

New Zealand: Court action over Pike River mine disaster

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Families of two of the 29 workers killed in the Pike River coal mine disaster in New Zealand have taken court action to obtain documents and information relating to the decision to drop charges against Pike River Coal chief executive Peter Whittall in 2013. Whittall was the only person charged with health and safety violations in relation to a series of underground explosions that trapped and killed the men in November 2010.

No one has been held accountable for the deaths, despite voluminous evidence, partly uncovered by a 2012 royal commission of inquiry, showing that the company broke the law and turned the mine into a death trap. The mine had no proper emergency exit, its underground ventilation and methane gas monitoring were grossly inadequate, equipment was constantly breaking down, and questions were raised about the reliability and safety of the underground fan.

The charges against Whittall were withdrawn by the Ministry of Business, Innovation and Employment (MBIE) in exchange for an unsolicited \$3.41 million payment to be divided among the victims' families. This deal, reached behind the backs of the families, was ruled to be unlawful by the Supreme Court in 2017. However, the charges against Whittall were not reinstated and none of the lawyers or state bureaucrats involved faced any consequences for breaking the law.

There are many unanswered questions about how the deal was reached, the legal advice provided to MBIE by state solicitors, and the involvement of members of the then-National Party government. A crucial question is the source of the \$3.41 million. Whittall's lawyers told *Stuff* last July that this was paid by "an insurer under the terms of an insurance policy held by Pike River Coal." However, Pike River Coal had earlier refused a court order to pay \$4.17 million in fines and reparations, declaring that it was bankrupt and had exhausted its insurance money.

On February 2, former criminal lawyer Christopher Harder spoke in the Wellington High Court on behalf of Bernie Monk and Dean Dunbar, whose sons Michael and Joseph were killed in the series of underground explosions at Pike River.

Harder outlined the case for documents and correspondence held by WorkSafe (formerly the Department of Labour) relating to the unlawful deal to be made public, including emails between Whittall's lawyer Stuart Grieve KC and Crown solicitor Brent Stanaway. Harder also called for the release of a transcript from an earlier High Court hearing, held in 2015, in which some of the families sought a judicial review of the decision to drop charges.

Crown lawyer Amy Hill, appearing on behalf of WorkSafe in last week's hearing, explained that some documents were already publicly available—including an email sent by Grieve offering the \$3.41 million payment—but argued that others should remain hidden. She asserted that this was "not a case of the Crown... [trying] to avoid scrutiny," but that there was a "public interest" in maintaining "legal privilege" for conversations between lawyers.

Harder earlier told the court that legal privilege does not allow two lawyers "to discuss something that is a criminal offence." He referred to correspondence in 2013 between Grieve to Stanaway in which Whittall's lawyer proposed "a voluntary payment [to the families]... conditional upon" charges being dropped. Harder said: "What is described here is nothing less than an offer of a bribe."

Instead of reporting Grieve to the Law Society for his proposition, Stanaway took the offer to his colleagues at MBIE for discussion, and ultimately it was accepted. District court judge Jane Farish then defended the withdrawal of charges at a district court hearing on December 12, 2013, declaring that this was not "Whittall buying his way out of a prosecution" and that the

“voluntary payment is really a side-issue.”

Asked by Justice Jillian Mallon last week what Monk and Dunbar were ultimately seeking to accomplish, Harder explained: “These gentlemen want accountability. ... Nobody’s been publicly held accountable.” Their aim was to “bring so much pressure to bear on the politicians that they will reopen the mine and get the bodies” and examine the crucial evidence underground that could establish the precise cause of the explosions and lead to successful prosecutions.

In 2021, the Labour Party-led government shut down a re-entry operation into the mine and then permanently sealed it. Minister for Pike River Re-entry Andrew Little falsely claimed that it was too dangerous to re-enter the mine workings where human remains are located, as well as the underground fan that may have sparked the explosion. Monk, Dunbar and other family members and supporters protested against the decision. They were supported by leading international mine experts, led by former Chief Inspector of Mines Tony Forster, who explained how the mine workings could be safely entered using standard techniques.

At the conclusion of last week’s hearing, Justice Mallon reserved her decision.

Speaking to the *World Socialist Web Site* (WSWS), Harder said: “The key question remains: who ultimately paid the \$3.41 million? If the money was paid by Whittall’s insurer, that is one thing. If the money was paid by a third party who had something to gain by the Whittall prosecution not proceeding—i.e., so that issues of ignition and possible causation of the explosion were not discussed or probed in open court—then there should be a fresh criminal investigation of all persons or companies potentially involved, as this would be a serious criminal endeavour.”

Monk told the WSWS he was very pleased to have been granted the court hearing after years of applying to WorkSafe, the police and the Ombudsman to release information, including the legal advice given to MBIE in 2013. He said it was “an absolute insult to the families” that, despite the Supreme Court ruling that the deal to protect Whittall was unlawful, no one had been held accountable for the disaster and the subsequent cover-up.

Monk said he had told WorkSafe’s lawyer Hill: “I’m not going to go away, whether we win or not... They might think that we’re going to go away, but it’s just not going to happen.”

Dunbar said Pike River had revealed that “this is a justice system that has a noose around its neck... If

anybody suggests that we haven’t got a two- or three-tier justice system then they’re not paying attention.”

Dunbar also pointed out that there were unanswered questions about what caused the second explosion at Pike River Coal, five days after the initial blast, which may have been started by a conveyor belt being switched on. Police, who were then in charge of the mine site, have denied that their actions may have led to this explosion, which put an end to any talk of a rescue or recovery operation.

Dunbar said WorkSafe saw its job as “protecting big business and blaming the poor workers in the forestry and mining industry for killing themselves at work.” The unions performed the same role, he added.

The Department of Labour (now called WorkSafe) knew about the dangerous conditions in Pike River mine prior to the explosion but did nothing to stop its operations. Any trial of Whittall or other members of Pike River’s management would have exposed the complicity of this government agency. It also could have shed light on the criminal role played by the trade unions.

Andrew Little, the Labour government’s minister in charge of Pike River since the 2017 election, who was instrumental in shutting down the re-entry operation, was the leader of the miners’ union, the Engineering, Printing and Manufacturing Union at the time of the disaster in 2010.

The EPMU did nothing to protect its members at Pike River, despite knowing the mine was extremely unsafe. It made no public criticism of Pike River Coal prior to the disaster. Shortly after the first underground explosion, Little defended the company, falsely telling the media that Pike River had a “good health and safety committee that’s been very active” and that there was “nothing unusual” about the mine.



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