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MANITOBA

The Fatality Inquiries Act

Report by Provincial Judge on Inquest

Respecting the death of _____ Henry Dueck _____

An inquest respecting the said death having been held by me on October 22nd, and 23rd, 2003, at Tataskweyak Cree Nation (Split Lake) in Manitoba.

I hereby report as follows:

The name of the deceased is Henry Dueck.

The deceased was pronounced dead on Tuesday, October 24th, 2001, shortly after 9:15 am at the Split Lake Nursing Station.

The deceased came to his death by the following means:

Severe Accidental Blunt Trauma to Chest and Abdomen.

I hereby make the following recommendations, as set out in the attached schedule.

Attached also are all the exhibits to be filed by me.

Dated at the City of Thompson, in Manitoba this 21st, day of April, 2004.

Original signed by Judge M.P. Thompson

Judge Murray P. Thompson
Provincial Judge

Introduction and Summary

In accordance with Section 19 of *The Fatality Inquiries Act*, an inquest has been called by the Chief Medical Examiner into the death of Henry Dueck. Mr. Dueck died on Tuesday, October 24th, 2001 at the Split Lake Nursing Station. He was killed in the course of his work on the construction site of a new motel in Split Lake, Manitoba. Henry Dueck was in the process of cutting an 18-foot steel pile at ground level while a co-worker was pushing it in order to topple it over. When the pile fell, it bounced back in the air, striking Henry Dueck in the midsection as it landed, resulting in his death. The scope of this inquest is to determine the circumstance surrounding his death; and to determine what, if anything can be done to prevent similar deaths from occurring in the future.

Facts Relating to the Incident

a) Pile Driving Operation:

As set out in the Workplace Safety and Health Division Incident Inspection Report (Exhibit 2 pp. 1.24 – 1.26), as well as the evidence heard at the inquest, work was required to be done to the foundation at the construction site of the new motel project in Split Lake. The task involved driving a 25 foot, 9.6 inch diameter steel “pile”, a hollow steel pipe, to bedrock using a crane operated pile driver. Once the pile was driven to refusal, the hammer (part of the crane apparatus) was lifted clear of the pile. The excess pile protruding from the ground was cut at ground level by a welder (Henry Dueck) using an acetylene torch. The length of the excess pile to be cut varied, depending on when bedrock or refusal was hit. At the time of the accident, the exposed piece of pile was 18 feet high. The weight of this excess pile was approximately 1,000 pounds. As the cut was nearing completion, the pile would be pushed by a co-worker to direct its fall. No physical means of securing the pile at the top was used to prevent the pile from toppling and to enable it to be laid down slowly. Nor was any physical means used to secure the bottom of the pile to prevent any kick back.

b) Profiles of the Main Parties:

i) Hugh Munro Construction Ltd.:

Hugh Munro Construction Ltd. is located at Hwy #207, approximately 1 kilometer north of Dugald road, east of Winnipeg. This location houses the companies head office, repair shop and equipment compound. Hugh Munro Construction Ltd. occupies 35,00 square feet of shop space. They employ approximately 150 people. The company has a branch office in Kenora, Ontario located on the Jones Road. This site is used as a home base and camp for any jobs within travelling distance.

Hugh Munro Construction has the capacity to perform a large variety of projects with a very extensive equipment list. Some of the projects Hugh Munro Construction Ltd. performs are dirt/earth moving, plowing voice frequency and

fibre optics cable for MTS and Hydro, building roads, snow removal and attending to train derailments. Hugh Munro Construction Ltd. has several crushing, drilling and blasting crews. Hugh Munro Construction Ltd. has very little experience in pile driving. (company profile Exhibit #2 p. 1.24)

ii) Ininew Project Management:

At the time of this incident, Ininew Project Management was owned by four (4) shareholders, including three (3) First Nation Bands and Gary Eirnarson, the CEO. He was the President and ran the day to operations of the company. Ininew had 12 –20 employees, mostly professionals providing engineering and architectural services.

iii) Henry Dueck:

Henry Dueck aged 61 years had worked for the pipeline industry for approximately 20 years as a certified welder. Dueck was self employed and worked for different companies on and off and was residing in Winnipeg. For the last four years, Dueck was employed by Hydra-Bore and Machine Ltd. where he performed maintenance welding and some line boring. On October 21st, 2001, Dueck was sub-contracted by Hugh Munro Construction Ltd. for the Split Lake Motel Construction Project for the purpose of cutting the steel piles at ground level. (Henry Dueck profile Exhibit #2 pp. 1.24 to 1.25)

c) The Accident:

Hugh Munro Construction Ltd. was contracted to perform pile installations and associated works including trimming of the piles near ground elevation after they had been driven to refusal. Work commenced on Monday, October 23, 2001. Six piles were driven to refusal and two piles were cut at ground level. On October 24, 2001 at approximately 9:15 am, Henry Dueck, a welder on contract with Hugh Munro Construction Ltd. was in the process of cutting his third pile, the first pile of the day, with an acetylene torch around the perimeter of the pile. He was lying prone on the ground while cutting. One assistant pushed on the pile to direct where the pile would fall. The cut pile, weighing approximately 1,000 pounds, fell in a direction in line with previously installed pilings, struck the cut pile, bounced up and struck Dueck on his right midsection.

Jack Braun, who was contracted by Ininew Project Management to perform the necessary survey for the pile installations, was the first worker to attend to Dueck. Braun asked Bruce Forbes, the crane operator on contract with Hugh Munro Construction Ltd., to comfort Dueck and Braun proceeded to call an ambulance and drive to the Nursing Station to get a doctor. Leon Keeper one of the assistants accompanied Braun. Braun and a Nurse from the Nursing Station drove back to the accident site and met the ambulance who had already arrived on site. From the time of the accident to the time the doctor and Braun arrived back to the site was approximately 10 minutes.

The doctor and ambulance attendants attempted to resuscitate Dueck. Dueck was transported to the Nursing Station and pronounced dead by the attending physician. (Exhibit #2 pp.1.25 to 1.26)

Testimony at the Inquiry:

Cindy Henning, of Manitoba Health and Labour, who compiled the Incident Investigation Report, testified as the first witness at the inquest. Her duties as Safety Health Officer were to enforce the Act, the duties thereunder and to provide education.

She testified there is a reporting procedure for commencement of construction projects, dependant on the size of the project. She was not certain of the criteria for such notification as notification comes from the Winnipeg office. She first received notice of this construction project after the accident of October 4th, 2001. If she had received prior notification she testified she would have reviewed any requests from the contractor and perhaps conducted a site inspection. However it is to be noted that she was the only officer based in Thompson and she was responsible for a geographic area stretching from Grand Rapids to Churchill. There is one other officer in the North located in The Pas who is responsible for the Flin Flon, the Pas and surrounding areas. It would have been difficult for her to travel to the construction site on a timely basis as a result of the enormous area she was responsible to cover.

No charges were laid under the legislation she is responsible to enforce as a result of this incident.

She was notified of the accident at 10:14 am of the morning of October 24, 2001. She had no difficulties investigating and seems to have received full cooperation of all parties. Ms. Henning issued the stop work order on October 25th, 2001 and did not rescind it until Hugh Munro Construction Ltd. satisfied her that they had developed a procedure to safely finish cutting the piles, some 6 days later. This was done by developing a procedure to secure the pile at the top and bottom to allow it to be lowered slowly.

She identified lack of knowledge and lack of clear lines of authority at the job site as significant contributing factors to this fatality.

She pointed out that subsequent to this incident, changes to the Workplace Safety and Health Act have been made which have expanded the responsibilities of contractors to the same level of employers.

Hugh Munro, CEO of Hugh Munro Construction Ltd. testified. He has been in the construction business for over 40 years. They have much experience in drilling and blasting, however this contract was unusual for the company in the

sense that they did not have a lot of experience in pile driving. The company had worked with Ininev Project Management previously, while putting in new roads both in Split Lake and Moose Lake. They had however done one other pile-driving job for Ininev in Split Lake on a housing development.

No inquiries were made to determine what procedure should be used to drive piles safely.

It was the position of Hugh Munro that Ininev was the contractor for the Motel project in question. Ininev paid Hugh Munro Construction Ltd. No discussions ever took place between Hugh Munro Construction Ltd. regarding safety.

Hugh Munro Construction Ltd. did and still does have a safety manual (Exhibit #2 p. 1.169). A pocket safety manual was given to Henry Dueck and Bruce Forbes (the crane operator) to read on the drive from Winnipeg to Split Lake. The company did and does employ a Health and Safety Officer. She was out of town at the time of this project start up and as a result was not asked to canvass safety procedures.

Hugh Munro contracted Bruce Forbes to do the pile driving at the motel site in Split Lake. He did not question Mr. Forbes' qualifications to do this work as "he'd done it all his life". Mr. Dueck had worked for the company for 40 years previously doing many contracts. Mr. Dueck was not questioned if he had cut piles before it was just assumed that he had.

Bruce Forbes, the crane, or dragline operator as it is sometimes referred to as, testified. He began operating a crane in 1959 and has owned his own business "Bruce Forbes Excavating" since 1966. He retired in 2000 and was doing this job to make some extra money and as a favour to Hugh Munro whom he has known all his life. Hugh Munro Construction Ltd. supplied the crane. Bruce Forbes did work as a contractor for the Province of Manitoba building bridges. While he was experienced in the driving piles, the "rest of the work" including the cutting of the piles was done by someone other than himself. This work would be performed when he was not at the job site. Further the piles that he had experience in driving were not pipes but rather "H-beams" and "Sheets". He had never driven a pipe before.

While he did glance through the safety manual given to him by the company, he did not see anything in it on pile driving.

He had worked accident free for 40 years until this fatality occurred. Despite his years of experience, he was not certified to operate the crane at the time of the accident, but he was at the time of the inquest.

He had never been responsible for safety on a job site during all his years in contracting for the province. No one talked to him about safety concerns or issues on this job site prior to the accident. There were no safety meetings. It was not clear to him who was the foreman on site. He knew that Mr. Dueck had

been a pipeline welder for 20 years, he assumed that Mr. Dueck knew how to do this work.

He was unsure who was in charge of the cutting. Ken Tait, whom he thought worked for Ininew would mark where the piles were to be cut as he had the elevations. Bruce Forbes was never given a written set of plans. He was not participating in the cutting procedure when the pile fell on Henry Dueck, but he was at the site when it happened. Also on site were Jack Braun, Leon Keeper, Abraham Beardy and of course Henry Dueck.

Gary Einarson, CEO of Ininew Project Management at the time of this incident, testified. He was the President and ran the day to operations of the company. Jack Braun worked for Ininew Project Management and was the only Ininew employee on site. He described Jack Braun as the project manager for Ininew responsible for onsite.

When asked who was Hugh Munro Construction Ltd.'s employer, Mr. Einarson answered "I would think Split Lake Construction, but I'm not sure."

Mr. Einarson also asserted that Jack Braun of Ininew was not in charge of the work site, as he would not have the expertise to do so. He was of the view that Hugh Munro Construction would have borne that responsibility.

He agreed with the suggestion that there was a lack of clear lines of responsibility of who was in charge of safety on the job site.

At the time of the incident Mr. Einarson agreed that Ininew would not have been required to ensure there was a safety plan in place. He also agreed with the assertion that changes to legislation subsequent to this fatality would require Ininew as a contractor to ensure one was in place.

Leon James Keeper, an employee of Split Lake Construction, testified. He was of the view that Jack Braun was the person on site with authority. It was Mr. Keeper's job to ensure that the piles were going into the ground "straight and level". He was also pushing over piles when they were being cut. He was just taking orders, mostly from Jack Braun and from Ken Tait who worked for Split Lake Construction. He did not recall any safety meetings on site, nor did he receive any safety training. He testified that "We hesitated on the last one (referring to pushing over the pile in question), it was too big"

James Abraham Beardy, who was an employee of Split Lake Construction, testified. Ken Tait dropped him off to the job site that morning and then left. He believed he was to take instructions from Jack Braun. He had never worked on piles before, his training was in carpentry and plumbing. He was 10 to 15 feet away from the accident site when the fatal injuries occurred.

Jack Braun, the current CEO of Ininew, testified on the second day of the inquest. He assumed the position of CEO from Gary Einarson in March of 2002.

He was employed as a Project Supervisor with the company prior to becoming CEO. He is a certified engineering technologist.

He testified that a lot of the project details for the Motel flowed through himself. Initially Ininew was acting as architects for this project and would become the project manager when the project started, by October 6th.

The working plans dated October 3rd, 2001, which were being used, were unsealed, which he admitted was not proper procedure. An engineer did not certify plans until October 26th, 2001.

He testified that Hugh Munro Construction Ltd. had performed piling work for 15 homes in Split Lake sometime earlier and that their equipment was still onsite. Mr. Braun was the project superintendent on the housing project, which had been contracted out to Split Lake Construction. He defined a superintendent as a position requiring attendance onsite fulltime whereas his position as project manager could be done from a separate location.

He did not investigate Hugh Munro Construction's experience in pile driving and that company did not raise any concerns over their ability to do the job. He did not raise any safety discussions. No safety meetings were held.

He testified there were difficulties in gauging the bedrock depth, which led to difficulties in determining how long the piles should be cut before being driven into the ground. The particular pile involved in the fatal accident, hit bedrock earlier than any of the others, leaving it exposed at a significantly higher level above ground than the other piles that had been driven.

He testified that Ininew Project Management is developing a safety manual.

It was apparent at the inquest, that Mr. Braun had been badly shaken by the death of Henry Dueck.

Nelson Spence, currently a councillor for Tataskweyak Cree Nation, testified for the Band and on behalf of Chief Norman Flett. He was a councillor at the time of the Motel project as well. The Band (TCN) was one of the First Nation shareholders on Ininew Project Management and the owner of Split Lake Construction. In his view the project manager (Ininew) was to oversee the project and construction regarding the day to day operations. When asked who was responsible to ensure motel site was safe for workers, he answered that it was not really discussed in detail.

He testified that in his view the construction start was rushed because of need to start to secure INAC funding. This impacted negatively on planning.

Conclusions:

As is often the case there was a series of events, which led to the accident, rather than one specific occurrence.

It appears that there was a lack of communication and planning between different parties to the project. This is evidenced by the lack of a written contract between Ininew Project Management, Hugh Munro Construction Ltd. and Split Lake Construction, on what was a significant project. No one person on the job site knew who was responsible for safety or really in charge.

There was a lack of training amongst the persons working on pile installation and cutting. Henry Dueck was not experienced. Bruce Forbes was not experienced. Hugh Munro Construction did not have significant experience. People on site did not know what safe procedures needed to be followed.

There was a general lack of consideration of safety issues. No one ever took the time to question or consider whether they were using a safe practice.

The evidence presented at the inquest is consistent with these conclusions.

Recommendations:

Workplace Safety and Health, immediately commenced an investigation determine the reason for the fatality and to implement specific measures to prevent any reoccurrence in the immediate future at that work site. A stop work order was issued on October 25th and was not rescinded until October 30th, 2001, when the required remedial steps had been taken. Crown counsel for the Director of Workplace Safety and Health has made three (3) recommendations in her very thorough, written submission to this inquest. The recommendations are found in Exhibit 10 p.13. This Inquest concurs with those recommendations, which are as follows:

Recommendation #1

That the Workplace Safety and Health regulations review include a provision addressing pile-driving operation.

Recommendation #2

That Workplace Safety and Health Division develop a Safe Work bulletin on pile driver safety procedures.

Recommendation #3

That Hugh Munro Construction Ltd. develop hiring policies to ensure workers are trained and supervised in proper safety procedures for the work they are hired for.

In addition this inquest makes the following recommendation:

Recommendation #4

That Ininew Project Management develop a comprehensive safety protocol and complete work on their safety manual.

Signed at the City of Thompson, in the Province of Manitoba this 21st day of April, 2004.

Original signed by Judge M.P. Thompson

Murray P. Thompson
Provincial Judge

Copies to:

Chief Medical Examiner (2)

His Honour Chief Judge Raymond Wyant

Deputy Attorney General Bruce MacFarlane

Mr. David Gray, for the Crown

Ms. Sharon Reid, for The Director of Workplace Safety and Health

Mr. Gavin Wood, for Ininew Project Management

Mr. H. Munro, Hugh Munro Construction Ltd.

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The Fatality Inquiries Act

Schedule Attached to Provincial Judges' Report

Respecting the death of _____ Henry Dueck _____

1. Letter to from The Chief Medical Examiner to The Honourable Chief Judge Raymond Wyant, dated November 13th, 2002 directing and Inquest be held.
2. Binder containing Workplace Safety and Health Division Incident Investigation Report and related documentation.
3. Booklet of photographs of construction site and deceased.
4. Booklet of Workplace Safety and Health Regulations - Blue.
5. Booklet of Workplace Safety and Health Regulations - Yellow.
6. Workplace Safety and Health Review Project Booklet of proposed regulations.
7. Resume of Shelly Plett – Health and Safety Officer for Hugh Munro Construction Ltd.
8. Construction site plans for Motel Project.
9. Aboriginal Strategies – project financial ledger.
10. Submission of the Government of Manitoba – Inquest into the Death of Henry Dueck.
11. Report of the Review Committee on the Public Consultations into the Workplace Safety and Health Injury prevention Strategy – dated January, 2002.