



THE KIWIFRUIT CLAIM

MEDIA STATEMENT

Wednesday 8 October 2014

FOR IMMEDIATE RELEASE

CORRECTION TO INACCURATE INFORMATION FROM NZKGI

The Kiwifruit Claim has today corrected inaccurate information provided to growers and the media by the kiwifruit growers' organisation, New Zealand Kiwifruit Growers Incorporated (NZKGI).

On Monday, NZKGI distributed 14 reasons it says it believes The Kiwifruit Claim is too risky.

The chairman of The Kiwifruit Claim, John Cameron, said: "We are surprised by the level of inaccuracy in NZKGI's document and assume it was not signed off by NZKGI's legal advisor prior to release to growers and the media."

Mr Cameron released a response to the 14 points which has been signed off as accurate by The Kiwifruit Claim's legal advisors, Matthew Dunning QC and Dan Parker of Parker & Associates.

The response is as follows:

NZKGI CLAIM A: There is not a good chance of success (based on our current legal advice).

The Kiwifruit Claim's response: Our legal advisors' professional assessment is that the facts are about as good as one could have for founding the arguments, the claim is meritorious, is supported by principle and should be heard by the courts. The Sapere Report identifies obvious deficiencies in the way in which MAF failed to administer its functions and obligations. In addition, and very significantly, there is evidence to identify the shipment that negligently allowed Psa-V to enter NZ.

NZKGI CLAIM B *There are risks to the Single Point of Entry (SPE) and our partnership with Government.*

The Kiwifruit Claim's response: There is no legal link between The Kiwifruit Claim and the statutes and regulations that govern the structure of the industry. Further, as a matter of policy, we believe that it is inconceivable that the Government would make a link between grower-led litigation and de-regulating the SPE or any offshore trading access.

NZKGI CLAIM 1 *There is no guarantee the case will be commenced – LPF has the right to make this decision by 28 November or at a later time by agreement.*

The Kiwifruit Claim's response: The case will be going ahead. The Grower Committee has instructed its legal team to file the Statement of Claim with the High Court in Wellington by no later than Friday 17 October 2014.

NZKGI CLAIM 2 *The growers will be the named plaintiffs in the court proceedings, not LPF (the company supporting the claim) and LPF has discretion as to what costs it will pay.*

The Kiwifruit Claim's response: The growers are the parties who have suffered the loss as a result of the release of Psa-V into New Zealand. It is appropriate that the growers are the named plaintiffs rather than LPF, which is funding the plaintiffs' litigation. The costs that LPF will fund are set out in the funding agreement and will be agreed with the Grower Committee. LPF cannot and will not be seeking any further contributions from the growers at all and all costs will be covered by LPF.

NZKGI CLAIM 3 *Growers cannot withdraw from the claim.*

The Kiwifruit Claim's response: Any grower can opt out at any stage should they choose to.

NZKGI CLAIM 4 *LPF can withdraw from the claim.*

The Kiwifruit Claim's response: That is correct. LPF does retain discretion to withdraw from the claim just as the growers have. LPF considers there is a strong case and intends to support the owners through to a successful resolution unless significant factors arise that change LPF's assessment.

NZKGI CLAIM 5 Growers could then be left to run the claim and met the costs of running the claim.

The Kiwifruit Claim's response: In the hypothetical situation that LPF withdraws, LPF will not be able to claim any success fee. In this situation, the growers have several options. If they discontinue as a result of LPF's withdrawal, LPF will meet any adverse costs award as a result of the withdrawal. Otherwise, growers can continue the claim, either funding themselves or with support of another litigation funder.

NZKGI CLAIM 6 The Government in addition may seek additional security from growers requiring payment of grower funds into court in excess of the joining fee.

The Kiwifruit Claim's response: LPF has confirmed it will post any security for costs that could be awarded, without even being required to do so by the Court. They want the growers to have the added security of knowing these costs are there to be drawn upon should costs be awarded against the plaintiffs.

NZKGI CLAIM 7 Growers could be then left to pay the Government's costs if the claim is unsuccessful – this could be millions of dollars.

The Kiwifruit Claim's response: LPF has confirmed it will cover any adverse costs award and provide any security for costs that could be required by the Court. The suggestion that there may be millions of dollars of costs awarded is not realistic given the rules as to costs in the High Court and that security for costs will be posted during the conduct of the claim.

NZKGI CLAIM 8 Growers, it seems, will need the consent of LPF to sell their orchard(s) (where the orchard(s) are what their Psa claim is based on) – the claim could take many years.

The Kiwifruit Claim's response: This is completely untrue. Growers do not need the consent of LPF to sell their orchards.

NZKGI CLAIM 9 Growers will not have a say in how the case is run and who is joined to the case as defendants – if you disagree with how the case is being run, you can't withdraw.

The Kiwifruit Claim's response: This is completely untrue. Under the litigation funding agreement, the legal team is instructed by the plaintiff growers. This includes decisions around the conduct of the case and who is joined as defendants. It is them (through the plaintiff committee) who provide instructions on the conduct of the litigation. The agreement notes the involvement of LPF in any settlement or discontinuance of the claim, and in funding expert or other costs. Additionally, it is incorrect that growers cannot withdraw from the claim. They can withdraw at any time.

NZKGI CLAIM 10 Any dispute growers have with LPF are to be dealt with by an independent expert appointed by LPF – there are no appeals from the decision of the independent expert.

The Kiwifruit Claim's response: The dispute resolution provision enables determination by an independent expert of any disputes under the funding agreement. This enables prompt, independent and cost effective resolution of any dispute.

NZKGI CLAIM 11: The figure of \$885 million is not how much the claim will be – the amount of claim will be based on the loss suffered by the growers who join the claim.

The Kiwifruit Claim's response: The claim will be based on the actual losses suffered by those who participate in it, including: loss of income; loss of capital gain; losses as a result of increased banking mortgage rates given the higher risk; increased and ongoing costs of maintaining Psa incursions; general damages where appropriate; and legal and expert costs. All appropriately claimed losses will be included in this claim and, depending on the numbers who elect to participate, the figure could be well over the \$885 million suggested in the Sapere Report.

NZKGI CLAIM 12: If the claim is successful growers will get what is left after all legal costs and the 20% to 25% success fee has been deducted – the bigger the claim, the bigger LPF's success fee.

The Kiwifruit Claim's response: That is true. The bigger the settlement or award of damages, the more money will be paid in compensation to growers and the more money will be made by LPF. The interests of growers and LPF are therefore aligned.

There have also been claims made that the litigation funder, LPF, is a foreign company. This is completely untrue. LPF is 100% New Zealand owned.

The Kiwifruit Claim says it is also disappointed that NZKGI declined its offer last week to brief its grower forum on the claim.

END

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