

IN THE SUPREME COURT OF NEW ZEALAND

SC 99/2010  
[2010] NZSC 154

BETWEEN                      ARROW INTERNATIONAL LIMITED  
   Applicant

AND                              QBE INSURANCE (INTERNATIONAL)  
   LIMITED  
   Respondent

Court:                      Elias CJ, Blanchard and Tipping JJ

Counsel:                      P H Thorp for Applicant  
   M G Ring QC and L Taylor for Respondent

Judgment:                      15 December 2010

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed with costs of \$2,500 to the respondent.**

**REASONS**

[1] Arrow International Limited (Arrow) seeks leave to appeal, having been unsuccessful in a claim for indemnity under a contract of insurance with QBE Insurance (International) Ltd (QBE) entered into on 30 May 2002. The claimed insurance cover was for Arrow's own liability to the owners of a building it had developed. In the High Court it was found as a fact that the damage to the building which was the subject of the claim had already occurred before QBE came on risk.<sup>1</sup> Nor did any measurable or further damage occur to the building after May 2002. These findings of fact were not challenged on appeal to the Court of Appeal.<sup>2</sup> The conclusion of the Court of Appeal, upholding the decision of the High Court that

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<sup>1</sup> *Arrow International Ltd v QBE Insurance (International) Ltd* [2009] 3 NZLR 650 (HC) at [84].  
<sup>2</sup> *Arrow International Ltd v QBE Insurance (International) Ltd* [2010] NZCA 408 at [8].

Arrow's liability to the owners of the building was not "consequent upon" some damage happening during the period of insurance (the basis of insurance under the contract), was inevitable.

[2] The interpretation of the contract of insurance does not give rise to any point of difficulty. The proposed appeal turns on a question of fact. It raises no matter of general or public importance. No matter of general commercial significance arises. The statutory grounds under s 13 of the Supreme Court Act 2003 are therefore not met, with the result that leave is declined.

Solicitors:  
Dawson Harford & Partners, Auckland for Applicant  
Hazelton Law, Wellington for Respondent