

The Crown, being sued on behalf of the Ministry for Primary Industries (MPI), does not accept the plaintiffs' allegations and is defending the litigation filed by The Kiwifruit Claim. MPI has filed a statement of defence in the High Court.

MPI denies it owes the duty of care alleged by the plaintiffs.

MPI says it acted appropriately in its treatment of Psa3 (also known as Psa-V) as a biosecurity threat and that it acted in accordance with its international obligations and with scientific knowledge at the time.

In allowing the importing of pollen and allowing a specific consignment to enter New Zealand, MPI did not "let" Psa3 into the country. MPI maintains that various studies have been inconclusive as to exactly how Psa3 entered New Zealand.

There are other reasons MPI says it is not liable for the claim. There is a statutory immunity from civil proceedings in regard to actions taken under the Biosecurity Act, which MPI will argue applies to this proceeding. MPI also contends that any liability on the Crown for losses as a result of a biosecurity incursion is covered by a statutory compensation scheme. A specific assistance scheme was offered after the Psa3 outbreak in 2010, whereby the Government made more than \$25 million available to compensate growers. This was matched by a payment by industry, and the fund is administered by an industry-led organisation, Kiwifruit Vine Health.

Any plaintiff bringing a claim of this nature has an obligation to demonstrate that they have been affected by Psa3, and prove and mitigate their losses. Whether plaintiffs contributed to their alleged losses will also be in issue

MPI understands the plaintiffs will deny the Crown's affirmative defences, which involve contested matters of law and fact. Further, MPI understands the plaintiffs will maintain that the matter is appropriate for representative orders and that the litigation funding agreement is appropriate for approval by the Court.

MPI does not consider this litigation can be appropriately dealt with as a representative action. The claims of the growers and post-harvest operators are best dealt with individually, so individual circumstances, such as how Psa3 entered the property and whether they have already received compensation, can be responded to by MPI and taken into account by the Court.

MPI also opposes the plaintiffs' application for approval of its use of a litigation funder and the litigation funding agreement on the basis the plaintiffs are not a representative group and the litigation funding agreement gives the funder too much control over the litigation.