

# Sentencing in Health & Safety prosecutions: personal injury litigation by the back door

MLAANZ Napier, February 2010

Neil Beadle

## MSA v Sealord (2005)

• <u>Starting point: fine</u>	
150,000	
<u>100,000</u>	250,000
• <u>Discounts:</u>	
Guilty pleas	45,000
	<u>205,000</u>
• <u>Emotional harm:</u>	195,000
• <u>Fines:</u>	10,000

## Same facts (2009)

• <u>Reparation:</u>	
- emotional harm	60,000
- loss of income	?
• <u>Starting point: fine</u>	250,000
• <u>Discounts:</u>	
- cooperation/remedial 10%	25,000
- reparation 10-15%	<u>25,000</u>
	<u>200,000</u>
- guilty plea 1/3 say	<u>70,000</u>
• <u>Fines:</u>	130,000

Totality?

Ability to pay?

- Penalties increasing but good representation can:
  - address suitable reparation for a victim at early stage
  - impact upon the Court's view of the relevant starting point for the fine
  - maximise the discount to 50% + of the starting point
- The value of insurance is not diminished: legal defence costs and reparation
- Possible increase in premiums?



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