

New Zealand: Court action continues over Pike River mine disaster

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Families of some of the 29 workers killed in the 2010 disaster in New Zealand's Pike River coal mine are continuing their fight to uncover the full truth about an unlawful deal to prevent the company's chief executive Peter Whittall from being prosecuted.

Despite a 2012 royal commission of inquiry finding that the company managers and the board prioritised production and profit over safety, no one has been held accountable for the extremely unsafe conditions in the mine. Pike River had no functional emergency exit, grossly inadequate ventilation and methane gas monitoring, and faulty equipment. It was a gas bomb waiting to go off.

In December 2013, however, the state regulator WorkSafe dropped a planned prosecution of Whittall. In exchange, an unsolicited payment of \$3.41 million was made to the victims' families, which many denounced as "blood money."

At a Wellington High Court hearing on April 22, Christopher Harder, a former criminal lawyer who is representing some of the families, questioned why more than a decade later WorkSafe continues to withhold information about the deal—including certain "conditions" demanded by Whittall's lawyer.

Harder also alleged that the fact that the original copy of a crucial letter sent from Whittall's lawyer to WorkSafe's lawyer has apparently disappeared, could constitute evidence of corrupt intent.

The deal was found to be unlawful by the Supreme Court in 2017, but charges were not reinstated against him or anyone else in Pike River Coal. The officials and lawyers responsible for scuttling the prosecution have never been held to account or made to answer questions about the deal.

Successive governments have sought to protect those responsible for the disaster. In 2021 the then Labour Party-led government shut down an operation to re-enter the mine workings and permanently sealed its entrance—despite opposition from the victims' families and supporters, including mining experts.

This prevented a forensic examination of the underground fan and other equipment. Mines almost never install their main fan underground because of the safety risks involved; the royal commission identified it as a possible source of ignition.

The sealing of the mine also prevented the recovery of the 29 bodies, which remain entombed within.

At Monday's court hearing, Harder was accompanied by Bernie Monk, whose son Michael died in Pike River, and Carol Rose, whose son Stuart Mudge was killed there. He is also acting on behalf of Dean Dunbar, whose 17-year-old son Joseph died in the disaster.

Harder has applied for disclosure of information relating to correspondence in 2013 between Crown Solicitor Brent Stanaway and Whittall's lawyer Stuart Grieve arranging the deal to drop charges.

It remains unclear who approved this deal in the then National Party government, what legal advice was provided by Crown Law to WorkSafe, and the source of the "blood money." Pike River Coal had declared bankruptcy and could not pay a fine after it was found guilty of health and safety breaches in an earlier court ruling in 2013.

Harder explained that the families had finally learned the name of the insurance company that made the payment, which is subject to interim name suppression. For 10 years, Harder said, the name of the insurer had been "kept secret."

Tracing the source of the money and the terms under which it was paid could shed light on who wanted to stop Whittall from going on trial. This could include companies that played a role in the mine's development and supplied its equipment, such as the underground fan.

Harder told the court that the families were asking for a disclosure order against Stanaway and Grieve for information about "other conditions" demanded by Grieve—on behalf of the then unidentified insurer—in return for the \$3.41 million payment, on condition the charges were first dismissed.

He cited a letter from Stanaway to Grieve dated August 20, 2013, including the statement: "I would simply not be able to support, and indeed would not be prepared to advance to the Solicitor-General or anyone else, the other two conditions which you referred me to in our without prejudice discussions."

Harder said Stanaway correctly rejected the conditions but made a "grave error" in concealing their content, which he told Justice Christine Grice, was evidence of "corrupt intent" on the part of the insurer.

WorkSafe's lawyer rejected the application, telling the court Harder's application for disclosure orders was an "abuse" of the judicial process. Harder suggested WorkSafe, in opposing the disclosure orders, was seeking to "thwart justice."

The agency has questioned how the "other two conditions" are relevant, since they were rejected—even though WorkSafe says it does not know what the proposed conditions were. Harder told the court that the concealment of the "conditions" hid the "corrupt intent," and that this compromised the ability of then solicitor-general Michael Heron KC to give informed advice to WorkSafe about whether or not to prosecute.

Even though the proposed conditions were rejected, knowing what they were and who demanded them could shed further light on who else was involved in the unlawful bargain.

On December 6, 2013, Grieve sent Stanaway an email, which proposed that the victims' families explicitly acknowledge that the \$3.41 million was being paid on behalf of Pike River Coal "in recognition of harm arising directly or indirectly from the explosions

or *any subsequent events* arising from those explosions” [emphasis added]. This sweeping condition—apparently an attempt to limit the liability of the insurance company—was rejected by Stanaway.

Harder said the families were seeking disclosure of the original “clean copy” of this letter—which WorkSafe says it does not have. The only copy in existence is one that includes a handwritten note by Stanaway. It is not clear what happened to the original email attachment or who saw it in 2013 besides Stanaway.

Justice Grice asked WorkSafe’s lawyer Aaron Martin if Harder’s claim that the “clean copy” of the letter had never been disclosed to any court was correct. Martin confirmed that this was the case.

On April 26, Justice Grice issued a judgement in favour of WorkSafe, stating that there was no jurisdiction for Harder’s application for the disclosure orders. Instead of awarding costs to WorkSafe, the judge gave Harder five days “to file submissions elaborating on the basis of his opposition to costs.”

Excerpts from the correspondence between Stanaway and Grieve were published by TVNZ in February this year, but both lawyers declined to answer questions put by TVNZ.

The final agreement reached between WorkSafe and Whittall to drop the prosecution was presented to Judge Jane Farish, who relayed it to the victims’ families on December 12, 2013. It contained no reference to the “conditions” that had been discussed.

Harder also revealed a March 2022 Minute from Judge Farish to TVNZ which showed that the broadcaster had requested a copy of any tape recording of a December 10, 2013 chambers hearing between Farish, Grieve and Stanaway. The Minute stated that there was no recording of it but that what was discussed in chambers was subsequently reflected in what the Judge said in court: that the decision to drop all the charges and the decision to pay the \$3.41 million were “two discrete acts.”

Chief Justice Sian Elias stated in the Supreme Court’s 2017 decision that this was incorrect but that Judge Farish did not have the information that was subsequently put before the Supreme Court, which revealed that the decision to drop the charges and the money were in fact inextricably linked. Harder suggested that Judge Farish had been misled.

Police announced in July 2013 that they would not lay any criminal charges against Whittall or anyone else at Pike River Coal, after receiving advice from Crown solicitors. This was justified, in part, on the grounds that WorkSafe was preparing charges of health and safety breaches. What was not revealed at the time is the fact that in July 2013, Stanaway, acting on instructions from WorkSafe, was already in negotiations with Grieve with the aim of avoiding a trial.

The government agency itself had a clear motivation for not proceeding with the prosecution. Whittall’s lawyers made clear that their defence would focus on the role of the regulators, who allowed Pike River to operate despite flagrant breaches of health and safety laws. This would have exposed the pro-business, deregulated regime under which successive governments allowed mining companies to effectively make their own safety rules.

The trial would also have raised questions about the role of the Engineering, Printing and Manufacturing Union (EPMU), which was then led by Andrew Little. The union knew about dangerous conditions in the mine, but kept quiet about them and took no action. After the explosion, Little falsely claimed that Pike River Coal had a good safety record.

Little became the Minister Responsible for Pike River Re-entry in the 2017–2023 Labour Party government. He played the key role in

aborting the re-entry of the mine and the underground investigation, thus continuing to protect the company.

Police initiated a new criminal investigation in 2018, when the Labour-led government prepared a manned re-entry of Pike River mine, ostensibly to gather evidence that would lead to prosecutions. Investigators only explored the drift (the entrance tunnel), however, and were prevented by the government from entering the mine workings where the most important physical evidence is located.

Labour’s Andrew Little made unsubstantiated claims—that were refuted by independent mining experts—that it was too unsafe and too expensive to re-enter the mine workings.

The shutdown of the manned re-entry in 2021 was opposed by thousands of people and prompted protests near the mine site. Labour suffered a landslide defeat in the October 2023 election, including in the West Coast electorate where Pike River mine is located, previously considered a safe Labour seat.

Harder told the High Court that the families hope that uncovering fresh evidence related to the Whittall deal will bring pressure to bear on the government to once again re-enter the mine.

In 2013, police declared that an obstacle to laying manslaughter charges was the lack of physical evidence from inside the mine to show precisely what happened.

Nearly 14 years after the Pike River mine disaster, the police investigation is officially ongoing. In March 2022, Detective Superintendent Peter Read declared that a decision on prosecutions was “months, rather than years” away. More than a year later, in May 2023, the timeframe was extended to the end of that year. This meant there would be no decision made before the October election—preventing the lack of justice for the Pike River victims from becoming an election issue, something none of the parties wanted.

So far this year the police have made no public statements on the investigation. No explanation has been given for the endless delays.

The National Party-led coalition government, including the far-right ACT and New Zealand First Parties, has remained completely silent on Pike River. The entire political establishment is seeking to bury the case, prevent any re-entry of the mine, and continue the cover-up. The ruling class is determined that no one be held accountable for decisions, dictated by the drive for profit, that led to the deaths of 29 people.



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