

Insurance Brief

Fewer Insured Losses from National Catastrophes and Manmade Disasters in 2000

By Paul Smith

According to Swiss Re statistics, 2000 was a relatively low year for losses arising from natural catastrophes and manmade disasters.

Catastrophe losses cost the insurance industry US\$10.6 billion in 2000. This figure is only a third of the US\$32.9 billion paid in 1999. The difference appears to be that there were an accumulation of storms and earthquakes with high concentrations of dollar value claims in 1999 which were absent in 2000. However, their absence in 2000 was entirely coincidental and severe earthquakes have already occurred in 2001 in El Salvador and India. Swiss Re predicts that the trend towards higher losses from natural catastrophes and manmade disasters will continue.

Floods accounted for a high proportion of the natural catastrophe losses in 2000. Approximately US\$2.5 billion was paid out solely for flood damage. This made 2000 one of the most expensive years for floods in insurance history.

The nearest comparative year was 1993 when huge losses were caused to the industry as a result of the Mississippi floods. In 2000, the Tokai floods in Japan cost US\$990 million with the next biggest flood loss occurring in the United Kingdom in the wake of Storm Oratia. The latter storm resulted in insurance payments of US\$747 million. The extent of these losses shows the often underestimated loss potential of floods.

Of the US\$10.6 billion figure, US\$3 billion was due to manmade disasters with US\$7.5 billion due to natural catastrophes. For manmade losses, fires and explosions accounted for US\$1.3 billion, aerospace losses for US\$1 billion and aviation losses for US\$397 million. It is to be noted that the overall financial loss due to catastrophes (not counting indirect economic damage) totalled almost US\$50

billion. The comparison between the insured loss and the true loss is striking and serves to underline the continuing problem of under-insurance.

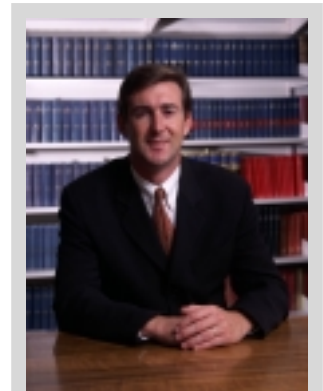
It was also to be noted that during the renewals for 2001, a general rise in catastrophe reinsurance premiums was seen. Swiss Re predicted that further price hikes would be necessary in years to come. Undoubtedly these increases will have to flow through to the direct insurance markets in due course.

HUGE INCREASES IN CIVIL COURT FEES

The Government has announced that as of 1 July 2001, there will be significant increases in the fees payable in the High Court and Court of Appeal. There will, however, be significant decreases in the fees payable in the Disputes Tribunal.

Filing a statement of claim in the High Court is to increase from \$120 (the existing rate) to \$900. Applying to set a matter down for hearing is to increase from \$650 to \$2,200.

There are similar increases for filing other applications or papers at the Court. The rationale behind these increases is that those using the High Court are more likely to be in a better position to pay these higher fees and that the existing fees are too low.



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Conversely, while there will also be increases in the District Court, these are at a much lower level. For example, filing a statement of claim will increase from \$50 to \$100. Fees in the Disputes Tribunal will in fact decrease. Lodging a claim of more than \$2,500 but less

than \$5,000 currently requires the payment of a \$120 fee. Under the new regime the new rate will be only \$50.

If any readers want a full schedule of the new fees and charges then please email us and we can arrange to forward a copy to you.

Re-Trial for Judges Breach of Natural Justice

By Robert Coltman

Williams v Willems

High Court Hamilton
21/03/01

State Insurance Limited v McLaren

High Court Blenheim
31/05/01

It is rare indeed in New Zealand that a Judge is found to have misconducted him or herself with respect to the handling of a civil proceeding so as to require the ordering of a complete re-trial.

In the above two appeals from the District Court, re-trials were ordered for precisely this reason and the cases provide a useful summary of the grounds that must be met. In both cases, it was the same District Court Judge who was found to have overstepped the mark.

In one of the appeals, the Appeal Court invoked the New Zealand Bill of Rights Act 1990 as supporting a fundamental principle that parties are entitled to a fair trial:

“Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person’s rights, obligations or interests protected or recognised by law”.

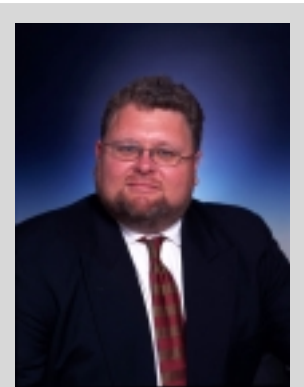
That appeal went on to survey certain academic literature and recorded that the research indicates that participants in the legal system want a fair and level playing field; they want to trust the legal authorities to use their discretion benevolently and not mechanically; they want people to be treated respectfully. His Honour commented that it was striking that participants in the legal system assessed the fairness of procedures and outcomes not only in terms of whether they obtained a favourable outcome but also with respect to the motivation and honesty of the legal authority.

Honesty was not in question in respect of the judgments appealed from, but something rather more subtle. Something described in legal terms as “apparent bias”. In one of the appeals the issue focused on the judicial questioning of witnesses – whether it had been excessive, adversarial or undermining. The legal test in respect of “apparent bias” is now settled in New Zealand. An earlier Court of Appeal decision was quoted in one of the appeals as follows:

“... the test to be applied in all cases of apparent bias was the same ...: namely, whether in all the circumstances of the case there was a real danger, or a real likelihood, in the sense of a real possibility, of bias”.

In both the above cases this was made out. The result for the parties involved will be a complete re-trial of the case before the District Court and, one assumes, an application to the Department of Courts for payment of the wasted costs of the earlier hearings and their appeals. *“..the test to be applied in all cases of apparent bias was the same namely, whether in all the circumstances of the case there was a real danger, or a real likelihood, in the sense of a real possibility, of bias”.*

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