IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY
I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2015-404-002088
[2018] NZHC 767

BETWEEN	DEO GRATIAS DEVELOPMENTS LIMITED Plaintiff
AND	TOWER INSURANCE LIMITED First Defendant
AND	EARTHQUAKE COMMISSION Second Defendant

CIV-2016-409-000722

BETWEEN	K B THORPE & ANOR Plaintiffs
AND	EARTHQUAKE COMMISSION First Defendant
AND	AA INSURANCE LIMITED Second Defendant

CIV-2016-404-000984

BETWEEN	J E FRAMPTON & ANOR Plaintiffs
AND	TOWER INSURANCE LIMITED First Defendant
AND	EARTHQUAKE COMMISSION Second Defendant

CIV-2016-404-001786

BETWEEN	A S AULD & ANOR Plaintiffs
AND	IAG NEW ZEALAND LIMITED First Defendant
AND	EARTHQUAKE COMMISSION Second Defendant

Hearing: 16 February 2018

Appearances: GDR Shand for Plaintiffs
M Hayes and K S Rouch for EQC
Counsel for other parties excused

Judgment: 23 April 2018

JUDGMENT OF ASSOCIATE JUDGE OSBORNE
[costs and disbursements]

Costs application

[1] Four sets of plaintiffs seek orders for the payment of costs and disbursements by the Earthquake Commission (EQC) as the second defendant (behind each plaintiffs' private insurer).

Background

[2] The plaintiffs all suffered damage in the Canterbury Earthquake Sequence. EQC subsequently made some payments for repairs to each of the plaintiffs but below EQC's statutory cap. EQC denied further liability. The plaintiffs issued these proceedings against their respective private insurers and EQC.

[3] EQC after each of the proceedings was commenced made increased payments acceptable to the plaintiffs. The plaintiffs then discontinued their proceedings against

EQC. All plaintiffs have either since reached acceptable settlements or repair arrangements with their private insurers or (in one case) are close to that point.

[4] The plaintiffs are:

- in CIV-2015-404-2088 – Deo Gratias Developments Ltd (Deo Gratias);
- in CIV-2016-409-722 – Kevin Thorpe and another (the Thorpes);
- in CIV-2016-404-984 – James Frampton and another (the Framptons); and
- in CIV-2016-404-1786 – Angela Auld and another (the Aulds).

The plaintiffs' costs and disbursements claims

[5] Upon settlement by EQC, the Thorpes, Framptons and Aulds sought costs from EQC calculated at 75 per cent of a 2B[1] award, while Deo Gratias sought 50 per cent of 2B costs. All plaintiffs also sought payment of their disbursements, including variously expert witnesses' and management fees.

[6] EQC initially rejected liability for any costs and disbursements claimed by Deo Gratias, the Framptons and the Aulds on the basis that, in these three proceedings, it was a litigation funder who may have incurred the "plaintiffs" costs and disbursements. In response to the Thorpes' claim, EQC asserted that an award of 50 per cent of 2B costs and disbursements would be appropriate.

EQC's position on costs and disbursements

[7] EQC now accepts that:

- the plaintiffs are entitled to awards of costs and disbursements as parties who have succeeded (it being inappropriate to apply the default rule for costs on a discontinuance);[2]

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1 High Court Rules, Category 2 under r 14.3(1) and band B under r 14.5(2).
2 High Court Rules, r 15.12.

- contrary to EQC's position before these applications were filed, the plaintiffs' litigation funding arrangements in these cases do not affect their right to recover costs;

- the four proceedings are each classified as Category 2 proceedings;[3]

- Band B is generally the appropriate band for determination of reasonable time under Schedule 3;[4] and

- each plaintiff is entitled to a sum calculated at 50 per cent of the appropriate scale award.

Legal principles

[8] The starting point for consideration of costs in the present proceedings is r 15.23 High Court Rules which creates a presumption in favour of awarding costs to a defendant against whom a proceeding has been discontinued.[5] The rule provides:

> **15.23 Costs**
>
> Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

[9] The operation of the rule and the exercise of the residual discretion reserved to the Court to make a different order were discussed in the specific context of discontinuances of claims made against EQC in the Court of Appeal's judgment in *Earthquake Commission v Whiting*.[6] In three High Court judgments costs had been awarded to plaintiffs who had discontinued their respective proceedings after EQC had made determinations that the claims exceeded the statutory cap.[7] EQC appealed the three awards.

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3 High Court Rules, Category 2 under r 14.3(1), band B under r 14.5(2).
4 High Court Rules, r 14.5(2).
5 *Kroma Colour Prints Ltd v Tridonicatco NZ Ltd* (2008) 18 PRNZ 973 (CA) at [12].
6 *Earthquake Commission v Whiting* [2015] NZCA 144, (2015) 23 PRNZ 411, (2015) 23 PRNZ 411.
7 Earthquake Commission Act 1993, s 30(2).

[10] I adopt the following principles identified in *Whiting* as applying when the Court's discretion under r 15.23 is invoked:

- There is an onus on the plaintiff to persuade the Court to exercise its discretion.[8]

- The test is whether it is just and equitable to exercise the discretion. The Court may consider the parties' conduct in the matter and the reasonableness of parties' respective stances, including the reasons why the plaintiff brought and continued the proceeding and the defendant opposed it.[9]

- The Court will avoid speculating on the ultimate outcome of the proceedings.[10] In other words, the Court will not assess on the respective strengths and weaknesses of the parties' cases unless they are clear.[11] To undertake a disputed merits review would result in a trial which would be contrary to the object of r 15.23.[12]

- A defendant may effectively concede that the r 15.23 presumption has been rebutted, as when the defendant submits that costs should lie where they fall.[13]

- Ultimately in a costs context, the discretion reposing in r 14.1 High Court Rules may override the general principles relating to discontinuance.[14]

[11] Once r 14.1 is in play, so too are the principles set out in r 14.2(1), including the principle that the party who fails with respect to a proceeding should pay costs to

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8 *Whiting*, above n 6, at [68].
9 *Whiting*, above n 6, at [68].
10 *Whiting*, above n 6, at [78].
11 *Kroma Colour Prints Ltd v Tridonicatco NZ Ltd,* above n 5, at [12], *Whiting*, above n 6, at [71].
12 *Whiting*, above n 6, at [71].
13 *Whiting*, above n 6, at [73](b), approving findings of Kós J in *van Limberg v Earthquake Commission* [2014] NZHC 2764 at [15] and *Ryde v Earthquake Commission* [2014] NZHC 2763 at [40].
14 *Kroma Colour Prints Ltd v Tridonicatco NZ Ltd,* above n 5, at [12], approving *Oggi Advertising Ltd v McKenzie* (1998) 12 PRNZ 535 (HC) at 536.

the party who succeeds.[15] I adopt the observation of Mander J in *Ramage v Earthquake Commission* ("*Ramage"*) that the assessment of success in a discontinued claim against EQC is essentially binary – the plaintiff can do no better than to obtain the concession that the claim is over cap.[16] That applies in each of the present cases.

The course of the proceedings

[12] As justification for the increased costs orders sought by each of the plaintiffs except Deo Gratias, Mr Shand relies upon a brief history of events as follows:

The Aulds

EQC assessment ($39,144.10)	7 July 2011
Proceeding issued	28 July 2016
EQC's statement of defence (denial of liability)	23 September 2016
EQC advice that claim over cap	10 October 2017
Plaintiffs settle with IAG	3 November 2017
Plaintiffs discontinue against EQC and IAG	14 November 2017

The Framptons (two flats)

EQC payment ($4,308.08 (less excess))	Undated
Proceeding issued	11 May 2016
EQC's statement of defence (denial of liability)	28 June 2016
EQC advice that Unit 1 claim over cap	7 February 2017
Plaintiffs discontinue against EQC	2 May 2017
Plaintiffs discontinue against Tower	11 August 2017

The Thorpes

EQC payment ($4,073)	9 December 2011
EQC payment $11,846.61	5 April 2016
Proceeding issued	18 August 2016
EQC's statement of defence (denial of liability)	18 October 2016
EQC advice that claim over cap	20 March 2017
Plaintiffs discontinue against EQC	8 May 2017

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15 High Court Rules, r 14.2(1)(a).

16 *Ramage v Earthquake Commission* [2016] NZHC 2327 at [27].

Plaintiffs progress with AA to scoping and costing necessary repairs	14 February 2018

[13] Mr Shand conceded that the costs claim of Deo Gratias (for 50 per cent of 2B costs) is in its own category. EQC made its over cap payment to Deo Gratias after the commencement of proceedings in July 2016. It then took Deo Gratias until August 2017 to achieve settlement with Tower.

Submissions on costs proportions

[14] For the plaintiffs, Mr Shand recognised that a common costs outcome in successful proceedings over earthquake claims is that the two defendants (EQC and the private insurer) are ordered to pay 50 per cent each.

[15] Mr Shand submitted that a 50 per cent apportionment does not constitute an immutable rule. Mr Shand referred in particular to two decisions as indicating that the Court may apportion more costs to EQC:

(a) In *Zygadlo v Earthquake Commission* ("*Zygadlo*"),[17] Davidson J ordered the successful plaintiffs' costs and disbursements be paid by EQC as to two-thirds and Southern Response as to one-third.

(b) In *Ramage,*[18] a case in which Southern Response moved swiftly to obtain a negotiated settlement after EQC accepted the claim as being over cap, Mander J limited the costs award against Southern Response to 25 per cent of the plaintiffs' costs. Mr Shand submits that it should be inferred that EQC ought to have paid 75 per cent of the costs.

[16] For EQC, Ms Hayes rejected the proposition that a costs award at 75 per cent of scale (or 66 per cent or any other similar figure) is generally to be viewed as the appropriate costs order when EQC determines that a claim is over cap after proceedings have been issued. Ms Hayes submits instead, that both *Zygadlo* and

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17 *Zygadlo v Earthquake Commission* [2016] NZHC 1699 at [55] and [61].
18 *Ramage,* above n 16, at [51].

Ramage confirm that the accepted approach has been for 50 per cent of costs to be awarded against EQC.

[17] Ms Hayes relied on the following passages in the two judgments:

(a) In *Zygadlo,* Davidson J observed:[19]

> EQC also says that it should bear only 50% of the costs incurred up until discontinuance… The costs award in this judgment reflects EQC's proposition, which I consider to be sound in principle and to accord with authority. However, I consider it is appropriate to reflect that significant cost was incurred by the plaintiffs while EQC delayed its decision until October 2014, and not formally advising its position until August 2015. EQC should therefore meet a greater proportion of the pre-August 2015 costs and disbursements reflected in Schedules 3 and 4.[20]

(b) In *Ramage,* with reference to this Court's judgment in *Driessen v Earthquake Commission* ("*Driessen"*)*,* Mander J noted:[21]

> Davidson J held that a 50 per cent award against EQC was appropriate and consistent with authority.

[18] Ms Hayes submitted that an examination of the reasoning in both *Zygadlo* and *Ramage* does not lend support to a blanket departure from the "established approach" of awarding costs against EQC based on 50 per cent of scale. In fact, in *Zygadlo,* Davidson J calculated costs on a 50 per cent basis except for three items for steps early in the proceeding. His Honour took into account evidence that EQC had at that earlier point been delaying its decision and had subsequently failed to formally advise of its position for a further 10 months. Davidson J increased the award of costs to two-thirds of scale on those items. It is implicit that his Honour found increased costs justified under r 14.6(3)(b) High Court Rules.

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19 *Zygadlo,* above n 17, at [55].

20 For authority, Davidson J cited *Whiting v Earthquake Commission* [2014] NZHC 1736; *Van Limberg v Earthquake Commission*, above n 13, at [16] and *Driessen v Earthquake Commission*, [2016] NZHC 1048 at [34].

21 *Ramage,* above n 16, at [24], *Driessen,* above n 20.

[19] In *Ramage,* EQC paid 50 per cent of a 2B costs award.[22] The contest remaining as between the plaintiffs and Southern Response was whether Southern Response's conduct had been unreasonable to warrant an award of some costs. Mander J found that it was, and that in the context of the negotiated compromised settlement, it was appropriate that Southern Response pay 25 per cent of the costs of a 2B award, leaving the plaintiffs to bear 25 per cent.[23] As Miss Hayes submitted, the *Ramage* judgment does not contain any implication that the appropriate costs contribution of EQC, on application of costs principles, would have been more than the 50 per cent it had agreed to pay.

Discussion on costs proportions

[20] The awarding of 50 per cent of the scale costs each against two defendants in earthquake litigation is readily understandable and will usually be the just outcome when both defendants have actively defended a plaintiff's proceeding.

[21] A different approach may be justified when the plaintiff and the private insurer are able to settle an aspect of the claim within a very short time after EQC has accepted that the claim is over cap. Until that point is reached, the plaintiff needs to retain EQC as a defendant in order to obtain the cap payment. Equally, the private insurer will generally be unable to bring about the conclusion of the proceeding by any (over-cap) payment while the plaintiff still needs to obtain EQC's cap payment.

[22] Mr Shand, in his oral submissions, conceded that a costs award of a standard 75 per cent of scale against EQC could not be justified either as a matter of invariable principle or on the facts of the proceedings involved here. Mr Shand recognised that the case for an award above 50 per cent of scale is substantially weaker in cases where the plaintiff, after settlement with EQC, took longer periods to settle with the private insurer. Mr Shand described the Aulds as having the strongest claim for a 75 per cent award on the basis that the plaintiffs were able to settle with IAG within one month of EQC's advice that the claim was over cap. Mr Shand recognised the Framptons' 75 per cent costs claim was "not as good as the Aulds'" in that discontinuance against

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22 *Ramage,* above n 16, at [6].
23 *Ramage,* above n 16, at [50] – [51].

Tower did not occur until six months after EQC's advice that the Framptons' unit 1 claim was over cap. The Thorpes, who seek a 75 per cent award, had not achieved finality of their position with AA some 11 months after EQC's advice that the claim was over cap. It should be noted, however, that Mr Shand identified the stage reached – the scoping and costing of necessary repairs – as being close to conclusion. Deo Gratias, which limits its claim to 50 per cent of its scale costs, achieved its settlement with Tower more than a year after EQC made its over-cap payment.

[23] In his oral submissions, Mr Shand conceded that the Framptons' and Thorpes' entitlements might appropriately be "closer to 50 per cent than 100 per cent".

[24] The inference Mr Shand invited this Court to make is that the delay in settlement was substantially due to EQC's late decision in relation to the cap. However, as Mr Shand through his oral submissions implicitly accepted, the case for imputing responsibility to EQC for delays weakens as time passes from the date of the EQC over-cap decision.

[25] The concept of a sliding scale of costs from 75 per cent (where the private insurer settles immediately after EQC's over-cap payment) to 50 per cent (where the private insurer's settlement is achieved a year later) cannot be justified in terms of principle. Any application for one of the two defendants to bear more than 50 per cent of the costs must be grounded in the facts (including any justified inferences) of a particular case, with consideration of the conduct of the parties, and the reasonableness of their respective stances, including how the proceeding came to be continued. I refer to the principles and cases footnoted at [10] above. In relation to these proceedings, the Court has no evidence as to the basis of settlement with the private insurers or the negotiations between the plaintiffs and the private insurers up to and after EQC's discontinuance. The Court is not in a position to determine reliably whether the two defendants bear differing responsibility for the continuation of the proceeding.

[26] I am not satisfied on the evidence that it would be just to order the relevant defendants to pay more than 50 per cent of the Framptons' and Thorpes' costs. On the other hand, I recognise that there is a reliable inference to be drawn from the timing

of the settlement of the Aulds' claims and that it is just that EQC be ordered to pay 75 per cent of the Aulds' costs. Orders will be made on that basis.

Submissions on costs items

[27] Although EQC initially challenged some costs items claimed by the plaintiffs, counsel were able to reach agreement on the sums appropriately to be calculated as constituting 100 per cent scale costs. I adopt those agreed calculations in the orders which follow.

Submissions on disbursements

[28] The plaintiffs' disbursement claims initially included some disbursements that counsel subsequently agreed should be excluded from any award.

[29] One disputed category of disbursement remains, namely claims by three sets of plaintiffs (namely Deo Gratias, the Framptons and the Aulds) for the costs of reports obtained and paid for by those plaintiffs.

[30] Deo Gratias claims a disbursement of $2,875 representing an "Independent Damage Assessment" ("IDA"). The invoice was dated 20 May 2014. Ms Rouch noted that the costing assessment in the IDA did not reflect the repair or rebuild costs which Deo Gratias pleaded in its statement of claim. Accordingly, Ms Rouch submitted that it did not appear that Deo Gratias had relied on the report in preparing its claim. She submitted that the document was therefore not necessary for the proceeding against EQC. Ms Rouch noted that the qualifications of the report writer were not set out in the IDA and that the writer cannot be taken to be an expert. Mr Shand has described the IDA as a "founding document" for the proceedings. However, the costing at the end of the IDA did not form the basis of the relief identified in the statement of claim. It was evidently not relied on in preparation of the statement of claim as Deo Gratias's solicitor did not provide it to EQC as a "principal document used when preparing the pleading". Such a document, if intended to be relied on at trial, is required to be provided to the other party by way of initial disclosure under r 8.4(1) High Court Rules.

[31] The Framptons seek disbursements for two IDAs ($2,875 each) (one for each of their units) which were invoiced on 16 September 2015. Ms Rouch notes that the IDAs were authored by persons whose qualifications were not set out. Ms Rouch submitted that in the absence of stated qualifications, the report was unlikely to be of substantial help to the Court in identifying earthquake damage and therefore was not in a class which could be considered reasonably necessary for the proceeding. Ms Rouch raised materially similar issues to those raised in relation to Deo Gratias.

[32] The Aulds claim a disbursement of $4,398.75 which was invoiced on 27 July 2017 in relation to a "Costing" by "CES". Ms Rouch notes that the report was never served on EQC. She submits that the disbursement was not reasonably necessary for the conduct of the proceeding against EQC.

[33] For Deo Gratias and the Framptons, Mr Shand submitted that the IDAs were foundation documents for each proceeding. The IDAs brought together a photographic record, details of measurements and calculation of costs. He submitted that they met the definition of "disbursement" under r 14.12(1) High Court Rules, being expenses incurred for the purposes of the proceeding and they also met the criteria under r 14.12(2) of being reasonably necessary for the conduct of the proceeding.

[34] Mr Shand further submitted that the awarding of a disbursement is not precluded where the relevant report writer is either alleged to be or in fact not qualified as an expert. Mr Shand noted that in both *Zygadlo* and *Driessen,* disbursements were awarded for reports in the nature of IDAs.

[35] In relation to the CES costing in the Aulds' litigation, Mr Shand submitted that the nature of the litigation meant that the Court would have required costings and that the report obtained (after issue of the proceeding) was properly to be viewed as incurred for the purposes of the proceeding.

Discussion on disbursements

Application of r 14.12 High Court Rules

[36] The inclusion of disbursements within the costs awarded for a proceeding is dealt with in r 14.12 High Court Rules. For present purposes, the relevant part of that rule provides:

> **14.12 Disbursements**
>
> (1) In this rule,—
>
> …
>
> **disbursement**, in relation to a proceeding,—
>
> (a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from legal professional services in a solicitor's bill of costs; and
> (b) includes—
> (i) fees of court for the proceeding:
> (ii) expenses of serving documents for the purposes of the proceeding:
> (iii) expenses of photocopying documents required by these rules or by a direction of the court:
> (iv) expenses of conducting a conference by telephone or video link; but
> (c) does not include counsel's fee.
>
> **relevant issue**, in relation to a disbursement, means the issue in respect of which the disbursement was paid or incurred.
>
> (2) A disbursement must, if claimed and verified, be included in the costs awarded for a proceeding to the extent that it is—
> (a) of a class that is either—
> (i) approved by the court for the purposes of the proceeding; or
> (ii) specified in paragraph (b) of subclause (1); and
> (b) specific to the conduct of the proceeding; and
> (c) reasonably necessary for the conduct of the proceeding; and
> (d) reasonable in amount.

[37] I have considered the disbursement awards in the cases to which Mr Shand referred me but, in the absence of information as to the extent to which the Court in those cases had heard argument on the application of r 14.12, I consider it important to reach an independent conclusion in relation to the IDAs and other reports in these present cases. The claims for costs and disbursements here have been brought together

precisely to enable the Court to consider the parties' contested positions upon the basis of focused argument.

An expense incurred for the purposes of the proceeding

[38] I am satisfied that the disputed disbursements claimed by Deo Gratias, the Framptons and the Aulds were incurred for the purposes of their proceedings. Rule 14.12 does not require that the conduct of the proceeding be the only purposes for which the expense is incurred. In the case of the Aulds' CES costing disbursement, which was incurred after the issue of proceedings, the proceeding itself was plainly the purpose. In relation to the IDAs incurred in the other proceedings, the use of conclusions reached in those documents to inform the plaintiffs' approach to their claim was clearly a purpose in incurring the expense. That conclusion is unaffected by the fact that the IDA was prepared some time before the proceedings themselves were commenced.

Reasonably necessary for the conduct of the proceeding

[39] I am satisfied in each case that the plaintiffs' obtaining of reports was reasonably necessary for the conduct of the proceeding in terms of r 14.12(2)(c). Ms Rouch's submissions invited the Court to embark on a detailed analysis of the extent to which the plaintiffs' initial (or perhaps ultimate) pleadings reflected findings in the report on which the disbursement was incurred. They also invited detailed analysis of whether all or any of the report's conclusions were in relation to matters with which the defendant/s might not take issue. I reject the appropriateness of such a detailed approach to the consideration of relatively modest disbursements of the nature here sought. The Court is not considering the recovery of the fees and expenses of experts who have been briefed at a later stage of litigation (when the pleadings are complete). Rather, the Court is concerned with the cost of a report which the plaintiffs' solicitors would consider in order to structure the plaintiffs' litigation. The conclusions and information provided in the IDAs were reasonably necessary for the conduct of the proceedings. Similarly, the CES costing disbursement incurred by the Aulds (after issue of proceedings) was reasonably necessary for their proceeding. While the total costs of remediation may not have been particularly relevant to EQC, it was necessary

for how the plaintiffs conducted the proceeding as a whole (involving as it did the private insurer).

[40] Submissions for EQC as to the various plaintiffs' failures to provide copies of reports by way of initial disclosure(s) do not detract from these findings. The recoverability of the disbursements flows from the application of r 14.12 and not from whether a particular plaintiff complied with its obligation of initial disclosure. I recognise merit in the proposition that if the disbursement incurred in obtaining a report is later to be sought upon the basis that it is recoverable under r 14.12, then it is likely that the document will be one of the "additional principal documents" used when preparing the pleading (in terms of r 8.4(1)(b)) and therefore would be required to be included in the plaintiffs' initial disclosure. Notwithstanding that, the consideration of disbursement recovery will still fall to be considered in terms of the provisions of r 14.12 even if there was a failure or initial disclosure.

Specific to the conduct of the proceeding

[41] Under r 14.12(2)(b), for a disbursement to be recoverable it must be specific to the conduct of the proceeding. Counsel for EQC placed their emphasis upon the next sub-rule (r 14.12(2)(c)) which requires that the disbursement be reasonably necessary for the conduct of the proceeding.

[42] For similar reasons to those which led me to find that the IDAs and the CES costing reports were reasonably necessary for the conduct of the proceeding, I find them also to be specific to the conduct of the proceeding. These were not general reports relevant to a range of insurance claims – they were specific to these plaintiffs' claims against their insurers when the plaintiffs issued the various proceedings to enforce their entitlements.

[43] In these circumstances, I am satisfied that each of the contested disbursements is one which must, in terms of r 14.12(2), be included in the costs awarded for the proceeding to the full extent of the disbursement.

The cost of this hearing

[44] The plaintiffs are the successful parties on the hearing of their costs applications. They are entitled to their costs and reasonable disbursements.

Orders

[45] I order that the Earthquake Commission pay to the following plaintiffs the following sums – (as calculated in Schedule A to this judgment):

(a) to Deo Gratias Limited $7,582.00 on account of costs and $7,774.48 on account of disbursements;

(b) to James Edward Frampton and Ann Charlotte Vanschevensteen $7,582.00 on account of costs and $8,290.99 on account of disbursements;

(c) to Kevin Byron Thorpe and Yvonne Teresa Thorpe $7,136.00 on account of costs and $4,731.73 on account of disbursements;

(d) to Angela Stanton Auld and Andrew Robert Auld $12,042.00 on account of costs and $10,396.55 on account of disbursements.

[46] In addition, I order the Earthquake Commission to pay to each of the four sets of plaintiffs identified in [45](a)–(d) above costs of $5,909.50 in relation to the applications, together with a one-quarter share of the disbursements reasonably incurred by the plaintiffs' solicitors in relation to these applications and the hearing, to be fixed by a Registrar if not agreed.

Associate Judge Osborne

Solicitors:
Grant Shand, Auckland
Chapman Tripp, Wellington

SCHEDULE A

DEO GRATIAS

Plaintiffs' claimed scale costs						
Item	Description	Days	Rate	No.	Amount 100%	Amount 50 %
1	Commencement	3	$2,230	1	$6,690.00	$3,345.00
11	Conference memoranda	0.4	$2,230	2	$1,784.00	$892.00
20	Discovery	1.5	$2,230	1	$3,345.00	$1,672.50
21	Inspection	1.5	$2,230	1	$3,345.00	$1,672.50
Total					**$15,164.00**	**$7,582.00**

Plaintiffs' claimed disbursements		
Description	Amount 100%	Amount 50 %
Certificate of title	$5.95	$2.98
High Court statement of claim filing fee	$1,350.00	$675.00
CRS – IDA	$2,875.00	$1,437.50
USS invoice dated 2.4.2015 – costing	$5,223.00	$2,611.50
USS invoice dated 28.6.2015 – engineering report	$4,025.00	$2,012.50
CRS – joint site visit/joint report invoice dated 5.8.16	$2,070.00	$1,035.00
Total	**$15,548.95**	**$7,774.48**

FRAMPTON

Plaintiffs' claimed scale costs						
Item	Description	Days	Rate	No.	Amount 100%	Amount 50 %
1	Commencement	3	$2,230	1	$6,690.00	$3,345.00
11	Conference memoranda	0.4	$2,230	2	$1,784.00	$892.00
20	Discovery	1.5	$2,230	1	$3,345.00	$1,672.50
21	Inspection	1.5	$2,230	1	$3,345.00	$1,672.50
Total					**$15,164.00**	**$7,582.00**

Plaintiffs' claimed disbursements		
Description	Amount 100%	Amount 50 %
Certificate of title	$5.95	$2.98
High Court statement of claim filing fee	$1,350.00	$675.00
CRS – IDA	$2,875.00	$1,437.50
CRS – IDA	$2,875.00	$1,437.50
USS engineering report	$4,025.00	$2,012.50
USS engineering report	$4,025.00	$2,012.50
USS joint site visit and engineering report	$917.14	$458.57
USS joint site visit and engineering report	$508.88	$254.44
Total	**$16,581.97**	**$8,290.99**

AULD

Plaintiffs' claimed scale costs						
Item	Description	Days	Rate	No.	Amount 100%	Amount 75 %
1	Commencement	3	$2,230	1	$6,690.00	$5,017.50
11	Conference memoranda	0.4	$2,230	3	$2,676.00	$2,007.00
20	Discovery	1.5	$2,230	1	$3,345.00	$2,508.75
21	Inspection	1.5	$2,230	1	$3,345.00	$2,508.75
Total					**$16,056.00**	**$12,042.00**

Plaintiffs' claimed disbursements		
Description	Amount 100%	Amount 75 %
Certificate of title	$5.95	$4.46
High Court statement of claim filing fee	$1,350.00	$1,012.50
IDA (10 April 2016)	$2,875.00	$2,156.25
USS engineering report (10 April 2016)	$4,025.00	$3,018.75
CES joint engineering report	$1,207.50	$905.63
CES costing	$4,398.75	$3,299.06
Total	**$13,862.20**	**$10,396.65**

THORPE

Plaintiffs' claimed scale costs						
Item	Description	Days	Rate	No.	Amount 100%	Amount 50 %
1	Commencement	3	$2,230	1	$6,690.00	$3,345.00
11	Conference memoranda	0.4	$2,230	1	$892.00	$446.00
20	Discovery	1.5	$2,230	1	$3,345.00	$1,672.50
21	Inspection	1.5	$2,230	1	$3,345.00	$1,672.50
Total					**$14,272.00**	**$7,136.00**

Plaintiffs' claimed disbursements		
Description	Amount 100%	Amount 50 %
Certificate of title	$5.95	$2.98
High Court statement of claim filing fee	$1,350.00	$675.00
Centraus Structural Engineering Report	$2,070.00	$1,035.00
Logic Cost Consulting – QS Costing	$6,037.50	$3,018.75
Total	**$9,463.45**	**$4,731.73**