

FELTEX CLASS ACTION

Defendant signs up claimants

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National sharebroking firm Forsyth Barr is signing up about 400 of its own clients to join claimants in a \$150 million representative action against itself and others over the failure of carpetmaker Feltex.

Forsyth Barr is one of the defendants in the action.

Former Feltex shareholder Eric Houghton is representing about 3000 other shareholders who bought shares in Feltex in the public offering in mid-2004, and he is claiming the prospectus was misleading and contained untrue statements.

The carpetmaker collapsed in 2006, and shareholders lost their investments.

Former shareholders are now suing the former directors, promoters and sellers of shares in Feltex, including Forsyth Barr which was a co-manager of the Feltex share float in 2004.

Forsyth Barr managing director Neil Paviour-Smith said the brokerage firm had written to clients who owned Feltex shares through Forsyth Barr's custodial service at the time of Feltex's initial public offering in 2004 telling them they would be "opted-in" as claimants.

Paviour-Smith said the position was not embarrassing but acknowledged there was a conflict of interests and, based on legal advice, opting-in clients was the best thing it could do for those clients.

"It's not embarrassing at all, we're simply doing what we feel is in the clients' best interests."

"We figured given there is no cost to them in being included, and if there ever was any recovery, they would then be able to participate in that so we felt, objectively that it was the best thing we could do for those clients."

"We also noted in our correspondence that obviously as ... the fifth defendant in the action,



Two hats: Forsyth Barr managing director Neil Paviour-Smith, centre, says the broking firm is acting in the best interests of its clients.

Photo: FAIRFAX NZ

we do have a conflict of interests but notwithstanding that, we feel this is the best thing for them."

About 400 clients would be opted in, before tomorrow's deadline of Thursday May 30, as set out in a High Court ruling last month.

Asked what potential liability the firm faced if it had not opted in clients this way, and claimants succeeded in the action, Paviour-Smith said it did face a risk.

He said the firm was wearing two hats because it was a defendant in the action but also had to act in the best interests of clients, "and if we hadn't done the best thing we could for them, where we had a clear option to do something, then potentially there's a risk around that side".

The lawyer for the claimants, Austin Forbes, QC, said by opting in its clients, Forsyth Barr was acting "responsibly" by recognising it had an obligation to ensure its clients could exercise their rights even though Forsyth Barr was a defendant in the proceedings.

Qualifying shareholders opted in by Forsyth Barr Custodians can opt out by June 21, in which case

they will be excluded from the final claimant group to be filed with the High Court.

Stage one of a two-stage trial will take place in the High Court in Wellington on March 14 next year.

However, one of the defendants, Credit Suisse, has been granted leave to appeal against a Court of Appeal judgment on the time limitations for claimants to join the

DEFENDANTS

- **First defendant** is the group of seven directors at the time of the share float in May-June 2004: Chairman Tim Saunders, Sam Magill, John Feeney, Craig Horrocks, Peter Hunter, Peter Thomas and Joan Withers.
- **Second defendant**, the sellers of the shares: Credit Suisse Private Equity.
- **Third defendant**, promoters of the shares: Credit Suisse First Boston Asian Merchant Partners.
- **Fourth defendant**, co-manager of the float: First New Zealand Capital.
- **Fifth defendant**, co-manager of the float: Forsyth Barr.

TIMELINE

- **May-June 2004:** Investors buy just over \$250 million of Feltex shares at \$1.70 each. Seller of the shares, Credit Suisse, alleged to have made \$182m profit.
- **October 2005:** Feltex announces a profit of \$11.8m compared with \$25.8m in prospectus.
- **March 2006:** Shares had fallen to 60c each.
- **September 2006:** Receivers appointed.
- **December 2006:** Feltex in liquidation.
- **February 2008:** Houghton files his claim suing the directors, sellers and promoters of the shares. He also asks for an order from the court to represent other shareholders.
- **March 2014:** First stage of representative action trial set to start in the High Court.

BRIEFING

CLOSE OF BUSINESS YESTERDAY

NZX 50
4478.25 0.05 ▲

NZ Dollar
US 80.90 0.12 ▲
Aust 83.83 0.05 ▼

Oil
\$US 102.51 0.05 ▲

Fixed Interest
90-DAY RATE 2.68 ▲

Energy Mad in red

Christchurch's Energy Mad has incurred an annual net loss of \$2.5 million ended March, bigger than the \$1m loss in the 2012 financial year and wide of the \$4m profit forecast in the energy-efficient lightbulb maker's initial public offer document. Energy Mad said its annual revenue had increased 59 per cent, relative to the previous year. This growth came from securing the Walgreens business in the United States, from Australian spiral Ecobulb, and from the New Zealand direct-install business. Energy Mad expects this revenue growth to continue this financial year. But \$9.8m of Australian halogen replacement revenues were not delivered. About \$7.3m of this was caused by design changes to improve the 12V Ecobulb, which meant no production and therefore no Australian sales of the product during the latest year. The remaining \$2.5m related to a manufacturing quality issue with the 240V Ecobulb Downlight that restricted sales to 10 per cent of the projected annual volume for downlights. Consequently, trading revenues for 2013 were \$9.2m, compared with the initial public offer forecast of \$21.3m. A further \$400,000 of revenue was recorded as other income, the company said.

Back to the well

Two of the three lead managers for the Mighty River Power (MRP) float have been re-appointed to run the sale of Meridian Energy. The Treasury yesterday announced Goldman Sachs, Macquarie Capital and Deutsche Bank/Craigs Investment Partners would be lead managers for the Meridian float, due later this year. Goldman Sachs, Macquarie and First NZ Capital held the same role in MRP's sale. Investment bank UBS was appointed joint lead manager for the sale of Genesis Energy, but a date has yet to be set for that share offer. Other lead managers may be appointed in the coming weeks.

BLIS seeks capital

BLIS Technologies says it has started plans to raise further capital of at least \$1m to further its business strategy. The Dunedin biotech firm yesterday announced a \$1.85m annual loss ended March, up 5.1 per cent on 2012's red ink. The result was in line with the revised guidance given in February 2013 and reflected a disappointing trading performance and February's decision to restructure the business of BLIS Functional Foods (BFF) by stopping ice-cream production and moving of group operations to the BFF site, the company said. Annual trading revenue fell 23.8 per cent to \$1.12m.

FONTERRA

Chinese slur 'out of context' Payout forecasts pleasing

Andrea Fox

Former Fonterra chairman Sir Henry van der Heyden has apologised for "an ill-judged" warning to businesspeople not to trust Chinese.

The leading Kiwi businessman who was recently named chairman of Auckland International Airport reportedly told a weekend business conference in Tauranga to be wary of fraudulent behaviour when doing business in China.

Van der Heyden, who yesterday attended his last board meeting as a director of Fonterra, New Zealand's biggest company whose biggest export customer is China, confirmed he did advise: "Don't trust them ... never."

"It was taken out of context ... but I did say it, it was an ill-judged comment ... a silly thing to say."

Van der Heyden, who led Fonterra for 10 years until December, is also chairman of Tainui Group Holdings, the commercial development arm of Waikato-Tainui.

He said he was "really positive" about China and his talk on Saturday morning to the Tauranga Chamber of Commerce's businesswomen's network conference reflected that. The comment he was apologising for was a response to a question from the audience.

"What I was trying to say was when you are working a new culture, it can be different."

Chamber chief executive Max Mason said van der Heyden's address focused on the great opportunities in China but he was not present at the question time.

Van der Heyden said he was speaking at the conference as a favour to a close friend.



Sir Henry van der Heyden

Fonterra has multimillion-dollar farm investments in China and was a minority shareholder in the SanLu company at the centre of the 2008 melamine infant formula poisoning scandal.

Andrea Fox

Economists are predicting a bit of sunshine coming into farmers' lives today with Fonterra's opening payout forecast for the new dairy year tipped to put \$2 billion more into their pockets than the season just ending.

New Zealand's biggest company and the dominant milk collector is today also expected to lift its milk payout forecast for the 2012-2013 season now in its dying days by around 10c/kg milksolids to \$5.90/kg. Fully shared-up farmers get a dividend on top of this.

While economists seem confident there is enough good oil in the current mix of conditions around robust international prices and the exchange rate to persuade Fonterra directors to part with the

extra 10c either today or in the final 2012-2013 dairy payout in October, the real economic focus is now on the forecast for the new 2013-2014 season starting on Saturday.

Despite this year's widespread drought, BNZ senior economist Doug Steel is picking a starting total payout forecast - milk payment plus profit including retentions - of close to \$7.

If he is right, and if predictions of a 6 per cent rise in national milk production next season prove correct, it could mean around \$2b more dairy payout for the economy than in the season just ending, a possible total injection of \$12.3b over the next dairy year. This compares with a predicted \$10.4b dairy payout for the 2012-2013 season just ending, and

\$10.95b in the 2011-2012 season. The prediction of \$12.3b would mean close to a 1 per cent of GDP cash injection for the economy over the next 18 months, said Steel.

The optimism is based on this year's strong international dairy earnings because of a tight global milk supply, influenced by New Zealand's drought, and the slowing ascent of the New Zealand dollar against its United States counterpart.

ANZ rural economist Con Williams is also picking Fonterra will top up the 2012-2013 season's milk payout by 10c/kg.

He does not expect much, if any, upward movement in Fonterra's current 32c dividend forecast.

His forecast for the opening season is for a milk payout of \$6.50/kg.

Independent retail works at Eastgate

When Penny Lane Records was on the hunt for new premises post-earthquake they didn't immediately think of Eastgate. But it didn't take long for the centre to become the obvious choice.

"We liked that the mix at Eastgate is different, it's not your standard carbon copy mall with all the same stores," says Penny Lane co-owner Garry Knight.

And he's right. Eastgate is different from other centres and that's what our shoppers like. It's also part of our strategy - to continually excite and entice shoppers to our unique retail mix that's unavailable elsewhere.

RETAIL LEASE OPPORTUNITIES AVAILABLE

Eastgate has several new stores available for lease - ranging from 30sqm to 200sqm. We've taken a proactive approach to the remixing and leasing of the centre and we're offering very competitive deals to the right tenants.

Find out why high profile brands such as Lincraft, Number 1 Shoes, Paper Plus, Bed Bath & Beyond, McDonalds and Christchurch City Libraries all agree that Eastgate is the place to be.

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Garry and Alun of Penny Lane fit right in at Eastgate

When did you open at Eastgate?

We opened at Eastgate on Easter weekend, 2012 replacing the Marbecks shop that had traded there previously. Eastgate provided the perfect fit for the product we carry and has been a great success.

Why did you choose Eastgate?

We spent some time observing the centre before making a decision and really liked the culture we saw.

Post earthquake people have gotten back into music, a lot of families are doing it and Eastgate has a big family community.

This side of town was hit hard, but socialising and coming together over music filled a gap - it's therapeutic and affordable.

Eastgate is different to other malls, it's laid back, friendly, old school and social - and that's very much us too.

What's your favourite thing about the centre?

The customers, as with any business the customers are the most important part to our success, along with an ever changing range of product.

Eastgate has a great relaxed feel about it and people are encouraged to take their time here and enjoy their shopping experience.

Garry and Alun, Penny Lane

