

Families continue fight to expose cover-up of Pike River mine disaster

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Nearly 15 years after the series of underground explosions at Pike River coal mine in New Zealand, some of the families of the 29 workers killed in the disaster are fighting to expose the full truth about the unlawful back-room deal to drop charges against Pike River Coal's chief executive Peter Whittall.

A hearing was held at the Wellington High Court on May 29, with former criminal lawyer Christopher Harder, assisted by former Ombudsman Leo Donnelly, acting on behalf of several of the victims' families, seeking information from the government agency WorkSafe (formerly the Department of Labour), part of the Ministry of Business, Innovation and Employment (MBIE).

Details of that hearing, including its outcome, are subject to a suppression order by Justice Andru Isac and cannot be reported.

It followed a court hearing in April 2024, previously reported by the *World Socialist Web Site*. Harder had applied for the disclosure of information relating to correspondence in 2013 between lawyers representing WorkSafe and Whittall arranging the deal to drop charges for breaching health and safety regulations, in exchange for an unsolicited payment of \$3.41 million to the families.

Harder has worked for years on the case with the support of family members including Bernie and Kath Monk, whose 23-year-old son Michael died at Pike River; Dean Dunbar, whose son Joseph died in the mine at the age of just 17; and Carol and Steve Rose, who lost their son Stuart Mudge, aged 31.

A 2012 Royal Commission of Inquiry revealed that Pike River mine was essentially a bomb waiting to go off. It was operating in violation of numerous health safety regulations: it had grossly inadequate ventilation, faulty equipment and no safe emergency exit. Company management, the trade union bureaucracy and government regulators all knew about life-threatening conditions in the mine, but did not shut down the mine to prevent the disaster.

The inquiry found that Pike River Coal's leadership placed production and profits ahead of its workers' safety. And yet, not one person has been held to account for creating the conditions that led to 29 avoidable deaths.

Harder told the *World Socialist Web Site* that he became involved with some of the Pike River families after he learned about the 2017 Supreme Court ruling, which stated that the agreement to drop charges against Whittall had been unlawful. This was a symbolic victory for the families. It did not lead to charges being reinstated and it left many unanswered questions.

Harder was puzzled to hear a lawyer describe the ruling as "groundbreaking," "because it wasn't groundbreaking. It had

always been the law that offering money to stifle a prosecution was contrary to public interest and unlawful."

Harder explained: "WorkSafe entered into an unlawful bargain to stifle prosecution. [The families] wanted to know the basis of the legal advice that then Solicitor-General Michael Heron gave to WorkSafe to justify that action. The Supreme Court never saw the legal advice and it's never been released."

At court hearings in 2023 and 2024, Harder sought the release of letters or emails exchanged between Crown Solicitor Brent Stanaway, acting for WorkSafe, and Whittall's lawyer Stuart Grieve, in which they discussed the payment of \$3.41 million in exchange for the dropping of charges.

"A first-year law student knows you can't offer—let alone take—money to drop a charge," Harder said. This would normally be considered a bribe. "Reparation can only be offered in New Zealand if you've either been found guilty or you've admitted liability."

When the decision to drop the charges was announced to the families during a court hearing in December 2013, it was met with outrage and was denounced as "chequebook justice" and "blood money."

Steve Rose told the WSWs he still felt "incredulous" about the decision, and the fact that charges were never reinstated following the Supreme Court's decision in 2017. "I can't buy my way out of a speeding ticket," he said

In 2020, Harder asked the Law Society to investigate Stanaway and Grieve for allegedly bringing "the legal profession into disrepute" and for misleading Judge Jane Farish—who had assured the Pike River families in 2013 that Whittall was not buying his way out of a prosecution. The Law Society took no action against the lawyers.

Harder alleges that a letter sent by Grieve to Stanaway initially on October 16, 2013, proposing the deal to drop the charges, was altered multiple times to conform with the legal advice obtained by WorkSafe—to make the agreement appear lawful.

On December 6, Grieve inserted a new clause stating that the proposed payment was "in recognition of harm arising directly or indirectly from the explosions or any subsequent events arising from those explosions"—an apparent attempt to prevent any future legal action by the families. Stanaway objected to the clause, writing in the margin that it would constitute "a bar to a civil claim," and it was removed in a final version of the letter on December 7.

During the April 2024 court hearing, a lawyer representing WorkSafe admitted that the original December 6 letter had never been seen by any court. The courts, including the Supreme Court, had only seen a printed copy with Stanaway's hand-written note in the margin, and had wrongly assumed it was only a "draft" letter and had therefore not taken it as evidential. The original letter or email (the "clean copy") had been withheld. This "clean copy" was subsequently released to Harder, but with no explanation about where it came from and why it had not been released for 11 years.

Harder explained that material relating to the "clean copy," obtained as a result of the various court proceedings, will be presented to the new Ombudsman as fresh evidence, in support of the families' previous request to access the legal advice given by the Solicitor-General to WorkSafe in 2013.

Monk told the WSWs that he and some other family members also wanted to establish where the \$3.41 million payment actually came from. According to Whittall's lawyers, it was paid by an insurance company. However Pike River Coal had earlier refused a court order to pay \$4.17 million in fines and reparations, on the grounds that it was bankrupt and had exhausted its insurance money.

Knowing the source of the payment could reveal individuals and organisations who had a stake in preventing Whittall from standing trial. If he had taken the stand, Whittall would undoubtedly have defended himself by exposing the role of government regulators, union bureaucrats, numerous businesses that financed and collaborated with Pike River Coal in the development of the mine, and individuals who were part of the company's leadership.

The entire political establishment was implicated in the disaster. Since the 1990s, successive Labour Party and National Party governments dismantled the country's expert Mines Inspectorate, allowing companies to regulate themselves with barely any oversight.

The Engineering, Printing and Manufacturing Union (EPMU, now called E t?), led by Andrew Little at the time of the Pike River disaster, had collaborated with the company and deliberately covered up what it knew about dangerous working conditions in the mine. The union leadership had the power, under the law, to call a strike and shut down production until the mine was made safe, but it chose not to.

The Labour Party-led government elected in 2017 made false promises that it would re-enter the mine, retrieve the 29 bodies and gather evidence in order to criminally prosecute those responsible for the disaster. But the minister in charge of Pike River "recovery" was former union leader Andrew Little—who had defended Pike River Coal immediately after the disaster, saying there was nothing unusual or concerning about the company's safety practices.

In 2021, Little aborted the re-entry of the mine, before investigators had reached the human remains and the mine workings, where crucial evidence is located, including the underground fan which might have sparked the first explosion on November 19, 2010. Installing the main ventilation unit underground in a coal mine is considered a dangerous practice and is outlawed in many countries.

The Labour government placed a concrete seal on the mine entrance, despite opposition by most of the Pike River families, who demanded a thorough investigation of the mine workings. The families gained international support from many readers of the WSWs, including mineworkers in Britain and Australia. World-renowned mining experts Tony Forster and Brian Robinson comprehensively debunked Minister Little's false claims that the mine workings could not be safely entered, or that it would be too expensive to do so.

Steve Rose said that for 15 years he had felt "like the legal system seems to divorce itself from humanity." Hundreds of people had been affected by the lack of justice for the Pike River families. He said he would have told the judge "that standing in this courtroom behind me are 29 dead men, and behind them are their 36 children, and behind them are their 29 partners and behind them are their 250 plus wider family members."

Monk told the WSWs: "We were promised truth, instead we were given silence. We were told the system would protect us, but all we've seen is delay, denial and deliberate obstruction. We waited, not just for accountability, but for the truth, and every year the truth has been withheld is another year our boys were buried, not just by coal, but by a cover-up."

"Our sons can't speak for themselves, and that's why we haven't stopped speaking for them, and we will never stop speaking for them. The fight was never about vengeance, it was about dignity, it was about giving our boys the honour they deserve and to make sure that other families don't have to go through what we've gone through. The institutions that were meant to give us justice have failed."

"The world is watching this case today, as they have done all the way thorough. All we're trying to do here is [bring back] confidence that there is a justice system in New Zealand."

Officially, police are continuing their investigation of the Pike River disaster, which was reopened in 2018. Their initial investigation was shut down on July 17, 2013 on the pretext that there was no physical evidence from inside the mine to prove what caused the initial explosion, so it was not possible to charge Whittall with manslaughter.

Police also argued in 2013 that if they laid a lesser charge of criminal nuisance against Whittall, this could raise "issues of double jeopardy" given the "ongoing prosecutions" by MBIE (WorkSafe). However, as TVNZ reported in February last year, on July 8, 2013, the government lawyer Stanaway had already proposed "a plea arrangement resolution" to Whittall's lawyer Grieve, to avoid taking Whittall to court.

The most recent public statement by police was made last November, on the 14th anniversary of the disaster. Following repeated extensions of the investigation, it said that "police expect to have a decision around prosecution(s) in the first half of [2025]." No decision has yet been announced.



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