EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT CHRISTCHURCH

I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI

CRI-2020-009-001644
[2022] NZDC 13609

WORKSAFE NEW ZEALAND
Prosecutor

v

SOUTHERN PALLET RECYCLING LIMITED
Defendant

Hearing: 19 July 2022

Appearances: Mr Belcher for the Prosecutor
T MacKenzie for the Defendant

Judgment: 19 July 2022

NOTES OF JUDGE M A CROSBIE ON SENTENCING

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[1] Southern Pallet Recycling Limited ("the defendant") is for sentence today on one charge of failing with its duty to ensure insofar as reasonably practicable the health and safety of its workers, in particular to ensure that a HolyTek Cut-off saw ("the saw") was safe to use pursuant to ss 36(1)(a), 48(1), 48(2)(c) of the Health and Safety and Work Act 2015 ("the Act"). The maximum penalty is a fine of $1.5 million.

[2] I acknowledge that it has taken some time to resolve this matter from the point at which the accident occurred. I acknowledge that that has caused some frustration to [the victim], who I also acknowledge is present in court today, as are representatives of the defendant. I acknowledge this is a matter that the defendant and its representatives have taken seriously throughout, as they have their obligations to [the victim].

[3] The defendant pleaded guilty after an application for dismissal of the charge was declined by a judge of this court. A subsequent appeal in the High Court was also unsuccessful.

[4] The summary of facts is extensive. I will not repeat the summary at this point, but will attach it to my decision. The background facts are concisely set out in paragraphs [2] to [5] of Dunningham J's decision on the s 147 matter.

[5] The defendant is a company based in Christchurch specialising in the manufacture of pallets and bins. It also supplies recycled pallets and carries out pallet servicing and repairs.

[6] [The victim] was employed by the defendant as a timber handler at the Christchurch manufacturing plant. On the morning of 15 February 2019, he was working on a HolyTek Cut-off saw located in the container away from the main warehouse. The saw involved is a rise and fall saw which means when activated a circular cutting blade ascends to cut wood at desired length, then descends again. Lengths of timber are fed into the side of the saw by the person operating the saw. He was the primary operator of the saw and had used it regularly since commencing employment with the defendant.

[7] He was asked by his supervisor to trim 20 millimetres off a number of small boards that were 90 millimetres wide and 19 millimetres thick. The saw was not set up to cut the smaller boards. He was clearing debris away from the right side of the saw with his right hand while at the same time stacking the cut pieces with his left. He reached through the guarded danger area to clear the debris. He did not use the pressurised air hose mounted on the wall nearby which he had been trained to use to clear the debris. As he stacked some cut pieces he pivoted on his left foot and activated the foot pedal which initiated the cutting action of the saw blade. His right hand was still in the danger area and the saw blade cut completely through his hand at the wrist. Within seconds he received first aid treatment, and fortunately his hand was successfully re-attached on the following day.

[8] As I have said, the summary is more extensive than that, and I have paid close attention to it, as I have to the written submissions filed by counsel; the victim impact statement; the authorities referred to by counsel; and the judgment of the High Court.

[9] The saw was purchased by the defendant in 2014, and when purchased it lacked appropriate guarding. This was communicated to the defendant by the supplier who advised that the machine does not comply with OSH requirements and should not be used. The supplier left information on OSH requirements with the defendant.

[10] The defendant then engaged Nimrod Engineering Limited to modify the saw, including fitting a new guard. The saw was also modified on the defendant's instructions so that it could be operated from both sides: not just the left as the manufacturer had intended. [The victim]'s injury was sustained when he was operating the saw from the right side.

[11] While there was some submission to me in terms of Nimrod's role, it is my assessment from what I have before me that the defendant did not seek or obtain assistance from an appropriately qualified person or organisation when it made the modification, meaning there was no guidance as to whether the modification met industry standards.

[12] WorkSafe investigated the incident and found that the guarding and safety feature on the saw were deficient in a number of respects and did not comply with standards and guidance issued by WorkSafe. Those deficiencies are four, including:

(a) First, the saw's foot pedal was easily activated. The guidance is that pedal should be covered to prevent accidental operation;

(b) Second, the foot pedal control allowed a full cutting sequence to be run with a single press rather than having a two-handed hold to run the control which is considered best practice;

(c) Three, the tunnel guards were too short and the openings too large to sufficiently restrict operator access to the saw blade;

(d) Four, the moveable interlock guard was ineffective as the operator could gain access to the saw blade without lifting the guard high enough to trigger the interlock limit switch.

[13] I refer now to [the victim]'s victim impact statement. He describes feeling lightheaded upon realising his hand was no longer attached to his body but was in fact on the ground one or two metres away. His arm was bleeding out and he could see the bone. He recalls clamping his arm in an attempt to preserve it and seeing a massive pool of blood collect at his feet. He details his long road to recovery. His hand was successfully re-attached after a lengthy surgery and he was discharged after approximately two weeks. However, he was soon back in hospital for a lengthy stay when an artery tore in his hand. He still attends physiotherapy, as I understand it, and says hand therapy will be a huge part of his life for the foreseeable future. He describes having almost no dexterity and says how frustrating that is for him, as is the fact that he will be disabled for the rest of his life.

[14] He notes he has had no financial loss as such because of his ACC compensation and reparations paid by the defendant. However, he says he has had no opportunities for promotion, pay increases or working overtime for the last four years, and he says working overtime counted for about $25,000 of his income per year.

[15] He emphasises that the emotional harm has been the most significant aspect of what occurred. He discloses being frustrated and embarrassed, and says that he is sometimes brought to tears. He says he completed a pain management programme with a psychologist at Burwood Hospital which he thought would have helped. To him it feels like life has just stopped.

[16] He expresses his desire to work for the defendant again, but has no idea when that is likely to be possible. He struggled with how long it has taken to get a judicial outcome, and explains the difficulties he has had paying his bills in the meantime.

[17] In terms of how the Court approaches sentencing of health and safety matters, the High Court in *Stumpmaster v WorkSafe New Zealand* sets out the correct approach for sentencing, which is first to assess the amount of reparation; second, to fix the

amount of the fine by reference - first to guideline bands, and then having regard to aggravating and mitigating factors; third to determine whether further orders under ss 152 to 158 of the Act are required; and fourth, to make an overall assessment of proportionality and appropriateness of the combined packet of sanctions imposed by the preceding three steps.[1]

[18] When fixing a fine there are four guideline bands – low culpability zero to $250,000; medium culpability $250,000 to $600,000; high culpability $600,000 to $1 million, and very high culpability $1 million to $1.5 million. In assessing culpability s 151 of the Act offers specific guidance. In *Stumpmaster*, however, it was held that the sentencing criteria covered by the well-established culpability assessments identified in *Department of Labour v Hanham and Philp Contractors Limited*, those being listed as (a) to (g):[2]

> (a) The identification of the operative acts or omissions at issue and usually involving a clear identification of the practical steps which the Court finds it was reasonable for the offender to have taken in terms of s 22 of the Act.
>
> (b) An assessment of the nature and seriousness of the risk of harm occurring as well as the realised risks.
>
> (c) The degree of departure from standards prevailing in the relevant industry.
>
> (d) The obviousness of the hazard.
>
> (e) The availability cost and effectiveness of the means necessary to avoid the hazard.
>
> (f) The current state of knowledge of the risks and of the nature and severity of the harm which could result.
>
> (g) The current state of knowledge of the means available to avoid the hazard or mitigate the risk of its occurrence.

[19] I also note the key purposes of the Act before engaging with the sentencing exercise which are protective, eliminating or minimising risks from work or from prescribed high-risk plant. They are effective in securing compliance with the Act through effective and appropriate compliance and enforcement measures, and they

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[1] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.
[2] *Department of Labour v Hanham & Philp Contractors Ltd* (2008) 6 NZELR 79 (HC).

provide a framework for continuous improvement and progressively higher standards of work, health and safety generally. I also note that ensuring the health and safety of workers is the primary duty of care. Against that background sentencing will generally require significant weight to be given for the purposes of denunciation, deterrence and accountability, as held in *Stumpmaster* at paragraph [43].

[20] I also consider today the promoting of a sense of responsibility providing for the interests of the victim and reparation to be relevant purposes. The most relevant principles today are: the gravity of the offending; the seriousness of the offending; the general desirability of consistency; and the effect of the offending on the victim.

[21] I deal now with a synopsis of the respective prosecution and defence submissions, working through the steps – step one being reparation. Regarding consequential loss, the prosecution presents the Court with two options. First, if the defendant undertakes to continue topping up [the victim]'s ACC payments until he returns to work, to decline to order further reparation for loss of earnings. Second, order a lump sum so that the total paid is the equivalent of 20 per cent of his pre-injury earnings over five years. That is the approach favoured by the defence. Regarding emotional harm, it is submitted that reparation of $50,000 ought to be ordered.

[22] Step two – fine. The prosecution submissions on culpability are made with reference to the factors in *Hanham*, submitting the defendant failed to carry out reasonably practicable steps and thereby created an obvious and material hazard to operators of the saw. It submits the risk was particularly dangerous because of the rapid rise and fall nature of the saw and submits that the realised risk in the case was well within the range of outcomes that could have been expected, including a real possibility of death. It submits the obviousness of the hazard is reinforced by the extensive industry guidance on guarding saws and the fact the defendant was warned that the pre-modification saw was unsafe to use. The prosecution suggests it would have been a simple matter for the defendant to seek input from a qualified person when modifications were made.

[23] Finally, the prosecution warns against taking into account conduct of the victim or the officially induced error of law previous relied on by the defendant. On these

factors it submits the defendant demonstrated a high degree of negligence, with a starting point at the top end of the medium culpability band in the range of $500,000–$600,000. The prosecution refers in this regard to decisions in *WorkSafe New Zealand v Otago Polytech*, *WorkSafe New Zealand v Miller Foods Limited t/a Remarkable Tortillas*, *WorkSafe New Zealand v Alliance Group Limited.*[3] No uplifts are sought by the prosecutor. However, it is submitted that the guilty plea at this stage of the proceeding should attract only a discount of 15 per cent. A further global credit of 10 per cent for reparation, lack of previous convictions and a positive safety record is considered appropriate.

[24] In terms of step three, ancillary orders – an order for costs is sought in the sum of $7,500, being approximately 50 per cent of the legal costs actually incurred, which would cover WorkSafe's internal legal costs, estimated external legal costs, and external legal costs for the High Court appeal.

[25] Step four is the overall assessment which has the prosecution seeking emotional harm reparation of $50,000, plus the consequential order which is not specified, but as I have said is acknowledged. A fine of $375,000–$450,000 is submitted as appropriate with costs of $7,500.

[26] For the defence, in dealing with reparation it accepts a consequential loss payment, submitting that the emotional harm payment ought to be between $40,000 and $45,000.

[27] With respect to step two, the fine, the defence accepts a poorly guarded sawblade can obviously maim or kill and that the realised risk is very serious. The defence submits this is not a case of no guarding at all, but a case of insufficient guarding and is therefore a lesser departure from the prevailing standards.

[28] The defence makes extensive submissions on the issue of obviousness. The defence submits that the warning given to the defendant that the outfeed guarding is

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[3] *WorkSafe New Zealand v Otago Polytech* [2020] NZDC 11114*; WorkSafe New Zealand v Miller Foods Limited t/a Remarkable Tortillas* [2018] NZDC 4732*; WorkSafe New Zealand v Alliance Group Limited* [2018] NZDC 20916.

absent from the saw and it did not comply with OSH requirements, is overtaken by the fact the defendant commissioned engineers to make guarding for the saw, with the defendant being unaware that the guarding was insufficient.

[29] The defence also draws upon the officially induced error argument submitted in the High Court, highlighting that neither WorkSafe, Nimrod, nor the independent inspector noticed the flaws in the machine. Reference is made to the High Court finding that [the WorkSafe inspector] did not examine the saw in detail thoroughly. It is contended that the defendant was unaware of this and was led to believe machine guarding was the primary focus of the inspection.

[30] It is accepted that a better guard could have been easily implemented at lower cost. The defence submits a starting point for a fine of $350,000 as appropriate. *WorkSafe New Zealand v The Pallet Company Hawke's Bay Limited* is cited in support of the proposition.[4] The defence rejects the suggestion the offending is more serious in this case than in *Otago Polytech, Miller Foods Limited* or *Alliance Group.*

[31] The defence identifies a number of mitigating factors and seeks several discounts. First, remorse 10 per cent. In this regard, counsel refers to the affidavit of Mr Donnithorne, co-director and sole director of Southern Pallet. Next, steps to assist the victim in reparation, 15 per cent. In addition to the reparation payments already made it is noted the defendant chose not to terminate the victim's employment when it could have done so. Next, for good character, five per cent. Next, for cooperation with WorkSafe, five per cent. Next, for guilty plea, 20 per cent.

[32] It is submitted that it was entirely reasonable for the defendant to pursue the officially induced error of law defence, a subsequent plea being responsible in the circumstances. It is further submitted that the fact the defendant appealed against conviction does not undermine the plea since that was the only way to appeal the dismissal decision.

[33] From a starting point of $350,000, it is submitted there ought to be total discounts of 55 per cent for mitigating factors, leaving a total fine of $157,500, with

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[4] *WorkSafe New Zealand v The Pallet Company (Hawke's Bay) Limited* [2019] NZDC 18776.

an order that this can be paid off over five years. In terms of that payment over time, I do not understand the prosecution to be taking any issue. It seems to me to be entirely reasonable in order to promote a business such as this with no prior record can remain trading viably.

[34] As far as step three is concerned, the defence takes issue with the reasonableness of the costs order sought by the prosecution, suggesting there has been a double handling of the file by WorkSafe counsel.

[35] As to my assessment of the submissions made and where I see this matter is at, I turn first to the issue of reparation, step one. There is no argument regarding consequential loss. I accept that option B, the lump sum payment, would be the most straightforward option for all parties and may sooner enable [the victim] to move on from this ordeal and get his life back up and running.

[36] Determining the appropriate quantum for emotional harm reparation is necessarily more difficult. I refer to the comments of Harrison J in *Big Tuff Pallets Limited v Department of Labour* where his Honour says:[5]

> The judicial objective is to strike a figure which is just in all the circumstances, and which in this context compensates for actual harm arising from the 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 a capacity, whether short term or long term.

[37] I have been referred to similar cases with emotional harm payments ranging between $35,000 and $48,000. Only one of those cases involved the complete amputation of a victim's hand in which case the defendant offered $48,000 on its own volition. It must be accepted that such an injury has far greater potential for trauma than the loss of one or two digits. Indeed, [the victim]'s account of the incident is both horrifying and saddening. His road to recovery has been very difficult and there is clearly still significant progress to be made, both physically and emotionally. I consider emotional harm reparation of $50,000 to be well within the range.

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[5] *Big Tuff Pallets Limited v Department of Labour* HC Auckland CRI-2008-404-000322, 5 February 2009.

[38] Step two, the fine. Culpability – there were effective inexpensive and readily identifiable practical steps that could have been taken. These are clearly set out in the various standards and guidelines. The defendant clearly should have ensured proper guarding was in place. It was also unsafe to rely on a machine with a single press pedal operating system rather than one with two-handed control. Further, the machine should not have been modified in such a way that it was capable of being operated from the left and right-hand side. The advice of an appropriately qualified person or company could and should have been obtained. There is also no doubt that the risk of harm and the realised risk was at the highest end of seriousness.

[39] I accept the defence submission that the degree of departure from prevailing standards would have been more serious had there been no guarding at all. I note, however, that the substandard guarding was not the only deficiency that made the machine unsafe, which is one of Mr Belcher's oral submissions today.

[40] The issue that requires the most attention is the obviousness of the hazard. I emphasise that there is no lack of awareness regarding the dangers associated with cut-off saws. Although it may not always be obvious a machine is insufficiently guarded, the importance of having adequate guarding is very obvious. Employers can reasonably be expected to pay close attention to such matters.

[41] In this case the defendant was expressly warned at the outset that the saw did not comply with Occupational Safety and Health requirements because of its original lack of outfeed guarding.

[42] Contrary to the defence submissions, I do not consider the defendant to have responded adequately to that warning. While steps were taken, they do not appear to have been the appropriate ones. The warning should have been a clear signal that the machine needed the attention of a qualified person at the company with expertise on the relevant standards. Nimrod did not appear to be a qualified person, and in my assessment appears to have merely acted on the defendant's instructions. Engaging their services could not have made the defendant sure the machine was safe and compliant.

[43] It is correct that WorkSafe failed to notice deficiencies in the saw, as did the independent safety auditors commissioned by the defendant. However, the defendant had knowledge that WorkSafe lacked. It knew the saw had been labelled non-compliant and that it had undergone modification without expert professional advice. WorkSafe's inspection was brief, and it has not been established that the saw was examined in any detail. I refer to the *Southern Pallet Recycling Limited v WorkSafe New Zealand* decision at paragraphs [57] and [60] in that regard.[6]

[44] Further, it cannot be claimed that Mr Donnithorne believed that a detailed examination had been carried out. He had no recollection of [the WorkSafe inspector] inspecting the saw – paragraph [60]. It is likely the deficiencies would have been found if the defendant had drawn the saw to WorkSafe's attention. Unfortunately, the defendant did not do so. Notwithstanding the defence position, my assessment is the hazard ought to have been quite obvious to the defendant.

[45] I agree with the prosecution that this case sits at the higher end of the medium culpability band, although not quite as high as submitted. I have considered all of the cases put before me, but the following were particularly helpful. First, I acknowledge the similarities between the facts of the present case and *Pallet Company (Hawke's Bay) Limited*. There, the victim was also injured while operating a timber saw with inadequate guarding. Prior to the incident the guarding had been assessed as non-compliant at which point modifications were made. However, like the present case, the modifications were inadequate. A starting point of $350,000 was considered appropriate.

[46] There are some key differences. First, the actual injury sustained was far less severe, it being the partial amputation of the thumb. Second, there was only a single failing in relation to the guarding standard, whereas in the present case other deficiencies contributed to the machine being unsafe. Third, a detailed risk assessment of the saw had been carried out by the defendant and therefore the defendant was in a better position to be making modifications, even if they were ultimately inadequate. Therefore, I deem the defendant, Southern Pallets' culpability to be higher.

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[6] *Southern Pallet Recycling Limited v WorkSafe New Zealand* [2022] NZHC 1042.

[47] I also consider the culpability to be higher than in *Otago Polytechnic* where a $400,000 starting point was imposed. Again, the injury was less severe, and the detailed risk assessment had been carried out. The risk assessment had failed to identify the guarding issues.

[48] Finally, I note the decision in *Alliance.* It also involved inadequate guarding of an obvious hazard which ultimately resulted in amputation of the victim's hand. The clear difference is the fact that the victim, being a very new employee, had been left unsupervised without any real training or instruction. A starting point in that case of $550,000 was adopted.

[49] In light of these cases, and on reflection, I consider an appropriate starting point to be a fine of $450,000.

[50] I deal now with the mitigation, dealing first with the guilty plea. There is no doubt that the delay in the plea, having come after an application for a dismissal, has occupied time and court resources. It has now been nearly three and a half years since the incident occurred. The delay in the outcome has evidently been frustrating and stressful for the defendant.

[51] The decision to appeal the District Court decision could be seen to have exacerbated the situation. It is not hard to view the dismissal application being based on an officially induced error of law as a partial deflection of responsibility. In my assessment a discount of no more than 15 per cent is warranted.

[52] I will deal with each of the remaining discounts proposed by the defendant in turn. *Stumpmaster* provides guidance on giving discounts for mitigating factors at paragraph [67]. By way of general guidance the decision says:

> We consider a further discount to the guilty plea of a size such as 30 per cent is only to be expected in cases that exhibit all the mitigating factors to a moderate degree, or one or more of them to a high degree. It is not to place a ceiling on the amount of credit but to observe a routine crediting of 30 per cent without regard to the particular circumstances is not consistent with the Sentencing Act.

[53] With respect to remorse, the prosecution submits that the circumstances of the dismissal application should detract from claims of remorse. The defence submits from Mr Donnithorne's affidavit, that it is quite clear that the company is remorseful for the incident. The following observations can be gleaned from *Stumpmaster* in terms of guidance on remorse:

(a) First, remorse must be genuine. It will often be apparent because the victim has spoken of it, and of efforts of the defendant to assist in every way possible. A discount should not follow if a victim speaks of disappointment at the actions of the defendant subsequent to the incident;

(b) Second, full credit for remorse should not follow when repeated deficits are present, no matter how immediately genuine the remorse is;

(c) Third, the best manifestation of remorse is taking every step available to keep the workforce safe.

[54] [The victim]'s statement does not comment much on what Southern Pallet has done for him. He says he still has a reasonably amicable relationship with Mr Donnithorne, but says during this whole process it seems that he has been looking after his end and he has been looking after his. In contrast, Mr Donnithorne says he has maintained a good relationship with [the victim], and has even provided assistance beyond the reparation payments such as providing him with new boots and offering to assist him with getting his car up to standard for a new warrant of fitness. In his affidavit Mr Donnithorne says that he phones [the victim], and always will on the anniversary of the accident, and that there would not be three months that goes by without them communicating, and that they all often meet for coffee.

[55] With respect to actions taken at the workplace, I accept that the defendant has been entirely responsible with its actions following the incident. Mr Donnithorne expresses what he has learned from the incident and how he has been motivated to ensure nothing like this will happen again. He recognises that the safety of his employees is his primary responsibility. That is encouraging to read. Many

improvements have been made, including: another review of all equipment; signage and guarding enhancements; expanding on, strengthening and adding standard operation procedures; increasing worker engagement and participation in health and safety; improvements to electrical and safety lockout systems; and upgrading safety cages, walkways and barriers.

[56] The actions of the defendant after the incident creates an impression of genuine remorse. It is clear that they care about their staff. It is clear that they are horrified at what happened at their workplace. They have taken many steps to reduce the risk of another accident. They are continuing to provide for [the victim]. Remorse is amplified by their presence in court today.

[57] I note that [the victim] appears unsatisfied with the level of compensation he is receiving, noting that it does not account for potential promotions or overtime hours. In response the defendant comments that, given the increases in minimum wage which he has received, it is unlikely he would have received a further contractual pay rise. I am unable to place too much weight on that aspect of [the victim]'s disappointment, given that in many cases defendants make no payments to victims following an incident. That is a matter referred to in *Stumpmaster*.

[58] I do not accept the prosecution's submission that the dismissal application detracts from remorse. While it does show that the defendant attempted to pass the blame, so to speak, it is clear from their actions happening alongside the dismissal application and appeal that they are remorseful. There is no history of repeat deficits, and the defendant should receive full credit for remorse. I consider the 10 per cent sought is appropriate.

[59] The defence seeks a discrete discount for steps to assist [the victim] and for reparation already made. It is submitted that it has paid the 20 per cent ACC top-up for three years now and has continued to provide other supports discussed earlier. It is also submitted the defendant could have justifiably terminated [the victim]'s employment, but have kept him employed in the hope that he may one day return.

[60] The prosecution submits that any credit for reparation should be modest to avoid the reduction in fine being greater than the amount paid in reparation which would be contrary to both principle and precedent. This is correct and, as recorded in *Stumpmaster* with reference to *Hanham*, equal credit for reparation payments or discount of more than the reparation payments should only be made in clear cases where analysis of the statutory purposes supports it and where, for example, support has been provided from the outset. The reference there is at [66], citing *Hanham* at [64].

[61] In this case Mr Donnithorne deposes that the defendant has paid approximately $27,000 gross to [the victim] as ACC top-ups which amounts to roughly six per cent of the starting point. A discount of 15 per cent as proposed by the defendant would therefore be far outside of the less than one to one credit supported by the legal authorities. I do not consider the particular circumstances warrant such a significant discount. However, there should be some recognition to encourage early reparation payments, and I consider that a discount of seven per cent is appropriate.

[62] The defence also seeks a discount for good character, as the defendant has no previous convictions. The prosecution makes no submission on that point. The discount for a clean record is warranted. In *Stumpmaster* the Court pointed out that companies with past convictions should not be receiving the same level of discounts as a company with zero convictions. I accept that a five per cent discount is appropriate here.

[63] A final discount is sought for cooperation with WorkSafe. The prosecution submits that the level of cooperation has been no more than is required by all entities, with obligations under the Health and Safety at Work Act. I accept that submission and consider that a discrete discount for cooperation is not warranted.

[64] In total, appropriate discounts for guilty plea, remorse, reparation and clean record add up to 37 per cent. As noted, the prosecution seeks an ancillary order for $7,500, being about 50 per cent of the actual costs incurred. The test for costs focuses on reasonableness. The defence takes the view that because multiple counsel have

handled the file, some double handling and further time will have been incurred than if sole counsel had taken charge of the file through all steps.

[65] I accept in this case that, due to the length of time since the event, the charge and disposition, together also with the vagaries of COVID, that it is reasonable for a file that has had such history to change hands over time. My assessment is that the costs sought of $7,500 seem reasonable in the circumstances.

[66] My overall assessment is as follows, a combined package of sanctions amounting to $351,500 calculated as follows:

(a) Consequential loss $10,000.

(b) Emotional harm reparation $50,000.

(c) A fine of $283,500 (which comes from a starting point of $450,000 off which comes $166,500 which is 37 per cent).

(d) Costs of $7,500.

[67] The defence does not make a claim of financial difficulty. I consider that in the circumstances the overall sentence is appropriate and proportional to the offending. However, given the size of the company and the submission that the fine ought to be paid over a period of five years. With no dispute from the prosecution in that respect, I will direct that the fine of $283,500 can be paid over that five-year period.

[68] I am obliged to counsel for their assistance.

M A Crosbie
District Court Judge