

**IN THE WEATHERTIGHT HOMES TRIBUNAL**

**TRI 2010-100-38  
[2011] NZWHT AUCKLAND 55**

BETWEEN KEITH FONG  
Claimant

AND AUCKLAND COUNCIL  
First Respondent

AND HUGHES & TUKE CONSTRUCTION  
LTD  
Second Respondent

AND DAVID CHARLES TUKE  
Third Respondent

AND DAVID B MCGLASHAN  
Fourth Respondent

AND RRL GROUP LIMITED  
Fifth Respondent

AND BARRY RUSSELL BROWN  
(Undischarged Bankrupt)  
Sixth Respondent

AND ALUMINIUM CITY (PENROSE)  
LIMITED (in Liquidation)  
Seventh Respondent

AND SCOTT MARSHALL  
(Removed)  
Eighth Respondent

AND FROGLEY PLUMBING SERVICES  
LIMITED  
Ninth Respondent

AND STEPHEN JOHN FROGLEY  
Tenth Respondent

AND VERO INSURANCE NEW ZEALAND  
LIMITED  
Eleventh Respondent

Hearing: 11-15 July 2011

Closing Written  
Submissions: 20 July 2011

Closing Oral  
Submissions: 22 July 2011

Closing Written  
Submissions on  
Quantum solely: August 2011

Extended  
Hearing of Oral  
Submissions on  
Quantum solely: August 2011

Appearances: Mr P Langlois and Mr R Potter for the claimants  
Mr P Robertson for the first respondent  
Mr D Wilson for the second and third respondents  
Mr G Kohler for the fourth respondent  
Mr S J Frogley, the tenth respondent – self represented  
Ms T Wood and Ms Tompkins for the eleventh respondent

Decision: 21 October 2011

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**FINAL DETERMINATION**  
**Adjudicator: K D Kilgour**

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[1] The claimant's claim succeeds to the extent of \$214,843.00 for the reasons set down in the attached "Reasons for Final Determination" and otherwise calculated on the basis of the column headed "J White" in Annexure 2, which can be summarised as follows:

Remedial costs claimed total	\$152,809.00
Consequential costs claimed	\$17,149.00
Interest	\$19,885.00
Subtotal	\$189,843.00
General damages	\$25,000.00
<b>TOTAL claimed</b>	<b>\$214,843.00</b>

[2] The claim by Keith Fong is proven to the extent of \$214,843.00. I order:

1. The Auckland Council is to pay to Keith Fong \$214,843.00 forthwith. The Auckland Council is entitled to recover a contribution from Hughes and Tuke Construction Limited of up to \$171,874.40 for any amount paid in excess of \$42,968.60.
2. Hughes & Tuke Construction Limited is ordered to pay to Keith Fong the sum of \$214,843.00 forthwith. Hughes & Tuke Construction Limited is entitled to recover a contribution of up to \$42,968.60 from the Auckland Council for any amount paid in excess of \$171,874.40.

[3] If the two respondents, Auckland Council, and Hughes & Tuke Construction Limited, meet their respective obligations under

this determination this will result in the following payments being made to Mr Fong:

- i. Auckland Council, first respondent - \$42,968.60.
- ii. Hughes & Tuke Construction Limited, second respondent - \$171,874.40.

[4] If either of the parties listed above fail to pay its apportionment, this determination may be enforced against any one of them up to the total amount they are ordered to pay in paragraph [2] above.

**DATED** this 21 day of October 2011

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K D Kilgour  
Tribunal Member