The Pike River Tragedy

OHS &

Subcontracting
outsourcing, contracting out, offshoring …
Subcontracting

Traditionally viewed as a shift from this:
To this....

Forms of work...

(1) the employee (the individual directly employed by the title firm)

(2) the independent contractor (the self employed individual contracting with the title firm as contractor NOT employee for the provision of a service)

(3) the employees of a sub contracting firm (the individuals employed by another firm contracting with the title firm for the provision of a service)

(4) the independent contractors of a sub contracting firm (the self employed individuals contracting with the sub contractor as contractors, not employees)

(5) And so on…
Where?
The Pike River Mine is a coal mine operated by Pike River Coal 46 km north-northeast of Greymouth in the West Coast Region of New Zealand's South Island.
The Human Cost
The Miners as employee and contractors

- On November 19, 2010 Pike River Coal had:
  - Around 180 employees
  - Around 80 contractors / subcontractors with workers of 200

Of the 29 miners killed in the explosion, 13 were subcontracted workers.
Pike River Coal Co. History

- 1979 Otter Mineral Explorations granted coal prospecting license in relation to Pike River Coal Field
- 1981 Otter Mineral Explorations undertook geological mapping
- 1982 Pike River Coal Coal Co. (PRC) is incorporated …
- 1983 PRC undertakes first drilling?
- 1988 NZ Oil and Gas acquire PRC
- 1990 – onwards development of Pike River
Contracts
– to mine or not to mine

• 1998 - 1993 PRC obtains reports - done by variety of contractors (including Jane Newman)
• 1993 PRC with Mitsui Mining Co. undertakes further drilling
• 1995 CMS Ltd does a pre feasibility study
• 1998 Minserve International does a pre feasibility study
• 1999 NZ Oil and Gas agree with AMC Resource Consultants Ltd (AMC) in return for equity
Contracts
- assessment of risks

- 2002 - URS New Zealand Ltd did environmental risk assessment

- 2005 - PRC and Solid Energy NZ enter a transportation services agreement

- 2005 - Minarco Ltd Pty (formerly AMC) prepares financial update
  - [http://www.minarco-mineconsult.com/about.htm](http://www.minarco-mineconsult.com/about.htm)
  - See also Runge Ltd [http://www.runge.com/](http://www.runge.com/)
  (Purchased Minarco Ltd in 2007)
Contracts
- to begin the work

- 2005 - URS begins work on roads
- October 2005 - UniQuest Pty Ltd provided a report (prepared by Dr Basil Beamish) which reconfirms that PRC coal has low inherent propensity to spontaneously combust.
- November 2005 - contract with Ferguson Brothers Ltd for construction of the roads
- December 2005 - contract with McConnell Dowell for the construction of PRC Mine Tunnel and ventilation shaft
- December 2005 - CRL Energy completed technical reports on gas drainage using simulation
Contracts
- to plan and design the mine

- March 2006 Contract between URS and McConnell Dowell entered into for URS to provide consultancy services on design and construction of the mine and ventilation shaft.
- April 2006 - Contract formed with SEIKO Mining and Construction for supply of steel for slurry pipeline and slurry pipeline couplings.
- June 2006 - Contract with Minarco produced a Ventilation and Gas design report
- June 2006 - contract with White Knight Joint Venture for access road
- July 2006 - Contract with Westpower Limited for supply and construction of infrastructure and equipment required to supply electricity to mine site
Contracts
- work and materials

- September 2006 - Contract with Waratah Engineering Pty Ltd for supply of road header and continuous miners
- Sept. 2006 - Contract for supply of flameproof electrical equipment with Ampcontrol International Pty Ltd.
- Nov 2006 Contract with Specialised Mining Vehicles Pty Ltd for the supply of flameproof Man Transporters and Loader
- Nov 2006 - Contract with Juganaut Industries Pty Ltd for supply of flameproof Load Haul dumpers
- Dec 2006 - Contract formed with Weir Minerals Australia Ltd for supply of the slurry, fluming water and makeup water pumps.
- Dec 2006 - contract formed for construction of amenities area buildings with Evan Jones Construction Ltd.
Contracts
- work and materials

- 2005 - Tender documents were prepared for tunnel, ventilation shaft and pit bottom development by PRC and McCracken Consulting Ltd and invitations to tender extended to select contractors.
- Dec 2006 - Contract with Anderson Industries Pty Ltd to supply Mine Grader.
- Dec 2006 - Contract with Steel and Tube Holdings for Makeup Water Pipeline.
- Jan – Mar 2007 - Flakt-Woods (Australia) selected for the supply of the mine's main ventilation fans.
Contracts
- money and money

• 2006 - Minarco prepares statement of reserves for Joint Ore Reserve Committee (JORC) code
• June 2006 - Gujurat NRE Coke Ltd invests $20 million
• June 2006 - Behre Dolbear Australia Pty Ltd (BDA) undertakes independent financial review. Initial capital costs are now estimated at $173 million

• Sept 2006 tunnelling starts?
Contracts
- work, materials, and more advice

- June 2007 - Contract with iPower Solutions Ltd for the supply of various pump and fan substations, variable speed drives and underground switchboard.
- June 2007 - Contract formed with Brightwater PEAT Ltd for the design and construction of Coal Preparation Plant.
- August 2007 - PRC requested McConnell Dowell to investigate alternative sites with PRC personnel and advise on constructability of ventilation shafts at various sites. PRC also providing drill hole data to inform best shaft site.
- July 2009 - Service agreement with McConnell Dowell to provide PRC with electricians/mechanical fitters and tunnel and stone drive excavation crews
Contracts
- and the process continues

• 2007 – 2010
  – Various agreements with URS ie produced a geotechnical report - the Alimak Raise Rock Mass review – on the Alimak raise “as found” geology

  – Various agreements with Minarco ie a 2005 report on mine design, gas testing, fire management etc.
Contracts
- independent contractors

- Aug 2010 - John Rowlands (Dallas Mining - Australia) carried out ventilation modelling to improve ventilation efficiency.

- Aug 2010 - Drive Mining (Australia) reviewed gas drainage monitoring and strategy and drainage infrastructure (May, July, Sept 2010).

- Nov 2010 - “A final test of the main fan at full load was undertaken by the manufacturer Flakt-Woods on 10 November 2010.”
2003 Dr Basil Beamish, University of Queensland, conducted spontaneous combustion tests and concluded that Pike River coal has low propensity for spontaneous combustion.

2004 - A report by R Cotton, geologist and T McMorran, an engineering geologist, identified that the most difficult part of the tunnelling operation would be the passing through and stabilisation of the area where the tunnel intersects with the Hawera Fault.

2005 - A report by Peter Gunn concluded that pit bottom development would involve some stone drilling.
Contracts and …

- 2005 - John St George of the University of Auckland reported on the pillar sizes to ensure pit bottom stability and general compliance with resource consents, and effects of Island Sandstone.

- 2005 - Strata Control Technology Operations Pty Ltd (SCT) reported on its review of the report by John St George.
Forms of work…
at Pike River Coal in 2010

(1) Employees: 180 (?)

(3) Independent or dependent contractors: (?)

(5) Sub contractors: 60 (whose employees worked at PRC estimated at 200 workers)

(4) Sub contractor’s subbies: (?)
Disappearing employee

• Standard employment - full time, indefinite, defined location, one employer…

• Non standard - part time, temporary, no fixed location…
  (casual, self employed, temp, etc)
Why?

- Flexibility
- Reduced costs
- Access to skills (talent / trained workers)
- Taxes / regulations (ie OHS)
- Meeting customer 24 / 7 needs
- … Profits …
Coase’s 1937 questions

Why the firm?
What is the firm?

The costs of external versus internal supply…
Contractor
- as seen by / through Contract law

• A contract is an agreement enforceable by law

A contract requires (among other things)
  • consideration
  • “fair” (natural justice and regulation)

Huge area of law - commercial law
(insurance law, real estate law, consumer law … )
Contractor
- as seen through employment / labour law

- A contractor is not an employee
Independent contractor

• Employee: tests
  – Control - derived in common law from Master and Servant tests used for Vicarious Liability
  – Economic context

• Definition developed in tort and tax cases and more recently in some jurisdictions in wrongful dismissal cases

• NOTE: Commercial enterprise / restraint of trade
Two worlds

• Commercial Law:
  – Agreement between individuals
  – Freedom of contract
  – Ideology of the market (creative destruction, lowest price and so on); supremacy of the individual…

• Employment law:
  – Imbalance of power
  – Fairness - minimum wages, OHS
  – Ideology of “the left” (capitalism, labour as source of value, collective action, and so on) supremacy of the collective…
From Status to Contract
Background - ideology of employment?

• Independent contractor as Master

• Employee as Servant
Pike River Coal Ltd
Its Role?

• Role - conception / execution?

• Responsibility - financing or mining?

• OHS - who or what cares?

Example of UBB and SEC regulations?