are:

1. The typical detail indicates that the hard fill is 200mm deep where, in reality, the hard fill is 600 mm deep.
2. On sheet 2 of the typical details it states “3. excavate hard fill and original ground to 350 depth widen hole at base.” Considering the distance from the underside of the slab to original ground level is 400 mm this is not possible.
3. The typical detail shows the hard fill, which are 20/40 tailings, can remain at a negative angle of repose.
4. The typical details show that the ring beam is 500 mm deep where, in reality, it is 1000 mm deep.
5. The typical details show that the underpinning can be carried out leaving the un-compacted 20/40 tailing and soil in place.
6. The “void fill concrete” is not specified. This is a vital element for the support of the floor slab but there is no specified product or specification for the application.

The PS1 by BLS Consulting Limited states that: “The proposed building work covered by this statement is described on the drawings titled s 9(2)(a)

Jacking Plan and numbered 01(A3) May 2016, together with the specification, and other documents set out in the schedule attached to this statement.” There is no schedule of documents attached. The only documents attached are the “Producers Statement attachment” and six drawings, four of which are typical details and not project specific.

Due to the damage sustained there are gaps of as much as 15-20 mm between the surface of the floor slab and the underside of the bottom plate of the wall frames. This means the connection between the floor plate and the slab has been broken. There is nothing in the consented documents that allows for the reinstatement of this connection. To achieve this repair the structural bracing will be compromised. A project-specific solution to this will be required.

Also, the GIB information bulletin included in the consent document requires a bracing design. There is no bracing design included in the building consent.

Conclusions:

We, the property owners, believe that the BCA was wrong in exercising its power to grant the building consent. The building work described in the consent documents is not achievable. For example, the engineers PS1 describes an excavation of the hardfill and ground to a depth of 350mm. This is not possible because the hardfill is greater than 400mm deep and probably 600mm deep. This, then, makes the PS1 not project-specific and not invalid for this project.

There is also vital information missing that the consent authority might reasonably expected to have been provided with. (Sec 45 BA2004) For example, there is no bracing schedule; no reinstatement method of the bottom plate fixings and no specification or methodology for application of the "void filling concrete."

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