

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV 2018-

BETWEEN **BRENDAN MILES ROSS and COLLEEN ANNE ROSS,**
Retired Manager and Retired Office Administrator, of 88
Sawyers Arms Road, Christchurch, as trustees of the
Brendan Ross Family Trust and the Colleen Ross Family
Trust

Plaintiffs

AND **SOUTHERN RESPONSE EARTHQUAKE SERVICES**
LIMITED, a duly incorporated company having its
registered office at 6 Show Place, Addington,
Christchurch

Defendant

STATEMENT OF CLAIM

Dated: 25 May 2018

Solicitors:

GCA Lawyers
PO Box 3241
Christchurch

Solicitor Acting: Grant Cameron
Phone: (03) 365 1347
Fax: (03) 365 4856
Email: grant@gcalawyers.com

Counsel:

Philip Skelton QC / Kelly Quinn
Bankside Chambers
Level 22, 88 Shortland Street
Auckland 1010

Tel: (09) 307 9966
(09) 307 8773

Email: philip@philipskelton.co.nz
kelly.quinn@bankside.co.nz



THE PLAINTIFFS by their solicitor say:

The Parties

1. The Plaintiffs are a married couple resident in Christchurch.
2. The Plaintiffs are together the trustees of both the following trusts:
 - (a) the Brendan Ross Family Trust; and
 - (b) the Colleen Ross Family Trust

(together the Trusts).
3. As at September 2010 and at all material times thereafter, the Trusts each owned an undivided one-half share of a residential property located at 119 Hulverstone Drive, Avondale, Christchurch (the Property).
4. The Plaintiffs sue in their capacity as trustees of the Trusts, and as representatives of the class of persons identified at paragraph 59 herein.
5. The Defendant is a Crown-owned company listed in Schedule 4A of the Public Finance Act 1989. It formerly carried on business as a private insurance company, and now primarily carries on the business of settling all claims against it arising from the Canterbury earthquakes. In particular:
 - (a) it formerly carried on business as a private insurer under the name AMI insurance Ltd;
 - (b) following the Canterbury earthquakes, its reserves and reinsurances were found to be insufficient to cover all claims, and the Crown became its shareholder as a consequence of the Crown Support Deed dated 7 April 2011;
 - (c) it has since existed as a run-off insurer in relation to covered claims, operating in accordance with its Statement of Intent dated 19 June 2015 which was provided in accordance with part 4 of the Crown Entities Act 2004; and

(d) its primary objective is to address the claims made against it arising out of the Canterbury earthquakes at the least cost to it.

The House

6. The Property had on it a residential dwelling (**the House**) which was the family residence of the Plaintiffs.
7. On 30 June 2010, the Plaintiffs entered into a contract of insurance with the Defendant (at that time known as AMI Insurance Limited) under a "Premier House Cover" policy (**the Policy**).
8. This Policy was a renewal of a policy taken out years earlier by the Plaintiffs. Their insurance was renewable annually on 30 June of each year, and was similarly renewed on 30 June 2011.

The Policy

9. The Policy provided insurance cover for physical loss or damage to the House, including from earthquakes.
10. The terms of the Policy provided that in the event the House suffered damage covered by the Policy:
 - (a) The Defendant was obliged to pay to repair or rebuild the House to an "as new" condition.
 - (b) If the House was repairable, the Defendant could elect either to repair the House to an "as new" condition, or pay the Plaintiffs the cash equivalent of the cost of such repairs.
 - (c) If the House was damaged "beyond economic repair", the Plaintiffs could elect one of the following options (**Rebuild Options**):

(i) To rebuild the House on the same site, in which case the Defendant would be obliged to pay the full cost to rebuild the House to an "as new" condition on the same site (**Rebuild Cost**);

(ii) To rebuild on another site, in which case the Defendant would be obliged to pay the cost of rebuilding on another site of the Plaintiffs' choice, up to a maximum of the Rebuild Cost;

(iii) To buy another house, in which case the Defendant would be obliged to pay the cost of buying another house, including necessary legal and associated fees, up to a maximum of the Rebuild Cost; or

(iv) A cash payment, in which case the Defendant would be obliged to pay the Plaintiffs the market value of the House at the time of the loss.

(d) When repairing or rebuilding the House, or calculating the cost thereof, the Defendant was obliged to use building materials and construction methods in common use at the time of repair/rebuild/calculation.

11. Under the heading "*Cover for additional costs*", the Defendant also undertook as part of the above obligations to pay the reasonable cost of:

(a) Any architects' and surveyors' fees to repair or rebuild the House;

(b) Demolition and debris removal;

(c) Removing household contents, in the event that was necessary to carry out repair or reinstatement of the House; and

(d) Any additional work required for compliance with building legislation and rules.

12. If the House was damaged in an earthquake the Defendant could deduct, from the sum or sums otherwise payable to the Plaintiffs under the Policy, any sum payable to the Plaintiffs by the Earthquake Commission (EQC).

13. The Plaintiffs rely on the terms of the Policy as if pleaded in full.

Duty of good faith

14. As the Plaintiffs' insurer, the Defendant owed to the Plaintiffs an ongoing duty of good faith.

15. This duty required the Defendant *inter alia* to:

(a) Disclose to the Plaintiffs all information known to it that would be material to recovery under the Policy, including after the lodgement of a claim; and

(b) Act fairly, reasonably and transparently, including after the lodgement of a claim.

The Earthquakes

16. Between 2010 and 2012, the Canterbury region and Christchurch city in particular suffered a series of earthquakes, including major earthquakes in September 2010 and February 2011 and many smaller aftershocks (the **Canterbury earthquakes**).

17. The House was damaged in the Canterbury earthquakes.

18. The damage to the House entitled the Plaintiffs:

(a) To make a claim or claims under the Policy; and

(b) If the House was damaged beyond economic repair, to:

(i) Elect one of the Rebuild Options; and

(ii) Recover from the Defendant the sum payable under the Rebuild Option they elected.

19. The Plaintiffs lodged claims with the Defendant on 29 March 2011 (the **Claims**).
20. The Plaintiffs also lodged claims with EQC for damage to the House.
21. In relation to those claims, the EQC made payments to the Plaintiffs totalling \$119,460.

Detailed Repair/Rebuild Analyses (DRAs)

22. Following the Earthquakes, the Defendant engaged Arrow International Ltd (**Arrow**) to:
 - (a) Carry out inspections of policyholders' homes;
 - (b) Recommend whether each home was repairable or "beyond economic repair"; and
 - (c) Prepare detailed estimates of the cost of repair or rebuild, which were set out in documents known as Detailed Repair/Rebuild Analyses (**DRAs**).
23. Arrow inspected the House on 19 March 2012.
24. On 23 April 2012, Arrow prepared a DRA which stated the House was "beyond economic repair" and set out Arrow's estimate of the Rebuild Cost.
25. Two versions of the DRA were created by Arrow simultaneously:
 - (a) One version was given the internal file name "*D3465959-DRA-SR-Ross*" (**Full DRA**).
 - (b) The other version was given the internal file name "*D3465959-DRA-Customer-Ross*" (**Abridged DRA**).
26. Arrow sent finalised copies of the Full DRA and Abridged DRA to the Defendant on 20 May 2012.

27. On or about 7 August 2012, the Defendant provided the Abridged DRA to the Plaintiffs.
28. The Defendant did not provide the Full DRA to the Plaintiffs.
29. The Abridged DRA contained a schedule of estimated costs to rebuild the House (**Cost Schedule**), which recorded the following sums:

Entry in Cost Schedule	Sum quoted (\$)
House Sub Total (excluding GST)	271,090.88
P&G & Consents Sub Total (excluding GST)	19,054.54
Total (excluding GST)	290,145.42
Outside EQC Scope - Sub Total (excluding GST)	24,945.00
House & Outside EQC Scope (excluding GST)	315,090.42
GST	47,263.56
House & Outside EQC Scope (including GST)	362,353.98

30. The Full DRA contained a Cost Schedule that was nearly identical, except that it included another section at the end (**Additional Section**).
31. The Additional Section recorded estimates for further items of cost, as follows:

Entry in Cost Schedule	Sum quoted (\$)
Internal Administration (excluding GST)	17,000.00
Demolition (excluding GST)	30,057.20
Design (excluding GST)	13,921.82
Sub Total (excluding GST)	376,069.44
Project Contingency	37,607.00
Grand Total House (excluding GST)	413,676.00
GST	62,051.40
Grand Total House (including GST)	475,727.40

32. The Abridged DRA did not include the information contained in the Additional Section of the Full DRA, nor any indication that it had been abridged or redacted in any way or that another version of the same document existed.

33. The Defendant did not, at any time prior to settlement of the Plaintiffs' Claims:

- (a) Provide the Plaintiffs with a copy of the Full DRA;
- (b) Disclose the existence of the Full DRA to the Plaintiffs; or
- (c) Inform the Plaintiffs that the Abridged DRA was an abridged document.

The Decision Pack

34. On or about 7 August 2012, the Defendant sent the Plaintiffs a "Decision Pack", which included a covering letter and a copy of the Abridged DRA.

35. The covering letter advised that:

- (a) The House had been assessed as being beyond economic repair.
- (b) If the Plaintiffs chose the "Buy another house" Rebuild Option:

"Southern Response will pay the cost of buying another house up to the maximum it would have cost to rebuild your house on its present site. [...] To assist you with your decision, we calculate the maximum amount available if you take this option will be \$361,955. This is the amount we are prepared to pay under this option. [...] The most Southern Response will pay is the amount it would have cost us to rebuild your house on its present site."

- (c) In estimating the Rebuild Cost, Arrow had taken into consideration the requirement to use building materials and construction methods in common use at the time of rebuilding.

The Settlement Election Form

36. On 12 September 2012 the Defendant sent the Plaintiffs a "Settlement Election Form".

37. The Settlement Election Form included a table headed "Options" that purported to set out the Plaintiffs' entitlements, and the Defendant's obligations, under the various Rebuild Options.

38. That table is reproduced in part below:

Option	What we will pay	Considerations	Settlement
Buy another house	<ul style="list-style-type: none"> • We will pay the purchase price of another house, including necessary legal and associated fees, up to the cost of rebuilding your house on its present site. • We will pay the reasonable cost of demolition and debris removal for your damaged house, if demolition is required. • These expenses must be approved by us before they are incurred. 	<ul style="list-style-type: none"> • We will not pay for any difference between the cost of buying your replacement house and the cost of rebuilding your house on its present site. 	<p>The maximum cover available to you under this option is:</p> <p>\$361,955</p> <p>*this is the total amount payable before deducting EQC payments made and any EQC excesses applicable</p>

Bruce Glennie Estimate and Final DRA

39. On 8 February 2013, the Plaintiffs obtained their own estimate of the Rebuild Cost, prepared by Bruce Glennie Building Consultancy Limited (**Bruce Glennie Estimate**).

40. The Bruce Glennie Estimate assessed a cost of \$536,359.80 including GST to rebuild the House and external works. This sum expressly excluded design costs, contingency allowance, resource consent costs and legal costs.

41. On 22 February 2013, the Plaintiffs met with representatives of the Defendant and Arrow. The Plaintiffs brought with them and gave to the Defendant a copy of the Bruce Glennie Estimate.

42. On 4 April 2013, Arrow advised the Defendant that it had reviewed the Bruce Glennie Estimate and that:

- (a) The difference between the sums in the Bruce Glennie Estimate and Arrow's DRA arose in part from Bruce Glennie including allowances for items that either were not covered by the policy or had not suffered damage.
 - (b) The remaining difference could be explained by Bruce Glennie using higher rates than necessary.
 - (c) Arrow's DRA had been updated to allow for cost escalation (although it had yet to be peer reviewed) and Arrow was comfortable that the revised budget would be adequate to replace the House.
43. By emails dated 4 April 2013 and 15 April 2013, the Defendant advised the Plaintiff that:
- (a) The difference between the sums in the Bruce Glennie Estimate and Arrow's DRA arose in part from Bruce Glennie including allowances for items that either were not covered by the policy or had not suffered damage.
 - (b) The remaining difference could be explained by Bruce Glennie using higher rates than necessary.
 - (c) Arrow's DRA would not be reviewed to allow for cost escalation under the "Buy another house" Rebuild Option.
 - (d) The settlement figure was non-negotiable.
 - (e) If the Plaintiffs requested, the Defendant could withdraw the settlement offer and "redo the total DRA from top to bottom", but this could result in a lower settlement offer or the claim becoming a repair instead of a rebuild.
44. On or around 4 April 2013, Arrow sent the Defendant an updated DRA with the internal file name "*D3465959-DRA-Final-Ross*" (**Final DRA**).

45. The Final DRA contained a Cost Schedule that recorded the following revised sums:

Entry in Cost Schedule	Sum quoted (\$)
House Sub Total (excluding GST)	291,546.68
P&G & Consents Sub Total (excluding GST)	20,077.33
Total (excluding GST)	311,624.02
Outside EQC Scope - Sub Total (excluding GST)	24,945.00
House & Outside EQC Scope (excluding GST)	336,569.02
GST	50,485.35
House & Outside EQC Scope (including GST)	387,054.37

46. The Cost Schedule in the Final DRA included an additional section similar to that in the Full DRA, with the following revised sums:

Entry in Cost Schedule	Sum quoted (\$)
Internal Administration (excluding GST)	17,000.00
Demolition (excluding GST)	30,057.20
Design (excluding GST)	14,330.93
Sub Total (excluding GST)	397,957.15
Project Contingency	39,796.00
Grand Total House (excluding GST)	437,753.00
GST	65,552.95
Grand Total House (including GST)	503,415.95

47. The Defendant did not, at any material time prior to settlement of the Plaintiffs' Claims under the Policy:

- (a) Provide the Plaintiffs with a copy of the Final DRA;
- (b) Disclose the existence of the Final DRA to the Plaintiffs; or
- (c) Disclose the information in the Cost Schedule (ie the Cost Schedule in the Final DRA) to the Plaintiffs.

The Settlement

48. On 26 April 2013, the Plaintiffs signed and returned the Settlement Election Form, indicating that they elected the "Buy another house" Rebuild Option.
49. On 23 May 2013, the Plaintiffs and the Defendant entered into a written contract described as a "Settlement and Discharge Agreement" (the **Settlement Agreement**).
50. The terms of the Settlement Agreement included the following:
 - (a) Clause 4 provided *"The parties agree that a fair and reasonable estimate for the rebuild cost of the insured property, and the sum insured under the policy, is \$362,355, including EQCover payments and applicable excesses."*
 - (b) Clause 5 provided that the Defendant would pay, and the Plaintiffs would accept, a sum of \$242,495 including GST, being \$362,355 less the EQC payment of \$119,860.
 - (c) Clause 11 provided that the Plaintiffs accepted the settlement sum in *"full and final settlement and discharge"* of their claims under the Policy for damage to the House *"and in respect of any complaint, claim or right of action the policyholder has or may have against Southern Response, whether known or unknown, which arises directly or indirectly out of the events or any subsequent aftershock that has occurred before the date of this Agreement."*
51. The Plaintiffs rely on the terms of the Settlement Agreement as if pleaded in full.
52. The Defendant paid a sum of \$242,495 to the Plaintiffs on or around 29 May 2013.

Representations

53. Between March 2012 and 23 May 2013, the Defendant made the following express or implied representations to the Plaintiffs (the **Representations**):
- (a) That the sum of approximately \$362,355 identified in the Abridged DRA was the Defendant's genuine estimate of the Rebuild Cost;
 - (b) That the sum of approximately \$362,355 identified in the Abridged DRA was the Defendant's genuine belief as to the sum the Plaintiffs were entitled to receive, and the Defendant was obliged to pay, under the Policy;
 - (c) That the Defendant did not possess any other or more complete estimate of the Rebuild Cost; and
 - (d) That \$362,355 was the sum the Plaintiffs were entitled to receive, and the Defendant was obliged to pay, under the Policy.
54. The Defendant made the Representations by means of the following acts and omissions:
- (a) Providing the Plaintiffs with the Abridged DRA;
 - (b) Failing to provide to the Plaintiffs, or disclose the existence of, the Full DRA or the information in the Additional Section;
 - (c) Preparing the Decision Pack and providing it to the Plaintiffs;
 - (d) Preparing the Settlement Election Form and providing it to the Plaintiffs;
 - (e) Advising the Plaintiffs that Arrow's DRA would not be reviewed to allow for escalation;
 - (f) Failing to provide to the Plaintiffs, or disclose the existence of, the Final DRA or the information in it;
 - (g) Discussions with the Plaintiffs via telephone, email, letter and in person; and

(h) Preparing the Settlement Agreement and providing it to the Plaintiffs.

(individually, and in combination, the **Misleading Conduct**)

55. At all times after 23 April 2012, the Defendant was aware that:

(a) \$362,355 was not a full estimate of the Rebuild Cost; and

(b) Arrow's full estimate of the Rebuild Cost as at 23 April 2012 was \$475,727.

56. At all times after it received the Final DRA, the Defendant was aware that Arrow's full estimate of the Rebuild Cost, taking into account cost escalations to 4 April 2013, was \$503,416.

57. As at 23 May 2013, being the date on which the Settlement Agreement was entered into, the actual cost to rebuild the House to an "as new" condition on the same site was believed by the Defendant to be no less than \$503,416.

The Class Members

58. Between 2011 and October 2014, the Defendant entered into settlements with an unknown number of policyholders (currently thought to be approximately 2,000) in circumstances materially similar to those described above.

59. The policyholders just referred to form a class of persons having the same interest in this proceeding, in that each of them:

(a) Own or owned a residential dwelling in Canterbury that was insured with the Defendant under either a "Premier House Cover" or "Premier Rental Property Cover" policy (the **Policy**);

(b) Lodged a claim or claims with the Defendant under the Policy for damage suffered to their dwelling as a result of the 2010 - 2012 Canterbury earthquakes (the **Claim**);

- (c) Received an Abridged DRA from the Defendant;
- (d) Did not receive the corresponding Full DRA from the Defendant;
- (e) Entered into a settlement agreement with the Defendant prior to 1 October 2014 in settlement and discharge of the Claim.

(collectively, **Class Members**)

- 60. The Defendant made express or implied representations to each Class Member that were the same or materially the same (save as to sums involved) to those pleaded at paragraph 53 above (**Representations**).
- 61. In each instance, the Defendant made the Representations to the Class Member by means of acts and omissions that were the same or materially the same as the acts and omissions (or some of them) pleaded at paragraph 54 above (**Misleading Conduct**).
- 62. In relation to each Class Member, the Defendant knew at all material times that:
 - (a) The cost estimate provided in the Abridged DRA was not a full estimate of the cost to rebuild or repair the Class Member's dwelling; and
 - (b) The full estimate of the cost to rebuild or repair the Class Member's dwelling was the "Grand Total House (including GST)" cost recorded in the Full DRA or Final DRA (in cases where a Final DRA was also prepared) (**Full Estimate**).
- 63. As at the date each Class Member entered into a settlement agreement with the Defendant, the actual cost to rebuild or repair the Class Member's dwelling to an "as new" condition on the same site was believed by the Defendant to be no less than the Full Estimate recorded in the Full DRA (or Final DRA, where applicable) prepared for that Class Member's Claim.

FIRST CAUSE OF ACTION: BREACH OF THE FAIR TRADING ACT 1986

64. In all of its dealings with each Class Member, the Defendant was acting in trade for the purposes of the Fair Trading Act 1986.
65. By engaging in the Misleading Conduct, the Defendant engaged in conduct that was misleading or deceptive, or likely to mislead or deceive in breach of s 9 of the Fair Trading Act 1986.
66. Each Class Member has suffered loss as a result of the Defendant's misleading or deceptive conduct.

Particulars of loss

- (a) The difference between the sum received by each Class Member under their settlement agreement with the Defendant and the Full Estimate prepared for that Class Member's Claim.
67. Each Class Member has further suffered stress and inconvenience as a result of the Defendant's misleading or deceptive conduct, and as a result of realising that they were misled into settling for a sum that was substantially less than that to which they were entitled.

WHEREFORE THE PLAINTIFFS CLAIM ON THEIR OWN BEHALF:

- A. Damages against the Defendant pursuant to s 43(3)(f) of the Fair Trading Act 1986, in the sum of \$141,061;
- B. General Damages in the sum of \$50,000 (being \$25,000 for each plaintiff);
- C. Interest pursuant to s 10 of the Interest on Money Claims Act 2016 (IOMCA), from 29 May 2013 to the date of judgment; and
- D. Costs of and incidental to this proceeding.

AND THE PLAINTIFFS CLAIM ON BEHALF OF EACH CLASS MEMBER:

- E. A declaration that the Defendant has breached s 9 of the Fair Trading Act 1986;

- F. Damages against the Defendant pursuant to s 43(3)(f) of the Fair Trading Act 1986, in an amount to be quantified (being the difference between the settlement sum received by each Class Member and the Full Estimate prepared for that Class Member's Claim);
- G. General Damages in the sum of \$25,000 per Class Member;
- H. Interest pursuant to s 10 of the IOMCA, from the date of payment under the settlement agreement to the date of judgment; and
- I. Costs of and incidental to this proceeding.

SECOND CAUSE OF ACTION: MISREPRESENTATION

- 68. The Plaintiffs repeat paragraphs 1 to 63.
- 69. The Representations the Defendant made to each Class Member were material to each Class Member and to each Class Member's decision to enter into a settlement agreement with the Defendant.
- 70. The Defendant intended each Class Member to rely upon, and each Class Member did rely upon, the Representations and was thereby induced to enter into a settlement agreement.
- 71. The Representations were false.
- 72. Each Class Member has suffered loss as a result of the false Representations and is entitled to damages from the Defendant as if the Representations were terms of the settlement agreement that had been breached.

Particulars of loss

- (a) The difference between the sum received by each Class Member under their settlement agreement with the Defendant and the Full Estimate prepared for that Class Member's Claim.

73. Each Class Member has further suffered stress and inconvenience as a result of the Defendant's false representations, and as a result of realising that they were misled into settling for a sum that was substantially less than that to which they were entitled.

WHEREFORE THE PLAINTIFFS CLAIM ON THEIR OWN BEHALF:

- A. Damages against the Defendant pursuant to s 35 of the Contract and Commercial Law Act 2017, in the sum of \$141,061;
- B. General Damages in the sum of \$50,000 (being \$25,000 for each plaintiff);
- C. Interest pursuant to s 10 of the IOMCA, from 29 May 2013 to the date of judgment; and
- D. Costs of and incidental to this proceeding.

AND THE PLAINTIFFS CLAIM ON BEHALF OF EACH CLASS MEMBER:

- E. Damages against the Defendant pursuant to s 35 of the Contract and Commercial Law Act 2017, in an amount to be quantified (being the difference between the settlement sum received by each Class Member and the Full Estimate prepared for that Class Member's Claim);
- F. General Damages in the sum of \$25,000 per Class Member;
- G. Interest pursuant to s 10 of the IOMCA, from the date of payment under the settlement agreement to the date of judgment; and
- H. Costs of and incidental to this proceeding.

THIRD CAUSE OF ACTION: MISTAKE

74. The Plaintiffs repeat paragraphs 1 to 63.
75. As a result of the Representations and the Misleading Conduct, each Class Member was mistaken as to:
- (a) The estimated cost to rebuild or repair their dwelling;
 - (b) The Defendant's belief as to the estimated cost to rebuild or repair their dwelling; and
 - (c) The sum recoverable under their insurance policy in respect of their Claim.
- (the Mistakes)
76. Each Class Member was influenced by the Mistakes in their decision to enter into a settlement agreement with the Defendant.
77. The Mistakes were material to each Class Member.
78. The Defendant was aware of the Mistakes in each instance.
79. In each instance, the Mistakes resulted in a substantially unequal exchange of values under the settlement agreement, in that each Class Member:
- (a) Surrendered the right to recover for their Claim under their Policy; and
 - (b) Agreed to accept a settlement sum that was substantially less than the true value of their Claim recoverable under their Policy.
80. Each Class Member has suffered loss as a result of the Mistakes.

Particulars of loss

- (a) The difference between the sum received by each Class Member under their settlement agreement with the Defendant and the Full Estimate prepared for that Class Member's Claim.

81. Each Class Member has further suffered stress and inconvenience as a result of realising that they were misled into settling for a sum that was substantially less than that to which they were entitled.

WHEREFORE THE PLAINTIFFS CLAIM ON THEIR OWN BEHALF:

- A. Compensation or restitution from the Defendant pursuant to s 28(2)(d) of the Contract and Commercial Law Act 2017, in the sum of \$141,061;
- B. General Damages in the sum of \$50,000 (being \$25,000 for each plaintiff);
- C. Interest pursuant to s 10 of the IOMCA, from 29 May 2013 to the date of judgment; and
- D. Costs of and incidental to this proceeding.

AND THE PLAINTIFFS CLAIM ON BEHALF OF EACH CLASS MEMBER:

- E. Compensation or restitution from the Defendant pursuant to s 28(2)(d) of the Contract and Commercial Law Act 2017, in an amount to be quantified (being the difference between the settlement sum received by each Class Member and the Full Estimate prepared for that Class Member's Claim);
- F. General Damages in the sum of \$25,000 per Class Member;
- G. Interest pursuant to s 10 of the IOMCA, from the date of payment under the settlement agreement to the date of judgment; and
- H. Costs of and incidental to this proceeding.

FOURTH CAUSE OF ACTION: BREACH OF DUTY OF GOOD FAITH

82. The Plaintiffs repeat paragraphs 1 to 63.
83. By engaging in the Misleading Conduct, the Defendant breached its duty of good faith to the Plaintiffs and to each Class Member.
84. As a result of the Defendant's breaches:
- (a) Each Class Member was misled as to the value of their Claim under their Policy;
 - (b) Each Class Member entered into a settlement agreement with the Defendant under which the Class Member:
 - (i) Surrendered their right to recover for their Claim under their Policy; and
 - (ii) Agreed to accept a settlement sum that was less than the true value of their Claim recoverable under their Policy.
85. Each Class Member has suffered loss as a result of the Defendants' breaches of its duty of good faith.

Particulars of loss

- (a) The difference between the sum received by each Class Member under their settlement agreement with the Defendant and the Full Estimate prepared for that Class Member's Claim.
86. Each Class Member has further suffered stress and inconvenience as a result of the Defendant's breach of its duty of good faith, including as a result of realising that they were misled into settling for a sum that was substantially less than that to which they were entitled.

WHEREFORE THE PLAINTIFFS CLAIM ON THEIR OWN BEHALF:

- A. Damages against the Defendant in the sum of \$141,061;
- B. General Damages in the sum of \$50,000 (being \$25,000 for each plaintiff);
- C. Interest pursuant to s 24 of the IOMCA, from 29 May 2013 to the date of judgment, at the rate prescribed by s 12 of the IOMCA; and
- D. Costs of and incidental to this proceeding.

AND THE PLAINTIFFS CLAIM ON BEHALF OF EACH CLASS MEMBER:

- E. Damages against the Defendant in an amount to be quantified (being the difference between the settlement sum received by each Class Member and the Full Estimate prepared for that Class Member's Claim);
- F. General Damages in the sum of \$25,000 per Class Member;
- G. Interest pursuant to s 24 of the IOMCA, from date of payment under the settlement agreement to the date of judgment, at the rate prescribed by s 12 of the IOMCA; and
- H. Costs of and incidental to this proceeding.

This **STATEMENT OF CLAIM** is filed by Grant Cameron, Solicitor for the Plaintiffs, of the firm GCA Lawyers. The address for service of the plaintiff is at the offices of GCA Lawyers, 22 Moorhouse Avenue, Christchurch 8011.

Documents for service may be left at that address or may be sent by email to the Solicitor for the Plaintiffs at grant@gcalawyers.com with a copy to counsel at philip@philipskelton.co.nz / kelly.quinn@bankside.co.nz