

IN THE MATTER OF	CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL ACT 2019
BETWEEN	DW and AW Applicant
AND	EARTHQUAKE COMMISSION First Respondent
AND	STATE INSURANCE Second Respondent

Date: 10 July 2019

Appearances: I Thain and R Tosh for State Insurance

DECISION OF C P SOMERVILLE

[1] On 25 June 2019 the Tribunal accepted an application from DW and AW seeking relief against the Earthquake Commission (EQC) and State Insurance, a business division of IAG New Zealand Ltd. The next day the application was served electronically on both respondents advising each that, if they wished to oppose the application, they must file their response with the Tribunal and serve it upon DW and AW within 15 working days.

[2] Each respondent, therefore, has until 17 July 2019 to file their response and supporting documentation. EQC has not yet taken any formal steps to oppose the application but State Insurance has filed an application seeking:

- (a) Further particulars of DW and AW's claim against State Insurance.

- (b) An extension of time until 31 October 2019 for State Insurance to file and serve its response to the claim.
- (c) A deferral of the first case management conference until the first available date after 31 October 2019.

[3] Section 15 of the Canterbury Earthquakes Insurance Tribunal Act 2019 provides:

“A respondent may file with the Tribunal a written response and supporting documentation within 15 working days of being served a notice of the claim or within a later time period directed by the Tribunal.”

[4] The Practice Notes, as published on the Tribunal’s website, make no mention of the possible extension of the period for filing the response but those Practice Notes are in the course of being amended to contain the following:

“A respondent wishing to respond to the claim must file a response in the approved form and lodge supporting material with the Tribunal within 15 working days. If respondents believe that 15 working days is insufficient time within which to file a statement of defence they may seek an extension and a new date for the case management conference by filing a memorandum, within five days of receiving notification, with the Tribunal outlining the reasons for that belief and nominating the period they consider to be sufficient. Such applications, will be treated as without notice applications and determined on the basis of the overall interests of justice after considering the competing interests of the parties. Respondents unable to file a detailed response due to a lack of clarity in the application should file a pro forma response and orally request further particulars of the claim at the case management conference.”

[5] The present request from State Insurance took the form of a letter supported by an affidavit provided by the claims technician to whom DW and AW’s claim has been allocated. Having regard to the informal nature of the Tribunal, that is an acceptable process.

[6] DW and AW’s property was repaired by EQC under an agreement with private insurers called Protocol 1 under which EQC arranged for the repair of properties where costs were expected to be under the EQC cap (\$115,000 including GST). In her affidavit, the claims technician described the process as involving:

- (a) EQC assessing the property as having damage repairable for less than the cap.
- (b) On further assessment or once repairs were commenced, EQC revising costs to be over the cap.

- (c) EQC notifying the private insurer and the homeowner, at which point the homeowner makes a formal insurance claim.
- (d) EQC providing a P1 form to the insurer with a scope of work and costing, seeking the insurer's agreement to pay the over cap portion of the cost.

[7] The result of that process in the case of DW and AW's property was that State Insurance was not involved in the claim, did not assess the damage, and did not scope or cost the work. Instead, it relied on limited documentation provided by EQC to approve the works in process and intend to reimburse EQC for the costs covered by the insurance policy in respect of the excess over EQC's cap.

[8] The claims technician says that it is impossible for State Insurance to provide a response to the claim until it has:

- (a) Considered the expert reports provided by DW and AW;
- (b) Appointed a structural engineer, a geotechnical engineer, a building surveying expert and a costing expert;
- (c) Arranged for those experts to inspect the property;
- (d) Obtained reports from those experts;
- (e) Considered those reports to determine whether the EQC repair work was defective/inadequate, and on the scope and cost of repairing any remaining earthquake damage to the policy standard;
- (f) Obtained all relevant documentation from EQC related to the actual EQC repair work, including EQC actual expenditure on work which was inadequate/defective.
- (g) Analysed what part of that expenditure relates to defective repair work, to be disregarded from the cap liability calculation;

(h) Assessed its own liability above the cap (if any).

[9] Because the experts State Insurance intends to appoint are in high demand and because some of the reports it seeks require other reports to be done first, the claims manager says that State Insurance will need until at least 31 October 2019 to properly assess the claim and provide its response.

[10] Although it is understandable that State Insurance would want to undertake those inquiries before either resolving the claim brought by DW and AW or commencing the hearing of their claim, that does not make it impossible for it to file a response by 17 July 2019. Defendants in this position have traditionally filed responses saying that they have no knowledge of the claim and deny liability under it. They then engage in interlocutory processes including discovery and the obtaining of further and better particulars so that they can learn more about the claim and, subsequently, file an amended statement of defence.

[11] If State Insurance has some knowledge of this claim, its response should outline what it knows rather than making a blanket denial and defer making a more detailed reply until it knows more about the claim.

[12] Parties to the claims process before the Tribunal should appreciate that it is not pleadings based and that the imperative is for the process to be fair, speedy, flexible and cost-effective. The emphasis on speedy process is reinforced by the requirement that the first case management conference must be notified to the parties within 15 working days of the claim being accepted. That process can hardly be described as speedy if the first case management of DW and AW's claim is not until early November 2019.

[13] State Insurance may well be worried about discovery. It should not be. Because of its limited knowledge about the claim made by DW and AW it is not likely to have many documents of any significance other than the insurance policy that should be filed with its response. Until more is known about the claim being made by DW and AW, it will not be able to distinguish between relevant and irrelevant documents. Clearly, discovery of that sort can be discussed at the case management conference once there has been some clarification about the nature of the claim that DW and AW are making against State Insurance.

[14] I can see nothing in the above circumstances which justifies the extension of the time for filing the State Insurance response beyond 17 July 2019 or in deferring the case management conference scheduled for 23 July 2019. The application for extension is therefore declined. The case management conference will be held, as scheduled, on 23 July 2019.

[15] As far as further and better particulars of the claim is concerned, no formal application is required. Instead, those particulars can be sought at the first case management conference. The application for further and better particulars is, therefore, declined.

C P Somerville
Chair
Canterbury Earthquakes Insurance Tribunal