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IN THE DISTRICT COURT
AT WAITAKERE

I TE KŌTI-Ā-ROHE
KI WAITĀKERE

CRI-2022-067-000033
[2023] NZDC 18305

WORKSAFE NEW ZEALAND
Prosecutor

v

RUAPEHU ALPINE LIFTS
Defendant

Hearing:	23 August 2023
Appearances:	R Woods and V Veikune for the Prosecutor G Galloway and S Crosbie for the Defendant
Judgment:	23 August 2023

NOTES OF JUDGE M PECOTIC ON SENTENCING

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[1] Ruapehu Alpine Lifts Limited (In Liquidation) (RAL) have pleaded guilty and now appear for sentence on two charges before the Court which are laid under the Health and Safety at Work Act 2015.[1] Both charges carry a maximum penalty of a fine not exceeding $1.5 million. The first offence charges RAL, being a person conducting a business or undertaking, failed to ensure so far as was reasonably practicable the health and safety of other persons, namely passengers on its Mitsubishi

[1] S36(1)(a0, 248(10 and (2)(c) of the Health and Safety at work act 2015

Fuso buses were not put at risk from work (transport to and from the ski fields) carried out as part of the business and that failure exposed individuals including Hannah Francis and the other passengers on Mitsubishi Fuso bus CDJ298 during the relevant period (along with other road users at the time) to a risk of death or serious injury.

[2] The second offence charges RAL, being a person conducting a business or undertaking, failed to ensure so far as was reasonably practicable the health and safety of workers who worked for RAL while the workers were at work driving its Mitsubishi Fuso and that the failure exposed individuals including Sung- Pil Choi, [redacted] and other employees who drove the Mitsubishi buses during the relevant period, to a risk of death or serious injury.

[3] The background facts to this matter are as follows and I summarise those. I have been provided with a substantial summary of facts; I do not intend to repeat everything from that summary of facts.

[4] On 28 July 2018, a Mitsubishi Fuso bus registration CDJ2908 owned and operated by RAL crashed while descending the Ohakune Mountain Road. One passenger, Hannah Francis who was 11 years old, was killed. Numerous other passengers and the driver Sung-Pil Choi received serious injuries as a result of the crash.

[5] RAL is a limited liability company that operates as a limited purpose public benefit entity. RAL operates the Whakapapa and Tūroa ski areas on Mt Ruapehu. In 2007, RAL commenced operating a commercial bus passenger service to transport fare paying passengers up and down the mountain roads to the ski fields. A passenger service licence was obtained from NZTA to permit this service.

[6] As a person conducting a business or undertaking, RAL had a primary duty of care to ensure the safety of passengers on its commercial bus passenger service up and down the mountain roads. The same duty applied to the safety of its workers while they were at work driving the buses up and down the mountain roads.

[7] RAL went into voluntary administration under Part 15A of the Companies Act 1993 and on 11 October 2022. On 8 February 2023, RAL's administrators consented to the prosecution continuing under the Companies Act.

[8] The bus was a 1996 Mitsubishi Fuso bus capable of transporting 33 seated passengers plus the driver. The bus had been imported in a used state from Japan. RAL used it as a carpark shuttle bus. In 2017, RAL began using this bus and other vehicles to transport staff and members of the public from Ohakune Village to the Tūroa ski field.

[9] The bus was fitted with air over hydraulic service brakes. The front and rear brakes were serviced by a separate air reservoir. The bus was also fitted with a switch referred to as a flicker chain switch. The switch was located to the right-hand side of the driver's seat near the switches for the front and rear doors. When activated, the switch deployed chains to the rear wheels of the bus to allow for improved traction on snow or ice. When the flicker switch was air activated, it plumbed into the secondary brake air reservoir serving the front brakes.

[10] The flicker switch had been installed without any mechanism to safeguard the air supply to the front brakes. It had been partially decommissioned at least two years prior to the crash. The switch remained in place and remained connected to the air supply line. The air line had been cut and had not been capped or sealed such that when the flicker chain switch was activated, it would permit the front brake reservoir to vent into the atmosphere resulting in the front brake reservoir being purged of air. Once this occurred, the front brakes would be rendered ineffective.

[11] The bus held a current certificate of fitness which was issued on 31 May 2018, which was valid at the time of the crash. It had been issued by VTNZ at Raetihi. The bus had received certificates of fitness on five occasions between 22 December 2016 to 31 May 2018. The flicker chain system had been partially decommissioned prior the issuing of the two certificates of fitness for the buses preceding the crash. As such, VTNZ ought to have failed the bus on both occasions.

[12] A coronial inquest was held to determine, amongst other things, the cause of the crash. The Coroner's findings indicated the crash was as a result of the driver using an inappropriately high gear during the early stages of the descent. The driver then failed to change from third gear to second gear as he usually did before a hairpin bend. Both the use of an inappropriately high gear for the initial stages of the descent and the failure to shift down to second gear prior to the hairpin resulted in an over reliance on the service brakes. This caused the brakes to overheat. It was concluded that this overheating of the brakes had likely resulted in brake fade leaving the driver without any braking ability through the service brakes. The coronial findings excluded the possibility that the flicker chain switch had been causative of the crash, there being no evidence to suggest it had been engaged, whether inadvertently or otherwise, so as to affect the braking system prior to the crash.

[13] The orders made by the Coroner provided WorkSafe with six months to investigate and consider whether the circumstances of the crash disclosed any breach of the Health and Safety at Work Act. WorkSafe commenced an investigation on 15 September 2021. WorkSafe's investigation found the following nine issues:

(a) RAL had no records in relation to the installation of the flicker chain system on either the bus or another Mitsubishi Fuso bus which had been fitted with a flicker chain system in the same manner;

(b) Installation of the flicker chain system required certification due to its interactions with the buses' braking system. RAL did not hold any certification in relation to the installation of the flicker chain system. The manner in which it had been installed would not have been compliant with the relevant rules and could not therefore have been properly certified;

(c) RAL had no records in relation to the decommissioning of the flicker chain system;

(d) The manner in which the flicker chain system had been decommissioned was unsafe and rendered the bus unroadworthy;

(e) In the absence of the certification for the installation of the flicker chain system, VTNZ ought to have failed the buses' certificate of fitness inspections from at least 2016, based on the manner in which the flicker chain system had been decommissioned;

(f) While the bus was capable of being driven on mountain roads, the nature of its axle configuration and braking system was such that the way in which the bus was used in RAL's business meant that it was operating towards the margins of its design envelope. Therefore, there was a relatively narrow margin for error for the driver of the bus to ensure it continued to operate within safe parameters including in respect of its braking capacity;

(g) RAL had issued its driver with a driver's manual which described the extremely hazardous nature of driving in the alpine environment. It advised drivers to always travel at a speed which would allow the bus to slow and stop if necessary without excessive braking, and to keep the engine revs down. The manual said to travel uphill in the highest gear possible and downhill in the lowest. The manual did not identify the brake fade as a hazard or explain the risk associated with it. Nor did it address an emergency response in the case of loss of air pressure or loss of service braking ability;

(h) RAL undertook training with its new drivers including having the new driver accompany a senior driver on one or more occasions before driving an empty bus with a senior driver observing and also driving a full bus with a senior driver observing. During this training the drivers were told which gears were appropriate for different sections of the descent. RAL's training did not address an emergency response in the event of a brake failure; and

(i) Some of the RAL drivers, including Mr Choi, were engaged on a seasonal basis for approximately six months of the year. On their return for subsequent seasons, RAL used a refresher training process which

involved observation of the driver by a senior driver. The refresher training did not involve retraining in relation to the driving techniques and the gear selection on the descent from the ski field, or in relation to an emergency response in the event of loss of brakes.

[14] The relevant hazards were identified as the loss of braking control of the bus by reason of the activation including inadvertent activation of the flicker chain switch which could cause the front brakes to fail. It noted this did not occur and was not causative of the accident and, secondly, brake fade which resulted from the driver's inadequate management of the service brakes through inappropriate gear selection. If the hazards were not appropriately addressed, there was a risk that the driver of the bus would be unable to remain in control of the bus during a descent of the mountain and crash. This exposed all persons on board the bus at the time to a risk of serious injury or death.

[15] It was therefore reasonably practicable for RAL to implement a safe system of maintenance of the bus which could identify and address the inappropriate partial decommissioning of the flicker chain switch and the significant risk it created. It was also reasonably practicable for RAL to ensure its drivers were provided with sufficient training instructions and supervision which included the appropriate gear selection descending the mountain. This aspect of the driver's technique was fundamental to maintaining a sufficient service braking resource to enable the bus to descend the mountain safely. There was intermittent training provided in relation to gear selection. However, RAL's training documentation and practices did not identify the critical importance of gear selection including the risk of brake fade nor did RAL's training documentation or practice provide training and instruction in relation to an emergency response.

[16] RAL's failure to adequately train drivers in relation to the risks associated with failing to manage gear selection and service brakes appropriately, as well as its failure to supervise drivers in relation to the appropriate gear selection is causative of the driver's incorrect gear usage and ultimately the crash.

[17] It was reasonably practicable for RAL to have developed, documented, implemented, communicated, reviewed and monitored compliance with a safe system of work for the maintenance of the Mitsubishi Fuso buses in its fleet and to ensure that the workers who operated the Mitsubishi Fuso buses were provided with sufficient information, training, instruction and supervision that was necessary to protect them and the passengers from risk to their health and safety.

[18] RAL has not previously appeared before the Court. I note that RAL has cooperated with WorkSafe's investigation.

[19] I turn now to the victims. I acknowledge all the victims who are here today in Court either in person or through VMR. I thank the victims who have spoken in Court this afternoon. I will not summarise what you have said, the words, the emotions, the impacts of this incident resonated with everyone in this courtroom today.

[20] To the parents, family and friends of Hannah, thank you for being here today. I understand the loss and devastation you feel and experience every day, how utterly robbed you feel of not seeing Hannah grow up to become the beautiful adult that she no doubt would have become. This event has turned your entire lives upside down and impacted on every aspect.

[21] I turn now to pay respect to Hannah. Your stories of Hannah speak of a happy and loving little girl, one who was full of life and loved living it. She was described as an innocent child with a vibrancy that shone from her like a light. She loved adventure. Hannah loved being a sister to her younger as well as her older sibling and loved playing games. She was intelligent, gifted in art, naturally empathetic and had an affinity with animals. She was a young girl with a loving, giving and gentle soul. These are some of the many qualities and gifts that Hannah had, and I have read about. Respecting and remembering Hannah in this way is very important. Hannah will remain in your memories and hearts like this.

[22] I thank all of you who have written victim impact statements. I simply could not do justice summarising everything you say. I acknowledge that everyone suffered physically, mentally, emotionally and financially as a result of the incident. The fear

of getting on a bus is real for most if not all of you. Some of you refer to the guilt you experienced at surviving when a life so young was lost. Many of you have had years of therapy to help with trauma and devastation you experienced and talk about the inability to forget and move forward. It is quite understandable that this event will remain with you for the rest of your lives. I understand and respect your views and feelings, they are heartfelt and very real. It is clear the impacts of what happened have been far reaching and devastating. I acknowledge the fact that RAL was prepared to participate in a restorative justice, but through no fault of anyone, that process did not proceed.

[23] I now turn to consider the submissions of counsel. I have read extensive submissions from both counsel and heard from them this afternoon. Firstly, I address the position insofar as WorkSafe is concerned. It is submitted that the primary failure on the part of RAL was the failure to adequately train and monitor drivers. WorkSafe submits the failings in respect of the maintenance systems were a significant aggravating factor given it resulted in an unsafe and unroadworthy vehicle being used to transport large numbers of people on extremely hazardous roads.

[24] Counsel refers to the relevant sections of the Sentencing Act 2002 as well as the Health and Safety at Work Act as they apply to this case. It is submitted that while 31 passengers were on the bus together with the driver, reparation is not sought in relation to all passengers.

[25] WorkSafe recognises it is not possible to assess the extent of harm for all passengers without the appropriate documentation except for those who have provided information to the Court through their victim impact statements. It is submitted the events were harrowing and traumatic for all on the bus when it lost control and crashed. The victim impact statements speak to the fear and anxiety the ordeal caused which was exacerbated for many by the physical injuries which were suffered. It is submitted that for the family of Hannah Francis the emotional harm due to her loss is unquantifiable.

[26] It is submitted that in cases where a family member has died as a result of offending under the Health and Safety at Work Act, reparation of $130,000 has been

held to be appropriate. It is submitted in fixing an appropriate figure, recognition of the fact that Hannah's father and stepbrother were present should be considered. Further, both also suffered serious injury as a result.

[27] I have received a table today which sets out the emotional harm reparation sought by WorkSafe on behalf of the victims. The total emotional harm figure sought is $420,000. This figure is accepted by the defence.

[28] There is a second table which sets out the consequential loss sought by WorkSafe on behalf of the victims. This figure is $13,094.82. Again, this figure is accepted by the defence.

[29] It is submitted that offending falls within the high culpability band inviting a starting point of $650,000. It is submitted this band is appropriate as there was a failure on the part of RAL to properly ensure a safe system of work for the maintenance of the buses in its fleet and failure to ensure that the workers who operated the buses were provided with the necessary information and training which was necessary to protect them and passenger from risks to their health and safety.

[30] It is submitted that driver training and vehicle maintenance are central to the provision of a safe passenger transport system. It is submitted that the harm in this case was great and it tragically resulted in the death of Hannah Francis and various serious injuries sustained by others on the bus. It is submitted that RAL's failure to train and monitor its drivers departed from the industry standards.

[31] WorkSafe highlight the terrain as being extremely hazardous and the potential for a catastrophic outcome if a vehicle were to lose braking capacity while descending the mountain was obvious. It is further submitted the proper training and maintenance of the vehicles could have been provided. I am referred to a number of similar cases to support WorkSafe's submission that this offending does fall within the high culpability band and a starting point of $650,000 ought to be adopted.

[32] WorkSafe submit and acknowledge the following mitigating factors are relevant. Firstly, a plea of guilty and submits 20 per cent is appropriate.

RAL's previous good safety record, a five per cent discount. Cooperation with the investigation, a further five per cent discount. Remorse, five per cent discount. It is submitted that if emotional harm reparation is paid in full, a further discount of 10 per cent would apply.

[33] It is submitted that costs be ordered and those costs represent a just and reasonable sum to the prosecution. In this regard the prosecution submit that half of the legal fees being sought ought to be ordered. It is submitted that as the company has been placed in liquidation, the Court should still order a fine although recognising the financial status of the company.

[34] I now turn to the defence submissions. It is submitted that RAL accepts responsibility for the tragedy which occurred. RAL accepts the training and supervision systems failed to ensure all of its drivers were using the appropriate gears during their descent. RAL also did not ensure its drivers had emergency response training. RAL also accepts responsibility for failing to ensure the incorrect decommissioning of the flicker chain system was identified and remedied.

[35] By way of background, it is submitted RAL is a limited purpose public benefit entity which was established in 1953. RAL operates the Whakapapa and Tūroa ski areas on Mt Ruapehu. The RAL shareholders do not receive any form of benefit and any company profits must be reinvested into the provision, promotion and development of amateur alpine sports for the public within the Tongariro National Park. While RAL is currently trading, it was placed into liquidation on 21 June 2023. Reference is made to the affidavit of the liquidator which has been filed in relation to this matter and it is submitted RAL is unable to pay a fine because of that status.

[36] In 2017, RAL began operating a commercial bus passenger service to transport ski field customers up and down the Tūroa and Whakapapa ski field access roads. It hired drivers specifically for this work. It is submitted RAL have co-operated fully with the authorities, the initial crash investigation, the Coroner's inquest and WorkSafe's subsequent reinvestigation.

[37] It is submitted RAL no longer provide transport services to the public. Sand Safari, who is a company which specialises in transporting passengers in alpine conditions, is currently contracted by RAL to provide RAL staff transportation. RAL was part of the working group which assisted in the development of the Bus and Coach Association New Zealand Alpine Code of Practice. As part of this process RAL engaged with the Francis family and raised their concerns in the consultation phase of development of the Alpine Bus Code of Practice.

[38] In addressing the four-step approach as set out in the case of *Stumpmaster v WorkSafe*, firstly in relation to reparation, it is submitted that the Court can order the payment of emotional harm reparation and consequential loss, the total figure being $433,094.82 as set out in the table of reparation.[2]

[39] In relation to step 2, Mr Galloway submits that having regard to the extent of RAL's admissions and comparable cases, RAL's culpability should be placed in the medium band and a starting point in the vicinity of $500,000 is appropriate. It is submitted that the operative cause of the crash is as set out at paragraph 20 of the summary of facts.

[40] While RAL accepts it needed to have better processes to uphold a safe system of work for the maintenance of the bus, it is submitted the Coronial findings excluded the possibility the flicker chain switch had been causative of the crash.

[41] Further, regular maintenance was done on the buses and a fulltime mechanic was employed to address preventative and reactive maintenance of RAL equipment including the buses, safety checks were carried out at 5,000 and 10,000 kilometre stages and full services were also performed on each vehicle.

[42] Finally, certificates of fitness were obtained immediately prior to the start of each season and drivers were given 30 minutes to inspect the vehicles and complete a daily inspection sheet at the start of each shift. It is submitted the RAL driver training programme included instruction on these inspections and how to identify any issues.

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[2] *Stumpmaster v WorkSafe* [2018] NZHC 2020.

[43] Training was provided to new drivers which included drivers being accompanied by a senior driver on one or more occasions, and drivers were told which gears were appropriate for different sections of the descent.

[44] Refresher courses were also offered to returning drivers. Drivers were issued with a driver's manual which included directions on the type of road, the speed which should be travelled, and the gears to use. It is submitted that RAL hired experienced proven drivers who were familiar with the conditions they would be driving in.

[45] RAL does accept it ought to have reiterated the importance of gear selection at the start of each season to returning drivers as well as provide training on emergency response techniques. In relation to the driver in this case, that driver had driven the same route around 800 times and in this particular bus, 500 occasions.

[46] It is accepted the harm and realised risk is towards the high end. It is submitted the failings do not represent a departure from industry standards given the need to develop the Alpine Bus Code of Practice which is supported by RAL to fill the gap in standards. Further, it was not unreasonable for commercial operators to rely on VTNZ certificates of fitness.

[47] In terms of the hazard, it is submitted the bus had been operating since 2007 ferrying passengers and had completed numerous trips up until July 2018. The previous proven track record demonstrates, it is submitted, that it was not as obvious as WorkSafe submit.

[48] It is accepted that avoiding the hazard was not unduly onerous, however this is not a case where RAL acted negligently or had a complete absence of process. Mr Galloway refers to a number of cases by way of guidance to submit that this case falls within the medium band and that a starting point towards the upper end of that band is appropriate, namely $500,000.

[49] In terms of mitigating factors, Mr Galloway highlights the remorse expressed by RAL to Hannah's family. Each year RAL host a memorial event on the anniversary of the tragedy. Staff and the CEO of RAL maintain regular contact with the Francis

and Bruton families. RAL is insured and able to pay reparation, and also highlights the steps that RAL has taken since the incident.

[50] It is submitted that RAL has pleaded guilty and after discounts are applied of approximately 50 per cent, an end sentence of $250,000 could be reached. It is submitted that given the company is in liquidation and in reliance on the liquidator's report, a conviction be entered together with orders for reparation and consequential loss. It is submitted the Court could impose costs at the Court's discretion.

Analysis

[51] In sentencing I consider the purposes as set out in s 7 of the Sentencing Act 2002. The purposes which I consider are appropriate to this sentence are to hold the defendant accountable for the harm which has been caused and to promote responsibility and an acknowledgement of that harm. I also consider the interests of the victims which includes reparation.

[52] In terms of principles as set out in s 8 of the Sentencing Act, I consider the gravity of this offending and the seriousness of this type of offence in comparison to other cases of a similar kind. I also consider the effects this offending has had on the victims and the steps taken by the defendant in terms of rehabilitation.

[53] In cases of this type, I also have regard to the purposes of the Health and Safety at Work Act and in particular s 151 which caters for the need to protect workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work and ensuring compliance with the Act through effective and appropriate compliance and enforcement measures.

[54] I acknowledge the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare, and from hazards and risks which arise from work as is reasonably practicable.

[55] The lead decision for sentencing in cases of this sort is the case of *Stumpmaster v WorkSafe New Zealand*. A four-step approach is taken to sentencing as follows:

(a) Assessing the amount of reparation;

(b) Fix the amount of the fine by reference to the guideline bands and then having regard to aggravating and mitigating factors;

(c) To determine whether further orders under ss 152 to 158 of the Health and Safety at Work Act 2015 are required; and

(d) Make an overall assessment of the proportionality and appropriateness of the combined packet of sanctions imposed by the preceding three-steps. This includes consideration of the ability to pay and also whether an increase is needed to reflect the financial capacity of the defendant.

[56] I now address the four steps.

Step 1- Assessing the amount of reparation

[57] Sections 32 to 38 of the Sentencing Act provide guidance on matters that need to be considered when imposing a reparation order. Given the responsible approach of both counsel, I order the emotional harm reparation, together with the consequential loss, be paid in accordance with the reparation schedule which will be attached to my sentencing notes. I have already referred to the total figure of emotional harm reparation and the consequential loss and I will not repeat it again.

Step 2 - Fix the amount of fine by reference to the guideline bands and then having regard to aggravating and mitigating factors

[58] In setting the starting point for the fine, I consider the aggravating features of the offending and the culpability of the defendant. In the case of *Stumpmaster*, the Court set out four guideline bands as follows:

(a) Low culpability, fines up to $250,000;

(b) Medium culpability, from $250,000 to $600,000;

(c) High culpability, $600,000 to $1,000,000; and

(d) Very high culpability, $1,000,000 plus.

[59] In *Stumpmaster* the Court endorsed a number of factors which were set out by the Court in a decision of *Department of Labour v Hanham & Philip Contractors Ltd* as being of assistance when addressing this step.[3]

[60] In this case RAL accepts the charges and accepts that its training and maintenance systems failed to adequately protect the passengers and the workers. The Coronial findings as set out in the summary of facts are relevant in assessing the band that this offending falls within. In this regard I note that the flicker chain switch was not considered causative of the crash, rather the use of an inappropriately high gear during the early stages of the descent and failing to change from third gear to second gear before the hairpin bend was considered an operating cause of the crash.

[61] It goes without saying, the risk or potential risk was high and further, the harm caused was at the upper end. I accept the prosecution's submission that proper training systems and appropriate safety procedures could well have reduced the risks and the harm caused. I accept the submission advanced on behalf of RAL that there was a gap in the industry standards prior to this accident. This has now been remedied.

[62] While recognising that each case needs to be determined on its own facts, I have been assisted by the cases of *WorkSafe v Ritchies Transport Limited*, *WorkSafe v N E Parks and Sons Limited* and *Maritime New Zealand v Skippers Canyon Jet Ltd.*[4]

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[3] *Department of Labour v Hanham & Philip Contractors Ltd* (2009) 9 NZELC 93,095; (2008) 6 NZFLR 79 (HC).

[4] *Worksafe v Ritchies Transport Holdings Litd* [2019] NZDC 18495; *Worksafe v NE Park & Sons Ltd* [2020] NZDC 25449 and *Maritime New Zealand v Skippers Canyon Jet Ltd* [2021] NZDC 11510.

[63] There is in reality very little difference between the two parties. In my view this case falls within the top range of the medium band as set out in the case of *Stumpmaster*.

[64] This is a case where the systems which were in place were insufficient to mitigate the risks and the harm caused. RAL had operated for many years without incident. It is not a case where there has been a complete absence of process. I also remind myself that while the cases referred to are helpful, none of the cases are on all fours with the present matter before me. Balancing all matters, I consider a fine towards the top of the mid range is appropriate and I set a starting point of $500,000.

[65] I now turn to mitigating factors. Again there is very little between the two positions. I turn first to the plea of guilty. Given the circumstances of this case, in particular the delay in the laying of the charges, the company RAL going into administration and then liquidation, and having to obtain the liquidation's consent for the prosecution to continue, I consider in those circumstances the plea of guilty and coupled with the fact there was an amendment to the charge done, was at the earliest available opportunity, I allow a discount of 25 per cent.

[66] The second factor I take into account is the cooperation with authorities. RAL has cooperated fully with the authorities, the initial crash investigation, the Coroner's inquest and with WorkSafe's subsequent investigation, I allow a five per cent discount.

[67] I turn to consider remorse. I accept RAL has expressed remorse. I have read the letter of apology which has been prepared by the CEO of RAL Limited, Mr Dean. RAL accepts unreservedly that it did not do enough to ensure the safety of its passengers and unreservedly apologises to the family of Hannah Francis and for the harm it has caused the driver and passengers on the bus that day. I accept this remorse is genuine and I allow a further five per cent.

[68] Thirdly, I turn to reparation. Reparation has been accepted in full. It is a significant sum. I consider it is appropriate to reflect that by allowing a discount. I am

also mindful of the requirements of s 10 of the Sentencing Act and I allow a further discount of 10 per cent.

[69] RAL recognises how difficult the process has been and has reviewed their processes and implemented a number of changes to improve their health and safety systems. Following this tragedy, RAL has stopped operating a commercial passenger service and contracts a specialist alpine provider to transport its workers to and from work. They have also been active in initiating industry wide change by helping create and promote the Alpine Transport Code of Practice which is designed to reduce the risk of an incident like this repeating. I allow a further five per cent to take these factors into account.

[70] I also allow a further five per cent for a previous good record.

[71] This reduces the fine to $250.000.

Step 3 - To determine whether further orders under ss 152 to 158 of the Health and Safety at Work Act are required

[72] In this case, the defence do not oppose the imposition of costs. The submission advanced by the prosecution is reasonable in my view and, accordingly I make an order for costs as sought by the prosecution to the figure that they seek.

Step 4 - To make an overall assessment of the proportionality and the appropriateness of the combined packet of sanctions imposed by the preceding three steps

[73] This includes consideration of ability to pay and also whether an increase is needed to reflect the financial capacity of the defendant.

[74] I turn now to consider the affidavit from the liquidator. RAL is in liquidation and has no funds available to pay a fine. This has been set out in detail in the affidavit together with the creditors' responsibilities that the company owes.

[75] Stepping back and looking at matters on the whole, and having regard to the totality of the offending, the potential penalty, reparation that can be paid, the financial position of RAL and its responsible steps following the incident. In my view it is not in the interests of justice to impose a financial penalty in this case and therefore I do not impose the fine, but I do record a conviction. This will serve as a salient reminder against RAL and anyone else in a similar situation as RAL.

[76] For completeness, I confirm that I order the payment of emotional harm and consequential loss as per the reparation schedule that has been handed to me this afternoon.

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Judge M Pecotic
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 06/09/2023

WorkSafe New Zealand v Ruapehu Alpine Lifts Limited (in liq.)

Table of reparation sought

Victim	Type of Reparation	Amount Sought
Matthew Francis	Emotional Harm	$90,000.00
	Consequential Loss	$2,890.00
	Total	**$92,890.00**
Michelle Bruton	Emotional Harm	$60,000.00
Shane Bruton	Emotional Harm	$30,000.00
Joshua Dukeson	Emotional Harm	$25,000.00
Garth Bishop	Emotional Harm	$15,000.00
[redacted]	Emotional Harm	$30,000.00
[redacted]	Emotional Harm	$30,000.00
Sung-Pil Choi	Emotional Harm	$20,000.00
Aleisha Cope	Emotional Harm	$20,000.00
[redacted]	Emotional Harm	$10,000.00
	Consequential Loss	$4,922.00
	Total	**14,922.00**
Luke Johns	Emotional Harm	$10,000.00
Fenella Murphy	Emotional Harm	$10,000.00
River Price	Emotional Harm	$10,000.00
Andrea Taylor	Emotional Harm	$15,000.00
Joe Taylor	Emotional Harm	$15,000.00
John Whitelaw	Emotional Harm	$15,000.00
[redacted]	Emotional Harm	$15,000.00
	Consequential Loss	$5,282.82
	Total	**$20,282.82**

Type of Reparation	Amount sought
Emotional Harm	$420,000.00
Consequential Loss	$13,094.82
Combined Total	**$433,094.82**

IN THE DISTRICT COURT
AT WAITAKERE

I TE KŌTI-Ā-ROHE
KI WAITĀKERE

CRI-2022-067-000033

WORKSAFE NEW ZEALAND
Prosecutor

v

RUAPEHU ALPINE LIFTS
Defendant

Date: 7 September 2023

Appearances: R Woods and V Veikune for the Prosecutor
G Gallaway and S Crosbie for the Defendant

MINUTE OF JUDGE M PECOTIC

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[1] Ruapehu Alpine Lifts Limited (in liquidation) (referred to as RAL) have pleaded guilty and appear for sentence on two charges before the Court which are laid under the Health and Safety at Work Act 2015. [1]

[2] An oral application has been advanced for the suppression of the names of some of the victims in this case. I have held a conference with the media and counsel prior to the sentencing to discuss this issue as well as other practical issues and measures which have been put in place for sentencing.

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[1] S36(1)(a0, 248(10 and (2)(c) of the Health and Safety at work act 2015.

[3] Section 202 of the Criminal Procedure Act 2011 applies to this application. This provision permits the Court to make an order forbidding publication of the name, address or occupation of a witness, victim or a person connected with the proceedings or is connected with the person who is accused of, or convicted of, or acquitted of the offence.

[4] The Court may make an order only if the Court is satisfied that the publication meets one of the factors as set out in s 202(2). One of those factors includes the possibility that publication would likely cause undue hardship to the victims.

[5] I have had the benefit of reading the victim impact statements of the victims involved in this case. The impact this incident has had on them has been traumatic and long lasting. It would cause further harm which would amount to undue hardship to the victims should their names be published. This case has attracted media attention and but for the order of suppression it is likely that their names would be published.

[6] To ensure that none of the victims experience any further trauma, I order suppression of the following names: [redacted]. In directing suppression of these names, I also suppress publication of their images, so in no way can their name or image be identified publicly in the media or any other social media device or capability.

Judge M Pecotic
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 07/09/2023