

IN THE COURT OF APPEAL OF NEW ZEALAND

CA160/02

BETWEEN	AMP GENERAL INSURANCE (NZ) LIMITED Appellant
AND	LANCE HUGO TRADING AS HUGO AUTO SERVICES Respondent

Hearing: 12 March 2003

Coram: Tipping J
Salmon J
Doogue J

Appearances: P R Rzepecky for Appellant
P F Dalkie for Respondent

Judgment: 26 March 2003

JUDGMENT OF THE COURT DELIVERED BY DOOGUE J

[1] AMP General (NZ) Limited was the public liability insurer of Mr Lance Hugo, who traded as Hugo Auto Services. In January 1996 Hugo Auto carried out repairs to the steering box of a truck owned by Tahuna Transport Limited. The following month that truck lost steering control and crashed, causing damage. Tahuna Transport claimed against Mr Hugo in negligence for failure to properly reinstate the steering system of the truck. Mr Hugo sought an indemnity from AMP General. AMP General declined liability relying, amongst other things, upon alleged admissions by Mr Hugo. In proceedings in the District Court Tahuna Transport succeeded against Mr Hugo and Mr Hugo failed against AMP General. Mr Hugo appealed from the decision refusing him an indemnity from AMP General. The High Court upheld that appeal, holding there were no admissions by Mr Hugo that caused

or contributed to his loss. AMP General was granted leave to appeal to this Court on the following limited issue:

Whether the [High Court] Judge wrongly excluded or failed to take into account, the effect of the appellant's admissions on the course adopted by NZI (as Tahuna Transport Ltd's indemnifier) in relation to the recovery action against Mr Hugo and in relation to negotiations with AMP (Mr Hugo's liability underwriter).

[2] At issue is the correct interpretation of s11 of the Insurance Law Reform Act 1977 (s11) when an insurer relies upon an exclusion clause dependent on admissions by the insured.

Background

[3] Mr Hugo was insured by the AMP General under a Trades and Light Industry Insurance Contract. It included a Public Liability Policy. That provided in part that if Mr Hugo became liable at law to pay money by reason of a judgment against him for damage to property the AMP General would pay the sum involved up to the limit of liability.

[4] Among the general conditions of the insurance contract was the following provision:

3(c) You must not make or give any admission, offer, promise, payment or indemnity.

[5] When Tahuna Transport's truck crashed towards the end of February 1996 the question was why it had lost steering. The steering box had been removed from the truck at Hugo Auto less than six weeks before. After the accident it was common ground that an arm within the steering box had worked loose. It was observed that at least one of two grub screws that helped to lock it in position was loose and that no Loctite adhesive had been applied to the grub screws to secure them.

[6] In reliance on a metallurgist's report, Mr Malcolm, an engineer engaged by NZI, the insurers of Tahuna Transport, at first took the view that the accident was not caused by the negligence of Hugo Auto in securing the arm within the steering box. He thought the arm could have detached as a result of the shock of the collision.

Ultimately however he and a consultant mechanical engineer, a Mr Rogers, took the opposite view. Mr Rogers concluded that in the absence of any substantial damage to the grub screw threads or their screw holes, coupled with the absence of any evidence of the application of Locktite, that the arm worked loose because it had not been properly secured by Hugo Auto.

[7] However, before these conclusions were reached, a Mr Fahy, an assessor acting on behalf of NZI, had interviewed Mr Hugo towards the end of March 1996. Early in April 1996 Mr Hugo had also discussed the procedure used to repair the truck with NZI's consulting engineer, Mr Malcolm.

[8] During the course of the litigation interrogatories were addressed to Mr Hugo, and it was upon the following answers to those interrogatories that AMP General relied for its decision to decline his claim because of his alleged admissions.

Statements by Mr Hugo to Mr Fahy (the NZI assessor)

- (a) I advised that neither Denis [Mr Hugo's brother] nor myself were aware of a special tool required to fit the drop arm;
- (b) I advised that upon attending the accident I noticed the drop arm separating from the sector shaft and also that the grub screws were protruding some 10 to 15mm from the hole;
- (c) I advised that I tested the tightness of the grub screws and one could be turned however the other could not be easily turned with my fingers;
- (d) I said "yes it is a serious thing to happen, I was very worried after the accident but I'm not so bad now. I'd gone straight to the accident scene when I heard about it, that's when I saw the drop arm off".

Statements by Mr Hugo to Mr Malcolm (the NZI consulting engineer)

- (a) That "he had no knowledge of a special tool recommended by the manufacturer of the steering box for fitting the drop arm";
- (b) Neither he nor his brother Denis had used a special tool in fitting the drop arm to Tahuna's truck.

[9] In the District Court Tahuna Transport relied, as one of its grounds of negligence, upon the failure of Hugo Auto to use a special tool recommended by the manufacturer of the steering box for the securing of the arm. This allegation of

negligence was not upheld because of evidence that it was common practice within the industry in New Zealand for the method adopted by Hugo Auto to be used. However, Mr Hugo's statements relating to a special tool were relevant to that part of Tahuna Transport's allegations.

[10] When AMP General rejected Mr Hugo's claim it relied not only on his alleged admissions but upon late notification of the claim. In the District Court the Judge rejected the latter basis for AMP General's rejection of the claim but upheld the former basis.

Section 11 Insurance Law Reform Act 1977

[11] The section provides:

Section 11. Certain exclusions forbidden

Where—

(a) By the provisions of a contract of insurance the circumstances in which the insurer is bound to indemnify the insured against loss are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances; and

(b) In the view of the Court or arbitrator determining the claim of the insured the liability of the insurer has been so defined because the happening of such events or the existence of such circumstances was in the view of the insurer likely to increase the risk of such loss occurring,—

the insured shall not be disentitled to be indemnified by the insurer by reason only of such provisions of the contract of insurance if the insured proves on the balance of probability that the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of such events or the existence of such circumstances.

[12] The genesis of the section is to be found in a report from the Contracts and Commercial Law Reform Committee in 1975. The section follows precisely what was recommended by that Committee. The Committee expressed the view:

Insurers are of course entitled to define the risks in respect of which they will indemnify by excluding circumstances that increase the risk. It is understandable that they should seek to define exclusions in temporal rather than causative terms for it is easier to prove (for example) that a vehicle was in an unsafe condition at the relevant time than that the unsafe condition

caused the accident. But it is unreasonable for insurers to avoid liability on the grounds that the risk is increased where the loss results from some cause other than the circumstances relied on as increasing the risk. [Para 29]

District Court Judgment

[13] The only basis for the District Court finding Mr Hugo liable to Tahuna Transport is to be found in the following passage of the judgment:

There is no need to traverse in great detail further evidence relating to the mechanical sequence of events because it is abundantly clear, and indeed not seriously disputed by the defendant, that the cause of the steering failure must have been that the drop arm had not been adequately seated on to the shaft, and whilst the defendant did not agree that Loctite or similar adhesive had not been used, it is clear on the evidence it cannot have been. This is because of substantially unchallenged evidence including:

- (a) The grub screws were found to be protruding slightly
- (b) One could be turned by hand
- (c) There was no trace of any adhesive found on later examination, and whilst there was some challenge to this proposition in that there was evidence of some post-crash cleaning, the evidence was that this would not have materially altered the situation.

Clearly, therefore, on the balance of probability, liability of the defendant to the plaintiff has been established. [page 4 of judgment]

[14] In the District Court judgment the only direct reference to the alleged admissions is as follows:

In particular, emphasis has been made to an alleged acknowledgement by the defendant [Mr Hugo] to a Mr Fahy [the NZI assessor], who did not give evidence, that “he made a mistake” and “yeah, I know it’s best to admit when you’re in the wrong”. Mr Hugo, who did give evidence, denies he said that. [page 7 of judgment]

[15] The Judge went on to discuss the issue of whether Mr Hugo was entitled to an indemnity from AMP General.

[16] In discussing the application of clause 3(c) of the policy the Judge discussed the meaning of the word “admission” and went on to consider the judgments in *SIMU Mutual Assurance Association v Minsons Limited and Others* [1938] NZLR

829 where the Court was considering the meaning of the words “admission of liability”.

[17] The Judge then addressed s11 and referred to what was said by this Court in *New Zealand Insurance Company Limited v Harris* [1990] 1 NZLR 10 at 15:

Section 11 contemplates a two step inquiry where the contract of insurance excludes or limits the insurer’s liability on the happening of certain events or the existence of certain circumstances. The first is to determine whether the insurer’s liability has been so defined because the happening of the events or the existence of the circumstances was in the view of the insurer likely to increase the risk of occurrence of the loss. That inquiry rests on an assessment of the bona fide view of the insurer in relation to the matter.

Even where the purpose of the limitation is entirely legitimate the insured is not necessarily disentitled to be indemnified. That is for consideration at the second step. The inquiry there is whether the loss in respect of which the insured seeks to be indemnified was caused or contributed to by the happening of the events or the existence of the circumstances. The onus of proof rests on the insured and the answer turns on the objective assessment of the Court or Arbitrator, not on the subjective views of the insurer. There is then a presumption of a causal link between the relevant events or circumstances and the particular loss.

[18] The Judge went on to give the following reasons for holding that Mr Hugo was not entitled to an indemnity from AMP General.

... Whilst it is clear in hindsight that the chain of causation was as asserted by the plaintiff, the practical reality is that at the stage of post accident (but pre-litigation) negotiations between the respective insurers the bargaining position of the third party was weakened as it is clear on the evidence that the admitted (in interrogatories) statements of Mr Hugo gave a degree of confidence to the plaintiffs’ insurers (particularly in the circumstances of an apparently initial contrary indication from Mr Malcolm). As counsel for the third party put it (correctly, in the Court’s view)

“There may have been a prospect in the face of Mr Malcolm’s publicly expressed view that Mr Hugo was not liable that NZI would not have pursued recovery had Mr Hugo not made admissions”.

In other words, having regard to the statutory test the Court is “not satisfied on the balance of probability that the loss in respect of which the insured seeks to be indemnified was not ... contributed to” by the statements that the defendant made generally of an admissory type, even accepting his denial at the hearing that he went as far as Mr Fahy had asserted. [pages 16/17 of the judgment]

The Judgment in the High Court

[19] Panckhurst J first reviewed the background to the appeal before the High Court which, like the appeal before this Court, concentrated on general condition 3(c) of the policy of insurance and s11. In the Judge's view it was necessary to address two key issues, namely:

- (a) what was said by Mr Hugo and were his statements admissions, and
- (b) if so, had he nonetheless shown the admissions were neither causative of nor contributed to the loss.

[20] The Judge noted that the loss was Mr Hugo's liability to Tahuna Transport.

[21] Having traversed the basis of the appeal and the argument before him, the Judge went on to discuss the questions and issues. He took the view that "an admission in relation to clause 3(c) is a statement against interest, being in this instance the interest of the insured with reference to his potential liability to the other party".

[22] The Judge went on to refer to s11 and noted that for the purposes of this section:

It was common ground that the loss in respect of which the insured seeks to be indemnified "was in this instance his liability to the third party Tahuna".
[Para 35]

He went on to say:

The nature of the loss in relation to which indemnity is sought is I think significant in relation to the potential operation of clause 3(c). [Para 36]

After further discussion the Judge referred to the passage in *NZI v Harris* already set out in paragraph [17] above. He went on to add that:

For an event or circumstance to cause or contribute to the loss requires at least a meaningful contribution. An act which is de minimis in terms of causation or contribution is not within the section. Further, actual causation or contribution is required. The potential of an act to have that effect is not enough. The test is an objective one. The subjective view or opinion of the

insurer is not determinative. But of course it is for the insured to establish the absence of causation or contribution, otherwise the exemption applies.
[Para 39]

[23] Panckhurst J then went on to analyse the answers to the interrogatories set out above in paragraph [8] relied upon in the submissions by AMP General. He placed them in three categories: first those relating to the unawareness by Hugo Auto of the special tool which the manufacturer said should be used for fitting the arm; secondly, the statements made to Mr Fahy relating to what Mr Hugo saw; and, thirdly, his statement of a more general nature about the accident being a serious thing to happen.

[24] The Judge then considered whether the different categories of admissions caused or contributed to the loss. He took the view that the first category of admission could not have done so as from the evidence it was clear that the failure to use the special tool was not negligent in New Zealand and that this was known to NZI's consulting mechanical engineer. He took the view that the second category of admission relied upon was equally non-causative of loss. The principal of Tahuna Transport, a Mr Walker, had made precisely the same observations as Mr Hugo, except that Mr Hugo had finger-tested the grub screws while Mr Walker had merely observed that they were loose. In any event the Judge was satisfied that the evidence of the mechanical engineer was dependent upon what he actually saw rather than what people said. The third type of statement was also found by him not to be an admission capable of causing or contributing to loss as it was equivocal and added nothing meaningful.

[25] Panckhurst J concluded:

For these reasons it is my view that upon an assessment of the evidence the statements relied upon by AMP as admissions did not in fact have any causative or contributory effect. That, I think, was affirmatively established. It follows that Mr Hugo did meet the onus upon him in terms of the Act. To revert to the issues identified by Mr Rzepecky at the commencement of his argument, it is my conclusion that on the evidence it was not open to the learned Judge to reach the conclusion he did concerning the non-application of s11. [Para 53]

Submissions for AMP General

[26] The AMP General submits that Panckhurst J's approach was unduly restrictive. It is submitted that any admission by an insured that leads an injured party to pursue a claim that would not otherwise be pursued must be causative of or contribute to the insured's ultimate loss. It is also submitted that the approach gave no significance to the true dynamics of litigation, including the opportunity which potential defendants and their liability underwriters have to minimise loss by reaching settlements prior to trial and, in some cases, even before commencement of proceedings. It is submitted that the insured must not do anything to interfere with the insurer's unique right to decide whether the claim would be disputed in whole or in part. It is submitted that Panckhurst J's approach failed to take these factors into account. It is said that it did not properly reflect the reality of the position which a liability underwriter is placed in when an insured makes admissions of crucial facts which may not otherwise be obvious to or capable of discovery by a third party claimant and its insurers.

[27] In support of these submissions the AMP General refers to dicta in both *NZI v Harris* and *SIMU v Minsons*.

[28] In *NZI v Harris* the Court said:

In construing a statutory provision of this kind designed for practical application on a day to day basis, refined analysis in terms of metaphysical inquiries into causation should be eschewed. Again, a simplistic "but for" approach would rob s11 of much of its efficacy and deny its application in examples given by the Contracts and Commercial Law Reform Committee as requiring statutory reform (see para 29). Rather it is a matter of determining, under a section concerned with exclusion from cover where the limitation has been included because the event or circumstance is likely to increase the risk of loss occurring, whether the loss actually sustained by the insured was caused or contributed to by the relevant event or circumstance. If the existence of the relevant circumstances did not in itself increase the risk of loss, there is no justification either in principle as the Contracts and Commercial Law Reform Committee emphasised, or under the statutory language, for denying the insured the protection of the cover. [16]

[29] In *SIMU v Minsons* Blair J commented that the statutory provision in question, generally analogous to general condition 3(c) here, was an attempt to

prevent the insured usurping the monopoly in effect given to the indemnifier of handling any claim made and of deciding whether the claim will be disputed in whole or in part admitted. It is to be noted, however, that was on the basis the admissions would have “the effect of prejudicing the indemnifiers rights.” [840 - 841]

[30] The AMP General submits that liability underwriters are particularly concerned to prohibit insureds facing claims for negligence from doing or saying anything which will prejudice the ability of the insurer to defend them. In conducting a defence, an insurer will investigate and make an assessment of the insured’s potential liability. This process will result in the insurer making a decision on the future conduct of the defence. This may include a strategy for conducting settlement negotiations with the plaintiff, or embarking upon alternative dispute resolution. The outcome of these strategies will determine the loss suffered by the insurer under the policy. It must follow, it is said, that any admission made by the insured that might adversely affect the outcome of these strategies will cause or contribute to the insurer’s loss.

[31] It is thus submitted that the District Court Judge was perfectly entitled, having heard the evidence, to find that Mr Hugo had not discharged the onus upon him under s11. It is submitted that there were three factors supporting that, namely:

- (1) NZI was not likely to have continued with the claim, given Mr Malcolm’s initial assessment that the steering box damage was caused by the accident to the Tahuna Transport truck rather than by Hugo Auto, if Mr Hugo had not made his subsequent admissions.
- (2) At an early stage AMP General was put in a poor position in respect of negotiating a settlement.
- (3) In any event Tahuna Transport/NZI was able to rely in part on Mr Hugo’s admissions to brief its experts and prove its claim at the trial.

The submissions went on to enlarge upon these three factors.

[32] The first factor is the preliminary conclusion of NZI's consulting engineer, Mr Malcolm, that the accident caused the damage to the steering box rather than vice versa. It is said that it was thus unlikely that the NZI would have continued with the claim on behalf of its insured Tahuna Transport if Mr Hugo had not made the statements that he did to Mr Fahy, the NZI assessor, and Mr Malcolm. Counsel relied on the cross-examination of Mr Malcolm by counsel for the AMP General. This indicated that Mr Malcolm revised his original opinion that the accident caused the damage to the steering box after he became aware of what Mr Hugo had said about the failure to use the special tool. Counsel submitted that the District Court Judge was entitled to reach the conclusion that Mr Hugo had not satisfied the onus of proof upon him under s11 and that to have done so it would have been necessary to have called a person from the NZI to rebut the inference that the District Court Judge reached. It is also significant, it is said, that NZI subsequently instructed its consulting mechanical engineer.

[33] In developing the second of the factors upon which it relies, the AMP General says it was put in a poor negotiating position by Mr Hugo's admissions and that the District Court Judge was entitled to reach that conclusion. In particular, the AMP General relies on the statements that Hugo Autos did not use the correct tool and that a grub screw was loose when Mr Hugo inspected them at the accident scene. It is submitted that without Mr Hugo's statements NZI would not have known about the correct tool and that, because of the statements against interest, AMP General was worse off from the outset than it would have been if he had not made the admissions.

[34] In relation to the third factor relied upon by AMP General, it says there was a reliance by Tahuna Transport/NZI on Mr Hugo's admissions to prove its claim. It notes the course of events in the District Court, where the real issue was whether Mr Hugo was entitled to be indemnified by AMP General. It was said that Mr Hugo simply put Tahuna Transport/NZI to proof. It was submitted that there is clear evidence showing that Mr Hugo's admissions assisted Tahuna Transport/NZI to prove its case. Such evidence supported the District Court Judge's findings that the statements made by Mr Hugo were of assistance to Tahuna Transport when he found "equally clearly that the defendant did make admitted statements to the representatives of the plaintiff's insurers that were of assistance".

[35] Accordingly, it is submitted for AMP General that even on the approach adopted in the High Court there is sufficient evidence to support a conclusion that Mr Hugo's admissions at least contributed to the loss by providing information to the witnesses for Tahuna Transport/NZI upon which they were able to rely in reaching their conclusions relevant to Mr Hugo's liability.

Respondent's Submissions

[36] Mr Hugo adopted the decision of the High Court under appeal and enlarged upon and elaborated the reasons for judgment. In particular, it is emphasised that the District Court, in giving judgment for Tahuna Transport, nowhere relied upon any admission by Mr Hugo. The submissions noted that, to the extent that Mr Hugo admitted that the correct tool was not being used, that may have been an admission of fault but it did not constitute an admission of legal responsibility. It is emphasised that this admission did not lead it to any finding of negligence against him as the District Court Judge expressly disavowed that failure as he stated it was not necessarily critical.

[37] The submissions also noted and adopted the distinction made in *Terry v Trafalgar Insurance Company* [1970] 1 Lloyd's Law Rep 524, 526:

There is a world of difference between giving a factual account of what happened, without giving any expression of opinion as to blame, and an admission of liability.

[38] The submissions emphasised that AMP General is really complaining that, because of the communications between Mr Hugo and Mr Fahy and Mr Malcolm, it lost the opportunity to be the beneficiary of Mr Malcolm's original mistaken view that the steering box was damaged by the accident.

Discussion

[39] We start from the provisions of s11. Here we are concerned with the second step of the enquiry under s11 identified by this Court in *New Zealand Insurance Company Limited v Harris*: see para [17] above.

[40] Thus the enquiry here is whether the loss in respect of which Mr Hugo sought to be indemnified was caused or contributed to by any admission by him. For present purposes we accept that an admission in this context is a statement contrary to interest. The onus of proof rested on Mr Hugo. Whether it was met turned on the objective assessment of the Court, not on the subjective views of the AMP General.

[41] The loss in respect of which Mr Hugo sought to be indemnified by the AMP General is his liability to pay the judgment sum arising from Tahuna Transport's claim against him. The question becomes: was that liability caused or contributed to by any admission by Mr Hugo?

[42] AMP General would have us approach the matter not on that basis but on the basis that the question is whether the risk of judgment being obtained against Mr Hugo was caused or contributed to by any admission by him. That is not the focus of the inquiry under s11 and there are good reasons for that.

[43] In relying on the passage in *NZI v Harris* set out in para [28] above the AMP General highlights the problem in its approach. It emphasises the language "likely to increase the risk of loss occurring", which is only relevant to the first limb of the inquiry under s11. The second limb of the inquiry, as the citation makes plain, is whether the loss "actually sustained" was caused or contributed to by the admission.

[44] In relying on the passages in *SIMU v Minsons* referred to in para [29] above the AMP General further highlights the problem in its approach. The emphasis is on admissions having the effect of prejudicing the indemnifier's rights. The right in question is to be free from liability to the insured where the insured's admission causes or contributes to the liability established against the insured. It is not a right

to be protected against the risk of proceedings against the insured or a right to negotiate freely. The admission must cause or contribute to the insured's loss, not the risk of that loss. That is one of the essential differences between the two limbs of the inquiry.

[45] On the facts of this case the approach of AMP General would give rise to the very mischief s11 was designed to prevent. AMP General's oral argument very properly focussed on the admission by Mr Hugo that the tool recommended by the manufacturer to secure the arm was not used. However, to uphold the submission that this admission contributed to the ultimate loss would enable AMP General to rely on a non-causative breach by Mr Hugo of the conditions of the policy to avoid liability to him.

[46] It should be noted that in finding Mr Hugo liable to Tahuna Transport, the District Court Judge found that the negligence was the failure to secure the arm and use Loctite or a similar adhesive upon the grub screws. In reaching that conclusion, he relied specifically upon the evidence of Mr Walker, the principal of Tahuna Transport, and the evidence of Mr Rogers, the consultant mechanical engineer. The District Court Judge did not in any part of his judgment in respect of that conclusion rely upon any admission by Mr Hugo as either the basis for his finding or in support of his finding.

[47] In those circumstances there is simply no basis for AMP General's submission that an admission by Mr Hugo caused or contributed towards his loss.

[48] The position would have been different if there was no direct evidence of negligence and the claim against the insured was relying on admissions of negligence by the insured. However, that was not the case here.

[49] The second step of the enquiry under s11 is concerned with an objective enquiry as to whether the admission relied upon, caused or contributed to the insured's loss. It is not concerned with an enquiry into a plaintiff's subjective state of mind as to why it brought a proceeding or an inquiry into the indemnifier's ability to settle, an equally subjective subject matter. An insured could find it impossible to

prove an admission of some relevant fact, even identity, did not contribute to the commencement of proceedings or a failure to settle then. That cannot be the intention of s11.

[50] An admission in general condition 3(c) is in the context of “any admission, offer, promise, payment or indemnity”. The admission must affect not the course of events in respect of the claim against the insured but its outcome. It must relate to something which can be successfully used against the insured in Court. Otherwise it could not cause or contribute to the insured’s liability to pay the judgment sum, other than in an indirect and unintended way. It is not the reliance Tahuna Transport/NZI placed on the admission that is relevant. That did not lead to the entry of judgment. It is the reliance the Court placed on the admission that is relevant.

[51] Thus Panckhurst J was entitled to reach the conclusions that he did when the District Court Judge had not analysed the factual matters before him in terms of s11. The conclusions of Panckhurst J were entirely justified, given that the District Court Judge’s findings in respect of Mr Hugo’s liability to Tahuna Transport did not rely in any manner upon any admissions by Mr Hugo.

[52] We should note that because of the course the litigation has taken we have had to approach the matter on the basis most favourable to the AMP General, namely that the statements by Mr Hugo on which it relies are indeed admissions. As a result we expressly refrain from any analysis of them. It is sufficient to question whether, in the circumstances, at least some of them can properly be categorised as statements against interest.

Decision

[53] For the foregoing reasons the appeal is dismissed. Mr Hugo is entitled to costs of \$5,000 together with his reasonable disbursements, including counsel’s reasonable travel and accommodation expenses. In the event of disagreement these disbursements are to be fixed by the Registrar.

Solicitors:

MCELROYS, AUCKLAND FOR APPELLANT

RAE & WRIGHT, MORRINSVILLE FOR RESPONDENT