

IN THE HIGH COURT OF NEW ZEALAND

CHRISTCHURCH REGISTRY

CIV-2018-409-361

SOUTHERN RESPONSE REPRESENTATIVE PROCEEDING

**NOTICE OF APPLICATION
TO DISCONTINUE REPRESENTATIVE PROCEEDING**

This is an important notice issued to you by the High Court. You have received it because the Court considers it is likely that you are a class member of the SOUTHERN RESPONSE REPRESENTATIVE PROCEEDING.

If your house was damaged in the Canterbury Earthquakes, and it was insured with AMI Insurance/Southern Response, you should read this notice carefully.

In 2018, a representative proceeding (or "class action") was brought against Southern Response Earthquake Services Ltd (**Southern Response**) claiming compensation on behalf of former AMI Insurance/Southern Response policyholders.

Now there is a proposal to discontinue (end) the representative proceeding due to a settlement Package that Southern Response is offering to all eligible policyholders including Class Members in this proceeding. Before the proceeding can be discontinued, the High Court must give permission to discontinue.

What you need to do in response to this notice

You can do one of two things in response to this notice:

1. **You can do nothing.** The Court will hold a hearing to determine whether to allow the representative action to be discontinued.
2. **You can make submissions** to the Court by 5.00 pm, 25 November 2021 supporting or opposing the proposal to discontinue the representative proceeding. The Court will consider your views when determining whether to allow the representative action to be discontinued.

If you wish apply to Southern Response under the settlement Package, you can do so by contacting Southern Response at registration@southernresponse.co.nz . You **do not need to respond to this notice** in order to apply to Southern Response under the Package.

**The deadline to support or oppose the proposal to
discontinue the proceeding is 5.00 pm, 25 November 2021**

A: ABOUT THIS NOTICE

1. Why is this notice important?

In May 2018, a representative proceeding was commenced in the High Court of New Zealand against **Southern Response Earthquake Services Ltd** (formerly **AMI Insurance**).

The representative proceeding is about the way that Southern Response settled insurance claims for homes damaged in the Canterbury Earthquakes. It alleged that Southern Response misled AMI policyholders into settling their claims for less money than they were entitled to under their insurance policies. The representative proceeding sought compensation (money) for people who cash settled their insurance claims with Southern Response before 1 October 2014.

Southern Response is offering a Settlement Package to class members in the proceeding (subject to eligibility criteria). It is proposed that the representative proceeding will be discontinued, and class members will need to contact Southern Response to claim compensation under the Settlement Package.

The High Court has ordered that this notice be sent to anyone who might be a "class member" on whose behalf the representative proceeding is brought.

You have been identified as someone who may be a class member. **Please read this notice carefully. Any questions you have concerning the matters contained in this notice should NOT be directed to the court.** If there is anything in it that you do not understand, you should seek legal advice. The contact details for the representative plaintiffs' lawyers are at the end of this notice.

2. What is a representative proceeding?

A representative proceeding is a lawsuit brought by one or more people ("**Plaintiffs**") on behalf of themselves and other people ("**class members**") who have similar claims against someone that is alleged to have affected their legal rights (the "**Defendant**"). In this case Brendan and Colleen Ross are the Plaintiffs and Southern Response is the Defendant.

Class members in a representative proceeding **do not have to pay** any of the costs of bringing the representative proceeding. In a representative proceeding, only the Plaintiffs are responsible for those costs.

Class members who do not opt out will be bound by the results of the representative proceeding. A binding result can happen in two ways: either a *Judgment* issued by the Court, or a *Settlement* negotiated out of court. That means that:

- (a) if the representative proceeding is successful, those class members will get to share in the benefits, including any money that the Defendant is required to pay; and
- (b) if the representative proceeding is unsuccessful, class members will not be able to pursue the same claims again, but will not have to pay any of the costs.

B: INFORMATION ABOUT THE REPRESENTATIVE PROCEEDING

3. What is this representative proceeding about?

This representative proceeding is brought by the Plaintiffs, Brendan and Colleen Ross, on their own behalf and on behalf of all persons who are "class members" as defined by orders made by the Court of Appeal (see the Section **Are you a class member?** Below).

The Plaintiffs allege in the statement of claim that:

- (a) Southern Response misled and deceived policyholders in the way that it settled insurance claims for earthquake damage prior to 1 October 2014;
- (b) Southern Response did this by withholding the full version of the "Detailed Repair/Rebuild Analysis" (**DRA**) prepared for each policyholder's home, and only sending each policyholder an abridged version of the DRA;
- (c) the full DRA contained a schedule of estimated costs to rebuild or repair the policyholder's home, some of which were located in an "Office Use" section, and recorded Southern Response's estimate of the total repair/rebuild cost;
- (d) the abridged DRA did not include the "Office Use" section, and therefore recorded a lower repair/rebuild cost;
- (e) Southern Response did not provide policyholders with their full DRA, or tell them about the full DRA, or tell them the abridged DRA was only an abridged version;
- (f) Southern Response told policyholders that the sum set out in the abridged DRA was Southern Response's estimate of the total cost to rebuild or repair the policyholder's home, when that was not true; and
- (g) as a result of the above conduct, Southern Response misled or deceived policyholders into settling their insurance claims with Southern Response for substantially less money than they were entitled to under the insurance policy.

The Plaintiffs sought "damages" (compensation) from Southern Response on behalf of all class members, based on the difference between the amount each policyholder settled their insurance claim with Southern Response for, and the full repair/rebuild cost estimate contained in the full DRA. Mr and Mrs Ross also sought interest for all class members, and \$25,000 per class member for stress and inconvenience.

Southern Response, as the Defendant, did not admit the claims made against it and defended the representative proceeding.

The representative proceeding is being run by GCA Lawyers, who are the solicitors for Mr and Mrs Ross. The costs of bringing the representative proceeding are being funded by Claims Funding Australia Pty Ltd (**Claims Funding Australia**).

4. Are you a class member?

You are a class member if you:

- (a) own or owned a residential dwelling in Canterbury that was insured with Southern Response (formerly AMI Insurance) under a "Premier House Cover" or "Premier Rental Property Cover" policy;

- (b) lodged a claim or claims with Southern Response under the policy for damage suffered to the dwelling as a result of the 2010-2012 Canterbury Earthquakes;
- (c) received a DRA from Southern Response that did not include an "Office Use" section;
- (d) did not receive a DRA that included the "Office Use" section;
- (e)** entered into a settlement agreement with Southern Response **prior to 1 October 2014** in settlement and discharge of their insurance claim; and
- (f) are not a person for whom Southern Response managed the repair of their home, or rebuilt their house.

The Court of Appeal orders on these matters are at paragraph 138 of the Court of Appeal's judgment (dated 16 September 2019) in *Ross v Southern Response* (2019] NZCA 431. The judgment can be found online at <http://nzlii.org/nz/cases/NZCA/2019/431.html>.

If you are unsure whether or not you are a class member, you should contact GCA Lawyers on 03 365 1347 or email srcca@gcalawyers.com or seek your own legal advice without delay.

C: SETTLEMENT PACKAGE AND PROPOSAL TO DISCONTINUE THE PROCEEDING

5. Southern Response Settlement Package

In December 2020, Southern Response and the Government announced a settlement package would be offered to eligible policyholders who settled their insurance claim for earthquake damage with AMI/Southern Response prior to 1 October 2014, including class members in this proceeding.

The Government's press release about the settlement package is available here: <https://www.beehive.govt.nz/release/proactive-package-southern-response-claimants>

Depending on each individual customer's circumstances, a payment under the Package may include:

- An allowance for professional fees
- A contingency sum, and
- Interest

You should obtain legal advice about your rights under the settlement Package. A contribution toward the cost of getting independent legal advice on any Package payment offered to you may also be available.

Class members who wish to make an application to Southern Response under the Package must contact Southern Response on registration@southernresponse.co.nz.

You may have heard that any Class Members who wish to participate in the Package need to opt out of the representative action by 20 December 2021. Please note that this date **no longer applies**. If the application for discontinuance is granted the representative action will be at an end and there will be no need to opt-out. If the Court does not grant the application to discontinue a new opt-out date (a later date) will be set and you will be informed of this.

6. Proposal to discontinue the representative proceeding

The Plaintiffs and Southern Response have reached agreement on the terms for the discontinuance of the representative proceeding.

The key terms of the agreement include:

- (a) Southern Response agrees to offer its settlement Package to all class members (subject to eligibility criteria) for a period of at least 18 months from 29 November 2021 or such date as the High Court approves the discontinuance of the proceeding;
- (b) Southern Response will pay an agreed amount towards the Plaintiffs' legal costs and the funding commission that Claims Funding Australia is entitled to claim from the Plaintiffs and class members who have entered into litigation funding agreements;
- (c) Claims Funding Australia and the Plaintiffs' legal team will not seek any further legal costs or funding commission from class members;
- (d) The Plaintiffs will discontinue the representative proceeding, subject to the High Court granting approval to discontinue.

Other terms of the agreement are confidential. The agreement to discontinue the representative proceeding requires approval by the High Court. The Plaintiffs have filed an application seeking approval to discontinue the representative proceeding. The Court has set a date of 29 November 2021 at 10.00 am to hear that application.

In the meantime, Mr and Mrs Ross and Southern Response have agreed to suspend further steps in the representative proceeding.

7. How does the discontinuance of the representative action affect you?

If the Court approves the application to discontinue, the representative action will come to an end. This **does not extinguish your right to seek compensation** from Southern Response.

However, **you will not receive compensation from Southern Response automatically**. If you wish to claim compensation under Southern Response's Settlement Package, you will need to contact Southern Response on registration@southernresponse.co.nz. You will be directed to complete an application form so your application can be considered.

Under the agreement to discontinue, Southern Response has agreed to keep the Package offer open for a period of at least 18 months from the later of 29 November 2021 or such date as the High Court approves the discontinuance of the proceeding. All Class Members who are eligible for the Package have the right to participate fully in and receive the benefit of the Package provided that they make an approved application within this time period.

If the Court approves the agreement to discontinue, Southern Response will pay an agreed amount towards the Plaintiffs' legal costs and the funding commission that Claims Funding Australia is entitled to claim from the Plaintiffs and class members who have entered into

litigation funding agreements. In return for this payment, Claims Funding Australia and GCA Lawyers will not claim any share of any compensation that class members get from Southern Response. That means that **if you obtain a payment under the Settlement Package, you will not have any money deducted** to meet legal fees or funding costs associated with the representative proceeding.

8. Can you still bring a separate lawsuit against Southern Response?

If you accept settlement under the Package, you will be required to sign a settlement agreement under which you settle your claim against Southern Response in return for the Package payment.

You are not obliged to apply for settlement under the Package. You may decide not to settle under the Package. If the Court approves a discontinuance of the representative proceeding, you will not be able to pursue claims against Southern Response in the representative proceeding. However, you will still be entitled to bring your own lawsuit against Southern Response, including for any losses or claims that you might have pursued in the representative action. As noted above, any rights you have to claim against Southern Response for compensation will not be extinguished by the agreement to discontinue.

It is important to note that if the Court approves the agreement to discontinue the representative proceeding, any individual claim you bring against Southern Response will be subject to time limits known as "limitation periods". If you have any questions or concerns about whether your claim might be affected by the limitation periods, you should seek legal advice. However, any limitation periods will not affect your eligibility for settlement under the Package.

D: WHAT CLASS MEMBERS NEED TO DO NOW

9. Your options

If you have any concerns or issues about the discontinuance agreement you should seek legal advice.

The Court will hold a hearing on whether to approve the discontinuance of the proceeding at 10.00 am on 29 November 2021 in the High Court at Christchurch.

If you wish to make submissions or be heard on why the Court should or should not approve the agreement to discontinue, you need to file a written outline of why you support or oppose the proposed discontinuance, together with any evidence you wish to rely on, by no later than 5.00 pm on 25 November 2021. This material should be sent to the Court at christchurchhc@justice.govt.nz or by mail to:

Ross v Southern Response Earthquake Services Limited
The Registrar
Christchurch High Court
Justice Precinct
20 Lichfield Street
Christchurch 8011

If you wish to speak to the Court at the hearing, you should email christchurchhc@justice.govt.nz and let the Registrar know that you wish to be heard. Due to the coronavirus, the hearing might not happen in a courtroom where people come along in person. This means that if you want to speak to the Court, you may need to do so by video or telephone link. If that is necessary, arrangements will be made in due course.

A summary of your options is set out in the table below:

<p>If you <u>support</u> the proposed discontinuance and <u>have already applied</u> to Southern Response under the Package.</p>	<ul style="list-style-type: none"> • You do not have to do anything. Southern Response will process your application under the Package and will advise you when it has calculated its offer to you (if any). • You may make submissions to the Court supporting the proposed discontinuance, but you don't need to.
<p>If you <u>support</u> the proposed discontinuance <u>but have not applied</u> to Southern Response for compensation.</p>	<ul style="list-style-type: none"> • If you wish to receive compensation from Southern Response under the Package, you need to contact registration@southernresponse.co.nz • If you do that, you will be directed to complete an application form and, if you are eligible under the Package, Southern Response will proceed to review your file and make an offer to you. • You may make submissions to the Court supporting the proposed discontinuance, but you don't need to.
<p>If you <u>disagree with</u> the proposed discontinuance (or any aspect of it)</p>	<ul style="list-style-type: none"> • You should tell the Judge why. • This is best done by sending written material for the Court to consider well before the hearing. The material should be sent to christchurchhc@justice.govt.nz by 5 pm on 25 November 2021. • You can also tell the Court your concerns at the hearing.

10. What happens if the application for discontinuance is not approved

If the Court declines the application to discontinue then the representative action will stay on foot. You will remain as Class Member in the representative action but will have the opportunity to opt out of the representative proceeding. If that happens, you will receive further communications about your options.

11. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the statement of claim, the statement of defence, and the court judgments issued in the case so far, may be obtained by:

- (a) downloading them from the representative proceeding website at <https://www.southernresponseclassaction.co.nz/> or
- (b) contacting the Christchurch Registry of the High Court at christchurchhc@justice.govt.nz

Please consider the above matters carefully. If there is anything of which you are unsure, you should seek your own separate legal advice.