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**In the High Court of New Zealand
Auckland Registry**

CIV-2012-404-4482

Between **Counties Manukau District Health Board**, a body duly constituted
under the New Zealand Public Health and Disability Act 2000.
Plaintiff

And **Hawkins Construction North Island Limited (formerly Hawkins
Construction Limited)** a duly incorporated company having its
registered office at Level 2, 70 Stanley Street, Parnell, Auckland,
New Zealand, construction company.
Defendant

Statement of Claim
Dated: 2 August 2012

MEREDITH | CONNELL
BARRISTERS AND SOLICITORS

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Statement of Claim

The plaintiff, by its solicitors, says:

The Parties

- 1 The first plaintiff is the Counties Manukau District Health Board, a body duly constituted under the New Zealand Health and Disability Act 2000.
- 2 The defendant is Hawkins Construction North Island Limited (formerly Hawkins Construction Limited), a duly incorporated company having its registered office at Level 2, 70 Stanley Street, Parnell, Auckland and carrying on business as a construction services company (**Hawkins**).

Building Work

- 3 In or around 2001, the plaintiff engaged Hawkins (**Hawkins Contract**) to design, develop and construct the Adult Medical Centre at Middlemore Hospital (**Hospital**), 100 Hospital Road, Papatoetoe (**Building Work**).
- 4 Between in or around 2001 - 2002, Hawkins carried out the design and construction of the Building Work.

Defects

- 5 In or around early 2012, part of the cladding of the Building Work fell off, which identified possible defects with the Building Work.
- 6 In or around early 2012, the plaintiff engaged Alexander & Co Limited (**A&C**), specialist building and quantity surveyors, to carry out preliminary investigations of the Building Work at the Hospital in order to identify potential issues and to recommend repair solutions.
- 7 In or around early 2012, A&C identified significant defects with the design and construction of the Building Work, further particulars of which will be provided before trial (**Defects**).
- 8 The Building Work does not comply with the functional and performance requirements of at least Parts B2 and E2 of the New Zealand Building Code.
- 9 The Defects are consistent with those found on buildings that have experienced significant damage due to the ingress of water (leaky buildings).

Result of the Defects

- 10 As a result of the Defects:
 - (a) The Building Work is not weathertight;
 - (b) There are areas of timber decay; and

- (c) The Building Work has suffered other damage and will suffer significant further damage in the future as a result of the Defects (further particulars of which will be provided before trial).

(together, the **Damage**).

- 11 Repairs are necessary to address the Defects and Damage, including but not limited to the following:

- (a) Remove the existing cladding and provide a drained and vented cavity;
- (b) Wall framing will need to be replaced; and
- (c) All cladding will need to be replaced.

Further result of Defects and Damage

- 12 As a result of the Defects and Damage, there has and will be interference with the use of the Hospital.
- 13 The full extent of the Damage arising from the Building Work cannot be established until such time as the Defects at the Hospital are fully remediated.

Cost of Remediation

- 14 The cost of remediating the Defects and Damage is estimated to be \$12,362,068.75 including contingency fees and GST. Further details of the cost of repairs will be provided when repairs are completed or more accurate estimates and costings are available.
- 15 The costs involved in providing replacement medical and staff facilities and/or additional resources for the administrative and medical staff of the Hospital in the event that the Hospital buildings are closed for repairs or by virtue of the Damage to the Hospital will be particularised before trial.

First Cause of Action by the plaintiff against Hawkins – Negligence

- 16 The plaintiffs repeat paragraphs 1 to 15 above and says further that Hawkins was at all material times responsible for carrying out the Building Work.
- 17 Hawkins owed a duty of care to the plaintiffs:
 - (a) To ensure that reasonable skill and care was exercised in the design and construction of the Building Work; and
 - (b) To design, supervise and construct a reasonably sound building using good materials and workmanlike practices in accordance with the New Zealand Building Code, relevant legislation and consistent with the terms of the Hawkins Contract.
- 18 The above duty of care arises out of the following facts and circumstances:
 - (a) The Building Work was carried out by Hawkins pursuant to the terms of the Hawkins Contract;

- (a) Hawkins carried out its functions through its employees or agents;
- (b) Hawkins was required to carry out its functions in accordance with the Building Act 1991 and the New Zealand Building Code;
- (c) Hawkins knew that the Hospital was to be used as an medical facility and knew, or ought to have known, that any failure to construct the Building Work in a thorough, professional and competent manner could:
 - (i) require repairs; and
 - (ii) interfere with the treatment of the patients at the Hospital;
- (d) The plaintiff is responsible for the Hospital property and relied on Hawkins to undertake the Building Work in a thorough, professional and competent manner;
- (e) Hawkins knew or ought to have known of the plaintiff's reliance on it; and
- (f) The Building Work was built with the Defects which have caused the Damage and will continue to cause damage unless remedied.

19 In breach of its duties, Hawkins failed:

- (a) To ensure that reasonable skill and care was exercised in the construction of the Building Work:

Particulars

- (i) the Building Work was constructed with the Defects/Damage set out in paragraphs 7, 10 and 12 above; and
- (ii) the Building Work does not comply with parts of the New Zealand Building Code.
- (b) To build a reasonably sound structure using good materials and workmanlike practices in accordance with the New Zealand Building Code and the Building Act 1991.

20 As a result of Hawkins' breaches of the duty of care set out in paragraph 19 above, the plaintiffs have suffered and will continue to suffer the following heads of loss:

- (a) The costs of remediating the Defects; and
- (b) The costs involved in providing replacement administrative and staff facilities and/or additional resources for the teachers of the students of the Hospital and administrative staff.

21 As a further result of the negligence of Hawkins:

- (a) The operation of the Hospital will be interrupted; and
- (b) At least part of the Hospital will be unable to be used effectively as a public medical facility while repairs are carried out.

- 22 The Damage and other losses were reasonably foreseeable as being likely to result from Hawkins' breaches.

Wherefore the plaintiffs claim:

- (a) Judgment in the sums referred to in paragraph 14.
- (b) Judgment for additional costs as at paragraph 15.
- (c) Interest.
- (d) Costs.

This statement of claim is filed on behalf of the plaintiffs by their solicitor **Mark Terence Davies** whose address for service is at the offices of Meredith Connell, Level 17, Forsyth Barr Tower, 55-65 Shortland Street, Auckland.

Documents for service on the plaintiffs may be left at that address for service or may be:

- (a) Posted to the Solicitor at PO Box 2213, Auckland 1140; or
- (b) Left for the Solicitor at a document exchange for direction to DX CP24063; or
- (c) Transmitted to the Solicitor by facsimile to (09) 336 7629.