



# New Zealand – Land of the Long White (Dust) Cloud

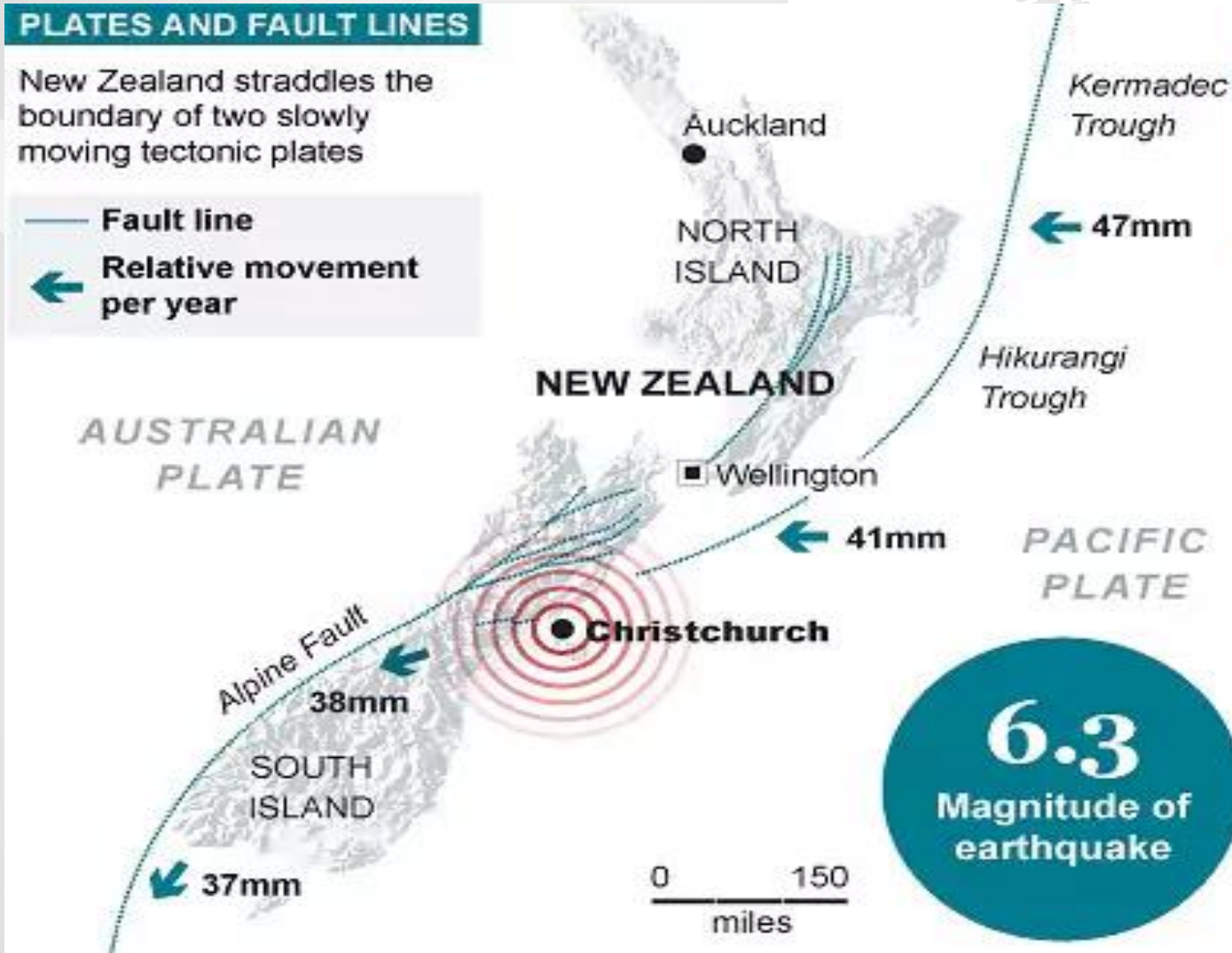
AIDA - Climate and Catastrophic Events Working Party  
by Richard Johnstone

# New Zealand Plates and Fault lines

## PLATES AND FAULT LINES

New Zealand straddles the boundary of two slowly moving tectonic plates

- Fault line
- ← Relative movement per year



**6.3**  
Magnitude of earthquake



In the South Island, plate motion results in **strike-slip** movement - rupture is nearly vertical as one side slides past the other



Darfield - 7.1 mag 04.09.10; Port Hills - 6.3 mag 22.02.11

- 14,532 earthquakes including
  - 5.7 mag 14.02.16
  - 4.7 mag 11.05.16
- CBD Cordon to 30.06.13 (30 months)
- 1,200 CBD buildings demolished; 70,000 people (est) left Christchurch
- CERA : special emergency powers
  - Demolition – was that building beyond repair or not?
  - CCDU Blueprint and compulsory acquisition programme
  - Key anchor projects : 1 out of 8 projects



- Royal Commission : causes of building failure
- MBIE Guidance – technical guidelines for repair and rebuilding of Canterbury houses
- New cadastral survey principles to redefine an existing ‘title’ boundary affected by earthquake movement
- Residential “red zone”: 6,300 properties cleared

# Dallington : Ōtākaro/Avon River corridor

# Christchurch



## Red Zone - damage

Christchurch



What to do with this?



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\$20.1 billion paid out at 30 June 2017

	No. of Claims	Paid to Date
Domestic	142,346	\$9.96 billion
Commercial	26,248	\$10.11 billion
<b>Total</b>	<b>168,594</b>	<b>\$20.07 billion</b>

**Total Over Cap Domestic Properties 26,879**

up 207 from 26,672 in Q1 2017

**89% (23,967) Over Cap Properties settled:**

- 16,850 Cash Settled (Repairs 7,177 and Rebuilds 9,673)
- 7,117 Construction Completed (Repairs 3,219 and Rebuilds 3,898)
- 613 settled in Q2 2017

**Out of Scope Properties settled 64,394 – 99%**

**Commercial Claims settled – 94%**

## Residential Over Cap Properties

Source: ICNZ/MBIE survey as at 30 June 2017



**99% of all over cap residential properties settled, resolved or in resolution**

Settled – claim settled & closed  
 Resolved – under contract, consent or construction  
 In Resolution – cash settlement pending, design etc.



# Insurance Events

Christchurch

- ANSVAR, Part 15 scheme
- AMI Insurance bailout and sale
- Re-insurance
  - *Western Pacific* (in Liquidation)
  - *Civic Assurance*

*Issue : statutory charge s9 Law Reform Act 1936 : Re Western Pacific*

- High Court Earthquake List: 1041 cases filed (30.09.17)
- Public meetings – protests and politicians
- Representative actions:
  - Quake Outcasts
  - EQC standard of reinstatement
  - Southern Response (AMI policyholders)





- Re-instatement of EQCover with successive events
- Measurement of land damage, flood and liquefaction risk *EQC v. ICNZ*
- Interpretation:
  - 'substantially when new' standard of reinstatement
  - 'physical loss or damage' *EQC v. ICNZ ; Kraal*
  - Right of election : repair, replace or pay? *C&S Kelly Properties.*
- Repairs – inadequate EQC scope and/or defective building works
- Reform : Treasury report
  - no household contents cover
  - residential buildings up to 150K + GST
  - all claims notified to insurers – assessment?



# Policy wording : interpretation issues

Christchurch

## Domestic

- Pre-existing damage/ causation : *Sadat, He*
- 'as new' / 'when new' : *Turvey Trustee; Parkin*
- Full replacement value: *Avonside Holdings; Myall*
- Reinstatement decisions : *Skyward Aviation*
- Insurer's breach of duty of utmost good faith : *Rout; Young*



## Commercial

- Inadequate sum insured
- Multiple events *Ridgecrest; Wild South*
- BI Claims
  - Concurrent causes
  - Wider area damage
  - 15 month CBD cordon
  - Indemnity period



***Ridgecrest v. IAG New Zealand*** [2014] NZSC 117

**Christchurch**

***QBE Insurance (International) Limited v. Wild South Holdings Limited & Anor*** [2014] NZCA 447

Both decisions on preliminary questions involved occurrence-based policies

No doctrine of merger in non-marine insurance law

The indemnity principle applies to entitle an insured to claim the sum insured for each loss within policy period, and across policy periods, subject to a limit of the full replacement value

Full recovery unless policy restricts recovery in any one policy period

Note :

- No double (or triple) counting of repair costs
- Reinstatement of cover provisions
- Different treatment of reinstatement as between partial loss and replacement (total loss)



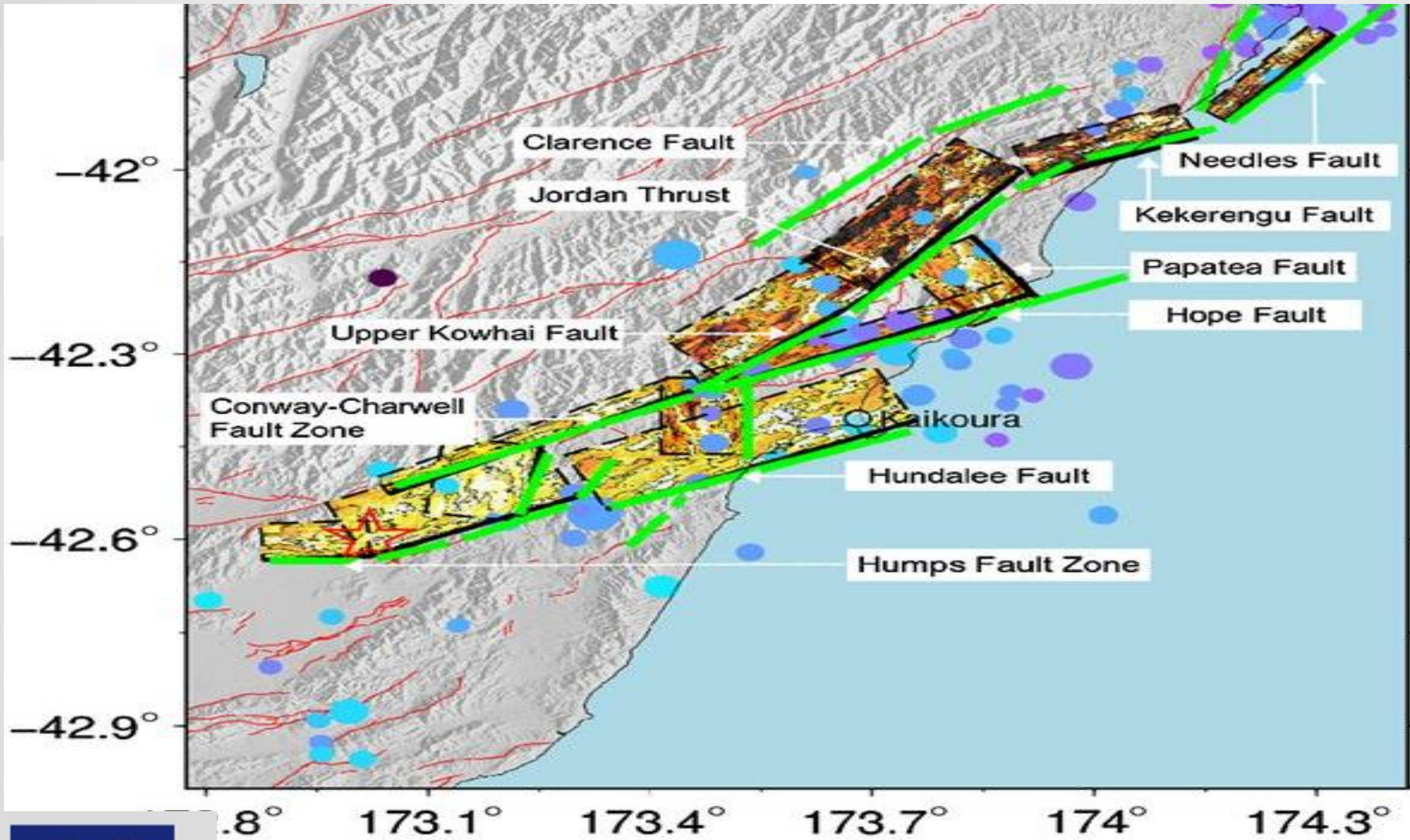
## Insurance : application issues

- Reinstatement election
  - When must an insurer elect? *Domenico Trustee*
  - What is a reasonable time for an insured?
- What constitutes an election decision? *Gidden*
- Performance of reinstatement
  - Demonstrated intention: *East*
  - Additional works for compliance: *Parkin; East; Turvey Trustee*
- Settlement agreements: *Prattley Enterprises; Gidden*
- Assignment of claim entitlements, and house policies : *Xu*
- Limitation of actions

*“One of the most complex earthquakes ever recorded on land”*

**Geonet 2016**

# Kaikoura







- 7.8 magnitude : 14.11.16
- Total economic losses : NZ 4.9 billion (NZ Govt; Aon Benfield)
- Insured losses (total) : NZ 1.88 billion (ICNZ 30.06.17)
  - Wellington commercial : NZ 1.39 billion
  - Residential : NZ 474 million
- ICNZ – EQC memorandum to simplify and fast track claim assessment processes
- Fewer claim disputes and litigation
- Sum insured policies :
  - Earlier settlements (cash payouts)
  - Adequacy of cover questions
- Ability to organise building works

## Lessons

- EQC v. private ‘top-up’ insurers – pitfalls of a statutory scheme
- Expert witness shopping
- Advocates – contingency fees and litigation funders
- Dispute resolution options : mediation or ombudsman or Court
  - Stephen Kós J (2016); N Khouri (2017); M Kelly (2017 AIDA, Singapore)
- Standardised policy wordings, perhaps?
  - Problems with different definitions of ‘insured property’
  - Which standard of reinstatement?
  - Sum insured limit or full replacement?
  - Should EQC’s standard follow the insurers’?



## References :

For copies of Court judgments or articles referred to, please email [richard@leftbank.nz](mailto:richard@leftbank.nz)

*Re Western Pacific Insurance Limited (in Liq)* (2011) 9 NZBLC 103,483

*EQC v. Insurance Council NZ* [2014] NZHC 3138

*Kraal v. EQC and Allianz Australasia* [2015] NZCA 13

*C&S Kelly Properties Limited v. EQC and Southern Response* [2015] NZHC 1690

*Sadat v. Tower Insurance & EQC* [2017] NZHC 1550

*He v. EQC* [2017] NZHC 2136

*Turvey Trustee Limited v. Southern Response* [2012] NZHC 3344

*Parkin v. Vero Insurance* [2015] NZHC 1675

*Southern Response v. Avonside Holdings Limited* [2015] NZHC 110

*Myall v. Tower Insurance* [2017] NZHC 251



## References :

For copies of Court judgments or articles referred to, please email [richard@leftbank.nz](mailto:richard@leftbank.nz)

*Tower Insurance v. Skyward Aviation 2008 Limited* [2014] NZSC 3111

*Rout v. Southern Response* [2013] NZHC 3262

*Young v. Tower Insurance* [2016] NZHC 2956

*Ridgecrest v. IAG New Zealand* [2014] NZSC 117

*QBE Insurance v. Wild South Holdings Limited & Ors* [2014] NZCA 447

*Tower Insurance v. Domenico Trustee Limited* [2015] NZCA 372

*Gidden v. IAG New Zealand* [2016] NZHC 948

*Medical Assurance v. East* [2015] NZCA 250

*Prattley Enterprises Limited v. Vero Insurance* [2016] NZCA 67

*Xu and Diamantina Trust v. IAG New Zealand* [2017] NZHC 1964



## Articles / Publications :

Stephen Kós J

*“Disaster & Resilience – the Canterbury Earthquakes and their legal aftermath”*  
paper presented to Supreme and Federal Court Judges’ Conference (Brisbane  
2016)

Nina Khouri

*“Civil Justice Responses to Natural Disaster : New Zealand’s Christchurch High  
Court Earthquake List”* (2017) 36 CJQ, Issue 3

Mark Kelly

*“Mediation Schemes for Natural Disaster Insurance Disputes”*  
AIDA Dispute Resolution Working Party presentation (Singapore 2017)



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