

Over-reaching can be counter-productive



The Jarden case

The recent High Court decision in *Jarden v Lumley General Insurance (N.Z.) Ltd* [2016] NZHC 2810 serves as a warning against exaggerated claims.

After the Jardens' home was damaged in the Christchurch earthquakes, their insurer, Lumley General Insurance (N.Z.) Limited, denied liability on the basis that the cost to repair the Jardens' home was below the EQC's statutory cap. The Jardens pursued a claim for damages against Lumley for just over \$900,000 alleging breach of contract and seeking a declaration of liability in the alternative.

Ultimately, the Jardens were only successful on one aspect of their claim for a declaration. Lumley was held liable for a sum just under \$20,000, less than 2% of the value of the original claim. The parties could then not agree on costs as each argued the other side should pay costs.

In the latest costs judgment, the Jardens were ordered to pay Lumley's scale costs (costs determined by a statutory calculation) and disbursements with an

additional 25% uplift. The uplift was applied because the Jardens had pursued an exaggerated claim even after their independent expert had made it clear that much of their case lacked merit. The court suggested that the appropriate response would have been to review their position and only maintain arguments that were supported by cogent evidence. Instead, the Jardens resisted attempts by Lumley to understand their case better and tried, unsuccessfully, to find another expert to support their position.

General comment

This judgment should serve as a reminder of the possible cost implications where parties take an entrenched and adversarial approach to dispute resolution. A common approach between litigation parties is for each party to maintain an impossible position as they jockey with the other side in the expectation of ending up somewhere in the middle. The result is that claims are unnecessarily drawn out and bloated costs erode any awards that are ultimately obtained. In extreme cases, the practitioners who advise their clients to adopt this strategy could find themselves held liable for any uplift that is applied.

This case illustrates the need for an approach that involves:

- Front-end investment in a dispute to ensure the parties and representatives understand the claim fully.
- Early gathering of an experienced team of experts when necessary so that parties can have confidence in their position.
- Robust engagement between opposing sides to get to the heart of a dispute faster. This will inform an early understanding of which claims need to go to court and which should be capable of settlement.

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