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12th January 2017

FELTEX SUPREME COURT UPDATE: Your «number» Feltex \$1.70 shares

Important letter from Eric Houghton and Joint Action Funding Limited (JAFL) to Feltex Qualifying Shareholders

Eric Houghton has filed a representative application in the Supreme Court¹ for leave to appeal the 12 October 2016 decision of the Court of Appeal² (CoA). Submissions in support were filed at the Supreme Court on your behalf on 16 December 2016. The appeal will seek a refund of your \$200 million of Feltex IPO subscription moneys, interest & costs from Feltex directors including TEC Saunders³, Credit Suisse PE Inc, First NZ Capital & Forsyth Barr.

Untrue Statement in the Feltex IPO Prospectus

The CoA differed from the High Court deciding that:

- the Feltex IPO Prospectus did contain an **untrue statement** at the date of allotment 2 June 2004;
- The High Court judge was incorrect to exclude consideration of your claims under the Fair Trading Act 1986;
- Forsyth Barr and First NZ Capital came within the statutory definition of promoters of the Feltex public offer.

The CoA concluded, at [84] to [116] of its decision, that the **untrue statement** (sales revenues were forecast to increase, but actually fell 18% below IPO monthly forecasts in both April and May 2004), would not have mattered to you (or Houghton) when you were investing in Feltex Carpets Limited at \$1.70 per share, providing you with no remedy.⁴

Your Supreme Court application submits broadly that:

- Having found that the prospectus contained an **untrue statement**, the CoA was wrong to conclude that you suffered no loss as a result of that untruth;
- The CoA wrongly disregarded evidence of non-disclosure to you, during the May 2004 Feltex offer and prior to June 2, 2004 allotment, that serious risk and adverse trade factors⁵ had eventuated which were affecting Feltex's 2004 sales and business prospects;
- The CoA wrongly decided that it was permissible for the defendants to allot Feltex shares to you without disclosing **the prospectus sales revenue figure was untrue**;
- The Feltex Prospectus was non compliant under the Securities Act because of the **untrue statement**, and the offer of Feltex shares should never have been made;
- Consequently you are entitled to compensation for your loss in investing in Feltex;
- Forsyth Barr and First NZ Capital (as well as the Feltex Directors and Credit Suisse) should give you your money back;
- Each of you 3,639 claimants is entitled to a stage 2 trial under the Fair Trading Act 1986 and the Securities Act 1978 to hear evidence on what you relied upon and whether the **lack of proper disclosure** about factors causing Feltex's 2004 sales to fall would have affected your decision to invest, or caused you loss.

¹ SC135/2016

² Decision at <http://www.wilsonmckay.co.nz/feltex-claim/>

³ Houghton led claimants secured a charge over the directors' substantial AIG/Chubb Insurance policies under s9, Law Reform Act 1936. Refer Supreme Court decision [2014] NZSC 20.

⁴ Eric Houghton fought for the rights of families, including his own, affected by the Erebus disaster.

⁵ These factors were identified in 2002 by KPMG and Des Tolan, Feltex's Chief Financial Officer.

Background and funding to date

The Supreme Court previously decided that Eric Houghton's 26 February 2008 statement of claim⁶ saved time for all 3,639 represented Feltex IPO subscribers who had opted-in to the JAFL Agreement by mid-2013 (the Qualifying Shareholders).

In 2011, JAFL arranged an \$8.2m cash investment in the claim through Harbour Litigation Funding Limited (Harbour) by its HLIF LP fund. The investment also funded insurance which protected Eric Houghton from \$6m of adverse costs. JAFL arranged an additional \$1m investment by HLIF LP to help cover multiple defendant interlocutory applications & appeals, the prolonged High Court trial, and the (3rd) CoA hearing just completed. HLIF LP is now fully called. JAFL has accepted Harbour's invitation to apply to HLIF3 for SC appeal funding.

In our view, it is an ideal time for the Houghton led claimants to also have the opportunity to restate their personal support for their claim for compensation. This will provide the claimant group with an alternative source of funding. Without funding from within the claimant group and/or from professional litigation funders, the Supreme Court appeal cannot proceed.

Your Funding support is invited

Your funding support is invited if you want to participate in, and assist, the success of your group's important public interest Supreme Court SC135/2016 appeal.

- This final appeal stage will require several hundred thousand dollars⁷;
- The funds required can be repaid and separately rewarded only out of success on the same basis as funding provided so far via JAFL and Harbour's HLIF LP;
- JAFL and its entire legal team have extended you considerable assistance to supplement HLIF LP cash funding in recent years. Working capital and payment of accrued and future Houghton/JAFL costs is now required.

A successful outcome of your Supreme Court Appeal will result in the Claimant group being entitled to a recovery from the defendants of legal costs and a refund of the adverse costs already paid by HLIF and the insurers. We expect this to pave the way to your Stage 2 trials.

If you wish to participate, and assist, your contribution will be held in trust to be applied in payment of the expenses of this litigation as authorised by EM Houghton Roger Cann and JAFL for the purposes described above. Please contribute by direct bank transfer to the instructing solicitors, **WILSON MCKAY HOUGHTON/JAFL TRUST ACCOUNT**
12-3110-0064834-03

Please insert your details as below with your bank transfer to Wilson McKay at ASB

Particulars	Code	Reference
« <i>surname</i> »	« <i>First_name</i> »	« <i>JAFL_number</i> »

- Please email a copy of your bank transfer to: rogercann@wilsonmckay.co.nz , and
- Email Houghton/JAFL a copy and confirm your contacts to: FeltexClaim@gmail.com

Yours faithfully

Eric M Houghton
Representative Claimant

Tony Gavigan (+64 21 326272)
Director, Joint Action Funding Limited

⁶ Between 2006 and 2011 over \$1m was funded through JAFL including success based fee arrangements with lawyers including Slater & Gordon, Melbourne. Intending claimants also contributed approximately \$500,000.

⁷ Some past costs are deferred on a success only basis. These include disputed success fee based claims by JR Eichelbaum, who is a 10% JAFL shareholder. He has not been part of the Houghton legal team since early 2012.