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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

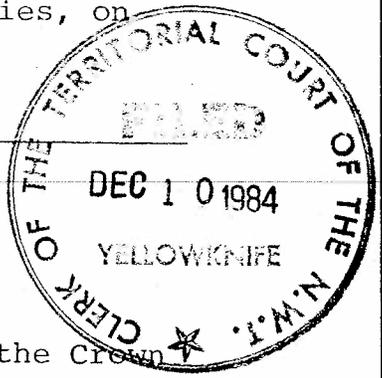
VS

NORTHERN CONSTRUCTION COMPANY LTD. and  
LORAM INTERNATIONAL LTD.

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Transcript of the Oral Reasons for Sentence  
Delivered by His Honour Judge T. B. Davis, sitting  
at Yellowknife in the Northwest Territories, on  
Wednesday, November 28th, A.D., 1984.

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APPEARANCES:

MR. G. BICKERT: Counsel for the Crown  
MR. A. PANTAGES: Counsel for the Defence

1 THE COURT: I felt we could complete this matter today  
2 because the submissions were such that I feel the matter  
3 has been covered sufficiently that I have a fairly good  
4 idea of what had happened relating to the charge against  
5 both Northern Construction Company Limited and Loram  
6 International Limited being charged that they did between  
7 the 1st day of August, 1982, and the 26th day of August,  
8 1982, unlawfully fail to maintain the establishment at  
9 Norman Wells in such a way that it was safe for  
10 employees and therefore violated Section 4(a) of the  
11 Northwest Territories Safety Ordinance. The agreed state-  
12 ment of facts that have been submitted, I will receive in  
13 substantial detail, as filed, and acknowledge the  
14 condition of the plant, the fact that two companies were  
15 in a joint operation, that it was a crushing machine that  
16 was being operated in which one of the employees who stepped  
17 on a conveyor belt had been pulled into the machine and as  
18 a result of the injuries died shortly thereafter after being  
19 taken to the hospital in Edmonton.

20 The agreed statement of facts also has been accepted  
21 by both Crown and Defence counsel to the extent that the  
22 company is acknowledging that when the belt was activated  
23 it was being activated by an employee. The actions were  
24 such that there was sufficient negligence in the operation  
25 and maintenance by the company that I was prepared to  
26 accept the plea of guilty and enter a conviction on the  
27 charge as filed.

1           The employer had an arrangement whereby the  
2 equipment would be oiled and greased on a daily basis and  
3 although the employees were instructed not to step on the  
4 conveyor belts, the employee who had been oiling the  
5 machine at the time did disobey the directions of the  
6 employer.   The operator in the power house for the  
7 equipment had the conveyor belt continue to move even  
8 though the employee had unfortunately been on the conveyor  
9 belt and was partially crushed going through the piece of  
10 equipment, although it had been expected by the persons  
11 on site that the belt would only have been moved a short  
12 distance so as to grease another portion of it.

13           With regard to Conveyor belts and heavy equipment  
14 operations, I have had an opportunity of just glancing at  
15 and reviewing one of the brochures put out by the American  
16 Society of Mechanical Engineers whereby the Association  
17 recommends that all companies have an accident prevention  
18 program. I am satisfied the conveyor belts, according  
19 to those suggested concerns, are in themselves given special  
20 emphasis by the Society, because they are inherently  
21 dangerous since they are moving parts in equipment.

22           I have to acknowledge, however, that the accused  
23 companies had a safety officer on site and had a safety  
24 officer at their head office at the time that this offence  
25 occurred. The on-site safety officer had received some  
26 suggestions or had some discussion with the Government  
27 inspector and was at the point of making recommendations to

1 his supervisors and the management of the local operation  
2 so that the company was in the process of studying the  
3 suggestions being put forward even though the local  
4 controlling operator did not see that some of the  
5 recommendations would be required or would be necessary.

6 The brochure by the mechanical engineers does  
7 say that there are various forms of protection available  
8 including coverings, some barricades, remote controls and  
9 emergency stop controls, but that today is not for the court  
10 to determine as to what should or should not have been in  
11 effect or in place on the equipment because it is  
12 acknowledged that the equipment was operated and was in  
13 a situation where injury could occur.

14 There had been some discussions a short time before  
15 the accident occurred which took place within a matter of  
16 a couple of weeks after setting the equipment up in Norman  
17 Wells in the Northwest Territories. As I said, I believe  
18 the company was in the process then of studying its safety  
19 position when this unfortunate accident occurred.

20 The maximum penalty under the Statute is \$5,000 and  
21 as pointed out by Crown and Defence counsel, that ordinarily  
22 would be reserved for the most extreme indifference of the  
23 company in its care and concern for safety matters so that  
24 the Crown in this instance has properly and validly  
25 indicated that it is not suggesting that the company was in  
26 the most extreme situation and therefore, is not recommending  
27 maximum penalty to be imposed even though, since 1982, when

1 this offence occurred, the Government of the Northwest  
2 Territories, has increased the maximum penalty substantially  
3 for this same type of offence.

4 The court must then try and determine what would be  
5 an appropriate penalty to be imposed under the circumstances.  
6 Defence counsel has submitted a number of letters which  
7 indicate that the company or companies had participated in  
8 the development of community projects in Norman Wells both  
9 by donations of work and by donations of money, and that they  
10 generally have an attitude of concern for the communities  
11 in which they operate.

12 There was and is no adverse evidence submitted  
13 to the court either of the defendant's reputation or their  
14 indifference to the concerns of the public or the employees.  
15 Therefore, I must presume that the company is such  
16 that it would be deserving of the ordinary considerations  
17 by a court in sentencing any corporate defendant in this  
18 instance.

19 The general principles of sentencing, of course,  
20 are to ensure that the law is enforced so that the public  
21 is protected and that a penalty is imposed to the extent  
22 that both the company and others will be deterred from  
23 committing similar offences. The ability and general  
24 status of the defendant or accused companies can also be  
25 considered by the court so the court has an  
26 opportunity to determine the likelihood of the company  
27 acknowledging the effect of penalty to be imposed. These

1 companies, because there is no adverse evidence before the  
2 court, are entitled to all the considerations of any  
3 defendant appearing before the court.

4 It is the responsibility of the company to ensure  
5 that the employees obey the directions and safety regulations  
6 because the company is responsible for the acts of its  
7 employees. Although under civil law both employees and the  
8 company can be held responsible, under the Safety Standards  
9 Ordinance the company itself in this instance is the  
10 accused or defendant and is to accept the responsibility by  
11 suffering the penalty to be imposed.

12 Because of what I have said, and because I feel  
13 that although the matter is serious in that an employee  
14 received very serious injuries, and subsequently died, it is  
15 not the maximum situation, or a situation requiring a  
16 maximum penalty, and I would have considered a penalty in  
17 the vicinity of \$2000 or \$2500 if the defendant had  
18 been a single company. That total would still be an  
19 appropriate penalty to be imposed even though there were  
20 two companies operating in a joint venture.

21 As it stands, therefore, since there are two  
22 companies, I believe that the court in this instance must  
23 divide the penalty between two companies and  
24 I will hear counsel, if there is any objection to that being  
25 considered by the court today. Is there objection to me  
26 imposing fines on the individual companies?

27 MR. PANTAGES: I understand that it is basically one company.

1 Let me put it this way. My understanding is it is a  
2 corporate entity, but it is a partnership on the venture.  
3 That is, it is a joint venture so basically it is one  
4 person that is responsible.

5 THE COURT: If it is listed as a partnership under the  
6 Northwest Territorial Societies or Companies Register then it  
7 certainly could be possible to impose a penalty on the  
8 partnership as such. Being a joint venture that ordinarily  
9 is done, but I wouldn't know that from the heading of the  
10 matter today.

11 MR. PANTAGES: My understanding legally is it is basically  
12 one single person that is before you today.

13 THE COURT: Alright.

14 MR. BICKERT: I don't wish to complicate the matter, but I  
15 thought the reverse was true, that in fact they were  
16 individual entities, but by contract between them they had  
17 joined together to conduct this operation. I took it  
18 that they are two separate defendants, and that is why  
19 they have been named as such and no objection has been  
20 taken to that.

21 THE COURT: You don't have them listed as a Partnership. Ordinarily  
22 partnerships are listed, two or more partners operating  
23 under a partnership or as affirmed by the name, and I am  
24 asking for submissions because I want to be sure that if  
25 there is a penalty imposed, it can be in fact enforced.

26 MR. BICKERT: Subject to objection by my friend, I would  
27 prefer penalty be imposed against each of them.

1 THE COURT: Even though it is a joint venture I presume  
2 that is no major problem with regard to the defendants as  
3 such?

4 MR. PANTAGES: Yes, I don't see any problem with respect  
5 to enforcement of it, Your Honour.

6 THE COURT: Alright, thank you. Having heard then that  
7 there may be a joint relationship and even a partnership  
8 set up for the purposes of this joint relationship, but  
9 still listed as individual defendants on the charge, and  
10 since there is no major objection to me assessing  
11 indivudally the two companies, I am going to divide the  
12 amount of approximately \$2500 in total fine up between  
13 the two, and therefore, I will impose a fine in the amount  
14 of \$1200 against each of the corporate defendants as such.  
15 I don't want the lesser amount in the sum of \$1200 to  
16 appear that the court is being indifferent about the total  
17 because effectively what I am suggesting is that the  
18 total fine is about \$2400 and part way over the scale  
19 between a suspended sentence and a fine of \$5000 which  
20 would have been in the most extreme situation.

21 MR. PANTAGES: I am not sure if I need to ask for time to  
22 pay, but may I ask for time to have a cheque cleared and  
23 I am always reluctant to suggest a time when we are  
24 dealing with Her Majesty's mails.

25 THE COURT: Well, it is a little bit awkward as well  
26 to possibly have mail come to the north because of the  
27 Christmas season. How long do you think you might wish?

1 MR. PANTAGES: I intend to instruct my client to handle  
2 this matter expeditiously.

3 THE COURT: A couple of months to be assured?

4 MR. BICKERT: Well, as Your Honour knows, you have no  
5 jurisdiction to grant time to pay for a corporation, but  
6 basically what we are doing as a courtesy is that distress  
7 will not follow immediately upon entry of the judgment  
8 if my friend is indicating in open court that he can have  
9 the payment made in a certain time. I can certainly assist  
10 in making sure no distress will occur immediately.

11 MR. PANTAGES: Alright.

12 THE COURT: Shall we just leave it on the assumption that  
13 it will be within a reasonable time?

14 MR. BICKERT: I think the sentence the court has to impose  
15 is a fine of \$2400, in default, distress.

16 THE COURT: Alright. Then as I have said, the total  
17 being \$2400, that is \$1200 with regard to each company,  
18 or in default thereof, distress against the assets of the  
19 company.

20 MR. PANTAGES: Thank you, Your Honour.

21 MR. BICKERT: Thank you, sir.

22 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)  
23

24 Certified a correct transcript,  
25

26 *Laurie Ann Young*  
27 Laurie Ann Young  
Court Reporter