



THE KIWIFRUIT CLAIM

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NEWSLETTER – 16 APRIL 2018

By way of update since we all met in December, it has been nearly six months since we wrapped up Stage 1 of 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. We are writing to let you know that we have received communication this week from the High Court that at this stage, Justice Mallon, the Judge, is expected to deliver her Judgment in the case by the end of May.

We have however been advised of an issue that has cropped up which we want you to be aware of. The lawyers for both parties have been informed by Justice Mallon, via a communication from the High Court, that the Judge's sister has a farm infected with Mycoplasma Bovis and her sister will receive compensation from MPI. As a matter of course, a Judge is obliged to raise issues with parties in a case he or she is presiding over, which could be argued to impact on the public perception of the Judge's impartiality in that case.

The issue regarding Justice Mallon's sister has been raised with both our legal team, and the Crown's lawyers, to provide each side with the opportunity to object to Justice Mallon determining the outcome of the PSA case. While the parties have until 4 May to advise the Court of any objection, our legal team has filed a document with the Court confirming they do not raise any objection.

We don't believe that the Crown has any reasonable grounds to object either, given that the Judge has no financial interest in her sister's farm. However, the Crown may decide to do so for tactical reasons. If the Crown lodges an objection, the Judge must then determine whether she can continue with the case, and issue her Judgment despite the objection. If the Judge proceeds to issue her Judgment when an objection has been raised, it could provide the Crown grounds for appealing that decision to continue, through the Courts. Alternatively, if an objection is raised, and the Judge steps down from the case, we would need another trial.

Both of those scenarios would be very difficult, creating more uncertainty for growers, and further significant and unnecessary costs for taxpayers. It has been eight years since PSA was first discovered in New Zealand, devastating grower's lives - many continue to suffer ongoing losses and expenses, and those impacted by the PSA incursion need closure.

We are confident that the case our legal team presented to the Court was very compelling, supported by strong evidence, and are hopeful that Justice Mallon will be able to deliver her Judgment in the case by the end of May as planned. We believe that it would be a big reach for the Crown to lodge an objection on the basis that the Judge's sister will receive a payment from MPI, but we wanted you to be aware that this is a possibility. We will communicate further with you as soon as we have more information.

If the first stage claim is successful, a further hearing will be scheduled to decide the amount of the Crown's liability to individual growers – you need to remember to keep all your documents – please see below.

REMINDER ABOUT IMPORTANT DOCUMENTS THAT YOU NEED TO KEEP

If the Court finds in our favour at the Stage 1 trial, individual growers will need to give discovery of relevant documents in their control, as well as details of their losses. The legal team has asked us to remind you that you need to preserve your documents, and make sure your records are complete.

Below is a list of some of the documents you should keep:

1. Maps showing the size and location of orchards.
2. Documents relating to the lease / purchase of any orchards from 2008 to date.
3. Documents relating to the sale of any orchards in the period since the incursion.
4. Insurance arrangements in relation to orchard operations / vines from 2007 to the date of infection.
5. End of season summaries prepared by your post-harvest operator from 2007 to date.
6. Any other documents showing the effect of PSA on your orchard gate returns.
7. Documents (e.g. accounts, ledger reports and invoices) relating to:
 - a. The cost of removing and disposing of vines;
 - b. The purchase of any new licenses after the incursion (e.g. Gs, G14, Kiwberry)
 - c. The cost of grafting any new varieties after the incursion;
 - d. Spraying costs and other costs associated with managing the effects of PSA;
 - e. Changes to rent paid or received in respect of an orchard as a result of PSA;
 - f. Any increased financing costs incurred as a result of PSA; and
 - g. Any other costs incurred as a result of PSA.
8. Annual financials from 2008 to date.
9. Any other documents showing the financial impact of the PSA incursion on you.
10. Electronic spray diaries for each orchard from 2008 to date.
11. Orchard management diaries from 2008 to date (if you or your orchard manager kept them).
12. Documents relating to artificial or beehive pollination from 2008 to the date of infection.
13. Orchard Management Plans under the National Pest Management Plan.
14. Documents relating to any audits Zespri or your post-harvest operator under the National Pest Management Plan.
15. Any correspondence with MPI, Zespri, KVH or your post-harvest operator in relating to PSA and managing its effects.

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.

The Kiwifruit Claim Committee