

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2020-004-009514  
[2023] NZDC 14809**

**WORKSAFE NEW ZEALAND**  
Prosecutor

v

**WHAKAARI MANAGEMENT LIMITED  
ANDREW BUTTLE  
JAMES BUTTLE  
PETER BUTTLE  
I D TOURS NEW ZEALAND LIMITED  
TAURANGA TOURISM SERVICES LIMITED**  
Defendants

Date of Ruling: 19 July 2023

Appearances: K McDonald KC, S Symon, M Hodge, D Dow, S Forrest,  
L Wright and L Dalton for the Prosecutor  
J Cairney and P Brash for Whakaari Management Limited,  
Andrew Buttle, James Buttle and Peter Buttle  
D Neutze, P Hawkins and P Couldwell for I D Tours New  
Zealand Limited  
P David KC and S Wroe for Tauranga Tourism Services Limited

Judgment: 19 July 2023

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**RULING 2 OF JUDGE E M THOMAS  
[Exception to witness exclusion order]**

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**A. The officer in charge, Mr Broad, may be present in the courtroom or follow  
the livestream throughout the trial.**

**B. Prosecution witnesses Dr Proctor, Dr Peace and Mr Gibson may be present in the courtroom or follow the livestream during the evidence of Dr Jolly.**

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**REASONS**

**Introduction**

[1] Ladies and gentlemen, excluding witnesses is a routine order that we make in trials to ensure that anyone who is going to be a witness is not able to follow what witnesses before them are saying, for obvious reasons. We commonly have exceptions to that from time to time.

**Officer in charge, Mr Broad**

[2] The first exception is the officer in charge who can be present for the entire case. The purpose of the officer in charge being present is, if there are any questions that WorkSafe's counsel need answered about anything that arises during the trial, he is available to them to be able to answer those questions.

**Expert witnesses during the evidence of Dr Jolly**

[3] The next exception concerns the next witness, Dr Jolly. I have no idea what Dr Jolly is here to talk to us about. I hear the evidence at the same time that you all hear the evidence. I do know that as part of WorkSafe's case it intends to call some expert evidence later in the trial. It has been signalled already this morning that there is likely to be some defence expert evidence to be given in the trial. Again, I do not know at this point what any of that expert evidence is going to be.

[4] It is common for experts to give conclusions or opinions based on whatever the scenario is that the trial is all about. Obviously, it is very difficult for experts to be able to give those sorts of opinions if they do not know what it is that we are all talking about. That is why commonly they may be present or have access to the evidence in the trial so that they hear about what has happened, for example on the island, before they are able to express any conclusions or opinions about that.

[5] Worksafe has asked for three of its witnesses to be able then to follow the evidence of Dr Jolly: Dr Proctor, Dr Peace and Mr Gibson. I cannot say whether they should or should not, based on what Dr Jolly is going to say or what they are going to say, because I do not know what any of them are going to say. These are exactly the sorts of discussions that counsel need to have and exactly the sort of protocols that counsel need to agree upon before a witness is called. This is exactly the reason we built in time on Friday afternoons and Monday mornings. To have these discussions, to develop and decide upon these protocols, not to waste time as we have done this morning.

[6] Given no party now opposes WorkSafe's application for those expert witnesses to be able to follow the evidence of Dr Jolly, I make that exception.

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Judge EM Thomas

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 20/07/2023