

New Zealand: Pike River mine disaster families make Supreme Court appeal

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The Supreme Court in Wellington heard an appeal on October 5 by family members of some of the 29 men who died in the 2010 explosion at the remote Pike River Coal (PRC) mine. The families sought a judicial review of the government regulator WorkSafe's decision in 2013 to drop charges against PRC chief executive Peter Whittall.

In February, the Court of Appeal rejected the families' case. The five Supreme Court judges have not said when they will make a decision.

No one has been held accountable for the disaster despite a 2012 Royal Commission finding that it was entirely preventable and that PRC had prioritised production over safety. Government regulators allowed PRC to operate despite flagrant safety breaches, including no adequate emergency exit, and inadequate ventilation and methane gas monitoring.

In 2013, PRC was found guilty of safety breaches and ordered to pay \$3.41 million in reparations, but the company was bankrupt and refused to pay. In December that year, WorkSafe reached a back-room deal with Whittall's lawyers to drop 12 health and safety charges against him in exchange for payment to the families by Whittall and other company directors of the \$3.41 million.

Police also decided in July 2013 not to press any charges over the disaster. Earlier this year it emerged that police had suppressed video footage taken inside the mine, which proved it could be re-entered safely to gather evidence. The mine has never been re-entered and the 29 bodies have not been recovered (see: "New Zealand: Police suppressed images of bodies in Pike River mine").

The families' lawyer Nigel Hampton argued in the Supreme Court that the "bargain," made by WorkSafe and Whittall without the approval of the families, was

"unprecedented, unprincipled and unlawful." He said it "sets a dangerous precedent" for wealthy individuals to be able to buy themselves out of prosecutions.

In response, WorkSafe's lawyer Aaron Martin declared there was no "improper bargain" because WorkSafe was not "benefiting" from the non-prosecution of Whittall. In fact, any trial would inevitably have exposed the regulator's failure to prevent the explosion and the role played by successive governments in deregulating safety in the mining industry.

Martin descended into semantic sophistry. He admitted "there was an understanding" that WorkSafe would drop charges against Whittall in exchange for the payment to the families, but then added, "that doesn't mean there was a deal."

The lawyer said WorkSafe decided a prosecution of Whittall was "not in the public interest" because of "a range of factors," including the probability of a "long, costly trial," which would have covered material already examined by the Royal Commission. Under questioning, Martin admitted there was no evidence WorkSafe had considered dropping the charges prior to the offer of payment.

Anna Osborne, whose husband Milton died in Pike River, told the *World Socialist Web Site* that the regulator's defence was "absolute nonsense." She described the Royal Commission as "a farce," adding, "I think it was done way too early. What came out of it was best guesses as to what happened and we've got no real answers and still no accountability. What I'd like to see is an independent inquiry to properly get to the bottom of it all."

Sonya Rockhouse, who lost her son Ben, said if the families succeed in their application for a judicial review it would be "a moral victory" against the

government. She added, “There’s a lot more we would like to happen. We’d like Whittall to be brought back; we’d like the charges to be reinstated. None of that realistically is going to happen.”

Rockhouse said the families would continue to demand justice “because no one’s been held to account, not one person.” She pointed out that after 96 people were crushed to death in 1989 at the Hillsborough stadium in Britain, it took 28 years before any of the police officers whose actions led to the disaster were charged.

The families hope the next government will organise a manned re-entry of the drift tunnel that leads into the mine. Seven years after the disaster, the opposition Labour, Green and New Zealand First Parties have promised to carry out a re-entry. Following the inconclusive election result on September 23, NZ First is currently deciding whether to form a coalition government with the National Party or the Labour-Greens bloc.

The government-owned company Solid Energy had wanted to permanently seal the mine entrance and only backed down earlier this year after months of protests by the families, which gained widespread public support.

Bernie Monk, whose son Michael died in the mine, told the WSWs that former Prime Minister John Key had made empty promises to re-enter the mine and retrieve the bodies. He said although many people were excited by the opposition parties’ promises, “I’ll never be excited till the job is finished.”

Monk said the Pike River case “needs to be reopened, that’s pretty obvious,” and a re-entry of the mine “will bring a lot of evidence.” He added that the families were still trying to obtain more information held by the police about the mine. “We’re fighting for justice and accountability in New Zealand,” he said.

None of the political parties has committed to reinstating charges or called for reopening the criminal investigation.

Monk said he had heard of recent attempts to cut staff at WorkSafe’s specialist mining inspectorate, which was boosted following the Pike River disaster. He said a WorkSafe employee “came to me personally and asked me to do something about it. The disasters are going to start all over again.”

Monk listed those he held responsible for the disaster

in addition to the company: “The Department of Labour [now WorkSafe] cut back the inspectorate in 1992 under the National Party. The Labour Party didn’t do anything [to reverse the cuts]; they were in power for three terms. They have honestly come forward and told us that.”

He continued: “Mines Rescue did work at Pike River; they knew that that mine was unsafe. And number four is the unions, because they did not do their job.”

The Engineering, Printing and Manufacturing Union, now called E Tu, represented about half the workforce at Pike River. It worked hand-in-hand with the company. The union knew about safety breaches at the mine, which had prompted one walkout by workers in protest, but it never organised industrial action to ensure the mine was safe.

The union made no public statement about the unsafe conditions. Immediately after the explosion EPMU leader Andrew Little, who later became the Labour Party leader, defended Pike River Coal. He told the media there was “nothing unusual” about the mine and nothing that the union had been concerned about.



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