IN THE DISTRICT COURT
AT TAURANGA

I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA

CRI-2022-070-000876
[2023] NZDC 17152

WORKSAFE NEW ZEALAND
Prosecutor

v

ADDICTION FOODS NZ LIMITED
Defendant

Hearing:	26 May 2023
Appearances:	V Veikune for the Prosecutor E Boshier for the Defendant
Judgment:	26 May 2023

NOTES OF JUDGE M MASON ON SENTENCING

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[1] This is the sentencing for Addiction Foods New Zealand Limited. The facts are that the defendant, Addiction Foods New Zealand Limited, who I am going to refer to as Addiction Foods, is an incorporated company involving the processing of pet food. Addiction Foods operates from the premises of 242 Jellicoe Street in Te Puke.

[2] [redacted] is employed by Addiction Foods as an [redacted] began working for Addiction Foods on 19 February 2018. Prior to that he has worked as an [redacted]

[3] As part of its processing plant Addiction Foods operates a twin screw extruder with a two tonne per hour capacity. The extruder was purchased by Addiction Foods from a supplier in Shanghai in China on 12 June 2020.

[4] As part of the extrusion process product passes from the preconditioner to the extruder via a stainless-steel chute referred to as a diverter and the diverter has a moveable flap enabling the workers to divert product for sampling purposes.

[5] After passing through the diverter into the extruder product is drawn through the extruder barrel by the rotating screws before passing through a die and cutting mechanism which cuts the product into kibble.

[6] Addiction Foods engaged Mount Maunganui Engineering Limited (MME) to remove the previous extruder and install the new extruder. As part of the installation MME modified the existing diverter to accommodate the increased size of the diverter. The diverter has flanges at its top and bottom and there is drilled to accommodate four bolts at each end, eight bolts in total.

[7] At some time prior to the incident the upper rear flange of the diverter had been bent downwards, such that the diverter was not bolted to the precondition flange.

[8] The incident is that on 4 April [redacted] began his shift at 11.30 pm. This was his sixth consecutive night shift and he was due to finish at 7.30 am.

[9] There had earlier been a blockage in the processing equipment. [redacted] and his two co-workers were advised of the blockage during a toolbox meeting at the start of the nightshift.

[10] [redacted] and one of his co-workers, Mr Bolinas, took steps to address the blockage. [redacted] turned off the seven switches used to shut down the different elements of the extruder, but he did not lock and tag out the machine. [redacted] did not turn the steam to the extruder off entirely to avoid product cooling and seizing within the extruder.

[11] Mr Bolinas used tools to open the hinged guard at the die and cut end of the extruder. The hinged guard was fitted with an interlock switch which prevented the cutting blades from continuing to operate when the guard was open. However, that interlock switch did not prevent the extruder from continuing to operate while the guard was open.

[12] In order to check for blockages at the opening from the preconditioner and the opening into the extruder [redacted] removed the diverter. The diverter was held in place by two bolts at its base. There do not appear to have been any bolts fixing the top end of the diverter to the preconditioner. The bolts were not fitted with nuts or otherwise screwed into the diverter or extruder flanges but were placed in the bolt holes as pins. [redacted] was able to pull these bolts out by hand before removing the diverter from its position. The diverter was not fitted with an interlock switch. Accordingly, the extruder screws could continue to operate or be restarted when the diverter was removed. By removing the diverter an opening into the extruder was exposed, which was 14 centimetres by 17 centimetres and 16.5 centimetres deep.

[13] After [redacted] has removed the diverter he started the extruder to eliminate any product in the extruder barrel. Shortly thereafter, in an attempt to clear the blockage from the extruder [redacted] has inserted his hand into the opening of the extruder. [redacted] has stated that he had forgotten that he had turned the extruder back on. His right index finger came into contact with the twin screw mechanism of the extruder and was amputated between his first and second knuckles. [redacted] was taken to Tauranga Hospital and while the end of his finger was able to be located from the extruder it could not be reattached.

[14] The relevant hazard was the moving parts of the extruder. This hazard gave rise to the risk of the part of a worker's body might come into contact with the moving parts of the extruder causing serious injury.

[15] There followed the WorkSafe investigation. It identified Addiction Foods directly imported the extruder from China. That Addiction Foods engaged MME to install the extruder, however commissioning of the machinery was undertaken internally by Addiction Foods. Addiction Foods has standard operating procedures in

place in relation to the normal operation of the extruder, routine cleaning and lockout tag procedures. Addiction Foods did not have a safe operating procedure or a safe system of works specifically in relation to the removal of the diverter in the context of addressing blockages.

[16] Addiction Foods had identified the hazard associated with opening the hinged guard at the die and cutter end of the extruder. WorkSafe located a notice titled "extruder cleaning" posted near the extruder in which Addiction Foods had brought this hazard to the workers' attention and required that they use a lockout/tagout methodology when opening the hinged guard.

[17] Addiction Foods had not identified or documented the corresponding hazard associated with removing the diverter. The diverter was regularly removed for routine cleaning. Routine cleaning was governed by a safe operating procedure and lockout/ tagout procedure. The diverter was not routinely bolted in place but was instead held by two bolts inserted as pins; that is, not secured with nuts or otherwise screwed into the flanges in order that it could be removed more easily for cleaning.

[18] In 2018 following the issue of improvement notices to Addiction Foods by WorkSafe Addiction Foods engaged Pim Bakker engineered to conduct a risk assessment on its machinery. He was engaged to provide reports dated 26 September 2018 and 5 October 2018. He attended onsite on at least two occasions and his reports state he was engaged to review the safe operation of the machinery situated at Addiction Foods' premises, including the extruder and to propose safety improvements. The extruder assessed by Mr Bakker back in 2018 was replaced by the extruder involved in the incident.

[19] Mr Bakker's review focused on the operation of the extruder and did not address issues relating to the servicing or maintenance. He did not identify the need to fit an interlock device to the diverter. However, he suggested that the diverter be bolted in place.

[20] He also recommended more generally that safe operation instructions be generated for every machine at the premises and with his guidance Addiction Foods

carried out documented risk assessments. However, Mr Bakker did not cite the risk assessment specific to the extruder.

[21] Addiction Foods generated documented operating procedures for all its plant. Those risk assessments and operating procedures were provided to WorkSafe. Upon receipt and review WorkSafe advised that Addiction Foods had complied with the improvement notices which had been issued and that they would be lifted. As a result WorkSafe's initial enquiries in relation to the current incident a prohibition notice was issued in relation to the extruder.

[22] Addiction Foods engaged NZ Controls Limited who carried out work to address the risk posed by the extruder system to satisfy the prohibition notice so the machine could be returned to service. During this time steps were taken to improve the extruder system. The work included additional safety switches and modifications made to the diverter to prevent access to moving parts. A new extruder cleaning guard fabricated to cover the knife end of the extruder during the cleaning process, an additional emergency stop added. Electrical work, including a Sick Flexisoft safety controller installed and safety contactors.

[23] Following the completion of this work WorkSafe lifted the prohibition notice and Addiction Foods returned the M28 extruder to service.

[24] Based on the information provided to WorkSafe by Addiction Foods an improvement notice was issued on 13 October 2021, which alleges failings in the Addiction Foods lockout/tagout procedures on the basis of the current process that was not in line with Best Practice Guidelines Safe Use of Machinery.

[25] Addiction Foods requested a review of the Improvement Notice issued on 13 October 2021.

[26] WorkSafe reviewed the Improvement Notice and the outcome from the review was the improvement notice was varied by way of clarifying that improvements were recommended in relation to the specific task of clearing blockages. The improvement

notice recommended that Addiction Foods put in place a lockout/tagout procedure to safely isolate machinery from its power source when cleaning or clearing blockages.

[27] Addiction Foods made improvements and following investigation WorkSafe confirmed Addiction Foods had complied with the improvement notice.

[28] Later in the course of its investigation WorkSafe obtained a report from a professional engineer, Jack Mains. Mr Mains inspected the extruder, diverter and pre-conditioner equipment, concluding:

> It is fundamental to machine safety that a piece of equipment such as the diverter or a guard of this sort that needs to be routinely removed must not be removable if the machine is still able to operate. SOPs and House Rules are not sufficient to prevent accidents. The machine must be safe by design.

[29] Mr Mains noted that the relevant standard for machines such as the extruder was AS/NZS 4024: Safety of Machinery. He further opined:

> As regards the removable diverter device, had the decision-making process of AS/NZS 4024 been followed then it would most likely have ended in a requirement to install interlocked guarding. This outcome is not inevitable: the risk analysis could have resulted in a decision to eliminate the risk (perhaps by fully automating the sampling process and improving the machine to prevent blockages), or; isolate the risk (perhaps by placing the entire machine within an interlocked guard) or; any number of other possible outcomes.
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> …
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> In my opinion, it would have been practicable to have guarded the equipment involved in the accident to ensure compliance with AS/NZS 4024.

[30] The summary of facts goes on to discuss the industry standards and guidelines, which I adopt into my decision from the summary of facts.

[31] In terms of the failure to ensure health and safety, as a person conducting a business or undertaking (PCBU), Addiction Foods had a duty to ensure, so far as was reasonably practicable, [redacted]' health and safety while he was at work, working for Addiction Foods.

[32] Addiction Foods breached this duty in that it failed to undertake an effective risk assessment of the extruder having regard to its regular operational use and ancillary tasks, including cleaning, maintenance or repair (both routine and unscheduled, including the removal of blockages and/or jams), ensure that the opening to the extruder were guarded in a way which complied with AS/NZS 4024 by securing every part of the extruder against movement, including inadvertent movement, until the diverter and associated guarding were returned to safe operating condition. Develop, document, communicate, implement and monitor safe working practices in respect of the removal.

The Defendant

[33] WorkSafe has previously issued Improvement Notices to Addiction Foods, in respect of the following alleged failings:

(a) Improvement Notices (x 4) dated 15 August 2014:

(i) Paper based health and safety systems are not being implemented effectively and monitored for effectiveness on site. The system for identifying and controlling hazards has not been updated since 2012, emergency procedures, contractor management requires review.

(ii) No noise survey has been carried out.

(iii) Inadequate machine guarding with exposed nip points and entanglement hazards over drive shafts, belts and rollers.

(b) Improvement Notices (x 3) dated 29 April 2015:

(i) Observed no hazard register in place where hazards have been identified and controls specified.

(ii) Observed no maintenance records for the forklift trucks.

(iii) Observed large build-up of dust throughout the factory that may cause respiratory irritation to employees.

(c) Improvement Notices (x 4) dated 15 March 2018:

(i) Traffic management system in place is inadequate.

(ii) Observed guarding issues on the coater and the bucket elevator.

(iii) PCBU does not have a hazardous substance inventory for hazardous chemicals stored in the workplace.

(d) Improvement Notice dated 3 August 2018:

(i) No formal system in place to manage the risks and hazards associated with isolating the plant.

(e) Improvement Notice date 3 September 2018:

(i) No risk assessment carried out on all plant at Addiction Foods NZ Limited, 240 Jellicoe Street, Te Puke by a competent person.

(f) Improvement Notices (x 2) dated 26 July 2019:

(i) PCBU does not have a robust standard operating procedure in place to mitigate the risk of harm during operation and cleaning of the vacuum mixer.

(ii) The vacuum mixer does not have effective guarding to ensure a safe working environment.

[34] Addiction Foods complied with all of those notices to WorkSafe's satisfaction.

[35] On 18 February 2019, Addiction Foods was charged with an offence under sections 36(1)a, 48(1) and 2(c), of the Health and Safety at Work Act 2015. Addiction Foods was later convicted and sentenced on 15 July 2020. This incident involved the victim's fingers being trapped inside horizontal heating elements of a granule packing machine. The victim suffered crush and burn injuries to her hand, resulting in the partial amputation of three fingers. Addiction Foods had failed to ensure, inter alia, adequate guarding of the machine, appropriate controls such as interlocked guarding and lockout/tagout procedures, and the development and implementation of a safe operating procedure for the machine.

[36] WorkSafe have submitted, and the defendant agrees, that the emotional harm reparation is appropriate. As discussed in *Big Pallets Ltd v Department of Labour* at paragraph [19] the High Court observed that imposing reparation for emotional harm is an:

> Intuitive exercise, its quantification defies finite calculation. The judicial objective is to set a figure which is just in all of the circumstances, and which in this context compensates for actual harm arising out of an offence in the form of anguish, distress and mental suffering. The nature of the injury is or may be relevant to the extent that it causes physical or mental suffering or incapacity, whether short term or long term.

[37] Worksafe have referred me to a number of authorities, *WorkSafe New Zealand v Kayes Bakery Limited*,[1] *WorkSafe New Zealand v Alliance Group Limited*[2] and *WorkSafe New Zealand v Bakeworks Limited*[3] where there has been the loss of, or significant damage to, finger/s where the emotional harm reparation figures have varied from $10,000 to $20,000. The victim in this case has lost his right index finger from the second knuckle up. The victim impact statement details the impact the loss has had on the victim's life. He does not want the details of his statement read out, but it is enough to say that the injury has caused a significant emotional impact, a loss of physical enjoyment of sports and a loss of confidence and heightened fear and anxiety. The parties agree that the emotional harm payment should be $20,000.

[38] Further, both parties agree that a consequential loss payment is also appropriate. Essentially the parties agree that the victim should receive the "top up" of 20 per cent after receiving ACC payments of 80 per cent of his usual income when he was unable to work. That payment has been established to be $710.00.

[39] The issue where the parties digress is with the starting point of what WorkSafe says is $450,000.

[40] WorkSafe acknowledge that the Sentencing Act 2002 applies along with s 151(2) of the HSWA and they note that there must be particular regard given to s 7 and s 10 of the Act. The purpose of the Sentencing Act 2002 and the risk and potential for illness, injury or death that could have occurred in terms of s 151. Whether death, serious injury or serious illness occurred or could have reasonably been expected to have occurred, a safety record of the person including without limitation any warning infringement notice or improvement notice issued to the person or enforceable undertaking agreed to by that person to the extent that it shows whether any aggravating factors are present, the degree of departure from the prevailing standards in the person's industry, the person's financial capacity or ability to pay.

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1 *WorkSafe New Zealand v Kaye's Bakery Limited* [2018] NZDC 5427.
2 *WorkSafe New Zealand v Alliance Group Limited* [2019] NZDC 10924.
3 *WorkSafe New Zealand v Bakeworks Limited* [2023] NZDC 5236.

[41] They also submit that the offender needs to be held accountable, promote a sense of responsibility, provide for the interests of the victim, denounce and deter.

[42] Also, to set the gravity of the offending and degree of culpability. The seriousness of this offence is indicated by as against other offences of its kind and the effects of the offending on the victim.

[43] They then refer to s 151(2) which is that the main purpose of this exercise and that is to provide for a balanced framework to secure the health and safety of workers in the workplace by protecting workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work or prescribed high-risk plant, providing for a fair and effective workplace, representation, consultation. Really, that is the most significant one here. And in furthering subs 1(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.

[44] The approach to sentencing is well established in these type of cases. We first must set a starting point. We refer to the *Stumpmaster v WorkSafe New Zealand* factors when setting the culpability.[4] Both parties accept that it is in the medium culpability but the difference between the parties is that WorkSafe submits a starting point of $450,000, and the defendant places it between $325,000 and $350,000.

[45] Really this has been an exercise of relying on authorities. WorkSafe has quite broadly relied on the fact that there is the overriding section 151(2) where there has to be the primary focus on the health and safety of employees and that the obligations are on the employer. They also note they apply an assessment of the nature and seriousness of the risk of harm as well as the realised risk, they say that the risk was created due to inadequate guarding. They have referred to the fact that guarding is a well-known risk and had the guidelines for safe use of machinery, that is made available by WorkSafe been followed then this would not have occurred.

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4 *Stumpmaster v Worksafe New Zealand* [2018] NZHC 2020; [2018] 3 NZLR 881.

[46] They go through the risk factors that should be considered in the assessment process, including anticipated work practices and they say when you look at this the obviousness of the hazard, the availability costs and effectiveness of the means necessary to avoid the hazard, that the culpability is at where it could be placed at the $450,000 starting point and they refer to the ample guidance on risk and harms that can eventuate.

[47] They rely on the *Department of Labour v Street Smart Limited* where it is referred to workplace accidents where it cost to and a burden on the community.[5]

[48] They also rely on *WorkSafe New Zealand v Alliance Group Limited* in trying to obviously refer to cases that they say are similar where in that case a starting point of $550,000 was adopted, where there was a box section cleared.

[49] *WorkSafe New Zealand v Alto Packaging Limited* is another authority where a starting point of $500,000 was set, where the tips of a finger were amputated.[6] *WorkSafe New Zealand v Bakeworks Limited* where a starting point of $550,000 was applied.

[50] They have also referred to mitigating factors relevant to the offending and have noted that the improvement notices that were issued where the company did respond by engaging engineer Pim Bakker to assess the risks, but they say not thoroughly enough. And they eventually land at the fact that quite frankly it is on PCBUs in the defendant's position ensure that assessments such as Mr Bakker's assessment was sufficient and he submits a starting point of $450,000.

[51] They seek an uplift for the previous conviction which is agreed, although they say that the 19 improvement notices are relevant to that uplift and the defence do not. They say the mitigating factors, remorse in the area of five per cent, co-operation at five per cent and they say there that: "The defendant fully cooperated with the investigation and the guilty plea in the warrants 20 per cent but in oral submissions today WorkSafe have agreed that 25 per cent is available.

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5 *Department of Labour v Street Smart Ltd* HC Hamilton CRl-2008-419-26, 8 August 2008 at (59].
6 *WorkSafe New Zealand v Alto Packaging Limited* [2019] NZDC 14809.

[52] No discount should be available for the reparation and discount solely for reparation and that is a well-known principle.

[53] They go on to submit that liability for regulated costs should be added. They say legal fees of $3,671 should be paid and then they refer to the costs of the engineer which in the written documents was $6,351, but on review at request by the defence they say it is now $5,522.53.

[54] So, their final submission is, in summary, an emotional harm payment of $20,000, a consequential loss payment of $710, a starting point of $450,000, a five per cent uplift for previous convictions, a five per cent discount for co-operation, a five per cent discount for remorse and the guilty plea discount of 25 per cent.

[55] Defence against that submit that the culpability of the defendant is the main focus and they see things from a slightly different perspective. In fact, they submit that this case relates to inadequate protection of a specific element of an extrusion machine. The protection was needed to address risk arising from the occasional need to remove the diverter to clear blockages and they refer to the fact that this was not something that had happened on a regular basis, rather it could be once a day, once a week or whenever the need arose.

[56] They refer to the fact that the extruder was purchased new to replace an old extruder and all material respects the new extruder was the same as the old, previous risk assessments applied equally.

[57] In 2018, they have referred to that same risk assessment and it is not in dispute that they have complied entirely with every notice and they have tried to work with WorkSafe on every occasion they have been required to do so.

[58] On receipt and review of the risk assessment Safe Operating Procedures and Records WorkSafe confirm that AFNZ had complied and there does not seem to be any dispute in that respect.

[59] The defence also goes through the criteria referring to s 151 and agrees on the approach for sentencing as set out by the prosecutor.

[60] They agree with the reparation of $20,000 and then now that we have been provided with the evidence of the loss they agree a payment of $710 is appropriate for the consequential cost.

[61] Where they differ from the prosecution is that in the setting of the starting point they say $325,000 to $350,000 and there have been the submissions today about the fact that compliance can seem like a very obvious thing in hindsight but when you look at it in particular with each workplace it is not so simple.

[62] They have engaged experts and thought the experts would do their job and there does seem to be some sense in that. We need experts because we do not know what we are doing so we do not what they are not doing when they are not doing it and I have some sympathy for that approach because I think the defence is correct when they say that mostly these risks are identified when something goes wrong and it does seem that this machine did attract a number of safety assessment reviews without this particular issue coming to light and it is with the benefit of hindsight and with a lot of man hours and expertise that the expert from WorkSafe, Mr Mains, that an appropriate risk assessment has been achieved.

[63] I do agree that these types of companies have an obligation to protect their employees but that is easy in theory and may be not so easy in practice. And so, when you look at the overall assessment of the nature and seriousness of the risk of harm is occurring as well as realised risk I do agree that there is some theory attached to that which is really difficult to apply in practice.

[64] The degree of departure from prevailing standards in the industry, well, again there does not seem to be a lot of specific assistance in this respect but of course guards are guards and everybody knows that they need to be carefully looked into in terms of safety. It is, of course, the type of area that there are constant workplace injuries.

[65] In this organisation Mr Bakker and Mr Mains, Mr Bakker before the fact and Mr Mains with the benefit of hindsight, have come up with quite opposed proposals for guarding the diverter and that is the way with experts. Mr Bakker you would have imagined would have pointed this out in his two reviews of the machinery pre-accident. He was asked to do an assessment of the machine. Perhaps it was not specific enough to address these issues but at the same time one would think if you are looking at a machine you would assess all aspects of it. And so, I do agree that the company has actually done quite a lot to try and get this right but unfortunately did not and they concede that with their guilty plea.

[66] The obviousness of the hazard, again I refer to the fact that this is very general and agree that these things can be obvious with the benefit of hindsight but of course anything where there is exposure of a machine when a hand or like can go into it, there must be a risk of some kind.

[67] The availability costs and effectiveness of the means necessary, of course WorkSafe say that that was no barrier to this company but as submitted by defence that it is quite clear that whilst the cost of this particular item was not prohibitive obviously when you scale that against every part of the machine and every part of the machine in every part of the warehouse that does get elevated, however, of course when we are looking at this specific issue that does not seem to be prohibitive.

[68] The current state of knowledge of the risks and of the nature and severity of the harm, the defence say the WorkSafe submissions do not address this criteria in any detail but to the extent WorkSafe says there is general knowledge that inadequately guarded machines create a risk of harm and that is accepted and responsibly that is the case but of course it is a principle but is how it works in practice particularly with risks associated with extrusion machines with the nature and severity of that harm that may be caused with them may be a different issue.

[69] The current state of knowledge of the means available to avoid the hazard and mitigate the risk, there is guidance available about guarding the machine and the decision-making processes that can be used, to consider how machines might be

modified to minimise the hazards. And of course he refers to the fact that it is an easy point to have an overriding guideline but not always so easy in practice.

[70] They submit the starting point on the *Stumpmaster v WorkSafe* culpability framework is that it should be $325,000 to $350,000 and they say, and he is quite right, that each case turns on its own facts and he refers me to *WorkSafe New Zealand v NZCC Limited*, again where there is a hand and finger injury and the starting point was $350,000.[7]

[71] He also referred me to *WorkSafe New Zealand v Pallet Company (Hawke's Bay Limited)* and that case involved an employee with a bandsaw, and the victim's right hand slipped off the timber and went underneath the shield making contact with moveable saw blade and as a result a thumb was partially amputated and he required surgery which resulted in revascularisation and the employee having to take six months off work.[8] The starting point there was $350,000 and that was a case where there was an uplift for a previous conviction as well. They also refer to *WorkSafe New Zealand v PG and SN Callaghan Limited* and that was another case where a hand was drawn into a pulley system which resulted in the amputation of fingers where a $400,000 starting point was submitted.[9]

[72] It is really not just the differing views about the culpability itself about this company but also the different referral to authorities by each party in terms of comparing it to current case law. The starting points vary considerably.

[73] The defence submits that *WorkSafe New Zealand v NZCC Limited* case and *WorkSafe New Zealand v Pallet Company (Hawke's Bay Limited)* case represent a similar profile in terms of the harm suffered in this case. They further submit that *WorkSafe New Zealand v PG and SN Callaghan Limited* case reflects a situation where there is greater culpability than in this case.

[74] They then distinguish the authorities referred to by WorkSafe and they go through *Alliance Group Limited* and noting that they had 16 previous convictions,

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7 *WorkSafe New Zealand v NZCC Limited* [2019] NZDC 16662.
8 *WorkSafe New Zealand v Pallet Company (Hawke's Bay Limited)* [2019] NZDC 18776.
9 *WorkSafe New Zealand v PG and SN Callaghan Limited* [2017] NZDC 28149.

Alto Packaging Limited which had conducted their own risk assessment as opposed to engaging an expert and that case related to two victims suffering injury.

[75] I take his point in relation to those and I agree that the start point when taking everything into consideration and applying the authorities should be $350,000.

[76] In terms of the aggravating and mitigating factors that are agreed, there should be an uplift of five per cent for the previous conviction, a discount for remorse of five per cent and a discount for guilty plea of 25 per cent. And in terms of the co-operation, I have heard from Mr Boshier that there was significant co-operation and of course there has been ongoing requests and I agree that there has been an effort made by them to comply as much as they could and a 7.5 per cent discount is granted.

[77] In terms of the ancillary orders which I am prepared to grant the legal fees of $3,671, but I agree there is a lack of evidence in relation to the investigator's cost. I do find it odd that there is travel costs and also the figures have only been updated recently. There have been no itemised accounts provided so that is not granted.

[78] So that leaves us with the task of assessing the financial capacity of the company which is for another day.

[79] Interim suppression of the sentencing notes, sentencing decision and final suppression of the victim's name and occupation (although he can be referred to as a "worker" for the company).

[80] End point of $201,250 but subject to capacity to pay.

[81] What I have entered is:

(a) The interim suppression of sentencing decision.

(b) Final suppression of victim's name and occupation.

(c) I have entered the conviction.

(d) $710 consequential loss order.

(e) $20,000 reparation order as per the schedule.

(f) Cost of the legal fees, $3,671.

(g) I have noted the end point, but I have made a note to registry not to enter it because it is not finalised.

(h) Remand for the capacity to pay hearing before me 23 June at 10 am.

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Judge MM Mason
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 25/09/2023