

22/11

NZLR

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
COMMERCIAL LIST

CL.77/89

**LOW
PRIORITY**

1758

BETWEEN HARBOUR INN SEAFOODS
 LIMITED

Plaintiff

AND SWITZERLAND GENERAL
 INSURANCE COMPANY
 LIMITED

Defendant

Hearing: 13 October 1989

Counsel: Ms M Lewis for plaintiff
 M. Ring for defendant

Judgment: 13 October 1989

JUDGMENT OF HENRY J

This is an application by the defendant under Rule 446K for removal from the list. The claim concerns the liability of the defendant to insure a vessel owned by the plaintiff for damage done to it when it ran aground. Reliance for entry on the list is placed on s24B(1)(a)(v) as being a proceeding arising out of and relating to insurance.

In support of the application, Mr Ring submitted that the issues were basically factual and did not involve any question of construction such as would warrant retention in the list.

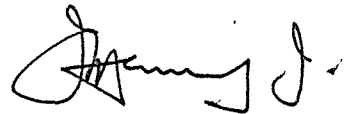
The plaintiff's revised statement of issues shows there are a number of matters in contention, in particular whether a warranty in the defendant's standard policy formed a term of this contract of insurance; the question of the standing of a broker and a sub-broker as regards the nature of their relationship with both plaintiff and defendant; a question of illegality under the provisions of the Shipping and Seamen Act, 1952, and also a question arising under s.42 of the Marine Insurance Act 1908.

Looked at overall, I do not think this is a case such as Petley v State Insurance Office CL.46/87 18 September 1987 and Quinby Enterprises Limited v The Accident Fire and Life Assurance CL.21/89 7 April 1989 in which it was held that what could be termed straight or ordinary insurance claims were not appropriate for retention on the list where no question of construction or commercial content was involved.

Here there are live issues which involve substantive questions of insurance law and practice. It is true, as Mr Ring urged, that the determination of these issues will depend on the finding of appropriate facts, but that applies to virtually all matters which appear in this list. There is in my judgment here a real commercial flavour, involving as I have mentioned issues relating to insurance law and practice, and accordingly

I think it appropriate that the proceeding remain on the list. The application will accordingly be dismissed. All questions of costs are reserved.

By consent timetabling orders as follows:
reply in amended form giving appropriate particulars to be filed and served by 20 October, verified lists of documents to be filed and served by 10 November, inspection to be completed by 1 December, any further interlocutory applications to be filed and served by 8 December, proceeding for call again on 15 December.



13 October 1989

Solicitors

Gibson Sheat of Lower Hutt by their agent Hesketh
Henry for plaintiff
McElroy Milne for defendant