



New Zealand High Court
Te Kōti Matua o Aotearoa
Christchurch Earthquake Litigation List Report
As at 30 September 2022

The High Court releases this report on the operation of the Christchurch Earthquake List for the 12 months since the last report.

About the Earthquake List

The Earthquake List was set up in May 2012, to manage litigation arising from the Christchurch earthquakes. The purpose of the Earthquake List is to deal with earthquake related cases as swiftly as the Court's resources permit.

Further information about the Earthquake List is available on the Courts of New Zealand website:

<https://www.courtsofnz.govt.nz/the-courts/high-court/high-court-lists/earthquake-list-christchurch>

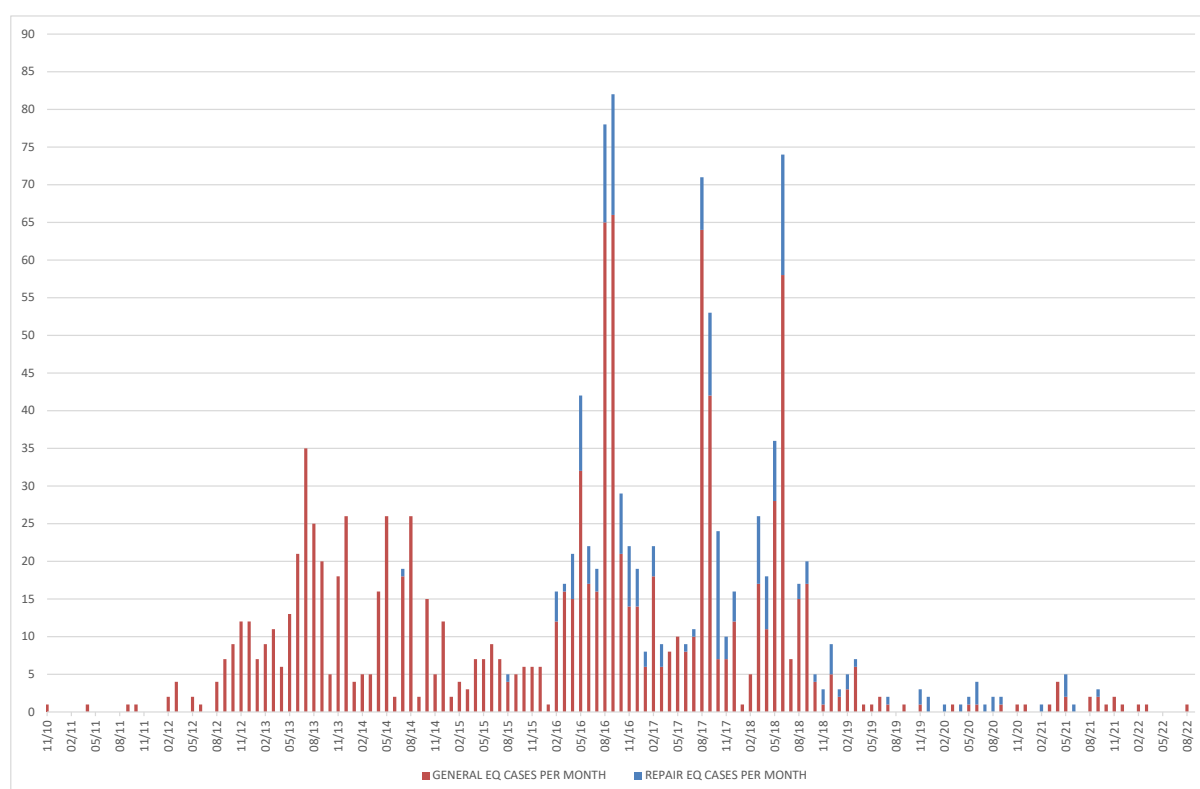
Update on management of the Earthquake List

The list is managed by two Christchurch based Judges (Justice Osborne and Associate Judge Lester). The Judges are provided with dedicated analytical and case management support from a Judicial Support Advisor and the Christchurch High Court Registry.

Filings and outcomes

Since the List was established, 1371 earthquake-related proceedings have been filed and placed on the Earthquake List. There was a pattern of high filing numbers in 2016-2018. In 2019 these dropped, with 39 new proceedings filed that year. In 2020 and 2021, this pattern has continued, with 19 new proceedings filed in both years. In 2022, 14 new proceedings were filed. The graph below shows the number of filings per month since earthquake-related filings began in 2010. It illustrates the high number of filings 2016–2018 and the more recent reduction in filings.

Filings per month: earthquake proceedings and defective repairs



The below table compares the number of recent filings with those in earlier years. It is evident that there are now likely to be relatively few unresolved purely legal issues, most of the remaining cases turning on their facts.

Average Earthquake-related filings per month for years ending 30 September	
2013	15.0
2014	12.8
2015	6.8
2016	26.3
2017	22.6
2018	21.2
2019	3.3
2020	1.6
2021	1.6
2022	1.2

As eleven years have passed since the February 2011 earthquake, the reduction in filings was to be expected as settlement negotiations or trials were concluded and repairs or rebuilds were undertaken. Cases raising issues over repairs now account for an increasing proportion (approximately one third) of all active Earthquake List cases.

Disposals

The aim of any case management list is to assist the parties to resolve the proceedings. The most common and cost-effective outcome for both parties is settlement. A feature of case management is that certain cases are identified for hearing as they can best provide a legal precedent to assist with settlement.

In 2019, the Supreme Court's decision of *Xu v IAG New Zealand Limited* [2019] NZSC 68 clarified the law on the assignment of rights upon sale of the property which led to several proceedings settling.

In 2020, the Court of Appeal released its decision of *Southern Response Earthquake Services Limited v Dodds* [2020] NZCA 395 which upheld the 2019 decision of this Court in *Dodds v Southern Response Earthquake Services Limited* [2019] NZHC 2016. After the release of the Court of Appeal's decision, the Government announced its intention not to appeal to the Supreme Court. The case established the right of policy holders to recover damages when they had settled their insurance claim less favourably than otherwise would have been the case because the insurer gave them incomplete information as to the costs of remediation.

In 2020, *Sleight v Beckia Holdings Ltd* [2020] NZHC 2851 was heard by this Court. The plaintiffs established that repairs effected by Farrells, project managed by Hawkins (both companies since in liquidation) under IAG's Managed Repair Programme, were defective. Ultimate liability was apportioned 79.64% to IAG and 20.36% to QBE Insurance (Hawkins' insurer). On 25 May 2022 the Court of Appeal released its decision on the cross-claim between IAG and QBE Insurance (*IAG New Zealand Limited v QBE Insurance (Australia) Limited* [2022] NZCA 208). The appeal relating to IAG's indemnity claim against Hawkins/QBE and Hawkins/QBE's cross-appeal was allowed, as was IAG's appeal regarding the award of interest to the Sleights. Several other proceedings awaiting the release of the *Sleight* appeal have now indicated they are engaging in alternative dispute resolution in light of the Court of Appeal's decision.

In 2020 it was determined that representative claims being pursued in *Ross v Southern Response Earthquake Services* were to proceed on an 'opt out' basis. This was determined by the Court of Appeal in September 2019 ([2019] NZCA 431) and subsequently by the Supreme Court ([2020] NZSC 126). There was understood to be some 3000 policy-holders whose claims (unless they opted out) would have been determined through this single proceeding. The claim asserted that the policy-holders settled their insurance claims in circumstances parallel to those in the *Dodds* litigation (above). On 20 September 2021 Osborne J released four interlocutory judgments clarifying the class action 'opt out' procedure (*Ross v Southern Response Earthquake Services Limited* [2021] NZHC 2451, 2452, 2453 and 2454). In January 2022 the *Ross* claim was discontinued with leave of the High Court ([2021] NZHC 3497), however the possibility remains open for other representative claims to be brought.

In the year to 30 September 2022, disposals by settlement were again the predominant type of disposal (34 out of 37 total disposals – 92%), continuing the pattern of earlier years. Since the list began, 1197 cases have been settled or discontinued by the parties.

The Court has continued to allocate Judicial Settlement Conferences wherever appropriate. These, together with external mediation services, have resulted in many cases settling. In the year to 30 September 2022, two of the three Judicial Settlement Conferences that took place have resulted in discontinuance.

Historically, cases were not set down for trial until they were ready for trial. However, in recent months due to the impact of COVID-19 on available hearing time, several cases have requested trials to be allocated at earlier stages of case management in anticipation that a hearing date would likely be well over a year away. As all the relevant information and expert reporting is usually complete before a case is set down, the parties can have meaningful settlement discussions at the point a hearing date is allocated. The disposal statistics suggest that the current approach to trial allocation encourages focused settlement discussions before the costs of final trial preparation are incurred.

The table below shows the number of filings by year and what numbers and percentage of those yearly filings have been resolved. The Earthquake List Judges continue to audit older cases to ensure that there is justification for older cases remaining active.

Table of disposals for years ending 30 September			
Year	Yearly Filings	Disposed	Percentage
2011	3	3	100%
2012	21	21	100%
2013	180	180	100%
2014	154	154	100%
2015	81	81	100%
2016	316	315	100%
2017	271	268	99%
2018	254	241	95%
2019	39	31	79%
2020	19	8	42%
2021	19	7	37%
2022	14	3	21%

Canterbury Earthquakes Insurance Tribunal

The Canterbury Earthquakes Insurance Tribunal commenced operation on 1 July 2019. A High Court Practice Note (HCPN2019/2 (CIV)) issued that day stipulated how transfer applications are to be dealt with in the High Court. As at 30 September 2019, 13 cases had been transferred from the High Court to the Tribunal. As at 30 September 2021, 41 cases in total have now been transferred. Of the 41 cases transferred, transfer was only opposed in 3. One application to transfer was unsuccessful. Where there has been opposition, the Court has promptly heard and determined the transfer application in accordance with the Practice Note. As at 30 September 2022 no further transfers have been made to the Tribunal. However, counsel are aware that the option to transfer matters remains available.

The Tribunal may refer questions of law to the High Court for direction on legal questions under s 53 Canterbury Earthquakes Insurance Tribunal Act 2019. These are known as case

stated proceedings. As at 30 September 2021, the Tribunal had referred 2 such cases to the High Court, both of which have been determined.

Active cases

There are now 59 active cases on the Earthquake List (down from 84 as at 30 September 2021). Of the 59 cases, 4 are set down for trial and 3 are awaiting judgments after a defended hearing. Of the remaining cases, all of which are being actively case-managed, 18 are in various stages of settlement negotiations, 10 have requested JSC's, and 6 are awaiting hearing dates to be allocated. The table below gives the historical record of filings, disposals and active cases.

Table of filings, disposals and active cases

Year ending 30 September	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Total Cases Filed (since September 2010)	24	180	154	81	316	271	254	39	19	19	14	1371
Judgments - following hearing*	2	20	9	9	2	6	4	5	4	2	0	63
Settled or Discontinued	1	28	59	86	125	178	185	252	153	96	34	1197
Other**	0	0	0	0	0	4	2	14	26	3	3	52
Total Disposals	3	48	68	95	127	188	191	271	183	101	37	1312
Total Active Cases	21	153	239	225	414	497	560	328	164	82	59	

* - includes 6 judgments that did not require a hearing.

** - includes files consolidated, stayed, removed from list and transferred (to the District Court or to the Canterbury Earthquakes Insurance Tribunal).

Court of Appeal proceedings

The Court of Appeal operates its own list of earthquake-related proceedings. As at 30 September 2022, the cumulative figures for the Court of Appeal Earthquake List since 2010 are —

Filed	59
Judgments released	42
Abandoned pre-hearing	15
Awaiting judgment	1
Awaiting hearing	1

The Court of Appeal statistics relate to all earthquake matters before it, including substantive, interlocutory and cost hearings.

General

The Earthquake List has continued to function effectively during 2022. It is pleasing to see the increase in the number of resolutions and the consequential reduction in the number of cases on hand. The Court is committed in 2021/2022 to ensuring that the List continues to function effectively, especially in relation to the increased number of repair cases that are being filed. However, due to the overall decrease in filing numbers the annual Meeting with the Profession has been discontinued. The Court will continue to report on the status of the Earthquake List.

I once again recognise the commitment of the supervising Judges, the Judicial Support Advisor and the Christchurch registry team.

Hon Justice Thomas
Chief High Court Judge – Te Kaiwhakawā Matua