



## **New Zealand High Court Te Kōti Matua o Aotearoa**

### **Christchurch Earthquake Litigation List Report As at 30 September 2018**

The High Court provides 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.<sup>1</sup>

#### **Update on management of the Earthquake List**

The Earthquake List is primarily case-managed by two Christchurch-based Judges (Gendall J and Associate Judge Osborne). Additional Judges from other circuits regularly assist. The Judges are provided with dedicated analytical and case management support from a Judicial Support Advisor and the Christchurch Registry.

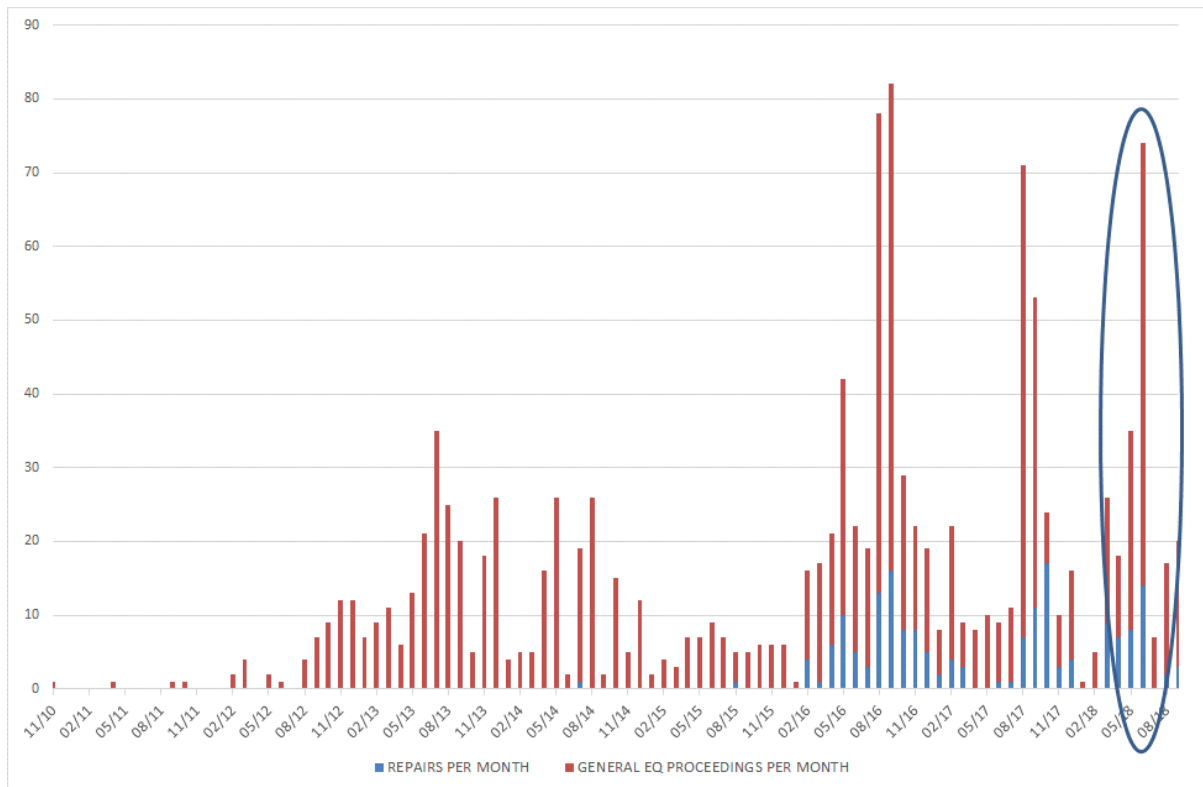
#### **Filings and outcomes**

Since the List was established, 1279 earthquake-related proceedings have been filed and placed on the Earthquake List. The pattern of high filings, which was evident in 2016 and 2017, has continued in 2018. Two hundred and fifty-three new proceedings have been added to the List since the last Earthquake Litigation List Report. The graph below shows the number of filings per month since earthquake-related filings began in 2010. It illustrates the high number of filings around August 2016, August 2017 and June 2018.

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<sup>1</sup> <http://www.courtsofnz.govt.nz/the-courts/high-court/high-court-lists/high-court-lists/earthquake-list-christchurch>

## Filings per month: earthquake proceedings and defective repairs



The 12 months to 30 September 2017 saw an average of 25 proceedings filed per month and the 12 months to 30 September 2018 have had an average of 21 proceedings per month.

Average Earthquake-related filings per month for years ending 30 September	
2013	15
2014	13
2015	7
2016	26
2017	23
2018	21

The continuation of heavy filings into 2018 appears to arise from the same factors as in 2017, namely:

- Not all insurers agreed to waive or defer a potential limitation period defence so some proceedings have been filed to protect against limitation arguments.
- Proceedings filed in recent years have included claims for defective or inadequate repairs. To date, 177 proceedings on the Earthquake List have involved defective repair allegations, of which 134 remain active.

- There are approximately 25 cases involving issues of assignment of insurance policies upon sale of the damaged property to a subsequent purchaser. These are awaiting the appeal decision of the Supreme Court in *Xu v IAG*

## 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.

In the early days of the List, certain cases were selected for hearing as they were best able to provide a legal precedent to assist with settlement.

In the year to 30 September 2018, almost all disposals were by settlement, continuing the pattern of earlier years. Since the list began, 661 cases have been settled or discontinued by the parties.

Pursuant to a direction I made in 2016 in response to requests from the profession, the Court has allocated judicial settlement conferences wherever appropriate. Settlements have been achieved through both judicial settlement conferences and privately arranged mediations.

The settlements are a positive indicator that the Earthquake List framework provides parties with a process to reach a determination of matters in dispute.

Cases are not set down for trial until they are ready. As all the relevant information and expert reporting is 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. There, nevertheless, remains a large number of cases that do not settle until the last month before trial.

Almost all of the proceedings filed in 2010 - 2015 have been resolved. The Earthquake List Judges audit the older cases to ensure that there are good reasons relating to the state of particular claims to justify old proceedings remaining open. The table below shows the number of filings by year and what numbers and percentage of those yearly filings have been finally resolved.

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	151	98%
2015	81	76	94%
2016	316	212	67%
2017	271	70	26%
2018	253	7	3%

## Active cases

There are 559 active cases on the Earthquake List as at 30 September 2018, of these, 64 are set down for trial. The balance are being actively managed.

## Table of filings, disposals and active cases

Year ending 30 September	2012	2013	2014	2015	2016	2017	2018	Total
<b>Total Cases Filed (since September 2010)</b>	<b>24</b>	<b>180</b>	<b>154</b>	<b>81</b>	<b>316</b>	<b>271</b>	<b>253</b>	<b>1279</b>
Judgments - following hearing*	2	20	9	9	2	7	4	<b>53</b>
Settled or Discontinued	1	28	59	86	125	178	184	<b>661</b>
Other**	0	0	0	0	0	4	2	<b>6</b>
<b>Total Disposals</b>	<b>3</b>	<b>48</b>	<b>68</b>	<b>95</b>	<b>127</b>	<b>189</b>	<b>190</b>	<b>720</b>
<b>Total Active Cases</b>	<b>21</b>	<b>153</b>	<b>239</b>	<b>225</b>	<b>414</b>	<b>496</b>	<b>559</b>	

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

\*\* - includes files consolidated, removed from list and transferred to DC.

## Available hearing dates

In September 2018, the Deputy Registrar was generally able to allocate fixtures for 2019, a time to trial which in most cases allows appropriate time for the parties' preparation.

## Court of Appeal proceedings

The Court of Appeal operates its own list of earthquake related proceedings. As at 30 September 2018, the cumulative figures for the Court of Appeal Earthquake List since 2010 were as follows:

<b>Cumulative statistics as at 30 September 2018</b>	
Filed	44
Judgments released	32
Abandoned pre-hearing	11
Awaiting judgment	1

The appeals relate to all types of proceedings including substantive hearings, interlocutory applications & costs.

## **General**

The High Court remains committed to provide, through a focused Earthquake List under the supervision of Judges, co-ordinated case management of all earthquake-related litigation. The List retains its focus on the structured, early identification of all relevant facts, the directed conferring and final reporting of experts, and the narrowing and resolution of issues in the light of the facts and expert evidence.

The Earthquake List has continued to function effectively during 2018, notwithstanding the continued pattern (beginning in 2016) of heavier filings. This has been substantially due to the commitment of the supervising Judges, the Judicial Support Adviser and the Christchurch Registry team.

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**Hon Justice Venning**  
**Chief High Court Judge – Te Kaiwhakawā Matua**