

**IN THE DISTRICT COURT  
AT WHAKATANE**

**I TE KŌTI-Ā-ROHE  
KI WHAKATĀNE**

**CRI-2020-004-009514**

**WORKSAFE NEW ZEALAND**  
Prosecutor

v

**WHAKAARI MANAGEMENT LIMITED  
ANDREW BUTTLE  
JAMES BUTTLE  
PETER BUTTLE  
WHITE ISLAND TOURS LIMITED  
VOLCANIC AIR SAFARIS LIMITED  
AERIUS LIMITED  
KAHU NEW ZEALAND LIMITED  
I D TOURS NEW ZEALAND LIMITED  
TAURANGA TOURISM SERVICES LIMITED**

Defendants

Date: 15 June 2023

Appearances: K McDonald KC, M Hodge and S Symon for the Prosecutor  
D Neutze and P Couldwell for the Defendants  
Whakaari Management Limited, Messrs Buttle and I D Tours  
New Zealand Limited  
R Raymond KC, G Nicholson and O Welsh for the Defendant  
White Island Tours Limited  
F Pilditch KC for the Defendant Volcanic Air Safaris Limited  
L Castle and M Sotutu for the Defendant Aerius Limited and  
Kahu New Zealand Limited  
S Wroe for Tauranga Tourism Services Limited  
R Gowing as counsel to assist on behalf of victims

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**CASE REVIEW HEARING MINUTE OF JUDGE E M THOMAS**

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### **White Island Tours Limited guilty plea**

[1] White Island Tours Limited has pleaded guilty to two charges that it faces following amendment. An agreed summary of facts has been filed. Sentencing is likely to take place once the trial against all defendants has concluded. It is too early at this point to identify a sentencing date. Proceedings against White Island Tours Limited are adjourned to 11 August this year at 2.15, to discuss a timetable further.

### **Access to court documents by Sharon Fergusson of TVNZ**

[2] Ms Fergusson filed an application to access what she described as the agreed summary of facts. Following some clarification it appears that what she was seeking was access to agreed facts for the purpose of trial. Those are still being discussed between counsel. Those documents, therefore, do not exist on the Court file and cannot be provided. It would not be the usual course that they would be provided ahead of trial in any event.

[3] I signalled to Ms Fergusson that if she was not present following on VMR this morning I, therefore, cannot deal with her application. If she becomes aware at any point of documents being filed prior to trial, then she may file the application again but would appear unlikely. WorkSafe intends to make a lengthy and full opening address at the start of the trial which should provide plenty of the necessary background for media. Media, of course, will be entitled to be present and to cover that opening address.

### **WorkSafe applications for mode of evidence**

[4] It is likely that counsel will come to an agreed position on mode of evidence, in other words, the way in which the evidence of certain witnesses is presented to the Court. Much of that turns on whether certain redactions to some of that material can be agreed. Those discussions are continuing. It would be premature to make any orders while those discussions continue. I invite counsel to sign a joint memorandum

once some agreement has been reached. I can then rule on the applications in chambers and issue the necessary minute.

### **Expert evidence**

[5] WorkSafe has stated that it intends to lead its expert evidence in the usual way. No one is suggesting anything different.

[6] Defence expert briefs have been provided to WorkSafe. To date there have been issues from WorkSafe's point of view about what non-compliance with my previous timetable will mean in terms of a defendant's ability to rely on a particular expert. We leave that discussion, if there is to be that discussion, until the appropriate moment in the trial.

### **Attendance at the trial by VMR**

[7] We will continue to use the VMR platform as we have done for all of these hearings. It has been well-used. It has been seamlessly used by and large, and I am very grateful and in some admiration of those who are able to ensure that that has happened. We will continue to use that platform. There need not be any change to the protocol that we have enjoyed so far. Any person wishing to access the trial, including counsel by VMR, is simply requested to make the necessary arrangements with the registrar.

### **Livestreaming**

[8] The trial will be livestreamed to certain approved recipients. The registrar is putting together a schedule of those seeking approval. I invite parties and counsel who seek approval to notify the registrar of that request. Once the schedule has been completed, and I have seen a draft which appears largely complete, that the registrar provide that schedule to me. At that point I will refer it to Mr Gowing to cast his eye over it to ensure that all of those he represents are appropriately recorded on that schedule. Once I have his confirmation or his comment, I will make the necessary orders in chambers.

[9] As we have discussed previously that ability to livestream is limited to counsel, media and those represented by Mr Gowing.

### **Viewing or access to recorded trial footage**

[10] The livestream footage itself will be retained and stored by the Ministry and no one will be able to access that footage without making an application to the Court and getting the Court's approval to do so.

[11] The question for today has been how long a person is entitled to access that footage once approval has been granted. Both the Ministry and the parties seek some guidance. As I understand it, once approval is granted a link is provided to the person approved to access that footage. A timestamp can be placed on that link so that access is only permitted or enabled for a certain period.

[12] In the filings for today there has been some debate about whether that window should be 24 hours or 48 hours. No party appears to contemplate that anything longer than 48 hours is necessary and I agree. I have reservations about 24 hours being useful. I can understand the pragmatism of limiting it as much as we possibly can. Although access to the footage will be accompanied by the usual warnings about distribution and privacy, it nevertheless is access that is beyond the control of the Court so restricting it becomes important. Twenty-four hours, however, can be too short a period if people are travelling or have other commitments that they cannot avoid.

[13] I, therefore, set the time for the window at present at 48 hours. If it emerges that that is likely to cause any real difficulty, then I am sure the Ministry will let me know and we can revisit that arrangement.

### **Tikanga**

[14] We previously discussed at the last case review hearing the need to acknowledge tikanga in these proceedings. As we have observed in this hearing today it serves a very poignant purpose as well as constitutionally anchoring our proceedings. The Ministry has provided two options which it has circulated to

counsel. Nobody objects to either option. I settle upon option 2, and that is after some further discussion with the Chief District Court Judge and Mr Tony Fisher of the Ministry of Justice. That is with an additional element which is that Mr Fisher is to respond on behalf of participants and the Court in a neutral way.

[15] Mr Gowing, who is well seized of these matters, approves. No party wishes to add any further comment. The registrar is to advise Mr Fisher of my order so that he can begin to make the necessary arrangements.

### **Counsel unavailability during the trial**

[16] It is inevitable with a proceeding of this length that despite the best efforts of counsel to keep their diaries free they will fill up with matters that take greater precedence. It is the convention, for example, that the District Court would defer to hearings in a superior court. I know the superior courts are extremely sensitive to the requirements of this trial, the contents of this trial, the wide-reaching consequences for this trial. I know that they are very supportive of all the steps that we are taking to ensure that the trial concludes and does so in a smooth and cohesive manner.

[17] I anticipate that there will be times, however, when counsel will need to be called away for various reasons. As I have stated previously, if it is a part of the trial which does not involve counsel's clients, I am happy for counsel to excuse themselves with the necessary discussion with the registrar and the necessary advice being given to the registrar. What we are really talking about here is having to disrupt the trial to accommodate other superior commitments of counsel. That will be a necessary evil and we should all be prepared to discuss those and accommodate those where they are reasonable.

[18] What I would like to do, however, is to put in place a fairly simple procedure which would allow us to deal with those sorts of requests and difficulties quickly and seamlessly. For now, I suggest that any counsel who finds themselves in that position should:

- (a) let all other counsel know, including WorkSafe, and

(b) file a memorandum as soon as possible.

[19] if any other party wishes to be heard on accommodating or not accommodating such a request then that should be contained in a joint memorandum. Otherwise I will simply rule on the request in chambers and issue the necessary minute.

[20] That is not a particularly well thought out protocol. I must confess that it is the product of a few moments' thought during this hearing. Anybody who can see flaws in the protocol at any time I invite to let me know and we can revisit whether that can and should be improved as we track towards trial.

### **Attendance of Mr Gowing at trial**

[21] I acknowledge again the work that Mr Gowing has done. When these proceedings began it was unknown how we could properly reflect and accommodate the positions of victims, their families, and the wider community. One of the successes of these proceedings will be that Mr Gowing has done that and how professionally and sensitively he has done that. That we attend these hearings and see orders being made and arrangements being made without much discussion reflects how much work Mr Gowing is doing behind the scenes with those parties and with the Ministry to ensure that their interests are properly met. I am very grateful to the help that he has provided and the work that he has done in the background.

[22] There is no need for him to attend the trial in person. I ask him to be available, however, if any issues arise to continue to bring to our attention in the way that he has done, any issue that he thinks requires my knowledge or intervention. In turn we will be quick to come to him if we think there is anything that he should be assisting us with.

### **The effect of the White Island Tours Limited guilty plea**

[23] I appreciate that many would not have been expecting the guilty pleas that were White Island Tours Limited entered this morning. As a party that appeared to be a fairly significant player in the trial, its absence now may materially affect the forensic

landscape. WorkSafe New Zealand will have to consider how it affects the way it presents its case. It will need to consider what witnesses remain or do not remain on its witness list. Defendants will need to consider how they respond to that. The defendants will also, no doubt, need to consider how the absence of White Island Tours strategically impacts upon their defence.

[24] I do not anticipate that we necessarily need another case review hearing prior to trial. I am loathe to set one down because everybody will be extremely busy and I would rather leave you to your preparations than take your time to attend another case review hearing. However, if matters arise that do need some discussion or my intervention, I encourage the parties to file memoranda seeking a further case review hearing. We can attempt to arrange a hearing that will impact as little as possible on the precious time that you now have between now and trial.

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Judge EM Thomas

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 19/06/2023-