



## THE KIWIFRUIT CLAIM

### The Kiwifruit Claim

#### COURT UPDATE 14 OCTOBER 2017

The High Court trial in Wellington to hold the Government and Ministry of Primary Industries to account for the losses suffered during the PSA incursion, continued this week.

On Monday, Dr Angelo Mazzaglia, a researcher for Agriculture and Forestry Services at the University of Tuscia, Italy gave evidence that covered the genetic analysis of all 132 strains of Psa and provided comments on the genetic differences.

This week also saw the DNA experts giving evidence in court. The experts included Professor Russell Poulter for the plaintiffs and Dr Honor McCann and Professor Edward Holmes for the defendant. They have been reading their individual Briefs of Evidence and following this formed a panel to be cross-examined by both our legal team and the Crown.

During the week, Justice Mallon gave a ruling during the week that requires the Crown to provide, via discovery, their insurance cover as it relates to the claim. We issued a media release announcing this ruling – please see details below.

In the week ahead, while at this stage we don't have exact timings, we can advise that the witnesses will include statisticians James Curren and David Bryant along with evidence from Joel Vanneste.

This is a guide only, and can change. Timing will also depend on the length of cross examination of each witness.

This week John Cameron from the Claim Committee and Jonathan Woodhams from LPF Group attended court proceedings. As previously advised, you are most welcome to attend the High Court and listen to the proceedings if you are in Wellington and wish to see for yourselves. Court begins at 10am each day, in Court room number 6. Please feel free to contact the committee if you would like to attend, to confirm witness timing.

#### MEDIA

Media continue to be very interested in the court case. This week we released a media statement about the court ruling that requires the Crown to disclose insurer details (*see copy below newsletter*) and below is the coverage this received.

<https://www.nbr.co.nz/article/mpi-ordered-release-details-insurance-arrangements-kiwifruit-case-b-208772>

<http://www.freshplaza.com/article/183072/NZ-MPI-ordered-to-disclose-insurance-details>

<http://www.scoop.co.nz/stories/BU1710/S00405/crowns-biosecurity-negligence-insurer-to-be-disclosed.htm>

<http://www.voxy.co.nz/national/5/295427>

#### TRIAL TIMETABLE GOING FORWARD

The lawyers keep us updated on the likely timetable for the trial, and as previously advised it is expected that we will not need all the 13 weeks currently scheduled. This will depend on how long each witness is required to give evidence and how many questions they are required to answer. While it is not possible to give exact times and dates, the remainder of the trial is expected to run as follows:

- w/c 16 October – The Crown will continue to present its witnesses, and they will be cross examined by our lawyers.
- w/c 30 October (potentially earlier)– The Crown closes its case.
- Late October - Our lawyers close our case, and the trial is scheduled to finish.

We will continue to keep you regularly updated as the Court case proceeds. If you have any questions please feel free to contact us. Our chairman, John Cameron, can be contacted on 027 497 9534, or use the Q&A forum on the website: [www.thekiwifruitclaim.org](http://www.thekiwifruitclaim.org).

The Kiwifruit Claim Committee

14 October 2017

## **MEDIA RELEASE ISSUED 13 OCTOBER 2017**

### **CROWN'S BIOSECURITY NEGLIGENCE INSURER - DETAILS OF POLICY REQUIRED TO BE DISCLOSED**

It has been revealed that MPI has a significant insurance policy to cover it for negligence in performing its biosecurity role.

A ruling by the High Court is requiring the Crown to release details of its substantial liability insurance cover relating to the case being brought by kiwifruit growers against the Ministry for Primary Industries over the 2010 PSA outbreak.

Kiwifruit Claim chairman, John Cameron says that it is important to all New Zealand primary industries, not just kiwifruit, to know what insurance arrangements the Crown has for acts of negligence and biosecurity breaches - such as MPI's decision to allow banned kiwifruit plant material which was contaminated with Psa-V disease, into New Zealand – this along with their failure to inspect at the border, led to the devastation of the kiwifruit industry.

“As plaintiffs, we believe by taking shortcuts and not following its own protocols under the Biosecurity Act, MPI were negligent and breached its duty of care to the kiwifruit industry - as a result compensation should be provided for the harm caused.

“MPI is denying all claims, however we think its reasonable to question why MPI is insured against acts of negligence if they believe they don't owe a duty of care to the primary industries it is meant to protect.

“Traditionally in litigation well-resourced defendants with liability insurance have not had to disclose details of their cover. This places plaintiffs at a serious disadvantage when seeking to access justice through the Courts when up against well-resourced defendants who have the means to use the legal system to test the financial resolve of plaintiffs through delaying tactics.

“The High Court is requiring the Crown to disclose all its insurance details which will ensure the process of facilitating justice is transparent to all parties involved.”

Mr Cameron says that kiwifruit growers, like other primary producers, are simply not able to insure themselves against risks that are a result of this sort of negligence, yet growers' lives and livelihoods were ripped apart by Psa and for many the impact is ongoing.

“It is also apparent that misleading statements have been made by a number of witnesses as to whether insurance is available and we are pleased the Court ruling will ensure information regarding the Crown's insurance position will be publicly provided,” he said.

The Kiwifruit Claim represents 212 kiwifruit growers who are holding the Government and MPI to account for the significant losses suffered by growers from the Psa incursion. The growers are seeking over \$376m in compensation. The High Court trial is currently being held in Wellington. MPI denies all claims, however the Kiwifruit Claimants say the negligence is obvious.

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