

**IN THE DISTRICT COURT
AT WHAKATANE**

**I TE KŌTI-Ā-ROHE
KI WHAKATĀNE**

**CRI-2020-004-009514
[2023] NZDC 4558**

WORKSAFE NEW ZEALAND
Prosecutor

v

**TAURANGA TOURISM SERVICES
WHAKAARI MANAGEMENT LIMITED
ANDREW BUTTLE
PETER BUTTLE
JAMES BUTTLE
I D TOURS NEW ZEALAND LIMITED
VOLCANIC AIR SAFARIS LIMITED
WHITE ISLAND TOURS LIMITED
INSTITUTE OF GEOLOGICAL & NUCLEAR SCIENCES
KAHU NZ LIMITED
AERIUS LIMITED**
Defendants

Date: 14 March 2023

Appearances: K McDonald KC, M Hodge and S Symon for the Prosecutor
S Wroe for the Defendant Tauranga Tourism Services
D Neutze and P Couldwell for the Defendants Whakaari
Management Limited, Andrew Buttle, Peter Buttle, James Buttle
and ID Tours New Zealand Limited
A Ross KC and S Coupe for the Defendant Volcanic Air Safaris
Limited
G Nicholson for the Defendant White Island Tours Limited
R Reed KC and G Gallaway for the Defendant Institute of
Geological & Nuclear Sciences
L Castle and S Lomaloma for the Defendant Kahu NZ Limited
L Castle and S Lomaloma for the Defendant Aerius Limited
R Gowing as counsel to assist on behalf of victims

CASE REVIEW MINUTE OF JUDGE E M THOMAS

Witness list

[1] WorkSafe is to file and serve an updated witness list by 14 April. That is to include a programme, or order of witnesses, to be called at trial.

Mode of evidence applications

[2] WorkSafe is to file and serve any applications relating to its witnesses by 21 April.

Exhibit list

[3] WorkSafe is to file and serve an updated exhibit list by 9 June.

Agreed facts

[4] Discussions are continuing. I encourage all parties to continue to participate aggressively to come to settle positions on agreed facts as soon as possible.

Pre-trial applications

[5] No party has signalled pre-trial applications today. There is always the spectre of possible pre-trial applications. Opportunities to determine those between now and trial are becoming scarce. I urge all parties to be vigilant in notifying pre-trial applications. That includes notifying *possible* pre-trial applications so we can begin scheduling those if necessary.

Trial logistics

[6] I invite WorkSafe to continue its discussions with counsel and the Ministry to come to a settled position on the following.

Daily sitting hours

[7] We will need to accommodate the possibility of witnesses testifying from different time zones. Advance notice, as much as possible, is required so the Ministry can make the necessary arrangements and other participants of course.

Composition of the sitting week

[8] I envisage including up to a day of non-sitting time in each trial week to allow for travel but, more importantly, the necessary collaboration between counsel regarding trial logistics.

Streaming and access to the trial

[9] The Ministry, in conjunction with Mr Gowing and counsel, is ready to put in place what is necessary to bring these proceedings to those who cannot physically attend. It intends, at this stage, a one-way streaming broadcast plus VMR for direct participants if required. Everybody agrees that that is an appropriate arrangement and I encourage the Ministry to implement that.

[10] Any livestream should incorporate a 10-minute delay.

[11] The livestream should, as much as possible, operate as if people were physically present in the courtroom. So it should be available to an open audience as opposed to only available to interested parties.

[12] The livestream should be recorded. At this point I contemplate that access to the recording would be by application to me as the trial judge. I leave WorkSafe and counsel to consider that a little more and discuss further with the Ministry if necessary.

Presentation of documents

[13] Everyone, including the Ministry, anticipates that documentary exhibits will be transmitted via the livestream and available for those to view who are following the livestream. A protocol will need to be in place regarding confidential documents.

That should continue to form part of the discussion between WorkSafe, counsel and the Ministry.

Other facilities

[14] The Ministry has identified physical venues, both here in Whakatāne and in Auckland, to cater for overflow, to cater for a separate physical location from which people can view the trial.

[15] As with all the steps the Ministry has taken in conjunction with counsel and Mr Gowing, I thank it for the work that it has done to ensure access to this trial. A significant amount of work has gone into that project.

Interpretation

[16] The Ministry is providing interpretation for those survivors and their families who need it. It has offered simultaneous interpretation for that purpose. It will provide interpretation services for any witnesses. It is suggesting at this point that it may be able to provide simultaneous interpretation. I support that. However, the necessary infrastructure needs to be in place to make that a viable option. That is likely to require some significant investment in time and other resources. I invite WorkSafe and counsel to liaise closely with the Ministry regarding how realistic that is.

August recess

[17] The Supreme Court will be using the Environment Court for the week of 13 August. This trial will not be able to proceed during that week. I propose resuming the trial on Wednesday 23 August to allow the Supreme Court a sufficient margin of error for any overrun in its proceeding and to enable counsel and others to take advantage of the first two days of the school holidays.

Attendance at trial by the Buttles

[18] The Buttles seek to be excused from having to attend the trial. They have been very well represented to this point by Mr Neutze and there is no reason to consider

that he will not continue to act in the thorough way that he has for them. WorkSafe does not oppose. No other party wishes to be heard. I grant that application. They may attend as they consider appropriate.

WorkSafe's opening address

[19] It would assist my own trial preparation to have a draft of WorkSafe's proposed opening statement by 23 June. WorkSafe has kindly agreed to provide that. It does so on the basis that it is a draft only. The only authoritative version of that address will be the one that WorkSafe presents on the first day of trial.

Further case review

[20] All outstanding issues arising between now and the start of trial need to be very closely managed. All parties were seeking a further case review hearing in late May to accommodate that. That was an appropriate timeframe, but dates around that time are not available for various reasons.

[21] I therefore propose two days which we can confirm today as case review hearing dates. Those are 12 May and 15 June. Ms McDonald will not be available to appear on behalf of WorkSafe at the case review hearing on 12 May. The one caveat then for that case review hearing is that if WorkSafe feels its position is compromised in any way by her non-availability, we can defer matters on which it feels compromised to some other date. I would prefer that date is not 15 June but we will deal with those issues as they arise. For now, all parties should be ready to attend case review hearings here in Whakatāne on both 12 May and 15 June.

[22] I encourage the parties however to file memoranda ahead of those dates if either date is under threat or if counsel feel that those dates are insufficient to be able to deal with any pre-trial issues.

[23] The case reviews will operate on those dates in the same way as they have to date.

Judge EM Thomas

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 16/03/2023