

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

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

**CRI-2020-004-009514
[2022] NZDC 5022**

WORKSAFE NEW ZEALAND
Prosecutor

v

**WHAKAARI MANAGEMENT LIMITED
ANDREW BUTTLE
JAMES BUTTLE
PETER BUTTLE
INSTITUTE OF GEOLOGICAL NUCLEAR SCIENCES LIMITED
NATIONAL EMERGENCY MANAGEMENT AGENCY
WHITE ISLAND TOURS LIMITED
VOLCANIC AIR SAFARIS LIMITED
AERIUS LIMITED
KAHU (NZ) LIMITED
INFLITE CHARTERS LIMITED
I D TOURS NEW ZEALAND LIMITED
TAURANGA TOURISM SERVICES LIMITED**
Defendants

Date: 23 March 2022

MINUTE OF JUDGE E M THOMAS

Disclosure

[1] By separate ruling I have discussed the outstanding issues regarding disclosure and set a timetable by which Worksafe must comply with what remains of its disclosure obligations. There may yet be issues regarding disclosure. Some parties have signalled possible s 30 application in respect of disclosure that Worksafe has withheld. No party is in a position, at this stage, to file those applications. The parties

intend to discuss all of that with Worksafe a little further. I encourage any party who feels they are ready to file such an application to file it, so we are aware of those applications as early as possible.

Other likely applications

[2] Mr Neutze on behalf of Messrs Buddle has signalled that in addition to a s 30 application his clients will be filing a s 147 application. That application needs to come after outstanding disclosure has been finally resolved. Those defendants are not in a position, at this point, to identify whether either application is forthcoming. Mr Neutze, on their behalf, and Worksafe, will file a joint memorandum when they are able to identify whether those applications will be required.

Trial venue

[3] This is still up for discussion and determination. I adjourned the previous hearing to enable the Ministry of Justice to look at further options. From my discussions with the Ministry, it appears on track to deliver its report, as required, by 31 March. All parties who want to be heard on the application have filed fulsome submissions on this issue in the past. The only remaining submissions I anticipate would be in response to the Ministry's 31 March report. All parties who wish to do so must file updated submissions addressing the implications of that report from their respective points of view by 13 May.

[4] We will reconvene the venue hearing on 13 June. Any party who does not wish to be heard further on the application need not attend. I counsel to liaise with [the registrar] regarding their appearance or non-appearance.

Case review hearing

[5] Today's hearing is adjourned to 31 May. I repeat the comments that I have made in another context during this hearing that the adjournment is to allow robust and fruitful discussion among defendants and between defendants and Worksafe. I appreciate that there is much to discuss, digest, consider and debate. But the more of

that that occurs between now and 31 May the more productive the 31 May hearing will be and, critically, the more we can achieve in terms of resolving outstanding issues well ahead of any trial date. Right now, 10 July 2023 seems a long way away. It will rapidly become very close. We need to use the time that we have now to its greatest advantage.

Venue for both the venue and case review hearings

[6] Both hearing represent adjourned hearings which began in the Whakatane District Court. Mr Neutze, on behalf of his Auckland-based clients, understandably and properly advances the case for those hearings to be held in Auckland. He does so respectfully and responsibly, as he has done in the past. However, for the same reasons that I have previously identified, both of those hearings will take place in the Whakatane District Court if the court is able to accommodate that.

[7] We have all become used to attending these hearings remotely. Even if either hearing proceeds in person in Whakatane, neither necessarily requires counsel to appear in person. If counsel wish to appear remotely, they may do so. I invite them again to liaise with our [registrar] regarding that.

[8] Finally, can I thank you all, counsel. The memoranda and submissions that were advanced for the purposes of this hearing have been sensible and of high quality. It has allowed us to make light work of the potential issues that have arisen today. I am very grateful for the work that everybody has put in.

Judge EM Thomas

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 24/03/2022