

New Zealand High Court
Te Kōti Matua o Aotearoa
Christchurch Earthquake Litigation List Report
As at 30 September 2015

The High Court is pleased to release this report on the operation of the Christchurch Earthquake List.

This report updates the last report released in October 2014.

About the Earthquake List

The Earthquake List was set up in May 2012 to manage litigation arising from the Christchurch earthquakes.

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

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

The Court's Commitment to Earthquake List Cases

When the list was established, the Court made a commitment that earthquake cases would be dealt with as swiftly as the Court's resources permit.

Earthquake cases continue to make up a significant proportion of the civil case load in Christchurch. As at 30 September 2015, 61% of general proceedings on hand in Christchurch were earthquake cases.

In June an additional Judge was appointed to sit in Christchurch to address the extra civil demand created by that level of earthquake cases. This appointment brings the total number of High Court Judges in Christchurch to five in addition to two Associate Judges. The additional Judge will assist in ensuring that cases are heard as soon as they can be made ready for hearing.

Over the last year Justices Wylie and Kós were responsible for managing the list and visited Christchurch on a regular basis throughout the year. There has been substantial progress in moving proceedings from the case management stage through to the settlement negotiation and substantive hearing stages.

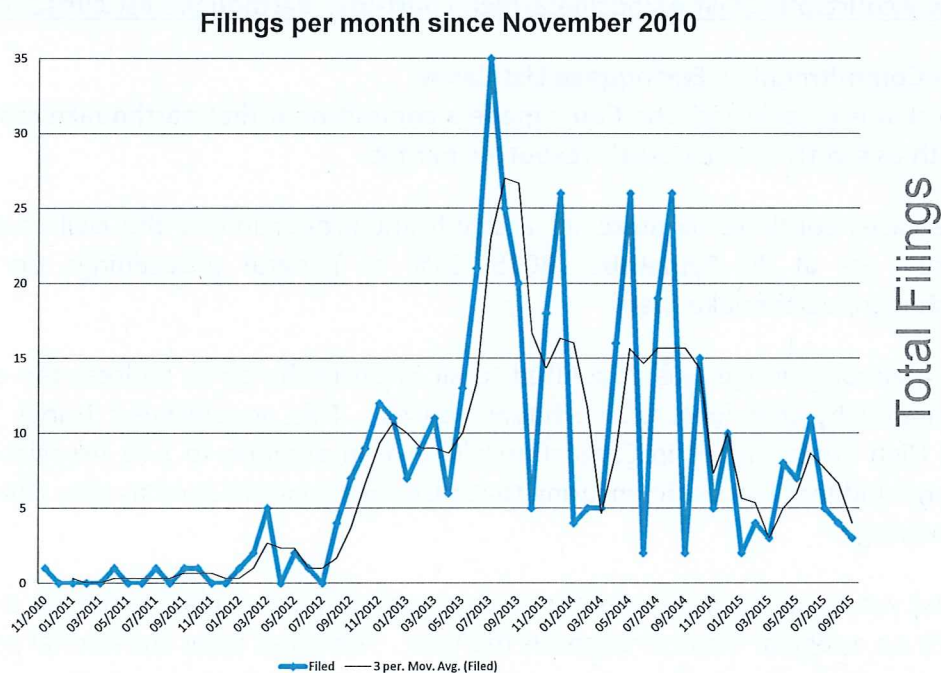
Initial case management conferences – usually face to face - continue to be held within a relatively short period – normally four to six weeks after the proceedings have been filed. Subsequent teleconferences are held approximately two to three months thereafter and then as required. The Court will not adjourn matters indefinitely and it invariably programmes in a further date.

The Court requires the early exchange of expert reports and has a number of common template documents it requires experts to use. Experts are also required to confer and to produce a joint report. This is intended to ensure that the issues in dispute are narrowed and so that the parties are appraised at an early stage of the other side’s case.

Despite the systems implemented by the Court, there have still been significant delays in the ongoing management of some cases. These delays are a matter of concern to the Court. It appreciates that there is a very real shortage of appropriately qualified and independent engineering experts available, and that this can have a major impact, particularly on plaintiffs. Nevertheless some experts retained by some parties to earthquake-related proceedings have taken an inordinate time to prepare their reports into damaged properties – regrettably in some cases, for no good or obvious reason. The Court appreciates that the parties are frustrated by these delays and it will endeavour to ensure that matters are progressed as quickly as is reasonably practicable.

Filings

Since the list was established, 437 earthquake related proceedings have been filed and placed on the List. The table below shows filings per month since November 2010 and the following table shows average filings since 2012.



High Court: Total Average filings per Period		
2012 average filings per month	5	
2013 average filings per month	16	
2014 average filings per month	12	
Average filings per month October 2013 – September 2014	13	
Average filings per month October 2014 – September 2015	6	

As expected over the past year, average filings per month have dropped dramatically. This drop has occurred even although a number of cases transferred from the District Court to the High Court, and from the High Court registry in Auckland to the registry in Christchurch.

This year the Court has focused its attention on progressing cases where the parties have failed to get matters ready for trial in a timely fashion. Recently all cases which had been dormant for 12-18 months were called by way of teleconference to find out what progress, if any, the parties were making. Where required, fresh timetables were put in place. In some cases “unless orders” were made which means the case will be stayed (put on hold) or struck out if certain tasks are not completed.

The Court is aware that the limitation periods will start to expire as from September 2016. It remains to be seen whether this will result in a substantial number of new cases being filed to meet the deadline.

Disposals

Of the 437 cases filed, 210 have been disposed of, either by judgment or by discontinuance.

The Court has disposed of 34 cases by judgment. The cases which proceeded to hearing took 125 court days, an average of 3.7 days per trial.

There were 176 cases disposed of by discontinuance which is 83% of all disposals. Of these discontinued cases, 105 were discontinued without being set down for trial and the remaining 71 cases were discontinued after being set down for trial. This high level of settlement is due to the active case management practices of the list.

Cases with precedential value (that is cases which will clarify the law) were selected for early hearing. Once such decisions are delivered, litigants with cases with similar fact situations have settled principles of law on which to consider whether to continue their litigation or explore settlement.

The List Judges have also required standardised formats for expert reports. There have been two effects from this: efficiency gains in the preparation of reports and easier comprehension of technical reports by judges, counsel and parties.

Active Cases

There are 227 active cases.

Of these 61 are ready for hearing and have been allocated trial dates. The scheduled hearing time for those 61 cases, based on counsels' estimates, is 322 days.

The remaining 166 cases are still at various stages in the case management process.

Based on statistics to date, it seems that counsel are significantly over-estimating the time hearings will take. In many cases counsel request five or more hearing days. It seems likely that few will require that much time. Further it seems unlikely that all of the 227 active cases will proceed to trial. If the settlement rate achieved to date continues, it is projected that only 37 of the 227 active cases will proceed to trial, and that they should only require 148 hearing days.

Available hearing dates

Litigants can access hearing dates as soon as preparation is complete and all Court directions have been complied with. The Court is not prepared to allow litigants to "book space" by allocating a hearing date when the parties have not complied with relevant case management directions. In September 2015 the Court was able to set down 3 day hearings before the end of 2015 and 5-10 day hearings in the first and second quarters of 2016.

Cumulative figures to date

Total filings and disposals as at 30 September 2015 are contained in the following table which compares the current position with that as at 30 September 2014.

High Court: Total Filings and Outcomes as at 30 September 2015: (cumulative since September 2010)		
	30/9/14	30/9/15
Total Earthquake Cases Filed:	359	437
Set down for fixture or awaiting judgment:	30	61
Disposed by judgment:	30*	34*
Discontinued:	91	176
Total Disposed:	121	210
<u>Total Active Cases:</u>	<u>238</u>	<u>227</u>

*The Christchurch Earthquake Litigation Report 2014 refers to judgments released. This metric has been changed to cases disposed of by judgment. The new metric does not include cases where the parties are seeking leave to appeal or have outstanding appeals.

Court of Appeal

The Court of Appeal operates its own list for earthquake related appeals. The relevant statistics as at the end of September 2015 were as follows:

Court of Appeal: as at end of September 2015 (cumulative from September 2010)	
Filed	23
Judgments released	14*
Abandoned pre-hearing	4
Awaiting hearing	2

* One judgment dealt with 4 appeals.

General

Some changes are underway in the management of the Earthquake List.

As an increasing number of defective repair cases are being filed, the Court has taken the view that these cases will not be placed on the Earthquake List. They generally have multiple parties and raise building/construction issues rather than insurance issues.

On 1 September 2015 Justice Kós was appointed to the Court of Appeal. Further, Justice Wylie, after two and a half years service, has asked to be replaced as an Earthquake List Judge from the start of 2016. For the balance of 2015, Associate Judge Osborne will assist Justice Wylie in managing Earthquake List cases. From the beginning of 2016, Justice Gendall and Associate Judge Osborne will manage the Earthquake List.

On 14 October 2015, Wylie J and I attended the High Court Earthquake List Update organised by the Litigation Committee of the Canterbury-Westland Branch of the New Zealand Law Society. I reaffirmed the High Court's commitment to the Earthquake List and the early and efficient disposal of insurance-related matters arising from earthquake related cases. Justice Wylie presented relevant statistics and answered questions submitted by practitioners about the operation of the list. The Court is grateful to the New Zealand Law Society (Canterbury-Westland Branch) for arranging the seminar.

The High Court's specialist Judicial Support Advisor, Robin Ashton, continues to monitor statistical, legal and community trends as part of the ongoing management of the Earthquake List. His assistance to the Earthquake List Judges has been invaluable.

Hon Justice Venning
Chief High Court Judge – Te Kaiwhakawā Matua
26 November 2015

