

MEDIA RELEASE

SOUTHERN RESPONSE CONCEALMENT CLASS ACTION

14 December 2020

The Minister's announcement

Earlier this morning Minister David Clark announced that the Government has approved a settlement package to compensate policyholders who settled with Southern Response prior to 1 October 2014.

As Representatives of the 3,000 class members, Brendan and Colleen Ross welcome the Government's decision as it signals the end to a long and difficult saga.

"This is a huge success for all policyholders," said Brendan Ross, "and it confirms the benefits of class actions as a means of achieving justice. When ordinary Kiwis unite they can hold to account powerful corporations or even government, and that's certainly been the case here".

We understand Southern Response intends to offer a "top-up payment" for all class members. That top-up payment should have been made 6 years ago, after the court decisions in *Avonside Holdings*. The class action has forced Southern Response to finally do the right thing.

The Supreme Court has directed that any settlement must be approved by the High Court and so Mr and Mrs Ross will carefully scrutinise the Government package to ensure that it fairly compensates all class members for their losses, and that it is fair and reasonable for all 3,000 class members.

Mr and Mrs Ross now look forward to working closely with Southern Response to finally resolve this matter for the benefit of all class members.

Background

In 2015 the Supreme Court (*Avonside Holdings Ltd v Southern Response Earthquake Services Ltd*) held Southern Response's practice of withholding certain financial information from its policyholders at the point of proposed settlement of their claims, was unlawful.

However, **despite the Supreme Court guidance, Southern Response refused to correct settlements that had occurred before 1 October 2014.** (It only changed its practises for settlements after that date).

In 2018 the Southern Response Concealment Class Action was brought on behalf of around 3,000 former policyholders of Southern Response (formerly known as AMI Insurance). Southern Response is owned by the Crown and is responsible for settling the insurance claims of AMI policyholders whose homes were damaged in the Canterbury earthquakes.

The class action alleges that Southern Response, a government entity, misled and deceived its policyholders when settling claims prior to 1 October 2014. Southern Response did this by sending the policyholder an abridged version of the cost estimate to repair/rebuild their home, which left out significant items of costs that in many cases added up to six figures. This approach resulted in policyholders being misled into settling their insurance claims for substantially less money than they were actually entitled to, under the insurance policy.

The class action was brought on behalf of all policyholders (with some minor exceptions) **who settled their claims with Southern Response before 1 October 2014** and may have been misled by Southern Response. It sought compensation from Southern Response for everyone in the class action, based on the difference between the “abridged” cost estimate that was shown to each policyholder and Southern Response’s “full estimate of the cost to repair/rebuild” that policyholder’s home. In many cases, that difference is more than \$100,000 per policyholder.

In filing the class action **Brendan and Colleen Ross sought an opt-out order from the High Court,** so that the action could proceed with an opt-out notice being issued to all affected policyholders. The High Court did not provide an order to that effect and so the parties then had to go to the Court of Appeal. In a powerful judgment issued in September 2019 **the Court of Appeal ordered the action to proceed on an ‘opt-out’ basis. That decision was confirmed by the Supreme Court in November 2020** and so the way was cleared for the class action to proceed to trial.

However, apparently the Government now recognises that there is no purpose in attempting to defend the class action further. That is because **Karl & Ali Dodds** brought their own action against Southern Response, on almost identical facts to those faced by class action members. In 2019 **the High Court found that Southern Response had misled and deceived Mr and Mrs Dodds** when it kept secret a higher estimate to rebuild their quake damaged home than the estimate the insurer revealed to them.

Southern Response appealed that decision but in September 2020, **the Court of Appeal confirmed that the Dodds had suffered misrepresentations and had been misled and deceived.**

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