SCOTT SILVA ON FAILED FED ECONOMICS

The reason that the Fed policy has failed to stimulate the US economy is that monetary policy cannot stimulate demand. And despite what the Keynesians in charge of Washington believe, government spending does not create demand (except, or course for defence spending). Even if I accept the Keynesian approach, then also I must believe that the US is in JMK's liquidity trap, that eerie nether region of extended ultra-low interest rates in which no amount of additional money produces any increase in output. Uncle Ben must secretly know that QE3 would ultimately fail, as did QE1 and QE2. And so too, his legacy as an effective Fed Chairman would never materialize. One example of the failure of Washington central planning policy is the unemployment rate, which has now reached 15% (U-6 rate) for July. We have not had so many out-of-work citizens since the 1930's. If defence funding sequestration occurs, there will be another 700,000 or so joining the jobless ranks. Despite what some may say, the private sector is not "doing fine".

DID YOU KNOW THAT WORKERS CAN GET PROSECUTED?

Section 19 provides that every worker shall take all practicable step to prevent serious harm both to himself or herself and at the same time shall ensure that no harm comes to any fellow worker. This means that if one worker sees another worker about to suffer an accident then there is obligation to try and rescue before the accident takes place. Workers can get prosecuted in the same manner as employers and we are aware of at least 20 cases with fines of up to $24,000. The new scale of fines relating to employers will also apply to workers and so a typical fine is likely to be between $25k and $50k. All workers need to know that in the first instance we will defend the client ie the employer. But then in the second case we will defend the worker if the client so authorises. Workers must be careful in any discussions with OSH as they could easily incriminate themselves. The law provides that no person is required to give information that could incriminate themselves or the employer. Section 31 (subsection 6).

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SUMMIT SYSTEMS LIMITED

News & views from Summit
Special Edition - Sept 2012

Designed Defence – ARCI / ACC and OSH Legislation

In recent articles we discussed the Degree of Control, the Duty of Care and Due Diligence. Now we are going to offer some articles about how to defend your company against a hefty fine when you consider and can prove that you took all practicable steps. First of all, we are not in the business of encouraging companies to flaunt the law and let it be known that on three occasions in the last ten years we actually reported three companies (not clients) that were acting in a dangerous manner that could easily have resulted in a death. Secondly, we are not encouraging you to try to beat the Department of Labour OSH, if you are obviously in the wrong. Our articles will simply show that it is possible to mount a legitimate defence and win. If however in the process of preparing a winning case, you wish to take the advice of your lawyers and barristers above our advice then we will not give any assurance of success, but just remember that on two occasions we were engaged to help prepare legal defences for top lawyers based in Sydney.

One of the most memorable cases involved a large house removal company in Auckland. The worker had been clearly instructed verbally and in writing not to use any fuel to make the bonfires go faster when burning scraps at the end of the relocation process. The bonfires of course had to meet city council bylaws for rubbish fires. In this case, the unfortunate worker was in a hurry to get home and it was nearly 5pm and he thought that the only recourse was to use some petrol and get the fire going really fast. So he went to the truck and grabbed a jerry can and then proceeded to throw the contents of the jerry can from a distance onto the smouldering fire. He certainly did get a reaction and there was a huge blaze but it blew back to the can that he was holding and the can then exploded. His private parts were either blown off or badly damaged. He had a series of operations over many months to rebuild his missing bits and pieces. ACC loaded the normal levy of $49,000 by another $49,000. This was 10-12 years ago so think about $200k plus $200k. The company manager was so upset that he could not think of what to do and he rang us to seek help.

In the first case we advised to appeal to ACC against its decision and we prepared a brief (series of papers as legal evidence). ACC rejected the case but in the process we discovered that the Minister of ACC had the power to treat an unusual situation as an "abnormal event". We then asked the Minister to treat this case as an abnormal event. He declined and then we suggested that the client get legal

advice from a barrister. He engaged a prominent law firm in Auckland to contact

me and seek my agreement to act as an expert witness in Court against the Crown. Firstly I was not keen to go to Court against a Minister of the Crown and I asked my own lawyer (a former President of the law Society) if I could respectfully decline. I assured him that I was not well and that I did not want to have the stress involved. To my horror, my lawyer told me that I was legally obliged to go to Court against the Minister. The law firm then asked me to draft a case against ACC so that they could go to Court and win. I then prepared a lengthy document outlining the case and submitted it for presentation to the Court. On the due date the matter was heard by the Court and some weeks later a formal decision was reached. The Judge made a ruling based on seven factors that he decided to consider. Two of the factors went in favour of the Minister and five of them went in favour of the evidence that I had prepared for the Court. If you happen to think that ARCI/ACC officials actually like me, then think again. The law firm then went for maximum publicity to gain more business, but made sure that I was not mentioned or implied that my involvement was just an incidental event.

DEPT OF LABOUR CASE IN PORIRUA DISTRICT COURT

This case was about 15 years ago and involved one of the largest shopping firms in Wellington City with seven large stores. The whole case evolved around a toddler of 3 years of age who was in the shop at the time when a forkhoist was in operation to replenish shelves.

This was a most difficult case to win and it came down to a tight decision of the Judge taking account of a wide range of factors. The shopping firm with many sites decided to get the biggest and best law firm that they could in Wellington. We then were contacted by one of their solicitors and he wanted to get to know about the Health and Safety Act as they did not have any good knowledge of it. He flew to Christchurch for meetings with me and then we prepared a case.

The normal practice was for the shops to use forkhoists only when public were not present but in extreme cases a forkhoist would be engaged to reload serious gaps in the range of products for sale. The toddler had two toes run over by the forkhoist and the DoL inspector had obviously encouraged the mother to seek reparations.

When we investigated all of the details it became obvious that the company had used all due diligence and that they had procedures to clear members of the public from the area where they were working. It also became obvious that a forkhoist was necessary to replenish the shelves and that other methods would not work.

The company staff were reloading the area where the ice cream and cones were and the mother and her child came to watch. They tried to clear the mother and child but the child did not want to accept the decision. They therefore went to another row or avenue to do reloading there but the child and mother followed them. They then went to another row or avenue and the child and mother followed them yet again. They then said to the child and mother "do not follow us and leave us alone". They then went to the end of the rows and back peddled all the way around to the first row where they had tried to work before the interference.

But now they discovered that the mother and child had tracked them down and were once again watching them with earnest and the little child came right up to the forkhoist as if to say "I have caught you". The accident then happened.

The Judge wanted to know about the other compliance standards of the supermarket company and to learn if they knew about and had implemented the Health and Safety Act and the Fire Regulations and the Building Act. The Judge also wanted to know if any other method of replenishing the shelves could have been successfully used in the situation and we had to provide evidence on the practicality of ladders or platforms or other methods. When satisfied of the observances and of the facts of the case plus the precautions taken, the prosecution was dismissed.

You need to understand that if the same case were heard today then the company may not have been exonerated as another Judge may have held that no reloading by forkhoists should take place during public hours under any circumstances. Yet again, the company paid our bill and put the whole matter down to what they considered to be their very good performance and of course, some good luck.

HUGE FINE IN CHRISTCHURCH

A Christchurch company has been fined $125,000 after an employee lost his arm when it became trapped for several hours in a tree-shredding machine. Canterbury Greenwaste Processors and one of its directors, Luke Charles Kepple, were convicted in the Christchurch District Court.

NEWSLETTERS FOR ALL SITES

Clients should ask for extra copies of our newsletters where they have several sites that they operate from.