



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

15 December 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**TOWER INSURANCE LIMITED V SKYWARD AVIATION 2008 LIMITED
(SC 41/2014) [2014] NZSC 185**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz

A residential property in Christchurch owned by the respondent, Skyward Aviation 2008 Ltd, was affected by earthquakes on 4 September 2010 and 22 February and 13 June 2011. Skyward accepted an offer to sell the property to the Christchurch Earthquake Recovery Authority at the land value recorded in the 2007 rating valuation while retaining the right to pursue the Earthquake Commission (EQC) and its insurer, Tower Insurance Ltd, for physical damage to the improvements.

Skyward settled its claim against the EQC for physical damage to the improvements, principally a house and a sleep out. Skyward had separately insured the house and the sleep out with Tower for full replacement value. Skyward settled with Tower in relation to the sleep out, but the parties could not agree on the basis for settlement in respect of the house.

The policy was for the full replacement value of the house. Under it, Tower had the option “to make payment, rebuild, replace or repair” the house. Tower elected to “make payment”. The policy provides four different payment options: if the house is rebuilt or repaired by Skyward, the cost of doing so up to the full replacement value of Skyward’s house at its situation; the cost of replacing the house at another site selected by Skyward, providing the cost is no more than the cost of rebuilding the house on its existing site; the cost of buying another house, up to the cost of rebuilding the house on its present site; or the present day value of the house. Under these payment options, Tower has no obligation to pay anything more than present day value until Skyward has incurred the

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cost of reinstatement, rebuilding or replacement and its liability is limited to what is required to reimburse Skyward for such cost.

Tower asserted that, having elected to “make payment”, it was also entitled to choose which payment settlement option should be applied. In particular, it argued that it could settle Skyward’s claim by paying the cost of a replacement house elsewhere of comparable size, construction and condition as Skyward’s house when new. In the High Court it claimed that such a house could be acquired for \$365,000. Tower also maintained that only the acquisition of a house which was comparable to the insured house would trigger a right to reimbursement of the purchase price. Skyward contended that it had the right to choose the basis of payment and was entitled to reimbursement up to the estimated costs of rebuilding or repairing the house on its present site. Skyward’s estimate of that cost is \$683,000. It also did not accept that if it chooses to buy another house, it is limited to houses which are comparable to the insured house.

Tower was successful in the High Court which interpreted the policy in the manner contended for by Tower. The Court of Appeal allowed Skyward’s appeal.

This Court has unanimously dismissed Tower’s appeal from the judgment of the Court of Appeal. It has concluded that the interpretation put forward by Tower under which Tower is entitled to choose the payment settlement option is inconsistent with the policy wording and would compromise the ability of Skyward to obtain replacement value recovery on the new for old basis contemplated by the policy.

The Court has also rejected Tower’s argument that it will not be liable to reimburse Skyward for the cost of a replacement house unless such house is comparable to the insured house. The Court has held that if the insured chooses to buy another house, there is no comparability requirement and the only cap on Tower’s reimbursement liability is the cost of rebuilding the insured house at its present site.

The Court has allowed Skyward’s cross-appeal against the refusal of the Court of Appeal to direct that it recover costs in the High Court. The cross-appeal was not opposed by Tower.

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