

SPECIAL EARTHQUAKE LIST FOR COURTS

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At a seminar for lawyers on 5 September 2012, Justice Miller spoke about the use of the new 'Earthquake List' for earthquake-related claims filed with the High Court.

The Earthquake List is a special category used for all cases involving a dispute arising out of the earthquakes, both domestic and commercial insurance policies. There is a set process to be followed to ensure that cases are progressed to a hearing, where required, as quickly as possible. There will be an early case management conference, run with a specific agenda, at which parties and their lawyers are expected to attend in person, and an attempt made to define and narrow down the issues in dispute, witnesses to be called, including experts and any outstanding discovery issues.

To date, a total of 24 earthquake claims have been filed in the High Court in the three main centres: 4 in Auckland, 2 in Wellington and the remainder in Christchurch. Of those, most have settled without proceeding to a hearing. His Honour noted that some of the claims had been filed by plaintiffs who felt they needed to start proceedings in order to engage in dialogue with their insurance company.

The majority of cases have been filed against insurers, with a handful taken against insurance brokers. Only a couple involve EQC. In the first week of September, three claims relating to domestic insurance policies have been filed. More are expected, as homeowners settle their claims with EQC and are then able to pursue disputes relating to 'top-up' cover from their insurers. As at 5 September 2012, no claims by residential red-zone homeowners have been filed.

We can expect some judicial guidance soon on the response of insurance policies to successive events in one policy year, as a hearing on that point in a commercial case has recently been concluded. A claim relating to the meaning of reinstatement has also been filed, but has yet to be heard as the parties are exploring settlement.

There is also a special earthquake claim process operating in the District Court (in Christchurch, Ashburton and Timaru), which currently has 8 claims in progress.

It is clear that the judiciary will pro-actively make hearing time available as quickly as possible to allow resolution or determination of earthquake disputes. However, it is for the parties themselves to decide to bring the proceeding to a hearing, or settle beforehand, so there is no guarantee that we will ultimately have judicial decisions on all important policy and statutory interpretation issues raised by the earthquakes.

For further information on the Earthquake List, please contact Richard Johnstone, Emily Walton, or any member of the Wynn Williams Insurance Group.