

# Moves to halt earthquake insurance claims class action

Sally Lindsay

Insurer Southern Response is attempting to have court action against it over earthquake claims stopped as a class action.

Christchurch-based GCA Lawyers' legal strategist, Grant Cameron, filed court proceedings in the High Court in August on behalf of 47 claimants seeking the full entitlements under their policies and \$25,000 each in damages for emotional stress, rental costs and interest on mortgages.

International consortium Litigation Lending Services is funding the class action and is paying the costs, including engineering and other expert evidence.

Mr Cameron says the funder will provide independent experts to tell the court about the "real value" of Cantabrian's claims and press for damages. He is expecting other Southern Response (previously AMI) policyholders to join the action. At the end of March Southern Response reportedly had more than 2000 over-cap claims still to settle.

"We are talking to quite a few people but, unfortunately, there has been a lot of misinformation circulating about the chance of success and what claimants can expect to get if the action is successful."

Mr Cameron says Bell Gully, acting for Southern Response, is preparing an interlocutory injunction in an attempt to stop the court from hearing the case as a class action.

"We are confident the court will accept the case as a class action and it will proceed that way." He is expecting a High Court preliminary case management conference will be held in early to mid-October. Auckland University law lecturer Rohan Havelock, who specialises in insurance, says on the face of it there is a case for Southern Response to answer.

"Provided the claimants had cover and Southern Response breached its obligations, the policyholders are entitled to claim for what are known as general damages for stress and inconvenience."

Mr Havelock says as stress is hard to quantify and put a figure on, the \$25,000 claim by each policyholder seems quite modest. "This is the same amount usually claimed in leaky home cases and that seems a sensible option.

"Insurers often play tough. Obviously concerned to minimise exposure and pay out as little as possible, insurers are known to obstruct and delay. Here, this class action is giving power to the consumers to fight back.

"In the past a lot of people have given up. If you are suffering the inconvenience of an earthquake-damaged home, and loss and stress as well, it is very difficult to get up and fight because you are already down.



**GRANT CAMERON:** 'We are confident the court will accept the case as a class action and it will proceed that way'

"This sort of action enables people who would otherwise not be able to take on the insurer to be able to do so and hopefully see a positive result."

Mr Havelock says being able to obtain an international funder for the class action is a fairly good indication the case is strong and has a good chance of success. "The funder must be fairly optimistic as it is a commercial decision to commit money to an action and funders don't do it lightly."

He says the class action is a welcome and positive develop-

ment because the ordinary policyholder finds it difficult to bring an action against an insurer on their own because of the cost and hassle involved.

"As soon as they join a class action there is strength by numbers, it levels the playing field and makes it easier to take on the insurer.

"Even though Southern Response has said it is going to fight the action vigorously and it doesn't believe there is any liability, I would suspect personally it is reasonably apprehensive about this action."

Mr Cameron says Southern Response has literally settled many claims where home owners have taken court action on the court steps. "It doesn't want claims being aired in court. Unfortunately, few claims are being settled at the full amount."

Auckland lawyer Adina Thorn, who is launching a \$150 million-plus class action against cladding manufacturers over the leaky homes crisis, says funded class actions are the way of the future and here to stay.

They are an attempt to meet the "David and Goliath" problem of suing large entities or large corporates and can bring about social justice, she says.

"They also take the huge cost of litigation and risk off the people involved in the action. It also means the litigation can be well resourced. It is normally a no-brainer to join a funded action rather than a non-funded action."

Ms Thorn says although New Zealand is a long way behind Australia in terms of funded class actions, there does seem to be a greater number of them recently.