



**Supreme Court of New Zealand  
Te Kōti Mana Nui**

**11 JUNE 2020**

**MEDIA RELEASE**

**SOUTHERN RESPONSE EARTHQUAKE SERVICES LTD v ROSS**

**(SC 105/2019)**

**CASE HISTORY SYNOPSIS**

**This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsfnz.govt.nz](http://www.courtsfnz.govt.nz). A direct link to the judgment is included at the end of this synopsis.**

In May 2018, Mr and Mrs Ross filed a claim against Southern Response. The claim related to a settlement agreement that they had entered into with Southern Response in relation to their insurance claim for damage to their house caused by the Canterbury earthquakes. Mr and Mrs Ross claimed Southern Response provided them with incomplete information about the cost of remedying earthquake damage to their home. As a result, they settled on a less favourable basis than they otherwise would have. Mr and Mrs Ross say many policyholders settled claims in similar circumstances and as a result have the same claims against Southern Response. Mr and Mrs Ross applied to the High Court to bring the claim as representatives of a class of around 3,000 policyholders who entered into settlement agreements with Southern Response in similar circumstances.

The claim was brought on an “opt out” basis, which meant Mr and Mrs Ross would bring the claim on behalf of every member of the group, apart from those who expressly chose to opt out. Southern Response did not oppose this representative claim but argued it should be brought on an “opt in” basis, meaning a group member would need to complete an opt in form and send it to the High Court in order to be included in the claim.

85 Lambton Quay, Wellington  
P O Box 61 DX SX 11224  
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

The issue before the High Court was whether the High Court Rules 2016 allowed for the bringing of representative claims on an opt out basis.

The High Court concluded the claim had to be brought on an opt in basis. Mr and Mrs Ross appealed to the Court of Appeal. The Court of Appeal allowed Mr and Mrs Ross' appeal, concluding that the High Court Rules did not bar a representative claim brought on an opt out basis.

The Supreme Court granted leave to appeal on the ground of whether the Court of Appeal was correct to allow Mr and Mrs Ross' appeal. The appeal will raise questions about the principles applicable to deciding whether representative claims proceed on an opt in or opt out basis. The appeal does not concern the substantive claim made by Mr and Mrs Ross as to their insurance settlement, but only whether the claim can properly be brought as one on an opt out basis.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921

Supreme Court leave decision: [\[2019\] NZSC 140](#) (9 December 2019)

Court of Appeal decision: [\[2019\] NZCA 431](#) (16 September 2019)