

## **Key points of the High Court's decision on the Kiwifruit claim**

1. The plaintiffs' claim was one of negligence. To establish a negligence claim, the plaintiffs had to establish, in relation to events that occurred 8 to 12 years ago, that:
  - a. MAF personnel owed them a duty to take care when making import permit decisions and when clearing consignments at the border;
  - b. That duty of care was breached by one or more members of MAF personnel;
  - c. The breach caused them loss; and
  - d. The damages they claim are of a kind which are recoverable against MAF/MPI.
2. The Court's decision is about the first two questions, and part of the third - but for a breach of the duty of care, would Psa have arrived in New Zealand? Whether the breaches in fact caused each of the claimant kiwifruit growers' claimed losses, and whether such losses are recoverable, will have to be determined at a later hearing (which will occur if the High Court decision still stands after any appeals against that decision have been heard).

### Key points of the decision

3. The key points of the decision are set out below.
  - *Duty of care owed*
    - a. The Court said MAF personnel did owe such a legal duty of care - but only to Strathboss, and other claimant growers who have property rights in vines physically damaged by Psa.
    - b. No duty of care was owed to Seeka because post-harvest operators are one step removed from the direct harm suffered by growers.
  - *Breach of the duty of care*
    - c. The Court found there to be a breach of the duty of care at the pre-import stage.
    - d. The Court did not find any breach in relation to the clearance at the border of the Kiwi Pollen consignment imported from China in June 2009 which caused Psa to arrive in New Zealand.
  - *Breach caused the incursion*
    - e. The Court concluded it was more likely than not that the June 2009 Kiwi Pollen consignment contained Psa and caused the Psa outbreak in New Zealand detected in November 2010.
  - *Statutory immunities*
    - f. The Court found that neither of the two relevant statutory provisions that provide immunity from personal liability benefitted the Crown.

The Crown can still be found vicariously liable for the negligent acts of employees.