

# Earthquake litigation in the wild south

Author: David McCarthy, Associate Director, Berwin Leighton Paisner LLP

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The New Zealand courts are now handing down judgments on a number of insurance issues arising out of the Canterbury earthquakes in 2010 and 2011.

Due to the enormous volume of cases, the High Court in Christchurch has established a dedicated list, intended to streamline the dispute-resolution process.

On October 23, 2013 Justice Fogarty handed down an important judgment in *Wild South Holdings and Maxims Fashion Ltd v QBE*. The court was asked to deal with preliminary issues between owners of damaged commercial buildings and their insurer, QBE.

The issues heard include the effect of an automatic reinstatement of amount (ROA) clause. ROAs were apparently a common feature in commercial property policies in Christchurch.

The ROAs provided in the event of a claim, in the absence of written notice by either party, the amount of insurance cancelled by the claim would be automatically reinstated from the date of loss, with the insured undertaking to pay a pro-rata premium.

Before the earthquakes it was assumed commercial buildings in Christchurch were unlikely to suffer significant loss more than once in a year. Christchurch, unlike Wellington, was not appreciated to be an area at immediate earthquake risk.

The ROAs have now assumed significance because of the extent to which many owners of commercial buildings were underinsured. The buildings

owned by Wild South and Maxim each had a replacement cost of more than NZ\$8m (\$6.7m), but their sum insured was only NZ\$3m to NZ\$3.6m.

The owners argued they are entitled to reinstate their sum insured following each major earthquake, while QBE argued it is still entitled to give notice under the ROAs.

Fogarty J determined QBE only had a reasonable period of time (after the insured suffered a loss) in which to give notice under the ROAs.

The case is now going forward to consider, with the benefit of evidence, whether a reasonable time for QBE to give notice under the ROAs had passed.

In the meantime, very similar preliminary issues involving a dispute about notice under an ROA were heard before Justice Dobson on October 29 in *Marriott v Vero Insurance*, with judgment awaited.

Reinsurers and reinsureds with exposure to claims arising from the Canterbury earthquakes need to carefully consider whether ROAs exist and how they have been managed