



Royal Commission on the Pike River Coal Mine Tragedy
Te Komihana a te Karauna mōte Parekura Ana Waro o te Awa o Pike

UNDER

THE COMMISSIONS OF INQUIRY ACT 1908

IN THE MATTER OF

**THE ROYAL COMMISSION ON THE PIKE RIVER COAL
MINE TRAGEDY**

Before:

The Honourable Justice G K Panckhurst
Judge of the High Court of New Zealand

Commissioner D R Henry

Commissioner S L Bell

Commissioner for Mine Safety and Health, Queensland

Appearances:

K Beaton, S Mount and J Wilding as Counsel Assisting

S Moore SC, K Anderson and K Lummis for the New Zealand Police

N Davidson QC, R Raymond and J Mills for the Families of the Deceased

S Shortall, D MacKenzie, R Schmidt-McCleave and P Radich for certain
managers, directors and officers of Pike River Coal Limited (in
receivership)

C Stevens and A Holloway for Solid Energy New Zealand

K McDonald QC, C Mander, A Williams and A Boadita-Cormican for the
Department of Labour, Department of Conservation, Ministry of Economic
Development and Ministry for the Environment

G Nicholson and S Steed for McConnell Dowell Constructors

G Gallaway, J Forsey and E Whiteside for NZ Mines Rescue Service

N Hampton QC and R Anderson for Amalgamated Engineering, Printing
and Manufacturing Union Inc

J Haigh QC and B Smith for Douglas White

J Rapley for Neville Rockhouse

TRANSCRIPT OF PHASE THREE HEARING
15 NOVEMBER 2011 AT GREYMOUTH

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**COMMISSION RESUMES ON TUESDAY 15 NOVEMBER 2011
AT 10.01 AM**

MICHAEL KERRY FIRMIN (RE-SWORN)

CROSS-EXAMINATION: MR NICHOLSON

Q. Good morning Mr Firmin. Just so you understand I'm counsel for McConnell Dowell?

A. Okay.

Q. I'd just like to ask you some questions about a couple of topics that my learned friend Mr Wilding went through with you yesterday. Now Mr Firmin the first thing I'd like to talk to you about is the, the rock bolting into the main drift tunnel back in 2007 when you were the inspector responsible for the department and directions with the mine. And you might remember that paragraphs 34 to 45 of your brief of evidence, the one you did on the 19th of October, you commented there on some of the challenges that were being faced in the, in the tunnel at that stage. Do you remember that?

A. Yes, the rock fault tests.

Q. Beg your pardon?

A. It started with the rock fault, fault tests.

Q. Yes.

A. Yep.

Q. And we also had Mr Wilding yesterday, just for the record, it was pages 2846 and 2847 of the transcript where he was asking you about these issues. Now would you accept that it was prudent for McConnell Dowell to be checking the rock faults to make sure that they were taking?

A. Yes.

Q. And McConnell Dowell had URS as the geotech consultants who were helping with that process, didn't they?

A. Yes.

Q. And you referred in your evidence to a 10% failure rate with the rock faults and having some concerns about that?

A. Yes.

Q. The failure was primarily in the first 30 metres of the tunnel, wasn't it?

A. It could've been I, I remember I got the rock bolt torque tests and it was the first – I'm not sure, yeah, could be. Have you got that evidence have you?

Q. Yes, well I'll take you to a document in a moment, but do you remember having discussions with Pike and with McConnell Dowell and URS about the fact that the ground conditions when they first started the tunnel were way worse than they were expecting?

A. Yes.

Q. That meant that the rock bolts that they were initially putting in weren't strong enough because the ground was just disintegrating around them, isn't that right?

A. I think, you know, it's the bond between the rock and the bolt and the polyester resin.

Q. That's right and the resin was just sort of disappearing out into the fissures and the rock because the rock was too soft, wasn't it?

A. I think that would be one, one possibility, yeah.

Q. And so McConnell Dowell actually made a whole series of changes to take account of that, didn't they?

A. They did, yes.

Q. And so they changed the grouted bars and put in 300% extra grouting for each rock bolt, didn't they?

A. The details of what they did – there was quite a, quite a big list and they sent me a letter with, with a comprehensive appraisal of how they changed their procedures and the amount of chemicals et cetera to make sure that those rock bolts held.

Q. And you were satisfied that the steps that they took were prudent and sensible, weren't they?

A. Excellent, it was very good geotechnical work.

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Q. Perhaps if I refer you to a document and Ms Basher this is going to be DOL3000070010.

WITNESS REFERRED TO DOCUMENT DOL3000070010

Q. Sir, perhaps this is taking a while for Ms Basher, shall I move on to some other questions and I can come back to this document once it's available. All right, Mr Firmin, we'll come back to the rock bolting. I'd just like to turn now to the question of the refuge chamber in the main drift tunnel. Now you talk about that at paragraphs 50 to 70 of your witness statement, can you remember that?

A. Yes.

Q. And then yesterday, Mr Wilding asked you some questions about it, and just for the record that was at pages 2854 to 2857 of the transcript. Do you remember that?

A. Yes.

Q. Now you'd accept, I think, wouldn't you that there was no need for a refuge station early on in the development of the tunnel, was there?

A. How do you mean by "earlier on"?

Q. I mean for the first few hundred metres?

A. Yes. Generally I would think 750 metres.

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Q. Now under the Health and Safety in Employment Act and the Underground Mining Regulations it's up to the duty holders to decide what controls they put in place to protect against risks, isn't it?

A. Yes, their responsibility.

Q. And there's no regulations or code of practice in New Zealand or even any guidelines about when or where to put in a refuge chamber underground?

A. That's true.

Q. So ultimately the location was really a matter for Pike River Coal, wasn't it?

A. Yes but then again I am the regulator to oversee.

Q. And that's why you wanted to talk to Mr Whittall about where it was ultimately going to be located. Is that right?

A. At that stage if I couldn't get an agreement I was going to talk to Peter Whittall but I think Kobus said, "Look, I'll get back to you."

- Q. Now Pike River and McConnell Dowell actually completed a risk assessment around the need for a refuge chamber, didn't they?
- A. Yes.
- Q. And that was them taking the prudent step considering the risks and then making the decision as they saw it just like the Health and Safety in Employment Act requires?
- A. From my memory they made the decision, the risk assessment that they didn't need one, that you could walk out.
- Q. Now you first raised this issue with them I think during a visit on the 2nd of May 2007. Is that right?
- A. I'll go to my notes or I'm quite happy with that, if you like, or...
- Q. No, that's from your witness statement so?
- A. Okay, well I'll just, shall I check that, the date, is that important? The 2nd of May, yes, that's right.
- Q. And by the 19th of September, which is only some four months later you were told that actually the changeover station had been installed, correct?
- A. Yes, it was quite – it was July, wasn't it, I got a letter?
- Q. No, September I think, the 19th of September?
- A. September was it, okay.
- Q. And in that intervening period you had a range of interactions with Pike River and McConnell Dowell, didn't you, about this issue?
- A. Yes.
- Q. So there were lots of emails going backwards and forwards?
- A. Lots of emails, yeah, trying to show that it was a practical step.
- Q. And in that interim period McConnell Dowell and Pike took a range of interim measures, didn't they, just to make sure that people were going to be safe underground?
- A. I think they just went with the, that they could walk out with self contained self rescuers which they had personally on their belts.
- Q. Well they changed to self-rescuers, didn't they, so that they got 90 minute units which had much longer capacity?
- A. No, they only had those in the exchange chamber.

Q. Well Ms Basher are you up to documents now? Can we go to DOL300008012?

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WITNESS REFERRED TO DOCUMENT DOL300008012

Q. And if you can go down Ms Basher to the bottom of the /1 page and then also to the top of the /2, just highlight from the second to last line of the first page. I think Mr Firmin you can see that this is an email from Kobus Louw who was Pike's mine manager to you on the 1st of August 2007, is that correct?

A. Yes.

Q. So Ms Basher are you going to highlight from the – sorry and this is Mr Louw telling you what some current actions they were doing and you see there the third bullet point, purchasing 90 minute self-rescue units?

A. Yes I'm a wee bit unsure how they were used. Those 90 minute ones are quite a big self-rescuer, you wouldn't wear them on your belt.

Q. Now perhaps if we go back to the question of the rock bolts and Ms Basher can we now have the document I'd asked for initially which is DOL3000070010?

WITNESS REFERRED TO DOCUMENT DOL3000070010

Q. Mr Firmin, you'll see that this is a letter dated 2 April 2007 addressed to you and if you can take it from me at page 2 it demonstrates that it was from Mr Whittall?

A. Yes.

Q. And you'll see that at paragraph 1 it references an attachment to the letter under the reference NTE227?

A. Yes.

Q. And Ms Basher if you please go to the /3 page and can you start by please highlighting paragraph 1. So Mr Firmin, this is the attachment that was being referred to by Mr Whittall in his letter and it's a letter to Les McCracken of Pike River Coal and it's from McConnell Dowell and you see there in paragraph 1 it says, "URS have reviewed the test results and have in fact been involved with the testing and bolt replacement." And it's just confirming what you knew isn't it that

competent professionals were actually assessing the situation with the rock bolts and making decisions about them?

A. Yes, this is very good.

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Q. And if you look down to the fourth line of that paragraph, "The other important issue is that all failed bolts located are replaced and a failed bolt has its head destroyed so that they cannot be used in the future." So you'd accept that was a sensible and prudent thing for them to be doing, wasn't it?

A. Yes.

Q. And you were actually involved in the process of working out how they were going to do that testing, weren't you?

A. I'm not, no, I'm not sure what you mean there.

Q. Well if you look at paragraph 2, "Our test procedure has been forwarded to yourselves recently." Would that be to you or to another coal mines' inspector?

A. I'm not, I'm not 100% sure. I could have seen that document.

Q. And Ms Basher, if we could highlight paragraph 4 please? Once the ground started to improve, Mr Firmin, the performance of the rock bolts also got a whole lot better, didn't it?

A. Yes, yeah, I agree.

Q. And if you have a look at just at the last line of that paragraph 4, it says that the bolt failure rate since change 2000. That's a typo there, it says 200, sorry change 200, my mistake, is 3.7% and that was far better, wasn't it?

A. Yes.

Q. Ms Basher, if you could go to the /4 of the same document and just highlight from line 5? The sentence that starts from, "December," onwards. So you see there, Mr Firmin in paragraph 6, Mr Whittall was telling you, passing on information from McConnell Dowell about the range of changes that they'd made including a larger diameter resin cartridge and getting more resin in there, changed drill bits, changed bolts and changed nuts. Do you accept that?

A. Yes.

Q. And again that was all prudent steps for McConnell Dowell to be taking to actually make sure that the rock bolts were working properly?

A. Yes.

Q. Finally for this document, Ms Basher, if you can highlight paragraph 7 please? You were also being told weren't you Mr Firmin that URS, the geotech consultants, they were confirming support as the tunnel advanced?

A. Yes.

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Q. Is it fair to say that all this information was giving you a fair degree of comfort that things were being managed appropriately underground?

A. Yes.

Q. Now, do you remember yesterday that Mr Wilding asked you about the need for a safety management plan during the tunnelling works?

A. Yes.

Q. And for the record, that was at pages 2868 to 2869 of the transcript. Perhaps it would be easiest if we just briefly bring it up, Ms Basher, document DOL300070217? This is a document Mr Firmin, I think my learned friend Mr Wilding showed you yesterday, a letter from Bill Taylor?

WITNESS REFERRED TO DOCUMENT DOL300070217

A. Yes.

Q. And do you see there in paragraph 3 in the middle, he's talking about the need for a safety management plan to be produced?

A. Yes.

Q. To your knowledge, a safety management plan was actually prepared, wasn't it?

A. I had a lot – we received a lot of construction execution plans, but not specifically that I can remember a overall safety management, Hazards safety management plan.

Q. Well there was overall project execution plan that effectively fulfilled that function, wasn't there?

- A. I'm sure there was – I'm not sure if I saw it. I saw part of the geotechnical report when I first asked for that.
- Q. Because actually McConnell Dowell and Pike did a major risk assessment at the start involving consultants in order to assess all the risk and create a plan for exactly that purpose, didn't they?
- A. When I first visited the site and I asked for some material, and part of that looked like it came out of a bigger safety management plan. I haven't seen that plan that I can recall.
- Q. Have you been reading the evidence of the other participants for the hearings of this Royal Commission, Mr Firmin?
- A. Most of them, yeah.
- Q. Do you remember reading the evidence of a Mr Edwards of McConnell Dowell in Phase One?
- A. Joe Edwards, yes.
- Q. Yes. And in that evidence which for the record is MCD001, he talked at paragraphs 29 and 30 about McConnell Dowell having a project execution plan, didn't he?

WITNESS REFERRED TO DOCUMENT MCD001

- A. I'll take your word for it, yeah, I can't –
- Q. Right, okay, well you don't remember it now?
- A. No, I don't know.
- Q. Mr Firmin, would you say that as a coal mines inspector working for the Department of Labour, is your approach consistent with what general warranted inspectors do in non-coal mine workplaces?
- A. We'd have a similar approach for a different workplace. Every inspector tries to work within the framework of the policy in the Department of Labour.
- Q. And would you agree that it's the Department of Labour's policy generally, not just in relation to coal mines that you don't have to use an enforcement tool, one of the powers that Mr Wilding was speaking with you about yesterday, every single time you see something in a workplace that isn't quite right?

A. Yes, our policy allows where you can get the people that you're working with to comply with issues that you can write what's called a negotiated letter.

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Q. And would you agree with me that sometimes people in workplaces will make mistakes, but it doesn't necessarily mean that the systems or the controls in the workplace are the problem?

A. Yes, it's a, I like to think of it as a partnership that you can get in there and talk with people and get beneath a certain level and they trust you then yeah, it's a partnership to try and identify hazards et cetera.

Q. And yesterday you were talking about the Braithwaite triangle was it?

A. Yes that's right.

Q. Yes, would you accept that McConnell Dowell was a business that you felt comfortable having that collaborative approach with because of the approach they took to safety?

A. Yes I think when I've referred to my dealings with Pike River, McConnell Dowell were the major contractor and in effect they were the main, they were really the people that I contacted and the tunnel manager was the guy, was the person that would take me round, so a lot of that really was assessment of McConnell Dowell.

Q. And by and large you felt satisfied of what McConnell Dowell was doing which was prudent, practical and safe didn't you?

A. Yes.

CROSS-EXAMINATION: MR RAPLEY

Q. Mr Firmin good morning my name's James Rapley and I act for Mr Neville Rockhouse. I'd just like to ask you just a few questions primarily focusing on your dealings with him. So when you were carrying out these inspections, was Mr Kobus Louw the mine manager in the main?

A. In the main, yes.

Q. And during those inspections you went underground with Mr Louw?

- A. Sometimes, mainly with the McConnell Dowell tunnel manager, Kobus and mainly with Neville Rockhouse.
- Q. The occasions that you went underground with Pike River people, Mr Louw, Mr Rockhouse would always accompany you?
- A. I'm not sure always, but Neville was generally there.
- Q. And during those inspections Mr Rockhouse was able to freely talk with you and vice versa?
- A. Yes.
- Q. The inspections that you carried out onsite at Pike River were walk through inspections weren't they, where you were walking around primarily looking for hazards?
- A. Yes.
- Q. And that was for things such as housekeeping like cables being rolled up or whatever you might come across?
- A. Yes.
- Q. Did you ever carry out any ventilation checks?
- A. Not myself, I carried my Drager mini-warn so I could check the air quality but I didn't have a, didn't take a anemometer I relied on them to tell me what their readings were plus you could get a general feel of the airflow.
- Q. And electrical safety checks, did you inspect those sorts of things?
- A. We had Richard Davenport do one check while I was there and then generally I would just do the visual check of the electrical gear.
- Q. Primarily to ensure that it was sort of tidy and safe and things were looking –
- A. Yeah no obvious damage so I'd have to pick something obviously not, but something that didn't look as though it should.
- Q. Now on 11 March 2008 during the construction of the coal handling preparation plant, you visited Pike River Coal and I've just taken that from your brief at paragraph 127 and you get a walk around with Mr Rockhouse?
- A. Yes.

Q. And do you recall Mr Firmin that Mr Rockhouse told you he was having some difficulties with a couple of contractors down at the preparation plant, issues with their compliance levels?

A. No I don't remember that.

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Q. And he gave you the details and told you you could issue an improvement notice over those things if you thought that would be a good idea. Do you remember the conversation flowing like that?

A. Yeah, I remember when we went down to the processing plant and we saw those guys and I said look, you know, I think this will be an improvement notice and he said, yeah, I think you're right.

Q. So he told you about the problems he was having sought your help and you assisted?

A. Yeah, he was very good like that, yeah, he was...

Q. From that point onwards you didn't seek out Mr Rockhouse to ask him if there was any other problems that you should be aware of, that the Department should be aware of, did you?

A. I mean when I did an inspection, Neville would usually be there, he had ample time, we would be talking, I'm not quite sure what you mean by, "did I seek him out". He would've had plenty of time to talk to me, I didn't take him aside and say look, any particular issues.

Q. Well you found him, Mr Rockhouse, approachable and easy to talk to about health and safety issues?

A. Excellent.

Q. Did you at any stage sort of go into his office and sit down have a one-on-one sort of talk to him and get a briefing really on the state of things?

A. No, I can't remember ever doing it.

Q. That's what I mean by sort of sitting down with him, one sort of safety man to another and really seek out his views?

A. No, I never did that formally. I mean when I turned up at the office we usually went to McConnell Dowell's office there and we'd be, I'd imagine we'd be together quite often by ourselves and the different tunnel

managers came in, I would've thought he would've had time but no, I never actually formally took him aside and said look, any issues.

Q. So it was more a situation of you going to the site, perhaps meeting with the mine manager or other McConnell Dowell people and then gathering Mr Rockhouse or not, depending upon the day and walking around with these men?

A. Yes, we would communicate by email and sometimes by phone.

Q. Sure.

A. So it was ongoing.

Q. You told us yesterday when questioned by the counsel for the Commission that sometimes you'd do your inspections without a safety person. So for example, just the mines manager, is that right?

A. Yes. You may not, there may be a group of you, depends who's available.

Q. Perhaps on those occasions you might've seen safety things that concerned you and brought that to the attention of whoever the mine manager or Pike River manager was. Is that right?

A. Yes.

Q. But you wouldn't then go back and sit down with Mr Rockhouse and raise these things with him or bring him to his attention?

A. No, whoever I was with, which was generally Neville but I'd put that in that letter, anything that we discussed or any issue was put in writing.

Q. And go back to the mine manager?

A. It would go back to often McConnell Dowell as the contractor. So it might go to Corrie, Corrie van Wyk and usually CC'd to Neville or Peter, somebody in Pike.

Q. Were you still carrying out inspections of Pike River when Michael Bevan was the mine manager?

A. No.

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CROSS-EXAMINATION: MR HAMPTON

Q. Mr Firmin, we spoke at Phase One, you'll recall?

- A. Yes.
- Q. And I want to follow up something that Mr Wilding asked you yesterday and which was raised in Phase One and that is inspections. Mr Wilding asked you yesterday about frequency of visits and whether the three monthly plan had changed. Do you recall that?
- A. Yes.
- Q. What about, has there been any change of view or policy as to visits, inspections of the back shifts?
- A. We haven't discussed that. I, I've taken a few initiatives myself and brought that up with John Kay.
- Q. And is it to be done?
- A. Yes, it's going to be done.
- Q. It hasn't been done yet, I take it?
- A. No, I did one unannounced inspection around about 2.30, 3 o'clock, when, at the East Mine and another one, we'd talked with Solid Energy who said there were some safety issues. And I left notice that they wanted some form of notice.
- Q. What, before you visited?
- A. Before we visited, yeah. An unannounced visit, could you give us some sort of notice because they don't have people on shift.
- Q. Are you prepared to accept that from Solid Energy that you're not going to make unannounced visits?
- A. No, no. We trialled it. It didn't work, so I rang them back and said, "Look, sorry, I'm just going to turn up."
- Q. So have you made unannounced visits?
- A. Just the one so far.
- Q. Just the one. I raise that issue because the local journal of record, "*The Greymouth Star*", on the 2nd of November in CPMU0025, I'm not sure that you can get it Ms Basher, but they made reference to unannounced visits that now are taking place in the United States, US mines inspectors under the US Mines Safety and Health Administration. Can we swing it round so that we can see that quick read thing,

Ms Basher? I picked it up from that. Had you seen that in reference at all in any of your newspapers?

A. I did read something like that.

Q. Did you?

A. Yeah.

Q. And did you go back then to the US Mines Safety and Health Administration press release of 26th October 2011, EPMU0027, please Ms Basher? Following what you saw in the newspaper, did you follow that up by going back to the US Mine Safety and Health Administration?

WITNESS REFERRED TO US MINE SAFETY AND HEALTH ADMINISTRATION PRESS RELEASE

A. Sorry, when you said did I see that particular article in the newspaper, no, I've read something about what...

Q. You read something about it?

A. About the unannounced inspections, that they were doing more unannounced inspections over in America, but no, I didn't go to it.

Q. Did you follow it up then at all as to what they were doing in the United States, what best practice they were adopting?

A. No.

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Q. So, anything that's in EPMU0027 comes as news to you, does it?

A. It would.

Q. Isn't that part of what you should be doing regularly, finding out what other mines inspectors around the world are doing, particularly in relation to underground coal mines?

A. Yes.

Q. The other thing that "*The Greymouth Star*," if we can go back to 0025 please Ms Basher, mentioned on that same day, different article, was something about canopies, canopies over the portal?

WITNESS REFERRED TO GREYMOUTH STAR 0025

A. Yes.

Q. Now, you refer to – well, I'll come back to the article in a minute, we'll just keep it up, but you refer to the issue of canopies at para 41 to 45,

and you may want to go to it in your brief, or your statement of evidence, Mr Firmin, please?

A. Okay.

Q. It's at page 10.

WITNESS REFERRED TO STATEMENT PAGE 10

A. Yes.

Q. Where you detail events really running through March and April of '07 about some issues about the bolt failure test, the bolt failures and as well, there's mention of the rockfall canopy?

A. Yes.

Q. Initially there was supposed to be a canopy there, over the portal, wasn't there?

A. That's right.

Q. And you were persuaded by materials given to you by Pike River and by URS, I think it is, it's mentioned in paragraph 44, that a rockfall canopy wasn't necessary at that stage?

A. Yes, the geotechnical assessment, when they – the letter that they sent to me, that extra support at the portal and that the rockfall canopy wasn't required at this stage, mainly from practical terms.

Q. All right, and you accepted that?

A. I accepted that.

Q. If I could have, Ms Basher please, DOL3000070010/6 please?

WITNESS REFERRED TO DOCUMENT DOL3000070010/6

Q. And that's the attached letter from URS to McConnell Dowell that came to you that you mentioned in your evidence. You see that, that's the letter? It's the last paragraph, isn't it that you relied on?

A. Yes.

Q. Well, sorry, it –

A. The whole thing isn't it?

Q. The whole thing, yes, but the last paragraph, "Given the site constraints, confined work area, we recommend that this rockfall structure not be erected before completion of tunnel construction."

A. Yes.

- Q. And you went along with that idea?
- A. Yes. Well, given the information there above it about the extra support they put at the portal.
- Q. Were you still inspecting when the tunnel construction was complete?
- A. When you mean, "the tunnel construction" –
- Q. Were you, well, I'm asking you, when the drive through the rock was completed, were you still the inspector at Pike River?
- A. Yes, right up to just before the fault.
- Q. Right, did you then take up again with Pike, the installation of a canopy over the portal?
- A. I think the issue was the conveyor, wasn't it?
- Q. Just answer my question please. Did you take up again with Pike then, the construction of the canopy over the portal?
- A. It doesn't say it there, but the issue was the conveyor, with the conveyor –
- Q. Please answer my question Mr Firmin. Did you take up again with Pike the issue of construction of a canopy over the portal?
- A. I think you have to let me finish.
- Q. All right.
- A. The issue was the conveyor. Given the site constraints, confined work area, and that was the conveyor. It doesn't say there. Maybe it was the – just talking to the manager, they said, "The conveyor, once the conveyor structure is out, then we're in a position to put the rockfall canopy in."
- Q. Well, did you ever follow that up?
- A. Yes.
- Q. And was the rock canopy put in?
- A. It's probably in now. Once the conveyor was taken out which was about two months ago, maybe three, I wrote to Pike River in receivership, and I said, "Now, remember when that conveyor came out, you had to put the rockfall canopy in," and there was a letter, probably this one, which I sent to him and Steve Ellis is the manager there. He said, "Yes, it'll be

done.” He looked around, he found the actual structure and it’s probably 95% complete now.

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Q. When you stepped away from Pike River and Mr Poynter stepped in, did you alert Mr Poynter to the rock canopy issue?

A. Probably not. It was a matter that - really that Pike River needed to manage. I guess if they hadn't then it was about to us to get on to them to make sure they did that.

Q. Paragraphs 25 to 29 of your statement please, page 7.

WITNESS REFERRED TO STATEMENT – PARAGRAPHS 25 - 29 PAGE 7

Q. This is when you first meet with Mr Whittall in February of '07 and the underground, the issue of the underground fan is raised with you?

A. Yes.

Q. Remember that Mr Firmin?

A. Yes.

Q. Did you understand that the fan was to be a very large fan, something like a 375 kilowatt unit?

A. Not at this stage, no.

Q. When did you find that out?

A. I think that was about three months later, six months later.

Q. And that it was a non-flameproof fan?

A. No, that sort of detail wasn't discussed.

Q. When did you find out that this fan that was going to be installed was non-flameproof?

A. I still, I'm not, I don't know any details about the fan.

Q. Did you never check at all whether this fan that was going to go underground was going to be flameproof or not? Did you never ascertain that?

A. I, this last conversation I had with, I think was on the visit of the 2nd of the 11th, when was that? I'll just go to my notes. 6th of the 11th, so the issue of the fan came up again, this is my inspection.

Q. The 6th of November, which year please?

A. 2007.

- Q. Yes.
- A. And that's when they told me the size of the fan. On the surface, 90 cubic metres per second and there'll be two main fans underground at 280 cubic metres per second, which were quite big fans. So I asked her a bit more detail about the fans and they said, "Look, at this stage we don't know, we haven't got that far." So I decided that that sort of information, I'd wait 'til they had that.
- Q. Did you ever enquire of them in November then as to whether these were to be non-flameproof or flameproof fans?
- A. We didn't get that far. That – on the 2nd of the 11th they didn't have that sort of information. Did I enquire later on? No.
- Q. At any time when you were involved with Pike, was there a ventilation manager employed by Pike?
- A. A ventilation engineer?
- Q. A ventilation engineer.
- A. No, not that I know of.
- Q. Was that of concern to you that there wasn't such a person?
- A. For me, up to the fault, the ventilation was fairly straightforward in the sense there was just one tunnel and the ventilation was forcing ventilation. The need for a ventilation engineer would obviously come in somewhat perhaps further down the track.

1045

- Q. Well just looking at your evidence about the fan, paragraph 26 you say you checked the regulations. When did you do that Mr Firmin?
- A. I'm not sure, I'll just go to my notes, that was the 2nd of the 5th, wasn't it? I think I checked them in the car when I left.
- Q. 13 of February?
- A. The 13th of February. So you want to know what time or what date?
- Q. When did you check your regulations?
- A. On the 13th of the 2nd.
- Q. Right, and then you say further on you wanted to be more informed on regulations that may govern the location of a main fan underground in a coal mine, paragraph 28. And 29, I didn't find any comparable

regulation that prevented the main fan being located underground. Where did you go in terms of looking for information about this please Mr Firmin?

A. I went to the Internet sites for, I can't remember exactly, but I would imagine it would've been the Queensland/New South Wales/Western Australian and MSHA, those are the sites I usually go to, American sites.

Q. Did you make notes of these enquiries of yours?

A. No.

Q. Did you actually speak to anyone else about the idea of having a fan underground, the main ventilation fan underground in a gassy underground coal mine?

A. No I didn't.

Q. You say at the bottom of paragraph 29, "Generally my research found that the fans were put outside for ease of maintenance." Isn't it the case that fans, large capacity fans are put out outside not just for ease of maintenance but because of their size and capacity, they're not intrinsically safe, they're not flameproof and that's the reason they're outside, isn't it?

A. The reason they're outside, yes, it would be lot easier to have fresh air passing over the motors.

Q. Much safer to be outside, isn't it?

A. If they're outside you need to control that risk as well through electrical cut-outs. Underground there is increased hazards but you have to manage those hazards.

Q. Did you turn your mind to the increased hazards of having the main fan for the ventilation of the main fans, as you say, there were going to be two eventually, the mains fans underground and the increased hazards. Did you turn your mind to that?

A. Yes.

Q. Where is that recorded in your notes?

A. When I – what was it the –

Q. November.

- A. – 6th of the 11th, when I asked for more information. I was looking for more information on the set-up of how those fans were going to work. At that stage they didn't have it. I was going to wait till later when they got into position where they could give me that information.
- Q. Did you seek advice from some electrical expert, say the man that you were working with, in the other Ministry?
- A. No, he'd been there when we first discussed that issue, with Peter Whittall, he'd been at that inspection.
- Q. On the 13th of February?
- A. Was it the, my very first inspection.
- Q. Yes, Mr Davenport, yes?
- A. Yes, that's right.
- Q. Did you discuss it with him, Mr Davenport, the issue of fans underground?
- A. No, not as such.
- Q. Well at all or what does "not as such" mean?
- A. Well he was at that meeting, they talked about the fans underground and we thought it was an option, that was about all.
- Q. Your notes are at DOL3000070008/1, you've got them there have you Mr Firmin?
- A. Yes.

WITNESS REFERRED TO DOCUMENT DOL3000070008/1

1050

- Q. And they start with the date 13/2/'06, that's a mistake. That should be '07, shouldn't it?
- A. Yes, that's right, yeah, it's a mistake.
- Q. And you detail there, "Pike River office, Peter Whittall gave a PowerPoint presentation on Pike River Mine prospect." And then we come down to just above the diagram, "May put the main fan underground," and then you've got a sketch, "Looked at regulations and nothing to see, say you cannot do this. Back-up diesel fan to..." something, "Of shaft, which is above the –
- A. Yeah, "Back up diesel fan, top of shaft which is –

- Q. "Above the snowline?"
- A. "Above bushline," yeah.
- Q. "Advantages of fan?"
- A. "Advantages, fan operates in area."
- Q. "Ease of maintenance?"
- A. "Ease of maintenance."
- Q. "Accessible."
- A. "Accessible, not in snow. Sufficient room for all equipment."
- Q. Is that what Mr Whittall told you on the day?
- A. Yes, Mr Whittall said that he looked at the regulations. And there was nothing that would stop Pike River doing this, and that that's basically what he said.
- Q. And looking at what you've put in your evidence from paragraphs 25 to 29, that's exactly what you repeat there, isn't it?
- A. Yeah, well it's the same thing, isn't it? I've taken my, all my inspect –
- Q. You just took his word for it, didn't you, Mr Firmin?
- A. The fact that...
- Q. That there was nothing about it, there was nothing against it in the regulations?
- A. No, no. I won't – I, I looked –
- Q. And that the advantage was ease of maintenance. You simply took his word for it, didn't you?

OBJECTION: MS McDONALD (10:52:41)

CROSS-EXAMINATION CONTINUES: MR HAMPTON

- Q. You simply took his word for it, didn't you?
- A. I – at the top of that it says I looked, it says, "Looked at regulation."
- Q. That's what he told you?
- A. Well he did tell me that, but I did look at the regulations. I'm not sure what that particular statement is but I did look at the regulations sometime.
- Q. Sometime?

- A. Well, either when I first got to the car. I'm not sure why I've written it there, or when I did these notes, but I definitely looked at the regulations.
- Q. Isn't it a matter of you just going along with and accepting what Pike was putting to you?
- A. No, because I think if I'd done that, I wouldn't have gone to the Internet to have a look at anything there to say that he couldn't do it.

CROSS-EXAMINATION: MR DAVIDSON

- Q. Good morning Mr Firmin. Have you had a chance to read the evidence of Dr Callaghan, who is to give evidence later this week?
- A. Yes, yes.
- Q. Is she known to you as part of your job?
- A. No, I've never met her.
- Q. Or her writings or teachings?
- A. No, I've not.
- Q. On the question of safety?
- A. No.
- Q. Yesterday, Mr Wilding took you through a series of propositions which he put to you were matters to bring to account in assessing safety issues at Pike River and you'll recall some of those with which you agreed included the fact that it was a new mine?
- A. Yes.
- Q. That it's on the West Coast, with its particular geology?
- A. Yes.
- Q. Hydromining has its own separate set of safety issues?
- A. Yes.
- Q. That training for a new workforce drawn from many parts of the world, not necessarily mining people is an issue in itself?
- A. Yes.
- Q. The mix of nationalities of itself is significant?
- A. Yes.

Q. Given the training and experience, and you didn't put in that list but I assume that you would include any circumstances where you understood that the company in question was having real difficulty in achieving its production goals. That would tell you there was real pressure on that company?

A. Yes.

1055

Q. And you would've become aware of that I presume just through your knowledge of the mining industry and Pike River Company in particular, the company was under severe pressure to achieve production?

A. I wasn't aware that – the full amount of the pressure pressure, but, yeah, I realised that they needed to produce coal. They hadn't produced coal for quite a considerable period of development.

Q. See Dr Callaghan has referred to a passage of evidence from Mr Whittall and this is in her brief at paragraph 87, and for the record it's FAM00042/23.

WITNESS REFERRED TO DOCUMENT FAM00042/23

Q. Where from evidence given in this Commission she has noted that, "The development production is running behind schedule, financial difficulties for the company and difficulty finding suitable staff, including levels of competence and experience of works and contractors working underground, is of concern." That would be a real flag to you in terms of your role as an inspector, would it not?

A. Yes.

Q. "And delays in production," from his transcript, "were lamentable and delays in the company achieving cashflow, positive cashflow is also lamentable?"

A. Yes.

Q. Now, it's an open question Mr Firmin, but were you actually conscious of these elements at Pike River Mine during the time you were an inspector in the periods you've described to this Commission?

A. During the period that I was inspector, I was primarily associated with the tunnelling operation and McConnell Dowell were the main workforce.

Q. Yes.

A. The pressure on McConnell Dowell was – I guess there would've been a certain amount of pressure in terms of that contract, but, no, I didn't feel, I didn't pick up that there was an intense pressure to get that drive –

Q. You didn't pick that up. Right. Now, I'm just going to ask you a bit more about Dr Callaghan's evidence, as you have read it.

A. Yes.

Q. You know what she's describing there is what is called, "human factors". You picked that up from her evidence?

A. Yes, mmm.

Q. And at the conclusion of her evidence she identifies two matters which I'm putting to you are highly relevant to your role as inspector. The first is, and this is from her paragraph 213 and the passage reference is FAM00042/58 – and I don't want to bring it up.

WITNESS REFERRED TO DOCUMENT FAM00042/58

Q. "The process of hazard identification and management will necessarily bring to bear the known and observable risks which are technical to the industry, for example, the construction of stoppings, gas detection systems, evacuation procedures." They're technical issues and you would accept that proposition, I take it –

A. Yes.

Q. Secondly, "A recognition that major accidents arise from the interactions of human, task, environmental and organisational factors." In her professional opinion, which she's going to put to this Commission, "Is that hazard identification and management needs to emphasise these factors which are all well established hazards which lead causally to adverse events."

A. Yes.

Q. Now you understand and accept that proposition?

A. Yes.

Q. Do you consider that you have been trained in any respect to evaluate those human factors in the way I've just put to you as an inspector?

A. I'm not sure. I've certainly done that risk management course, which had a section on human factors.

Q. But put simply, and she does put it simply in her evidence, "When human factors are considered," and I'm going to come to them in Pike River Mine shortly, "it's the whole purpose is to understand and improve the competence and safety at work, by addressing questions such as," this is her paragraph 9, "why do seemingly smart people do unsafe things? Why won't people do the right thing even when they've been told? Why do the same mistakes keep being made over and over?" Now you would accept that they are proper, soundly based questions to ask regarding conduct of people in mines, indeed all places of work?

A. Yes.

1100

Q. You would?

A. Yes.

Q. So as she develops this, she explains that in looking to see why disasters such as, she uses Chernobyl, Piper Alpha, Exxon Valdez and Cave Creek occurred. They're elements of what are called process safety. Do you understand that term at all from reading her evidence?

A. Yes.

Q. And have you read or are you aware that this whole consideration of the way people are behaving, the conduct of people, they're all Neville's in this case in a mining operation, is a critical element of evaluating just what went wrong but also in considering why things went wrong or might go wrong while the mining operations in place?

A. Yes.

Q. Now to take this one step further, I'm going to get off if you like the academic or theoretical side in a moment. In her evidence at paragraph 85 and this is FAM00042/23, "This human factors analysis, understanding it, has been used to analyse 508 mining incidents in

accidents from Queensland.” It’s been used directly in that State and I’m going to ask you, are you aware of any examination of mining accidents, safety in the context of human factors analysis such as I’ve just put to you?

A. By the Department of Labour, my statistics, stats?

Q. I’m not talking about stats.

A. No?

Q. I’m talking about analysis of the human factors, the things, the behavioural things which she is going to put to this Commission are the things that cause accidents and that you need to look for as an inspector. Have you any knowledge of what I’m talking about at all?

A. How you actually determine what human factors, how they’re – what we’re looking at?

Q. Let me give you an example.

A. Okay.

Q. I come to her evidence in this regard. When you look at the matters which were available to her and available to you as an inspector, I’ll come to some of those, but for example incident reports. If you see a repetition of bad conduct, that’s a signal that something has to be addressed. Something keeps happening that’s adverse, you’ve got to work out why it’s happening don’t you?

A. Yes.

Q. It’s not a matter of simply telling people, “Do something,” or forbidding something to be done is it?

A. No that’s right.

Q. Because the fact is and it’s coming back again to what she’s putting to this Commission, is that what we are really looking for in exploration of what happened at up here at Pike River, but also in your job is you’re looking to identify the hazards, the holes, the things that can go wrong in combination to cause an accident, potentially catastrophe. You understand that?

A. Yes.

Q. So we can bring a bit of the picture to this. Ms Basher could we bring up FAM00042/16.

OBJECTION: MS SHORTALL (11:04:24)

1105

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

Q. Now in the matters that I have put to you earlier, just generically of concern in a safety context, I referred to the question of training and you may recall from the Stage One or Phase One of this inquiry there was reference there to a passage of the Gunningham and Neal report and comment made to the reporters, Gunningham and Neal, by Mr Slonker, former mine manager, whom you knew. You knew Mr Slonker? You met him?

A. I've met him since.

Q. The paragraph of the report is 456 and I'm just for the record going to read in DOL0100010001/124 where Professor Gunningham and Dr Neal record that Mr Slonker said that, "The training, so far as he was concerned, did not extend to contractors and this was an area where the company in his view failed miserably at least at the time he commenced with Pike River Coal." Was any issue of training ever raised with you?

A. Just, just want to clear something here. Mr Slonker wasn't the manager when I was there, that was later on but training with McConnell Dowell people?

Q. Yes, the contractors?

A. When I was doing the inspection with McConnell Dowell were basically the only contractor at the – no, I, their, they, one of reasons that they were employed was the fact that they were hard rock, experienced hard rock people and I think they had a, a well, a good background in that area.

1110

Q. All right.

A. I knew some of the people.

- Q. That's all right. Now in the role you undertook and I'm going to come to several matters that are part of your evidence in a moment, you obviously can only do the job as well as you are able in terms of your training and experience, and the way the Department of Labour operates.
- A. Yes.
- Q. And you've read the Gunningham and Neal report I presume in some detail?
- A. Yes.
- Q. And have you read the passages, I'm not going to take you to each one, that refer to the resource constraints, the actual financial restrictions on the funding of the inspectorate in which you worked?
- A. I would have read that, yeah, yes.
- Q. You were conscious of that because you weren't able to attend, for example, some courses you thought you should attend?
- A. Yes, the travel was difficult.
- Q. And the resources shortage went beyond that because the, if you had gone to one of the destinations or courses you wanted to attend, you would not have been able to carry out your actual operation routines, would you?
- A. No.
- Q. And there's this passage in the Gunningham/Neal report, at paragraph 61, "With regard to codes of practice, the failure of industry to develop its own codes expeditiously prompted the Department of Labour to put in place a substantial number of approved codes of practice, but no approved codes have been introduced in the mining sector," which you'd acknowledged?
- A. Yes.
- Q. Now, the Department then, or someone made this remark, someone, departmental officer, "In the past, we may have been standard setters in having the functional expertise within the agency, but increasingly, we now see ourselves as standards facilitators because we don't have the

capacity and expertise to be more.” Was that a remark you either made or would associate yourself with?

A. Yes, we don't set standards.

Q. So facilitating the standard really is simply encouraging or assisting the duty-holder to meet the standard. Is that what you'd accept?

A. Yes.

Q. Now we'll come down to what in fact you had available to you in your time as an inspector before we look at the specific matters that I want to address with you. Yesterday, Mr Wilding put to you some documents and the number, Ms Basher, could you bring up DAO000000400789, it's the incident accident near hit event register.

WITNESS REFERRED TO INCIDENT ACCIDENT NEAR HIT EVENT REGISTER

Q. And we can see it goes back, Mr Firmin as you saw yesterday to 8 April 2006. Now as I understand it, you've never seen or knew, you didn't know of this register at all?

A. I can't remember ever looking at the accident register.

Q. So we looked at O33, the event on that page, which is, “McConnell Dowell ventilation shutdown, crew not withdrawn from face after 30 minutes. Fan restarted after 60 minutes,” and it's seen from your action yesterday, you've identified that immediately as a breach of the regulations?

A. Yes.

Q. And Mr Wilding took you to O44 at the bottom of the page, “Person removing a person's tag on the tag in/tag out board.” A matter again which would be of obvious, very obvious concern to you?

A. Yes.

Q. Now, you didn't know about this and I think you'd acknowledge that a near hit event, a near hit is what seems to be defined here, something that nearly happened is an accident or did happen, is a matter of utmost concern or would be to you as the inspector?

A. Yes.

1115

- Q. So, what attempt did you ever make in your time to look at what the company was keeping in terms of records of incidents including near hits?
- A. I can't recall exactly, sometimes when I went to the office, I'd have a look at the actual accident register form to see whether there'd been an accident recently. But I never looked at the whole, they've put this all into one list.
- Q. So, so far we know that sometimes you looked at, what are you saying? A book or?
- A. You know, the accident register that is required by law, that form. I can't recall exactly when though, but I would often – when I go to site, I'd have a look at the accident register, just to have a look at the last accident they might've had to see whether any issues.
- Q. Did you ever enquire as to what other things were kept, for example, you've never seen this –
- A. No, I didn't do this, no.
- Q. You didn't enquire?
- A. No.
- Q. So does it come to you really picking up what you can in your discussions with Mr Rockhouse or Mr Whittall and an occasional look at the incident register, in terms of what actually was happening as to safety?
- A. Yes.
- Q. In the time you were there, did you ever have, at Pike River, did you ever have any instruction from the Department of Labour as to how you should go about your work?
- A. Just the general policy of how an inspector goes about doing an inspection.
- Q. And as for looking for records and comparing records with actuality, did you ever do that?
- A. No.
- Q. Right, now I want to deal with the question of egress briefly. You said in your evidence yesterday your preference was, and this is the word you

used, "For two drifts and a fan outside." That would've been your preferred position?

A. If that'd been an option, yes.

Q. Did you ever discuss it in those terms with anyone in the company?

A. No.

Q. With your fellow inspectors?

A. No.

Q. Now, as we read your evidence on this question, or on the evidence you gave yesterday, you seemed to accept that the ladder up the vent shaft and up the Alimak rise would not work in all situations. That's the expression you used?

A. Yes, as an emergency escapeway.

Q. Yes, and you used the further expression, "It would depend on the emergency."

A. Yes.

Q. So you had evaluated that for yourself as something that would work in some circumstances, but not in others?

A. Yes.

Q. So a man might climb up unaffected by smoke, concussion, blast, that sort of effect, might climb up, but people affected and a number may not. Is that a fair encapsulation of it?

A. The emergency situation, you're talking about, if there'd been an explosion, are you?

Q. Yes, or fire?

A. Or fire, well, I think we stick with the explosion for a start. You'd go out the intake airway. You should go out the intake airway.

Q. Yes, and if you couldn't?

A. And if you couldn't, and there was smoke et cetera going up the shaft, the situation, you're talking about?

Q. Yes.

A. Then you should go to refuge chamber.

Q. A refuge chamber?

A. Yes.

Q. As you define it, a place where you've got actual complete refuge, air and protection, double doors and so forth, that right?

A. Yeah, yes, yes. Unless you were 100% sure you could get out that shaft if the air wasn't too bad, you – but I would imagine that the risk assessment would push you towards your refuge chamber.

Q. See, you had some discussion with Mr Poynter about this topic, I presume, at some stage, did you?

A. About the shaft or?

1120

Q. About the getting up that shaft, vent shaft?

A. No I, we didn't discuss the vent shaft. This is the collapsed one with the egress, is it, you're talking about?

Q. Yes, yes.

A. No.

Q. Well is it fair to say that what you thought about that as a second means of egress was that it technically might be called a second means of egress but it would only be useable by some in some sorts of emergencies. Is that a fair comment?

A. When I was asked about the emergency egress I was at the design stage and we were talking about a four metre diameter shaft where the ladderway with landings. Now you're referring to this, the fall and when the shaft fell in near the Alimak rise?

Q. Yes, I'm talking about –

A. I'm not familiar with that egress at all.

Q. Did you never see that egress?

A. I never saw that egress.

Q. So before that occurred, you were conscious, you knew of the vent shaft as it was proposed with a ladder straight up it. Is that right?

A. With landings, yeah.

Q. And my questions then relate to that. You say that in certain emergencies that might've been a useful means of egress but not in others, right?

A. Yes, and it complied with the regulation, the regulations that you need two forms of egress.

Q. So a form of egress for you, it is a form of egress even though it may not be useable in an emergency for which it is intended to operate?

A. Provide – in that case the requirement on the employer would be to have an alternative, like you say, if the shaft was full of smoke and it was pretty obvious that you couldn't get out there then you'd need an alternative, if you couldn't get out the intake.

Q. Before I leave this topic, did you ever consider this as to whether, what you were told was going to be put there compliant with the regulations?

A. When we had that discussion about the shaft and John Walrond was involved, it was, there was discussion about what sort of ladderway would go in the shaft and the landings as a suitable form of egress.

Q. So just to finalise the point, is it your evidence that as you understood the vent shaft before the collapse at the bottom and the Alimak rise was put in, as you understood it, you thought that that would be a suitable second means of egress in some sorts of emergencies but not in others?

A. Yes.

Q. Thank you.

A. It complied with the regulation.

Q. Because technically it was a second means of egress?

A. Yes and had the ladderway which complied with the standards.

1123

Q. Mr Firmin, you must have known that if a man couldn't get down the drift and the place was full of smoke, affected men or affected by concussion that they would not be able to use that effectively as a second means of egress. You must have known that.

A. It could be a situation where you couldn't use, you couldn't get out the intake.

Q. Yes.

A. The stone drive and you couldn't go up the egress 'cos it's full of smoke.

Q. Yes.

- A. In which case you should go to a refuge chamber.
- Q. Yes, now as to the vent shaft itself –
- A. I mean, ideally of course it would be better to have had a third egress.
- Q. Yes, a third egress.
- A. Mmm.
- Q. Because the second one could be affected?
- A. Well that situation, it gives you another option, another refuse chamber, yeah.
- Q. Now I want to come to the vent shaft itself. At paragraph 112 of your evidence you refer to a discussion with Mr Kobus Louw, this is at DOL7770040002/21. You say we also talked about the shaft. Ms Basher, can we bring that up please?

WITNESS REFERRED TO DOCUMENT DOL7770040002/21

- Q. So at paragraph 112 there, you'll see the discussion about the shaft referred to by you and when Mr Louw explained to you the shaft would now be driven using a raise borer 110 metres deep, top 35 metres broken rock and that would be grouted. Now clearly you remember the discussion.
- A. Yes.
- Q. Did you take a note of it?
- A. Sorry?
- Q. Did you take a note of it?
- A. Yes, it'll be in my notes.
- Q. And is there any note or recollection by you of what you immediately thought about the safety of that raised bore?
- A. My immediate thought of course was that they would've done some geotechnical work to make sure that it was safe, 'cos raised borer requires reasonably competent roll.
- Q. Well if you knew that much, what you've just told the Commission is that you have made an assumption at the time, that they would've done some geotechnical work on the proposal?
- A. Yes, I didn't ask for the geotechnical appraisal to do that.

- Q. Were you familiar with what a raise bore, how it works?
- A. Reasonably, yes.
- Q. And is it right then that, to assume, that you knew that you would have to have a rock which was solid, would not fragment for the purpose of a safe raise, bore raising?
- A. Yes.
- Q. Now, was that a matter which you thought in terms of your role as an inspector, you should investigate, consider?
- A. Yes, you know, if they're going to put a raise borer up, a raise bore, then you'd want to know the ground was competent. It's their responsibility of course to make sure, to get a geotechnical consultant. You may not necessarily ask for it immediately, but I made the assumption that that would be a safe thing to do.
- Q. So you made the assumption it would be safe because you thought they would get a geotechnical assessment before they did it?
- A. Yes, yes.
- Q. You know what happened, don't you?
- A. Yes.
- Q. Mr Gary Jones has filed evidence in this phase and referred to the circumstances in which he was one of those mucking out, supposed to be mucking out at the bottom of that, and you know that there were very large rocks described as large as refrigerators coming down the vent shaft?
- A. I heard that from his evidence, or I've heard that somewhere, yes.
- Q. Yes. And of course, that led to finally collapse at the bottom of the shaft, and the huge disruption in the progress of the mining development?
- A. Yes, yes.
- Q. Now, the purpose of my question or raising this with you is simply to understand whether the point at which you take the view that a matter requires your consideration as to safety. This plainly did not. Correct?
- A. I think you've got to put it in context. When was this? This was a discussion about the shaft, what they were going to do.

Q. Yes.

A. Way back when, 11th of March 2008. Now that shaft would've gone in about January 2008.

Q. Yes.

A. So, you don't necessarily cover every aspect in terms of discussion and you're not there to involve in every aspect of management of a particular operation, so, to say I was responsible for, at that stage, asking for the geotechnical report. It would've been a prudent thing to do but it was their responsibility.

1129

Q. Well the question is, it's not a matter you take any further. Having been told what they're going to do, it's a matter you say that is for the company?

A. It is for the company, yes, and if I become aware of any issues, if they want to discuss that with me that would be good, closer to the time and if you went there and you saw something that was hazardous, then you'd be quite – to bring that up.

Q. Now I want to come to the issue of approaching the Hawera Fault and as I understand it, from the outset, you understood or it had been agreed there would be a 50 metre barrier in terms of flame-proof equipment?

A. Yes.

Q. From the breach, before reaching the fault?

A. Yes.

Q. Were you involved in setting that barrier?

A. I think there might have been a discussion, I can't recall exactly, between me and Peter Whittall. There was an agreement there anyway.

Q. Now, the matters I want to raise with you arise out of Mr Harry Bell's evidence in Phase Three, where he is making it plain to this Commission that in his view, the fault was entered without adequate ventilation. You read his evidence in that regard?

A. Yes.

Q. And you'd be aware that in that regard, he has said and this is from his paragraph 30, that he anticipated with his knowledge of this industry on the Coast that it was reasonable to expect the Hawera Fault would be very gassy.

A. Yes. They were expecting it to be gassy.

Q. Yes.

A. And it wasn't was it?

Q. And you knew that was the expectation?

A. It was the expectation.

Q. And already the ventilation was under pressure at the time, was it not?

A. That's disputed. When I was there the ventilation was adequate.

Q. So from his paragraph 31, I am referring to the fact that the ventilation ducting at the time was 1.4 metres in diameter. That may have been sufficient for the stone drive work as it needed shotfiring fumes only, but it would not handle methane, which does not move easily downhill. And the ducting was under extreme velocity pressure. Were you aware of that?

A. I was aware of the general ventilation issues, in terms of how much air was supplied. I'd read Joe Edwards' statements and he, he said that they managed to maintain I think, 15 cubic metres per second, with a velocity of one to 1.1 metres per second.

Q. Am I right that you were the inspector who approved the entry through the 50 metre barrier?

A. Approved's not the right word but they wanted to go through that 50 metre barrier.

1132

Q. There was a risk assessment done to that end, was there not?

A. Yes.

Q. And what Mr Bell is raising with the Commission and therefore I'm raising it with you is that the decision was taken to go through the 50 metre barrier without what he considers adequate ventilation and with non-flameproof equipment based on a report that was obtained by

Pike River which assessed the gas in the fault from drilling. Are you aware of that?

A. No, I'm not aware of that.

Q. I'll put this the other way. Mr Bell at his paragraph 34, and he was working there at the time, you recall?

A. Right, yes, I know he was there when I was doing inspection.

Q. Says that in the, at that time he was not aware of any drilling which would've given any information about gas in the Hawera Fault but the decision was taken to go through the 50 metre barrier and through the fault without flameproof equipment?

A. Even a risk assessment.

Q. Yes. Now can you tell the Commission whether you were aware of any drilling which gave information to warrant the conclusion that the gas in the Hawera Fault was at levels which warranted that approach?

A. They had assumed that the Hawera Fault would be gassy and full of water and they took precautions in their risk assessment based on that assumption and it turned out that wasn't in fact true.

COMMISSION ADJOURNS: 11.34 AM

COMMISSION RESUMES: 11.52 AM

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

Q. Mr Firmin, we're just looking at to conclude my cross-examination, two or three topics and the one we're on at the moment is just the issue of approaching the Hawera Fault and changing as it were the approval to the 50 metre barrier and going through and then proceeding through the Hawera Fault without flameproof equipment right. And you have worked from a risk assessment that was provided to you by Pike River?

A. Yes.

Q. And the question I was putting to you just before the break was whether in fact you were aware that they had drilled ahead to conclude that there was no gas risk evident from the drilling?

A. Yes, from the tunnel.

Q. Are you aware of that fact?

A. Yes.

Q. They did drill?

A. Yes.

Q. Are you aware of the Mount Davy disaster and the circumstances there where they'd drilled ahead through the fault?

A. No not really, no.

Q. So I put to you that one of the circumstances around the Mount Davy disaster was the fact that having drilled to assess gas in the fault, there was an outburst which led to the explosion and the disaster. You're not aware of that?

A. I remember there was an outburst yeah, I don't know the details.

Q. See Mr Bell as you know is intensely critical of this decision to drill through the fault without that flameproof equipment, you understand that? You've read his evidence?

A. I, yes I did, yeah.

Q. So it's in the record and that's from paragraph 35 of his brief.

A. That's right.

- Q. And he says, "That Mr Firmin would have been aware that reference to there being only a trace of methane discovered to that point, that was 2000 metres, was irrelevant because it would be unusual to find methane in the stone drift but an extremely high likelihood of methane in the fault."
- A. Yes.
- Q. Do you consider that you had any technical skills yourself to assess, to look at the risk assessment, to actually evaluate it?
- A. I think my general experience and qualifications would give me quite a good basis to assess that risk assessment.
- Q. You were someone who gave frank information to the Gunningham and Neal reports weren't you about what you considered the limitations of your knowledge?
- A. Yes I, limited knowledge on certain areas, yeah.
- Q. Well quite significant if we look at paragraph 346 of the Gunningham and Neal report, Ms Basher, which is obviously 0100010001/98.

WITNESS REFERRED TO PARAGRAPH 346 REPORT 0100010001/98

- Q. If you look at the paragraph 346 and there's a passage taken from, I presume, an interview with you where you talk about management's approach and that's to check people's systems and any inspector can do this. See that?
- A. That's a false view of some people, yeah, yes.
- Q. But it's you who say, "I want ventilation, engineering training, geotechnical training," and they say, "It's not your responsibility. Why didn't you train into that degree." Well you thought you did need training to that effect didn't you? You told them.
- A. Yes I would like to do some of that particular training, extra but you know, I did ventilation in my first class, my manager's ticket and I've worked with the geotechnical people in the geotechnical laboratory for a couple of years, so it's not that I'm totally untrained in those areas.
- Q. No, but these are your words.
- A. Yeah.

Q. In the same passage, if you look at them here, "Sometimes I say I'm coming to mine to do ventilation, show us all you've done, but I need the qualifications to ask, 'Is it adequate?'" So you clearly do feel a shortfall in dealing with the technical elements of mining or some of these elements of mining.

A. In certain times and conditions yes.

Q. Yes.

A. But not always.

Q. So in this situation, dealing with the decision to go through the Hawera Fault with a completely new non-flameproof methodology, you relied on a risk assessment made by others for the technical skills. Isn't this a situation where you are short of the tools to evaluate the safety of that exercise?

A. I feel adequate to assess that. The drill holes are maintained at 16 metres in advance of the tunnel, so they would adequate warning of any methane associated with that fault. They had protection on the jumbo to cut-out and all the gear behind the jumbo was flameproofed.

1157

Q. That's all in the risk assessment, I acknowledge.

A. Okay, yeah.

Q. What I put to you before about Mr Bell's evidence is that that is simply a way of saying there's a method we can go through the Hawera Fault, but the risk of outburst in the fault was there throughout, notwithstanding this sort of drilling ahead if that's what occurred. Would you have had the skills or knowledge to evaluate that?

A. The risk of an outburst?

Q. Yes.

A. I didn't consider the risk of an outburst associated with that fault.

Q. Thank you. Now, I come to the question of multiple shotfiring where there is something of a tandem act between you, with you and Mr Poynter, is there not, in the decision about P1 shotfiring? You're both involved in decision-making in the inspectorate?

A. Yes, we would've been and Johan.

Q. So if we just set the scene for this exercise, it comes in your evidence at paragraph 74, and we don't need to put this up on the screen, but the beginning of the narrative here is that the Department of Labour made investigations because P5 explosives were not available, were not readily available in New Zealand and you advised industry, "They could no longer multiple shotfire P1 in coal or gassy mines." So you conveyed the information?

A. Yes.

Q. And who was involved in that investigation?

A. Me. I was the only person really. Bill Taylor had sort of started it, then he left and I was the only coal mines inspector.

Q. And the essence of this seems to be that the suppliers cannot provide this P5 in New Zealand or Australia, and the only place or the only source was Spain, but it took too long to get to Australia and the shelf-life would expire, so it was unsafe. That's the essence of it?

A. Yes.

Q. But there was, available through Orica, P1 explosives which are not designed for use in coal seams, on your evidence?

A. Yes.

Q. And this seems to have arisen according to your evidence because you checked, "Inspectors checked," and I assume it's you Mr Firmin, "as to whether P5s were being used in 2006." Is that right?

A. I think it was a combination of Bill Taylor and I when we first started looking at this issue was P5 or P1 being used in mines. I can't remember which one of us actually started, actually looked at it first.

1200

Q. Now what seems very clear from your evidence and in particular at paragraph 77, is Mr Edwards, Joe Edwards had spoken to you in October 2007 about the proposed use of P1 explosives for full face multiple delay shotfiring into Pike River and they'd evacuate all employees. That was his position?

A. Yes.

- Q. And given the danger of the P1 explosives in a gassy mine, a potentially gassy mine, that's something you thoroughly endorsed?
- A. Yes.
- Q. Now that seems to have been where matters lay for a period of time we can truncate this a bit, we can see in the Gunningham and Neal report and in Mr Poynter's evidence which links with yours, Pike River wanted to multiple shotfire with P1 and to do so from a so called place safe, underground?
- A. Yes.
- Q. So contrary to your position that the men all had to be out of the mine, this was a new proposal, entirely new proposal?
- A. Was a new, well, it was a new proposal but when we say evacuate from the mine, what we're really talking about is a safe place.
- Q. Yes.
- A. So people need to be taken to a safe place.
- Q. But as far as you were concerned that was out of the mine?
- A. Generally it would be out of the mine.
- Q. This was a small development, wasn't it? So the notion of a safe place certainly didn't occur to you, at least in your correspondence that we read with your evidence, a safe place within the mine?
- A. That's right, normally I would expect that to be outside and away from the portal.
- Q. Yes. And what Mr Bell says about this, before I come back to what Mr Poynter and you say, further say, is that at paragraph 64, "P1 has the highest velocity of detonation in a sense for stone but that high velocity makes it dangerous and P1 is only for use of stonework in a gassy mine with a maximum amount of explosive in any shotfiring 800 grams per shot hole in total, single or multiple." That's his position?
- A. Yes, that sounds right.
- Q. And you accept that as right?
- A. Yeah, that is right.
- Q. So endorsing the position as you first corrected or accepted or approved that the mine would be evacuated as Mr Edwards said. Mr Bell's point

is that in paragraph 70, "The obvious risk is that there may be an uncontrolled explosion, any discussions to potential safe areas is pointless and absurd. The only safe place is outside the mine." It goes on, for completion, same paragraph, "DOL appeared unable or unwilling to assert the usual practice in their early directive and challenged Pike River Coal." Now he's taking it there that you were saying, P1 only to be used with men out of the mine. That's what he's assuming. Is he correct in that regard?

- A. I think the fact that people have to go out of the mine really means we made that decision, that that would be the safe place. If you, as they did, got an expert, and remember it's their responsibility, we can't, we shouldn't prescribe to the extent we prescribe in the sense that we control the P1, but we don't prescribe what people do, it's not our responsibility to say exactly what we or stand et cetera and they got an expert, an explosive expert and said that that position was safe. For us then to say it's not safe would mean we would have to prove that it wasn't safe. Now they had an expert and like you say we are generalists, so we looked at it and we thought they were quite some distance from where they were firing that shots, 500 metres stone drive in between, around a corner, in a place that we thought, well that's what the expert says, we probably can't refute that.
- Q. So to take that as a whole, what you're saying is that if Pike River Coal or any company can produce an expert report which says something is safe, adopting a certain methodology you have to accept that because otherwise you've got to actually disprove it. Is that what you're saying?
- A. We'd have to disprove, yeah, disprove it. Not have to accept it, we'd have to disprove it.

1205

- Q. But you don't have the expertise in yourself to challenge it or take it on technically, do you? You're not an explosives expert?
- A. You've got a feeling, you know, if the expert, if the expert said, "Just around the corner, 50 metres," well then yeah, you'd, I think we would have a reasonable case, but in this case it was quite some distance.

We'd discussed it amongst the three of us. I think later on we managed, well, Kevin said they managed to convince them to take it outside, but at this stage, yes, we had to go along.

Q. You had to go along?

A. Well, we went along with it.

Q. Well just going back –

A. Well, we could not find a reason to stop, that we could stop it.

Q. And the only way you could have found a reason to stop it would be if you identified a plain error in what they put to you, right? At this point?

A. Yes.

Q. Or alternatively, if you had the expertise available to you to say, "Well that's an expert report on what is a life-threatening circumstance if you get it wrong. We will take advice from an expert ourselves"?

A. Yes.

Q. But that doesn't happen, does it? If the company says with an expert, "This is okay," unless you can spot a problem with it, that's it. You accept it?

A. No, I think if the issue was you believed in it strongly enough, then yes, you could get another expert in and stop it in the meantime.

Q. Mr Firmin, I'm only putting this to you because here's an issue of absolutely, absolute concern to all men underground and you have given a direction consistent with what Joe Edwards said to you from McDow, "Men are in the mine," then you get a report in which gives you a so-called safe place underground, during the shotfiring, all I'm putting to you is that this is a very significant shift in position and you rely entirely on what the expert for Pike River Coal has come up, unless you could spot something within that report which was patently wrong. That's the position, isn't it?

A. We haven't accepted the expert's position blindly. We've looked at the requirements, the risk assessment and the distance from the shot, the tunnel where they were using the explosives, what ground was in between, where the people were standing and we accepted that that could be, that we could not prove that that was an unsafe place.

Q. Okay, well that perhaps is a good place to sort of rest this part of the cross-examination. You couldn't prove that it was an unsafe place and therefore you have to live with what they provide to you, they tell you?

A. I guess so, yes.

1208

Q. Now, the way your name's included in Mr Poynter's brief throughout this discussion of the P1 explosives, I need to check that you were still part of the tale narrative, Mr Poynter's evidence at paragraph 173, as the inspectorate was considering the so-called safe place underground, has received an email from Mick Lerch of Pike River on the possible effects of a concussion shockwave, and this is from someone called Nick Elith, E-L-I-T-H. You know who I'm talking about?

A. Yes.

Q. And Nick Elith's view was that the identified safe area was completely safe, so he was the expert in that regard? That right?

A. Yes.

Q. And Mr Poynter, I presume given this is of such consequence across the industry, would've talked with you about this issue?

A. Yes.

Q. And he responded, same paragraph, the issue he'd raised, and therefore I assume you're onto, "Was not the concussion shockwave from the blast, but from an ignition of gas at the face." And Mr Poynter asked if Mr Elith could comment on the impact of people in a safe area if there was an underground explosion in that context. Do you remember that?

A. Yes.

Q. So the risks were, fire front from the blast, the blast knocking out the fan and subsequent firedamp and concussion shockwave. And what we get from the brief and this just seems to be the thinking within the Department, from Mr Poynter, paragraph 174, was that, "The shock design followed good underground coal practises and consistent with Mr Elith's designs, the view, the risk of methane ignition was extremely

low when using P1 explosives.” So there’s the expert’s reply to that, right?

A. Yes.

Q. But all the time you were also considering the British Guidelines here, were you not?

A. Yes.

Q. Was what was being discussed or proposed by Pike River consistent with the British Guidelines?

A. No.

Q. So it was a new solution to what potentially could be a catastrophic issue?

A. The issue with the British Guidelines and P1 was that they can’t get P1 and this affects the Australian mines as well.

Q. Right.

A. And Queensland used the risk assessment approach where they fire P1, I believe, following a risk assessment, multiple shotfiring. We’ve gone somewhere in-between, between New South Wales who don’t allow it, and we’ve allowed either single shotfiring or withdrawal to a safe place. And a safe place being not in the vicinity where you’ll get blast damage, but vicinity if there was, the condition of methane at the face.

Q. So as far as you were concerned, that response I’ve just referred to for Mr Elith was the end of it? He’s saying, “If you follow good practises then there won’t be a problem with ignition.” Is that right?

A. Yes.

Q. Okay. So, what did you make of the circumstances being described when we got in evidence and Mr Bell’s referred to this in his paragraph 73, it’s in the Gunningham/Neal report at paragraph 296, that Mr White advised you of, “Three live charges, were buried in a coal portal” Remember that?

A. Look, I don’t know anything about this. That was an issue that was in the report –

Q. If you don’t know anything about it, I’ll not take it any further.

- A. Okay, no I don't know anything about it.
- Q. So I'll leave this on the basis that what we've got out of this exchange is that you've adopted a process, a procedure for P1 shotfiring, multiple shotfiring. Multiple shotfiring?
- A. It's multiple delay and multiple shotfiring, yes.
- Q. So, multiple shortfiring in a safe place somewhere between the New South Wales and the Queensland regulations or requirements, is that right?
- A. Yes, I can understand –
- Q. And the judgement about that is being made by you and Mr Poynter, you're the two key players?
- A. Yes, and Johan.
- Q. And Johan Booyse?
- A. Yes.
- Q. Do you pronounce it "Boy-zee"?
- A. "Boy-zay", yep.
- Q. Boy-zay – and you and Mr Poynter don't claim to have any particular explosives knowledge, do you?
- A. We both have our – we've both used explosives.
- Q. Yes, I know that, but to evaluate this, do you claim to have sufficient expertise to make an evaluation –
- A. For a place to stand, no, we would suggest outside.

1213

- Q. So Pike River, this has been implemented and in the same vein, I just want to briefly come to the question of the refuge chamber that you have raised in your evidence. In this way, as I understand your evidence your approach to achieve all practicable measures for safety was that there would be a refuge chamber in the stone, in the drift?
- A. Yes.
- Q. A refuge chamber as such?
- A. Yes.
- Q. As opposed to an exchange chamber?
- A. I preferred the option of the refuge chamber.

- Q. And there followed something of a debate between you and the company regarding that chamber?
- A. Yes.
- Q. You didn't accept the risk assessment for the exchange chamber from your paragraph 56 and you told Neville Rockhouse that?
- A. Yes, for the lack of an exchange chamber or a refuge chamber.
- Q. What is clear is that from your evidence is that you thought taking your practicable steps in this regard meant a refuge?
- A. Yes.
- Q. It's also clear from your evidence that you were told that it would take some 16 weeks or thereabouts to incorporate a refuge chamber of that kind?
- A. Yes.
- Q. And you contemplated an improvement notice, but one reason you didn't do that was that if you did issue an improvement notice you'd simply get potentially an alternative step to the improvement notice contemplated?
- A. Yes that was one of the things plus I felt that I was getting somewhere, I was, and I prefer to deal with people rather than a improvement notice you know, might get challenged.
- Q. You never really changed your view that a refuge chamber would be taking all practicable steps did you?
- A. Towards the end I did once I'd read a wee bit more about it, the philosophies, what is acceptable, the sense be there's two philosophies in mining, two approaches and that's one, go to a refuge chamber, have the option of staying there or waiting to be rescued. The other is to evacuate the mine using exchange chambers and they seem to be both equally valid and almost splitting the mining community people. Some people believe in exchange chambers, some people believe in refuge chambers.
- Q. So this is another case which you were put up as an example of how you modify, things were modified against your first instinct on each of the things I have taken you through, first of all going through the fault,

secondly the shotfiring and then evacuation of men and thirdly a refuge chamber, each of them is resolved in a sense in a compromise?

A. No I don't think that compromise is the right word.

Q. So a change of position by you after –

A. We can't tell people what practical steps to take, we can't take ownership of the hazard. The philosophy behind the Act is that the employer has to take responsibility. Now there's two options, one well in this case the guidance out there is that we would like them to fall in-between, either a refuge chamber or as an exchange chamber but if they choose exchange chamber, it doesn't necessarily mean we compromised.

Q. You reached the view about what all practicable steps meant, in this case as to refuge chambers?

A. Yes.

Q. You reached a view with regard to men leaving the mine with regard to the use of P1 explosives, in terms of more practicable steps?

A. Yes.

Q. You also reached a similar view, you must've done, with regard to going through the fault with non-flameproof equipment?

A. Yes.

Q. On each of those occasions, you changed your position in the face of proposals put to you by a Pike River Company?

A. Yes.

Q. You did that without having technical expertise of your own, except as you've described it to the Commission and went with the company against your primary instinct by way of a compromise?

A. I think that's going too far. I – we liken it in the case of the refuge chambers, the more papers you read, there is a choice, you can use refuge chambers or exchange chambers.

1218

Q. Yes I understand.

- A. So for me to say that it was against what I fully believed in, at first, I thought, "No, let's go for the refuge chamber," then I realised that, no, the exchange chamber is an option.
- Q. And finally Mr Firmin, the issue of missing explosives which is dealt with in your evidence, the report was requested and your evidence indicates that a letter came from Mr Louw, Kobus Louw, that did not confirm, or they could not confirm that explosives were missing. Do you remember that?
- A. Yes.
- Q. The police were involved in this matter, were they?
- A. That's right, yes.
- Q. Yes. Did you at that stage, undertake any form of check or audit of the process by which explosives were recorded, held, measured out?
- A. No I didn't.
- Q. Did anyone from the Department do so?
- A. No.
- Q. Did you not consider it a matter of considerable importance?
- A. Yes, it was basically a police matter. They'd gone through that and they, there was no requirement to notify us and the internal investigation had realised that they weren't doing that properly and they'd put steps in to make sure that they counted the explosives more carefully in the future, so I didn't actually audit that when I went there.
- Q. So you again, you were satisfied having been told they're going to take steps to make things in that regard, leave it to them, is that right?
- A. Yes, yes, and they've worked with the police on that.

THE COMMISSION ADDRESSES MR STEVENS

CROSS-EXAMINATION: MR STEVENS

- Q. Mr Firmin, I just want to ask you about your answer to Mr Hampton about impromptu inspections on the afternoon and evening shifts at Solid Energy. Do you recall that?
- A. Yes.

- Q. Now, the first time you did this was post-Pike and you turned up at Huntly at some time after four in the afternoon, correct?
- A. I'm not sure. Between two and four.
- Q. I put it to you it was late afternoon?
- A. Was it? Okay.
- Q. You accept that?
- A. Yes.
- Q. And as a consequence of your request to go underground, there was a phone call to Mr Craig Smith who at that time was at Spring Creek, wasn't he?
- A. Yes. He was out somewhere.
- Q. And the issue with the afternoon and evening shift which was explained to you was that there was nobody immediately available above ground to take you underground, correct?
- A. Yes.
- Q. And that they had to bring to the surface the compliance manager out of that mine to take you underground?
- A. Yes.
- Q. And Mr Smith agreed to that but expressed concern at having to take someone such as the compliance manager or a shift manager out of the mine, didn't he?
- A. Yes.
- Q. And Mr Smith requested a meeting subsequently with you to discuss that, didn't he?
- A. I'm not sure about that.
- Q. Well –
- A. I know we, we did discuss it. Yeah, we did discuss it at meeting at the East Mine.
- Q. Correct. And present at that meeting was, you were in the company of John Kay?
- A. Yes.
- Q. And there was also Paul Hunt?
- A. Yes.

- Q. There was the systems manager, Bill Cowley?
- A. No, I'm not sure, yeah.
- Q. You're not sure or?
- A. I can't remember Bill Cowley being there.
- Q. And do you remember also Lincoln Smith was present?
- A. Yes.
- Q. And it was a matter that Solid Energy took seriously, wasn't it?
- A. Yes.
- Q. And you were asked what was the, what was the objective or purpose for why you wanted to do this?
- A. Yes.
- 1223
- Q. And is it fair that you were evasive in giving that answer?
- A. No.
- Q. Okay. On your first visit when you turned up unannounced, you were asked, "Was this simply a matter of procedure now, or was there an issue that you'd been informed about?" Correct?
- A. I'm not sure, but – yeah.
- Q. Sounds likely?
- A. Sounds, yeah, sounds likely.
- Q. And you did not answer that, did you?
- A. I couldn't be sure what I answered.
- Q. And coming back to the meeting –
- A. Sorry, so, what was the question, whether it was a complaint or?
- Q. Yes, whether you were acting on information or –
- A. It wasn't a complaint, so I would've said, I'm sure I would've said, "No, it's not a complaint."
- Q. Okay, well, if Mr Smith gave evidence to the contrary, would you dispute that?
- A. That I was evasive, or?
- Q. Yes.
- A. Yeah, I think so.
- Q. You would?

- A. Mmm.
- Q. Okay. And at the subsequent meeting which Solid Energy had requested, it was again asked, "What was the objective of impromptu visits for the afternoon and evening shifts?" wasn't it?
- A. Yes.
- Q. And Mr Smith expressed that he was content with that, but that there aren't people available to, immediately available to take you underground and you might have to sit for an hour or two and wait, but it was the prerogative of the Department to be able to have impromptu visits, correct?
- A. I think Mr Smith didn't see the value in an impromptu visit.
- Q. I put it to you again, Mr Firmin, that Mr Smith said that you could, but you might have to sit aboveground for an hour or two until someone was available?
- A. He said, he did say that, yes.
- Q. Yes. And so if in your answer to Mr Hampton, the Commission got the impression that Solid Energy were opposed to it or telephoned you to say it wasn't to happen again, that would've been incorrect, wouldn't it?
- A. What – can you repeat that question? Just one question at a time.
- Q. If, in your answer to Mr Hampton this morning, the Commission got the impression that Solid Energy subsequently phoned you and said such impromptu visits were not to happen again, that would be incorrect?
- A. No, I never said that. I never said that.
- Q. Yes. And indeed they have been quite welcoming of your visit subject to that proviso that there is somebody available to take you underground, correct?
- A. My opinion was that, no they weren't that impressed by impromptu visits, that they could be a safety issue for them.
- Q. Correct, because the compliance manager on the time you did it, had to be brought out of the mine to take you underground?
- A. Yes. It wasn't they said, "Look we welcome these. We'll make sure that there's someone here for you."
- Q. Yes. They welcome them.

MS MCDONALD ADDRESSES MR STEVENS – HE SAID OPPOSITE**CROSS-EXAMINATION CONTINUES: MR STEVENS**

Q. They didn't welcome them?

A. No. They didn't welcome the idea because it presented problems for them.

Q. And the problem was that they had to bring senior personnel out of the mine and take them away from the job they were doing?

A. Yes.

Q. Now, was it either that visit or the one previously at Huntly where you observed a section manager using an anemometer? Do you remember that?

A. No, sorry, I don't.

Q. So you wouldn't be able to say that you expressed surprise that a section manager would be able to use one?

A. No.

Q. You don't have any recollection of expressing such surprise?

A. No.

1228

CROSS-EXAMINATION: MS SHORTALL

Q. Good afternoon Mr Firmin. Let me just start with clarifying one matter that Mr Davidson put to you and it was an allegation made by Nigel Slonker that's contained in the report by Professor Gunningham and Dr Neal that contractors like McConnell Dowell weren't re-inducted in safety training when the tunnel at Pike changed and it became declared a coal mine. Do you recall that question put to you earlier by Mr Davidson?

A. Yes I recall the question.

Q. Now were you present when Mr Whittall gave evidence in Phase One Mr Firmin?

A. I would've seen it on TV or, yeah.

Q. So you believe you are familiar with what evidence he gave?

A. Reasonably so.

- Q. Well do you recall or are you aware that Mr Whittall has given evidence that this change from a tunnel to a coal mine was in September 2008?
- A. Yes I remember the change was around about there.
- Q. And Mr Whittall has given evidence that Mr Slonker didn't start at Pike until seven months later in April 2009, do you recall that evidence?
- A. I believe you, yeah.
- Q. You don't have any reason to dispute that?
- A. No I – yeah, no.
- Q. So Mr Slonker simply wasn't there at the time was he?
- A. No not if those dates are right.
- Q. And just for the record for the convenience of the Commission, that evidence is reflected at pages 1000 and 1001 of the transcript back from Phase One. Now Mr Firmin, I'd like to really start by asking you some questions about your experience and you became a mine's inspector in 1995, right?
- A. Quarry inspector.
- Q. And before that you'd worked for State Coal Mines and Coal Corporation New Zealand for around 15 years, right?
- A. Yes.
- Q. You worked at State Coals east underground coal mine, right?
- A. A variety of coal mines in the Huntly area.
- Q. And as a miner, as a deputy and as an underviewer, is that correct?
- A. That's true.
- Q. And while you worked at east underground coal mine, you gained your first class coal mine manager's ticket didn't you?
- A. Yes.
- Q. That was in 1984, right?
- A. Yes that would be about right.
- Q. And then you renewed that qualification, in fact you got what's called your first class mine manager's certificate in 2005, right?
- A. That's the metalliferous one, yes.

Q. Yes. And in fact that just again for the record is reflected in your July 12 brief. You've outlined your experience and your certificates haven't you sir?

A. Yes.

THE COMMISSION ADDRESSES MS SHORTALL – HAS ALL EXPERIENCE DETAILS

CROSS-EXAMINATION CONTINUES: MS SHORTALL

Q. So I'd just like to touch briefly on a topic that I don't think has been addressed so far before the Commission and that is the unit standards that one is required to complete in order to obtain a first class mine manager's certificate. You're familiar with those unit standards sir?

A. Reasonably.

Q. Was part of getting your ticket to become a first class mine manager in New Zealand to get that certificate there is the expectation that one will be knowledgeable about aspects of underground coalmining, right?

A. Yes.

Q. And in fact the requirements for a first class mine manager's certificate include that units be completed describing, developing and maintaining basis ventilation systems for underground coal mines?

A. Yes.

Q. And there's another unit that's required that involves designing, establishing and maintaining effective ventilation systems for an underground coal mine, right?

A. Yes.

Q. And there's yet another unit standard that relates specifically to ventilation in particular the person sitting for the certificate must demonstrate knowledge of and design an effective ventilation system in an underground mine, right?

A. Yes.

Q. And other standards that are required in order to obtain the certificate that you got in 2005 relate to the design support methods for underground coal mines, don't they?

- A. Yes.
- Q. In order to obtain your certificate, in '05 you had to demonstrate knowledge of geology for underground extraction didn't you?
- A. Well there's a little bit of confusion here. When I did my first class underground coal mine manager's certificate, was way back in 1984, it wasn't under the unit standard system, but we did all that in a general sort of a – but to sit my first class metalliferous ticket, all those unit standards were accepted from the first one and I had to sit one unit standard and that was, mining methods, metalliferous mining methods.

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- Q. So could you explain to me what it is that you needed to do in 2005 to accept that other –
- A. Just the one unit standard.
- Q. And what was involved in that standard course?
- A. I went to an assessor and he, it was a, it was a unit standard about mining methods, metalliferous mining methods and how you can extract ore, gold ore, using various methods such as, it depends on the types of stopes, types of ways of extracting stopes.
- Q. Now at the time of your first contact with Pike in May of 2005 you'd just completed that recertification of your certificate, hadn't you sir?
- A. Yes.
- Q. And you'd been a warranted inspector of coal mines in New Zealand for around 10 years at that point, right?
- A. Remember I was inspector of quarries for a starter and I think it was about 1999 I became the inspector of coal mines.
- Q. So around six years as the inspector of coal mines?
- A. Yeah, yeah, yeah.
- Q. And over that six year period Mr Firmin you had inspected underground coal mines on the West Coast of New Zealand, right?
- A. Yes.
- Q. Do you recall how many different underground coal mines on the West Coast you had inspected over that six year period before 2005?

- A. Well I count them, I suppose I did Roa, Black Reef, Terrace, Spring Creek and then Pike, five.
- Q. So four before you reached Pike in 2005, is that right?
- A. Yes.
- Q. And you had been the mine manager at an underground coal mine on the West Coast back in around 1994, hadn't you?
- A. For a short period, yes.
- Q. And that was the Moody Creek underground mine?
- A. Moody Creek, yes.
- Q. And by 2005 when Mr Whittall called you, first called you about Pike, is it fair the Roa, Black Reef and Terrace and Spring Creek mines were still operating at that time?
- A. I would think so, yeah.
- Q. Was Burkes Creek operational at that time?
- A. I'm not sure, but it was, I did go there once or twice around about that time or a bit after.
- Q. And as the health and safety inspector for coal mines back in 2005, you visited each of Roa, Black Reef, Terrace and Spring Creek, right?
- A. Yes.
- Q. You'd conducted underground inspections of those mines?
- A. Yes.
- Q. Would you agree with me Mr Firmin that in 2005 you had a good knowledge of underground coalmining on the West Coast of New Zealand?
- A. Coalmining is fairly generic. The West Coast of course has its special problems, methane, perhaps high quantities in Huntly where I was based but I would say that I've got a reasonable aspect, a reasonable knowledge of the mining on the West Coast.
- Q. Because in fact beyond the West Coast you'd also inspected other coal mines around New Zealand, hadn't you?
- A. Yes, there was one in Southland and of course I'd worked in Huntly and inspected Huntly.

- Q. Now I just want to stay on these West Coast mines and the inspections you'd been involved with prior to your first contact by Mr Whittall in 2005. You were familiar with the design of these underground coal mines that you'd inspected prior to '05?
- A. Yes.
- Q. You were familiar with the strata control systems used at those underground West Coast mines?
- A. Yes.
- Q. You were familiar with the mining methods used at those underground West Coast mines?
- A. Reasonably familiar.
- Q. And in fact by 2005 Spring Creek was using hydromining on the West Coast, wasn't it?
- A. Yes.
- Q. So you were familiar with hydromining at that mine?
- A. Well I was aware of it and I knew the basics, yeah. Well I wouldn't say I was an expert on it, yeah.
- Q. But you'd inspected the Spring Creek Mine?
- A. Yes, I'd inspected it, yes.
- Q. At the time it was using hydromining, right?
- A. Yeah, probably, yeah.
- Q. And when you and Richard Davenport met with Mr Whittall at Pike's office in Greymouth in February 2007, so I'm coming forward in time, do you recall being told that Pike was planning to use hydromining?
- A. Yes.
- Q. And you didn't say to Mr Whittall at the time that you had concerns about the suitability of hydromining at Pike's West Coast mine, did you?
- A. No.
- Q. You had more West Coast experience of hydromining than Mr Whittall at this point, didn't you?
- A. Probably, yes.
- Q. And you didn't say to Mr Whittall subsequently that you had concerns about the suitability of hydromining at the Pike Mine, did you?

A. No.

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Q. Or concerns about the extent to which Pike had considered the risks of hydromining in the area?

A. You mean the full risk assessment of hydromining?

Q. Whether Pike had considered the risks. Not necessarily a risk assessment, just generally the risks of hydro?

A. Just in general terms, I was reasonably satisfied that they could hydromine that mine.

Q. In fact, you knew from your experience Mr Firmin, didn't you, with other mines, that hydromining could work effectively on the West Coast, right?

A. Yes.

Q. And you drew comfort as to the Pike project, based on your knowledge that other West Coast coal mines were hydromining, right?

A. Yes.

Q. And you understood from your early contacts with Pike that the mine had been designed such that a single tunnel would be driven to access the coal seam, right?

A. That happened a bit later, didn't it?

Q. You understood from your early discussions that Pike had been designed with the single drift, isn't that right?

A. That single drift which at one stage there was a proposal for two drives through the fault.

Q. But with respect to access to the coal seam, did you understand from your early discussions that the plan was to use a single tunnel?

A. Yes.

Q. And you didn't say to Mr Whittall at your February 2007 meeting that you had concerns about that design, did you?

A. No.

Q. And you didn't say that to Mr Whittall subsequently, did you?

A. No.

Q. And you understood from your early interactions with Pike, what types of strata control would be used at the mine, didn't you?

- A. Yes, these, in relation to the drive, that's provided. You know, you have got roof support with ventilation, that your health and safety systems can deal with the issues that could arise.
- Q. Now, yesterday Mr Firmin, a lot of questions were asked of you about whether your inspections of Pike's mine were up to scratch. Do you recall those questions?
- A. Yes.
- Q. Now, at the time you're inspecting Pike, it was largely just a tunnel project, wasn't it?
- A. That's right.
- Q. Pike didn't become a coal mine until around September 2008, did it?
- A. That's right, yes, designated coal mine.
- Q. So the three months, sorry. Do you have something else?
- A. I think they designated it as a coal mine once they found coal or methane, yeah.
- Q. So that's three months after you stopped being the Department's primary inspector for the Pike mine, right?
- A. Yes.
- Q. In fact, the first coalminers to work underground weren't employed by Pike until June 2008, were they?
- A. I'd accept that.
- Q. So right around the time of your handover?
- A. Yes.
- Q. And as I think you've said again this morning, at the time of your inspections, you were largely checking work being undertaken by McConnell Dowell, right?
- A. Yes.
- Q. And McConnell Dowell is a renowned construction company with expertise in mining construction?
- A. Yes.
- Q. And they had their own safety systems in place for the tunnel project, right?
- A. Yes.

- Q. But even so, between February 2007 and May 2008, you visited Pike six times, didn't you?
- A. Yes.
- Q. Now, you were asked yesterday whether the Department ever asked Pike for its gas drainage plans and spontaneous combustion reports and you said that you weren't sure. Do you recall that line of questioning?
- A. Yes.
- Q. Because one of the reasons you're not sure, because at the time you were inspecting, Pike was largely just a tunnel project, wasn't a coal mine?
- A. Yes, perhaps someone else might have asked for it earlier or subsequently.
- Q. And even though you weren't sure whether the Department ever received spontaneous combustion reports from Pike, would it surprise you to know that Mr Poynter did?
- A. No.
- Q. And just for the record I will cite to DOL3000010026 for the convenience of the Commission. Now you were also asked yesterday a lot of questions about what, and some today actually, about what you didn't do when you inspected mines. I'd like to talk to you about what you did do when you came to Pike. You visited six times, right?
- A. Yes.
- Q. Can you generally describe to us what you did when you came to Pike for those inspections?
- A. Generally I would go to the office where, at the early stages it would have been with McConnell Dowell, talked to the tunnel manager, asked them how they were going in terms of their development, any issues that they had, any problems, have a look at the cross-section which was on the board, and then go and do an inspection underground, come back out and have a debrief with the management.

1243

- Q. Now when you refer to the “cross-section”, what do you mean by that, sir?
- A. The tunnel plans as such. They work basically off this cross-section and they had the trigger action response plan for the type of ground that they were in, from 1 to 5, and they would plot that on the cross-section to show where they were in terms of meterage and of course the main, one of their main concerns was the stability of the ground and that was being plotted up as they were going through. They had the original two estimates of how hard the ground would be. Then they had the actual underneath that.
- Q. And then you referred to, “the inspections underground”. Can you describe to the Commission what you did during those inspections at Pike?
- A. Was a walk-around inspection looking for hazards, looking to see that people’s work procedures, looking for equipment, anything there that could show me that the mine was being operated safely.
- Q. And you would carry a gas reader with you during that walk-around inspection?
- A. Yes.
- Q. You would talk to workers while you were underground, Mr Firmin?
- A. Sometimes, yes.
- Q. Do you recall during the period that you conducted the six visits of Pike, when it was a tunnel project, approximately how long you spent underground each time?
- A. Well, around about three hours, I think. I would do two places in the one day, so...
- Q. And would you end your visit to Pike by speaking with, it would’ve been the tunnel manager I guess at this point, not the mine manager, is that right?
- A. Usually, yes. Kobus was there later on. Peter Whittall was usually not onsite. Later on, he was.
- Q. And Kobus, is Kobus Louw, the mine manager?
- A. Kobus Louw, yes.

- Q. Now you didn't inspect Pike's mine any differently to any other mine that you inspected, back in the time, did you?
- A. No.
- Q. You didn't give Pike any special treatment, did you?
- A. No.
- Q. You didn't give it a "soft touch", did you, sir?
- A. No.
- Q. You applied the same standards as you did to all the other mines you were inspecting at the time, didn't you?
- A. Yes.
- Q. Now, although your primary contact with Pike ended in around July 2008, just as it became, moved into being a coal mine, you continued to discuss Pike in 2009 and 2010 in phone calls with Mr Poynter, didn't you?
- A. Yes. I talked with Kevin and sometimes Kobus would ring me. Perhaps the odd time Neville Rockhouse too.
- Q. Did you exchange any emails with Mr Poynter about Pike?
- A. Often, I think, that was normal discussion, you know, with Johan and probably other people as well.
- Q. Did you keep those emails, Mr Firmin?
- A. I generally try and keep Pike's in a separate file, but no, they'd all be disclosed with the Gunningham/Neal report.
- Q. And have copies of those emails all been made available to the Commission, sir, do you know?
- A. I would think so, yes, all of those were, yeah, every email.
- Q. So to the extent that they haven't been, they would be located in your Pike email files, is that right?
- A. Generally, yes.
- Q. Now would you also see Mr Poynter on occasion?
- A. Yes.
- Q. How frequently, back in 2002 – sorry, in 2009 and 2010, would you see Mr Poynter?
- A. Every three, four months, I would think.

- Q. And on those occasions, did you discuss Pike with Mr Poynter?
- A. Perhaps, sometimes, yeah.
- Q. When you spoke with Mr Poynter about Pike during 2009 and 2010, or you received an email from him, do you recall what sort of circumstances had arisen that caused that contact?
- A. Well, it could be an incident, it could be an accident, it could be a concern that he had. It could be just general how they're getting on, you know, it would be general interactions.

1248

- Q. Including any concerns they he had, right?
- A. Yes, he might ring me back instead.
- Q. Mr Poynter didn't contact you to discuss his conclusion that use of the vent shaft at Pike is an escapeway met minimum standards, did he?
- A. No I don't think he did.
- Q. Now on occasion Mr Poynter asked you to peer review his work on Pike, right?
- A. I'm not sure, you mean peer review in the formal sense of accident investigations.
- Q. Well I'd like to understand that. From your evidence yesterday you refer to this peer review process which I believe is connected to Insite, the Department's document management system, is that right?
- A. Yes.
- Q. Now outside of a review of an accident or an incident, is it possible for an inspector to see a peer review more generally?
- A. Just a normal consultation with me, if you call that a peer review, yes.
- Q. And would that be reflected in Insite, is there – let me ask that differently? Is there an aspect of Insite that enables an inspector to formally request a peer review?
- A. No, that would just be in my, inspector's notebook, if I recorded it. I didn't always record the...
- Q. Let me just, I just want to show you a document on this point. It's at DOL3000070063 Ms Basher and just wait for that to come up Mr Firmin, I just have a quick question on it?

WITNESS REFERRED TO DOCUMENT DOL3000070063

- Q. I'd actually like you to just orientate yourself. This is file detail report generated out of Insite. Is that right?
- A. Yes.
- Q. So you're familiar with these sorts of documents, sir?
- A. Yes.
- Q. And if I could take you to page 6, it's /6 in the reference I have Ms Basher. You see the task history there, sir?
- A. Yes.
- Q. And is the task history essentially a summary of the actions that have occurred in relation to the matter subject of the file detail report?
- A. Yes.
- Q. Now on that task history there it's on the, I think it's the fifth row down, there's a reference to request peer review. Do you see that?
- A. Yes.
- Q. And I'm just trying to understand how this document works in connection with my questions about Mr Poynter perhaps requesting a peer review. Here this file detail report appears to relate to a particular incident. Is it possible however or was it possible back in 2009 and 2010 for Mr Poynter to request a peer review from you in other circumstances?
- A. This is probably the only one I ever peer reviewed. It's, it must've been, I had forgotten all about it. It must be a, I remember when we first started Kevin said we should be peer reviewing, mines inspectors should be peer reviewing and he must have sent me this one and I've peer reviewed it but the normal peer review process for, this must be an incident, a health and safety incident, was you went to your team leader. So there maybe one or two but that would be only with a formal incident at Insite rather than perhaps what you're referring to before.
- Q. Well was there anything in the Insite system that would prevent Mr Poynter from seeking a peer review from you in circumstances other than an incident?
- A. No, you, the way that Insite - you had to have an incident and you click on incident and it's got peer review, although you could put a file note, if

you did an inspection and you wanted to raise that you talked to somebody. Or even in your investigation you could just add that you talked to whoever you were talking.

Q. And how would you, well strike that, how were you informed with this particular example back in 2008 that Mr Poynter had requested a peer review from you?

A. I think it shows up in the Insite system that you've got an outstanding task. He may have phoned me as well.

Q. Mr Poynter didn't ask you to peer review his conclusion that use of the vent shaft at Pike is an escapeway that met minimum standard, did he?

A. No, we never the, this is the one when it collapsed? No we never discussed that.

1253

Q. Now just moving off that document, you were asked this morning by Mr Davidson about a preference for two drifts and a fan outside and I understand in response to Mr Davidson's questions you confirmed that you didn't discuss that preference with anyone else, is that right?

A. No.

Q. Now Mr Firmin I understand that people often have second thoughts after a tragedy and my question to you is, did you form a view as to this preference before or after the 19th of November 2010?

A. I mean the whole process about design et cetera, we're not really involved in it as a department, but I mean it's standard practice in a sense that if you're reasonably close to the coal, you have two headings and you go to the coal seam. In this case, because of the distance and the geology, one was used. Whether I've made my mind up any – I'm not, I don't think that's quite relevant, the question, in a sense that yes, after the accident you do look at this sort of thing.

Q. So it's possible that you formed your view as to this preference post the tragedy in November last year sir, is that right?

A. It's possible, yes.

Q. Now even though Mr Poynter was the Department of Labour's inspector for Pike at the time, you were aware that the company had started hydromining in around September 2010 weren't you?

A. I don't know I knew they were actually hydromining.

Q. You just may not recall the timing, is that right?

A. No, I – we talked about Pike but I don't recall even knowing that they'd actually started extraction there when we talked about that. I just don't know.

Q. Now you've given evidence about your knowledge of the main fan being installed underground at Pike, do you recall that evidence?

A. Yes.

Q. And you never raised with Mr Whittall or anyone else at Pike any concern about the extent to which the fan would have explosion protection did you?

A. No, those sort of details never – we – I haven't been supplied with.

1256

Q. And you understood from early on that Pike also would install a surface fan, right?

A. Yes.

Q. And you never raised with Mr Whittall or anyone else at Pike any concern about the extent to which the surface fan would have explosion protection, did you?

A. Those details we hadn't discussed. The meeting that we had on the 2nd of the 11th, '07, the design there that had an explosion door in it, explosion stopping, so I realised that, well it was part of that conversation.

Q. But you don't recall raising any concern with Mr Whittall or anyone else at Pike about the extent to which the fans had explosion protection, do you?

A. I never saw the final design.

Q. Just my question sir.

A. Sorry.

Q. You don't recall raising any concern with them about that matter, do you?

A. Because I hadn't seen the design then I, I, we wouldn't have discussed it. Did I not, did I say something before about the surface fan has to be explosion protected? No. We talked about it with the underground one.

Q. Now, you and Mr Poynter conducted a joint inspection at Pike in May 2008, right?

A. Yes.

Q. And you discussed with Mr Louw, the mine manager at the time, how a ladderway in the shaft would be a second egress from the mine, right?

A. Yes.

Q. And although the bottom part of the shaft changed in February 2009, when there was a collapse and the Alimak then required installation, the height of the ladder climb didn't substantially change, did it?

A. No, but the landing, there was no, it wasn't possible, the landings in, was there?

Q. But the height itself didn't substantially change, did it sir?

A. No, no, yeah, okay.

Q. So you understood more than two years before the November 2010 explosion that the climb up the ladderway was approximately 100 metres, right?

A. Yes.

COMMISSION ADJOURNS: 12:58 AM

COMMISSION RESUMES: 2.02 PM**CROSS-EXAMINATION CONTINUES: MS SHORTALL**

Q. Now Mr Firmin, you've given some evidence about 2007 conversations regarding a refuge chamber, do you recall that evidence, sir?

A. Yes.

Q. Now prior to the 19th of November 2010, how many of the underground coal mines that you had inspected in New Zealand had underground refuge chambers?

A. Would be East Mine, Spring Creek only.

Q. The underground refuge chamber at East Mine, when was that installed?

A. I'm not sure, I think it could be quite old, yeah.

Q. And the refuge chamber at Spring Creek, when was that installed?

A. That's a newer mine, so I'm not too sure.

Q. Do you have any recollection whether it was within the 12 months before the 19th of November or longer than that?

A. Be longer than that I think, yeah.

Q. Within the five years before the 19th of November 2010?

A. I'm not sure when Spring Creek started, would've been 2001, maybe, probably a couple of years after it started, I would imagine.

Q. So just those two underground mines?

A. Yes, I think, Roa, Black Reef and Terrace, were all quite short distances to go outside.

Q. Now for a proactive inspection to a mine, you contact the mine manager to say you're going to visit, right?

A. Yes.

Q. And why do you contact the mine manager?

A. I think there was a policy actually that said that it was better to make sure that the mine manager was in, or the, in this case the mine manager, client, was in, because any issues you could raise with the manager with that person, and they'd be able to give you a good answer

to anything that they would know was going onsite, or anything you wanted done, so it was kind of a functional thing.

Q. Now under the mining regs it states that, "The mine manager is responsible for managing the operation and supervising the health and safety aspects of the operation personally on every day on which any employee is at work." Do you recall that language from the regs?

A. Yes.

1405

Q. And in connection with you contacting the mine manager, as part of a proactive visit did that language from the regulation form part of your thinking?

A. Yes.

Q. And you would generally start an inspection with a meeting with the mine manager, right?

A. Yes, generally with a meeting.

Q. And that's because the mine manager is in charge of the mine operations, right?

A. Yes.

Q. And so at Pike it was generally the mine manager that you met with on arrival, right?

A. Yeah, it changed slightly 'cos I think initially the tunnel manager was the person in charge but yeah, later on Kobus was both.

Q. And would it be fair to say Mr Firmin that based on all your years of experience, as an inspector for the Department of Labour, operational decisions at a mine site are made by the mine manager?

A. Well these days usually it's a, most of the operational decisions, well I guess its multi-discipline approach so he might consult lots of people or people might ask him to do things as well so.

Q. But would you agree with me that the decision-making power as to the mine site rests with the mine manager?

A. Yes generally. There could be operational managers as well there, yeah.

- Q. Now as at the 19th of November 2010 which underground coal mines were you inspecting in New Zealand?
- A. East Mine.
- Q. Any others?
- A. No, just the East Mine.
- Q. Now as at the 19th of November 2010 do you have an understanding as to which mines Mr Poynter was inspecting, which coal mines?
- A. That would be all the West Coast ones, what you're doing underground coal mines? Was that underground coal mines?
- Q. Yes thank you.
- A. Yeah, that would be, Burkes Creek was probably still going then so Black Reef had stopped, Roa. Terrace may have been going, and Spring Creek and later he asked to do some inspections at Huntly as well so.
- Q. Now to the best of your knowledge Mr Firmin, had any of the mines, the underground coal mines that either you or Mr Poynter were inspecting pre-19 November 2010, fitted all their diesel vehicles that were likely to work in a restricted area with a gas detector that would shut the engine off in the presence of methane levels greater than 1.2%?
- A. I think that was in the audit that was done recently. I think only some of them had met that criteria of the – and I think it's in a standard.

1408

- Q. So some hadn't as part of the recent audit?
- A. Some hadn't, yeah, as far as I know.
- Q. And had any of the mines pre-19 November 2010 installed a real-time flow and pressure sensor in the methane drainage line that reported and recorded on anything equivalent to the SCADA system at Pike?
- A. I'm not familiar with the SCADA system at Pike. Is this, this is just real-time monitoring?
- Q. That's right.
- A. Yeah, most of the East Mine has got real-time and Spring Creek's got real-time.

- Q. And do you recall whether pre-19 November 2010, those mines had installed a real-time flow and pressure sensor in the methane drainage line?
- A. They don't have methane drainage. Spring Creek did for a while I think.
- Q. Had any of the mines that either you or Mr Poynter were inspecting pre-19 November 2010 installed a suction unit on a methane riser to assist in removing gas from the lines?
- A. They don't, they don't have methane drainage.
- Q. What about pre-19 November 2010, any of the mines that you or Mr Poynter were inspecting, had they installed an over-pressure detection system to detect a goaf leading to gas expulsion that removed power to energised electrical apparatus?
- A. I'm not sure. I don't think so.
- Q. Did any of the mines pre-19 November 2010 have their main fan as a forcing fan at the mine entrance?
- A. No.
- Q. Now, Mr Davidson put to you earlier that Mr Bell was critical or is critical of the extent to which Pike assessed, had assessed, sorry, the gas outburst risk as it approached the Hawera Fault. Do you recall that line of questioning?
- A. Yes, yes.
- Q. Now, at the time, you recalled that Mr Bell was working in the tunnel?
- A. Yes.
- Q. Right. Do you recall that Mr Bell was working and employed by McConnell Dowell, not Pike at the time?
- A. Yes, that's right, I think, yeah, as far as I know.
- Q. And do you recall that he was working on a part-time basis?
- A. I didn't know that. I knew it was the nightshift.
- Q. Do you recall that he was working that nightshift as a part-time tunnel supervisor?
- A. Yes.
- Q. You don't have any reason to believe that Mr Bell was privy to all the assessment work being conducted by Pike at the time, do you?

A. No.

1411

Q. You don't have any reason to believe that Mr Bell was even aware of the surface drilling and other assessments being undertaken by Pike as it approached the Hawera Fault, do you?

A. No, I don't know what he's –

Q. You don't know whether Mr Bell's criticism is based on all of the relevant information, do you?

A. No.

Q. Now Mr Davidson also put to you that Mr Bell is critical of the decision to drill through the fault without flameproof equipment, do you recall that?

A. Yes.

Q. But whatever the merit of that criticism, which my clients reject, there was no accident as a result of using non-flameproof equipment, was there?

A. No.

Q. There was no safety incident, was there?

A. No.

Q. There was no harm or injury caused to anyone, was there?

A. No.

Q. So the risk assessment process used proved adequate, didn't it?

A. Yes.

Q. The use of non-flameproof equipment proved safe, didn't it?

A. Yes, you're probably getting into an area that I wasn't quite there when they were going through the fault, but I haven't heard any issues going through.

Q. No issues have been brought to your attention about that matter have they?

A. No.

Q. Now, Mr Hampton also put to you earlier some criticism about the underground fan at Pike not being flameproof, do you recall that?

A. The motors, yes.

- Q. The motors, that's right, to the underground fan. Do you recognise the name, "Flakt Woods"?
- A. No.
- Q. You don't understand Flakt Woods to be a well respected fan designer in the coalmining industry?
- A. No, no.
- Q. You just don't know anything about them?
- A. No, I don't know too many designers of fans.
- Q. Do you have any understanding that Pike used Flakt Woods to, in all aspects actually, of the design and installation of the underground fan to assist the company?
- A. No, I remember I did ask Peter about the fan and he said they were going to get a reputable manufacturer of coal mine fans.
- Q. And you may not recall this, or know this, Mr Firmin, but I'll put it to you to see whether you do, now for the underground fan, the drive was separated from the fan by a bulkhead through which the card and shaft passes, so that all the devices on the other side of the bulkhead were certified for operation in an underground coal mine. Do you understand that to have been the case? You don't know those specifics?
- A. Look, I – the concept, but yeah, no, I, I wasn't involved there.
- Q. Now just turning to a separate topic Mr Firmin, you commented yesterday in response to questions from counsel assisting the Commission that inspecting the Pike mine every three months was, and I think your words were, "obviously not enough". Do you recall that?
- A. Yes.
- Q. Now that's a view you formed post the November 2010 tragedy as well, isn't it?
- A. Partly, we had wanted to do audits. If we'd been a separate group on our own, we would've done specific auditing processes, like with three inspectors sort of turning up at probably a couple of times a year, but that's pre-Pike, yeah. There was some talk about increased inspections, but I must admit I thought three months wasn't too bad, but we did want to do some audits.

Q. So at the time, and I know it's difficult perhaps to separate your mind in this way, given the tragedy that occurred last November Mr Firmin, but at the time, pre-November 19, 2010, did you believe that three-monthly audits at Pike were sufficient?

A. Three-monthly inspections?

Q. Yes. Sorry, inspections, sir, yes.

A. Bare minimum, minimum.

1415

Q. Now turning to Mr Poynter, in questioning yesterday, Mr Poynter was described as a trainee inspector at the time he took over from you as the Department's primary inspector for Pike, do you recall that?

A. Yes.

Q. But at the time Mr Poynter took over responsibility for Pike in 2008, he had over 30 years experience in the coalmining industry, right?

A. Yes.

Q. He had held a first class mine manager's certificate for 23 years, right?

A. Yes.

Q. He'd worked in mines including –

THE COMMISSION ADDRESSES MS SHORTALL – MATTER OF RECORD

CROSS-EXAMINATION CONTINUES: MS SHORTALL

Q. Is it fair to say that at the time Mr Poynter took over he had a wealth of practical and management experience with underground coal mines?

A. Yes.

Q. Did it ever occur to you Mr Firmin that Mr Poynter might've been brought in as the Department's primary inspector for Pike because of his experience including for many years as a mine manager?

A. We were lucky to get Kevin yes. Asset, and he really worked to – his philosophy was to work to make sure the places were safe so, yes him, whether he was the primary person, he was definitely good management experience.

- Q. Did you have any reason to believe that Mr Poynter's inexperience as an inspector when he took over Pike had any impact on his ability to understand for example the ventilation and development issues at the mine?
- A. No, I think it would be more practicalities in terms of writing inspector's notes and that sort of stuff.
- Q. So the paper trail that came following?
- A. Yeah the admin, he was a qualified person. I – you'd have to ask him as to whether he felt confident.
- Q. Would you agree with me that Mr Poynter was at least as able as you to inspect the underground coal mine at Pike?
- A. Oh yes.
- Q. Perhaps even more able than you Mr Firmin?
- A. Perhaps more.
- Q. You would agree with me, more able?
- A. Perhaps more, yeah probably more able.

QUESTIONS FROM COMMISSIONER HENRY:

- Q. Mr Firmin, my questions fall into two parts. The first part deals with your approach that you've described to how you carry out your inspections and the second is the training that you received. On the first one and I must confess many years ago I was a specialist tax inspector, so I have some feel for the difficulties of determining the level that you go to in an inspection or an investigation and how much coverage you do as against in-depth reviews. Is it your position that the way you approached your inspections at Pike is in accordance with the departmental policy?
- A. Yes I don't think that at any stage that we were asked to change our way we did our inspection. There is a policy on inspections and I am pretty sure we're following that.
- Q. So when you decide not to use the written warning improvement notice, prohibition notice available to you under the legislation, in your view you were following the departmental guidelines, is that correct?

A. Yes, yes.

Q. And when you had your performance review with the person you reported to, was there any suggestion in that review, any criticisms of you in regard to how you carried out those inspections, whether at Pike or anyone else?

A. No.

Q. Now you mentioned to us I think quite a few times the Braithwaite triangle as something which you relied on in determining your course of action. Now if I can just tell you what I think that triangle is and you tell me whether I'm wrong. It's based on an approach to try to get the employer to become a safe workplace using a variety of techniques?

A. Yes.

Q. And one of the techniques is to educate them?

A. Yes.

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Q. Give them guidance. One is to generally provide information, another one is to facilitate?

A. Yes.

Q. And then of course to enforce the law if you need to?

A. Yeah.

Q. And in doing so you try and divide the workplaces into different categories and the very top category is someone's who's at best, some company that's at best practice and at the bottom is someone who's unlawful?

A. Yes.

Q. And in between you've got all these gradations and you try and adopt your process according to where you think the employer or the company is in that triangle. So if you think they're doing their best, you may take a different approach than if they're deliberately not compliant. Is that how it works?

A. Yes that's right.

- Q. Now in order to do that you need to have under the Braithwaite model, you need to have knowledge and information about the company. Is that right?
- A. Yes, that'd be correct.
- Q. So you need to have performance data of some kind which enables you to place that company in the triangle?
- A. Well that, ideally, yes, yeah.
- Q. So in your case you've put a lot of weight, if I understand it, on the fact that when you raised compliance issues with Pike, they fix them or promise to fix them?
- A. Yes, in, when you're talking with the company you pretty quickly understood that, if they were wanting to comply and looking at their standards and involving you, and you've kind of that, I guess, just a gut feeling and then if it did raise an improvement and it was, you know, that they responded by sending you photographs of what they've done or quite quickly got back to you and it looked, the content of the material that they gave back to you, and you saw that it was a high standard then you continued along that line but it was no formal assessment, like just how good they were.
- Q. The problem you've got though, isn't it, that under the Braithwaite model if you don't have objective data?
- A. Yes.
- Q. As to where that company actually lies, you could be thinking that they're compliant when actually all they're doing is promising –
- A. That's right.
- Q. – from time to time. So given the lack of what appears to be, at the moment, a lack of solid data collected in the course of your investigation, it looks as if the Braithwaite model might be a bit shaky, doesn't it?
- A. It could be, yes.
- Q. Well the second part, I just wanted to ask you about training. Now Gunningham and Neal which we've heard a bit about, a review, independent review commissioned by Labour, they said when they

brought their report out in July that there were gaps in the training of the mining inspectors and that those gaps were being addressed as they wrote. Has there been new training for you?

A. No. No.

Q. Is any slated?

A. No, the new high hazard unit? There's plans to do that.

Q. Would you as a front line inspector be given any training or briefings on the Department's strategic direction?

A. No it tends to be done at a higher level than what I would be involved in. There's probably a consulting document that comes out where you can input. I don't usually get involved in that.

Q. No but what I mean is, for example, in the Department's statement of intent for 2011 to 2014, the three year strategic view, they talk in there about a measure that they're going to use of the employer complying within six months of enforcement action being taken?

A. Yeah.

Q. Would you be aware of that measure?

A. No, it's probably in my performance document that if we write an improvement notice or some sort of compliance we have to follow up to make sure that's put into Hasard, into Insite when they use a compliance date so that would generate that information.

Q. And that would be used to measure your performance?

A. Yes.

Q. In part at least?

A. Mmm.

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QUESTIONS FROM COMMISSIONER BELL:

Q. Mr Firmin, good afternoon. I've got a few questions. Do you see any benefits in an unannounced audit?

A. Audits?

Q. Unannounced audits. How do you feel about unannounced audits?

- A. It's something I haven't thought about really. I would imagine a company would have to prepare to do an audit, to have that sort of information ready for you, to go in and just find it, I suppose, it's something that's probably a good idea. I didn't realise –
- Q. I probably gave you the wrong – probably more an unannounced inspection, rather than an audit, sorry.
- A. I see. No, I do. It was, it was actually really good the one, the only one that I've done so far. Well, I've done two, I suppose in the 15 years, well for a coal mine, underground coal mines.
- Q. What do you think you found on an unannounced inspection that you may not have found if you'd gone along with prior notice?
- A. Well the one that I did, because there was no managers with me, it was good to talk to the men and I found the health and safety rep and I was given some good information actually, yeah.
- Q. Have you ever stopped any operating mines, underground coal mines?
- A. Prohibition notices.
- Q. Actually stopped them operating there and then with a prohibition notice or –
- A. Yeah, a prohibition notice, it has to be the likelihood of serious harm and that, just that, what they're doing. We had that incident recently with the ignition at Spring Creek. Generally, if there's been a serious harm accident or fatality, you know, so you stop the place, you stop what they're doing until they can come back with a safe way of doing it and you're doing your own investigation. I think there was a couple in small, in small mines I stopped. You can only stop a certain aspect of what they're doing. I think there was one in relation to surveying. I said that they couldn't, they had to get a survey straight away so there was a, was that an improvement notice? In one, they couldn't enter the mine because the entrance needed to be fixed. There was a timber there, so I stopped them there. I think the other one was the survey. I think they did the survey straight away as well, because, that's right, yeah, they were already about 30 metres into the mine and didn't have a survey where they were. There was old workings.

- Q. Do you have the capacity to ask a mine to do an engineering study? We were talking about before about shotfiring or the underground plan. Do you have the capacity to say to them you want them to do an engineering study to give to you?
- A. Yes. You'd more likely ask for a risk assessment if you're unsatisfied with what they were doing, you could say, "Well, look this," yeah, I think you could, yeah.
- Q. It's quite common in other jurisdictions to request an engineering study from a mine if there's something you're not comfortable with?
- A. Yeah.
- Q. I'm just suggesting it may be a useful way to get the information you need?
- A. Yes.
- Q. At their expense?
- A. Yeah, okay.
- Q. Just getting back to the underground fans, I know it's been covered a few times but when you looked around overseas, did you think about talking to Mr Booyse who was a member of the Chief Inspectorate Coal Mines Group, so that group could have provided information back to you?
- A. I was the only one, I think, then. It was on my –
- Q. Mr Booyse wasn't there at the time?
- A. No, I was the only coal mine inspector. There was a hard rock inspector but I was the –
- Q. I know he's hard rock, but I think he's a member. He attends the annual chief inspectors' meeting where there are three chief inspectors there that know about underground mining.
- A. I know that. Yeah, no, Mr Booyse was a senior high hazards advisor. The hard rock guy I was talking about was a Mr Oran. He has been to one or two –
- Q. I know Booyse's been to at least one or two as well?
- A. Yes, he hadn't started then.

Q. The point I'm making is there's a chief inspector of coal mines in New South Wales, one in Queensland who would've been able to provide the information you were asking about almost instantaneously?

A. Yeah.

Q. In section 142 of your document, 142 it talks about a risk assessment was done that identified that flameproof equipment would be more dangerous if it was brought in to play?

A. Yes.

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Q. Why was it more dangerous?

A. In terms of they wanted to use the jumbo to head towards the fault and the place was about five metres high, so they looked at the risk and because the risk – because there was no methane, the way I understand it, because there was no methane detected and they were drilling a hole in advance, you could work out the risk that methane might suddenly blow out of that hole, compared with the risk of trying to do roof supporter in really hard ground with a machine that couldn't reach that height and people had to work under a canopy to support the roof and mesh.

Q. So you were comfortable with that risk assessment that it was in fact more dangerous to have flameproof equipment there?

A. Yes, I – when you talk about “more dangerous” you think, well, catastrophe where you had a methane explosion, well, it would be really difficult to say. That's a high risk. But because there was absolutely no methane found at this stage and they were drilling ahead, the idea of using the jumbo in an area where no methane had been found but close to a potential source, but they had that control advised where they were drilling 16 metres ahead and they had a methane detector on the jumbo with a cut-out .25%, that then that would mitigate the risk of an explosion from methane.

Q. All right, just finally, section 86 of your statement, I'm just interested in what Mr Whittall was talking about “appointing anyone who was competent to fill the duties of a competent person and that he may not,

there could be smaller numbers of deputies.” How did you feel about that concept?

- A. I wasn't happy with it and I discussed it. I asked him to put it in writing and send it to me and that I might contact the Australians and just sort of say, "What do you think of this?" Unfortunately our admin regulations don't require underviewers on each shift, and most of the mines don't have an underviewer on each shift. We discussed this with Johan and Kevin and we thought we probably couldn't enforce it, but I said to Peter, I thought it was a really good idea and to Peter's credit, as far as I know, he did put an underviewer on each shift.

QUESTIONS FROM THE COMMISSION:

- Q. Just one matter of clarification really Mr Firmin, you said to Commissioner Bell a second ago that one of the advantages of the unannounced inspections that you've conducted is that you enjoyed the opportunity to speak to the men, the miners and the workers representative in the absence of the mine manager accompanying you. Do I take it from that that whenever you did an announced inspection, you'd have no opportunity to talk to the miners and their representative on your own?
- A. Yes, you'd often get away, or they'd be behind you or in front of you or somewhere else, you know, usually fairly close, but this case it was just sort of so much more relaxed, they knew that the manager wasn't sort of there, somewhere close and again, because this time I did this unannounced visit, there was actually no underviewers. There was no assistant manager. There was nothing, so I went down with the, basically the deputy or compliance manager, and it just seemed to be so much easier. Maybe it was just that particular inspection, but, yeah, they were very open.
- Q. When did you do these two unannounced inspections? How long ago now?
- A. No, sorry, it was only one.

Q. One?

A. Another one I left a message or something. They didn't get back.

Q. It didn't come to pass?

A. Yeah, didn't – yeah, that's right.

Q. So you did one, when was it?

A. East Mine, probably two months ago, maybe three months ago.

Q. And what, you got markedly better feedback did you, on your own, on that day?

A. On that day, yes, from the people that I was talking to.

QUESTIONS ARISING - NIL

WITNESS EXCUSED

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MS MCDONALD CALLS**KEVIN FREDERICK POYNTER (SWORN)**

Q. Mr Poynter, can you confirm that your full name's Kevin Frederick Poynter?

A. I can.

Q. And you are now living in Queensland, Australia?

A. I am.

Q. And I think you're employed as a mining inspector for the Department of Employment Economic Development and Innovation for the Queensland Government in Australia, is that right?

A. That is correct.

Q. And did you start that role in July of this year?

A. July 18th.

Q. And prior to that you worked for the Department of Labour in New Zealand and I think left the Department of Labour on the 24th of June 2011, is that right?

A. That's correct.

Q. Now you've prepared a statement for this Phase in the inquiry and you confirm that your statement, have you got a copy of it there?

A. I have.

Q. And that's dated the 19th of October 2011 isn't it?

A. It is.

Q. And you confirm now the contents of that statement? I'm not going to ask you to read it.

A. I can confirm the contents.

Q. And just to be clear, you have today completed a very brief supplementary statement which I just handed out to counsel. It's dated the 15th of November 2011 and it simply refers to a document that you had omitted to refer to in your statement but you've covered off in the supplementary statement, that's the case isn't it?

A. That is correct.

Q. And just as a matter of completeness, you have previously provided a statement to this Commission, dated the 23rd of June and that was for

Phase One and that statement is attached to the statement of, it was Lesley Haines, which was dated the 15th of July 2011.

A. I did provide a statement, I wasn't sure how it was delivered.

CROSS-EXAMINATION: MR WILDING

Q. Mr Poynter thank you for coming to New Zealand to give evidence today. Could I just turn first to the training you had when you started as an inspector. I think you started with the Department in April 2008?

A. That is correct.

Q. And you received your certificate of appointment just about a year later on the 18th of June 2009?

A. That's correct.

Q. And it was during that intervening period that you undertook your training to qualify as an inspector?

A. As a health and safety inspector, yes.

Q. Did you also train to be a HSNO inspector?

A. During that time, at the end of that time I trained as a HSNO warranting inspector as well.

Q. So when did you qualify as HSNO inspector?

A. It was later in 2009, I don't recall the exact date.

Q. Ms Basher could we please have DOL3000100117/1

WITNESS REFERRED TO DOCUMENT DOL3000100117/1

Q. Now you see this is a document entitled, "Learning and development centre core training module skill check assessment," and does this document show the training that you had to qualify as an inspector?

A. It does.

Q. And as a coal mines inspector rather than a HSNO inspector?

A. This – these core modules are common for all health and safety inspectors.

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Q. And was the training for those modules undertaken within the Department?

A. They're all internal courses.

- Q. So they're all taught by people within the Department?
- A. Yes they are.
- Q. Are they taught by people with experience in underground coalmining?
- A. No, they're not.
- Q. Did any of the people who taught you have any experience in the extractors industry?
- A. No, they did not.
- Q. If we can just look, there are three modules, core module 1, core module 2 and core module 3. Were those modules all the same length?
- A. No they weren't. Core module 2 was slightly longer. It's, quite a lot involved in core module 2, around health and core module 3 was broken into two parts as well which was, one part was on guarding and one part was on machinery.
- Q. So if we look at core module 3 down the bottom you will see it says 1504 and I presume that 15 April 2008 that you completed those modules?
- A. It would've been 2004, 2000 for module 3.
- Q. It just doesn't state the year and I'm just wondering whether it was 2008 and or 2009 that you undertook that module?
- A. Sorry, this is a confusing document. The first core module I completed was the core module on investigation and compliance assessment and that would've been May '08 not May '09.
- Q. Right, so the dates at the top under core module 1 beside investigation and compliance assessment are wrong and they should be for example,
-
- A. I'm sure they should be '08.
- Q. Right. And the next module you took.
- A. Was the core module 2 which appears to be correct and core module 3 was 2009.
- Q. And I see that core module 2 deals with ventilation principles. Did any part of that deal with ventilation principles within an underground mine?
- A. No, it's based on ventilation principles in normal workplaces like factories or warehouses.

- Q. Did any of the modules focus on underground coal mines?
- A. No they did not.
- Q. Are you able just to give us an overview of what was taught in the investigation module?
- A. Just the investigation process, the process that we should go through. There was some training on note-taking of an investigation, there was a bit of training in the Department of Labour investigation tools and, but there's no specific training around an investigation technique so it's about the tools, the processes, how you go about it.
- Q. When you say the Department of Labour investigation tools, what were they?
- A. We have a set of DOLI tools, they call them D-O-L-I and they're a set of tools to help you work through an investigation.
- Q. Are you able to identify some of those tools for us?
- A. There's, they each have a number, it's like a DOLI6, DOLI7, one will be a witness interview, one will be a witness interview under caution, there'll be like a timeline of, and documents that may be collected. So there's like a set of tools to assist that process.
- Q. How long was that module?
- A. It was, the 2 module, the module 1 took place over two weeks. The compliance assessment part of the module was really learning about the law.

1445

- Q. Did any part of that module train you how to plan and structure an investigation?
- A. There was some parts of the module that did cover some, some of the issues around planning and investigation.
- Q. Did they cover any particular scale of investigation, for example, planning a large investigation or a low scale investigation?
- A. I don't recall, I'm sorry.
- Q. As part of your training, did you follow any inspector through as he or she conducted an investigation?

- A. I did one of an investigation into an incident where an employee got caught up in a piece of machinery in a quarry.
- Q. How many people were involved in that investigation?
- A. Only the lead investigator and myself.
- Q. Did that module include any assessment of your ability to conduct an investigation?
- A. No, the assessment was around the understanding of the law.
- Q. If we just turn to the second part of core module 1, which is compliance assessment, did that module include training in how to approach the issue of compliance and assessment in the context of a complex system, for example, a ventilation and methane drainage system?
- A. No, it didn't.
- Q. Did it deal with the content and interpretation of the Health and Safety in Employment Underground Mining Regulations?
- A. No, it didn't.
- Q. Did any part of your training deal with that issue?
- A. No, it didn't.
- Q. From your perspective, was the Department essentially relying on you to have a sufficient understanding of those regulations to conduct your business as an inspector?
- A. I believe that's the case.
- Q. So they never tested that?
- A. No they didn't.
- Q. Did any of the training focus on how to identify and prioritise hazards within a high hazard industry?
- A. It didn't.
- Q. Did that training include teaching you about the resources you'd have available to you as an inspector?
- A. Beg your pardon? Just repeat that.
- Q. Did that training involve teaching you about the types of resources you'd have available to you as an inspector, for example, whether you would have ready access to a ventilation expert or certain bits of equipment?

A. No, it didn't but it did talk about having access to a specialist in engineering fields for things like forklifts. We had a forklift specialist, or we had a specialist that, the health and safety inspectors to go to, for machine guarding for example, so there were some specialists that you could utilise but they were for, more for general workplace.

Q. Not for underground coal mines?

A. No.

Q. Were you told whether you had an ability to call an expert to assist you in your inspection of underground coal mines?

A. No, I wasn't.

Q. I take it you wouldn't have been given a list of experts or ready contacts who you could call on if need be?

A. No, I wasn't.

Q. Were you advised of any procedures for seeking expert advice?

A. No, I wasn't.

Q. Did the issue of whether there were any fiscal constraints relevant to seeking advice ever arise?

A. At times it was very difficult to get permission to travel, so I guess we took an assumption that being able to get technical advice was going to be something that was quite difficult.

1450

Q. So you never tried to get technical advice?

A. The only person I tried to get technical advice off was Johan Booyse, when he was appointed, and Johan, whilst technically very good, had no experience in coal.

Q. If I can just move briefly to another topic. I think you were present yesterday when Mr Firmin gave evidence in relation to the enforcement mechanisms under the Health and Safety in Employment Act, so warnings, improvement notices, prohibition notices, infringement notices and prosecutions.

A. I was.

Q. Is your understanding of the policies consistent with his evidence?

A. It was consistent with his evidence.

- Q. I won't cover that in detail then, but I do just want to touch on one aspect – there's no need to draw this up, Ms Basher, but the improvements and improvement notices policy issued on 17 October 2005, included the following: "Advise employee reps of action where possible inspectors must make contact with health and safety representatives with a view to seeking information and keeping representatives advised of action taken." Were you aware of that requirement?
- A. I was not aware of the requirement. I was aware of a requirement to wherever possible try to make contact with health and safety reps when we visited a mine site. Often they would be off shift or unavailable. We didn't automatically know who they were. It's not something, information that's normally provided to us unless we physically ask for it at the mine.
- Q. Does that mean that you weren't aware though of a requirement to contact them in the context of potential enforcement action?
- A. That's correct.
- Q. Would I take it from that then that your general approach with Pike River was not to contact the health and safety representative?
- A. It wasn't my general approach. My general approach on all mine inspections was, where possible, to try to speak to health and safety reps which I understood was the policy. As I say, depending – they don't necessarily have health and safety reps on every shift, depending on what shift you go to, you may or may not find health and safety reps there.
- Q. Now, if I can just turn to the issue of your workload. Am I right, you were responsible for extractives within the South Island region?
- A. When I was first employed, I was – I understood that I was expected to cover extractives from the Rakaia River as far north as the Cook Strait. That involved all extractive industries including coal, quarries, open coal mines, underground coal mines, tunnels and also gold extraction such as dredges.
- Q. If I could ask Ms Basher please if we could have DOL3000030103/1?

WITNESS REFERRED TO DOCUMENT DOL3000030103/1

Q. And you'll see that this is an email from you to Mr Booyse of 22 January 2009, and the attachment is referred to as an "inspection plan". If we could just please go to page 2 and 3 of that document? Are you able to confirm to us that that was your inspection plan for 2009?

A. I presume so. It doesn't have a date as 2009, but if it was attached to that email, that's what it would be.

1455

Q. And would that have been from July 2009 to June 2010?

A. It would have been and bearing in mind that this is a plan, and as of the day that I wrote it that's what was planned but quite often that gets changed the day after you write it, depending on load.

Q. Thank you for that clarification. So if we look at Pike River which is the eighth down?

A. Correct.

Q. The plan was to visit in February, May, August and November that year?

A. Correct.

Q. And you total number of visits that year were going to be 83?

A. Correct.

Q. Do you know whether you managed to meet that number of visits?

A. I don't recall exactly how many visits, what to Pike River?

Q. Well, no generally out of the 83?

A. Generally. Most years I met my targets and I don't, certainly discussions with my team leader, there was no discussions about not meeting targets.

Q. Can you recall what your target was for the next year from July 2010 to June 2011?

A. It would've been similar, we were looking at around 80 inspections a year. That was sort of about the level of work load that was felt to be reasonable.

Q. Would that have included HSNO visits?

A. It does include HSNO visits.

Q. Ms Basher could we please have DOL00200200094 and 5 please?

WITNESS REFERRED TO DOCUMENT DOL00200200094/5

- Q. This is a document entitled staff performance agreement and it's not specific to you, it's just a blank one for the year 2010/2011 position title health and safety inspector mines and you'll see that on the page on the left-hand side so ending summation 4 it says, "Workplace assessments and there is says complete 50 health and safety workplace assessments and five HSNO assessments at 4.30 June 2011." Does that sound right for that year?
- A. It certainly looks that way, yes.
- Q. And if we look at the right-hand page, summation ending five, it says, "Complete 20 health and safety information visits." Does that look right?
- A. Yes, that looks right.
- Q. Am I right in understanding that in addition to your inspections and information visits you were also a mentor to quarrying inspectors?
- A. That is correct. I raised an issue out of the mine steering group meeting about a lack of inspections being taken place in quarries and a training plan was put in place and I was mentoring people in the North Island and the South Island.
- Q. When did you start doing that mentoring?
- A. I started doing the mentoring in June because it was actually a requirement to have all the mentoring completed by the 30th of June and due to a family tragedy I wasn't able to complete it all in June and had to then complete it in July.
- Q. In June what year?
- A. June 2010.
- Q. So you weren't doing mentoring before then?
- A. No.
- Q. What did the mentoring involve?
- A. Visiting the quarry sites with the trainees that we'd put through the quarry training programme and identifying whether or not we considered that they had taken, they were competent to be able to carry out those quarry inspections on their own. In addition to that if there were issues

that were raised or they were concerned about they had somebody they could ring and discuss it with.

1500

Q. Prior to you undertaking that role, had the Department undertaken any review of the quality of your inspections?

A. Irene Campbell came to an inspection, she was my manager. She came and attended an inspection I did at Canterbury Coal, an open cut coal mine.

Q. Is she an inspector?

A. No, she – well, no she isn't.

Q. And she's not an extractives expert either is she?

A. No she isn't.

Q. No. Was that the only review undertaken of the quality of your inspections?

A. Yes.

Q. What other demands on your time were there aside from the inspections, information visits and mentoring?

A. Nothing specific other than all the general information, general administration responsibilities that we had. I had slightly more in that I worked from home. There was no office in Westport that I was able to work from.

Q. Ms Basher could we please have DOL0020020011/21

WITNESS REFERRED TO DOL0020020011/21

Q. I just want to show you this because it came up in Phase One. This is page 4 of the minutes of the mine steering group of 10 July 2009 and you were a member of that group and you'll see it says, the third paragraph, "K P," and I presume, "K P," is a reference to you?

A. It is.

Q. "K P pointed that in Tasmania before the Beaconsfield accident, chief inspector of mines had written to his Minister stating he was not in a position to provide an adequate inspection service with the resources at his disposal. There was agreement that there was a risk that adequate inspection and other services could not be maintained with the

personnel available.” Do I take it from that, that you had serious concern about the ability of the Department to provide an adequate inspection service?

A. I was very concerned when we were put in a position where we went down to two inspectors and not only about our ability to be able to provide a service, but the extra pressure that it was going to bring on myself and my fellow inspector, with respect to the amount of time that we would've actually had to spend getting around the North Island to fill the gap. There appeared to be no plan to replace the inspector and you might note a comment that I made there, is if I had to travel a hundred days away from home I'd resign. I was fairly passionate about it and probably somewhat disappointed that the decision had been made not to replace the inspector and no consultation with myself or Mr Firmin.

Q. This minute is dated 10 July 2009, is that issue of an inadequate inspection resources one that you'd raised on other occasions?

A. I've raised this issue on every occasion since that date on my monthly report. Prior to that I have had a number of discussions with the Mining Steering Group and some senior managers in Christchurch about the structure of our mining inspection group. I felt not reporting to a technical mining person left myself and my fellow colleague exposed. We were making – plus it made it a little bit dysfunctional in that with Michael reporting to somebody in Dunedin, me reporting to somebody in Christchurch and Johan reporting to somebody in Wellington, we were hardly an inspection or a mining inspection group. It was really difficult to try and have a co-ordinated approach. So I had discussed issues around whether it was appropriate that we're reporting through the regional structure or whether we should be reporting to Johan Booyse.

1505

Q. And what was the result of you raising those issues?

A. Well no change occurred. I raised the issue again I think in September 2010, probably, I don't know maybe the third or fourth time that I'd raised it and I'm pretty sure it made it onto the minutes of the steering group meeting. They were, we were trying to determine at that

stage some functional role of the mining steering group and I've just raised the issue again as maybe what we should be looking at is, is the mining steering group an appropriate mechanism to be managing the inspectors.

Q. From your perspective, was the response, or did the response that you got indicate that there was an understanding of the time when you voiced demands on the coal inspectors?

A. It's hard for me to comment on whether or not my managers understood that we felt that we were under pressure, but it's fairly clear that we felt that the work load was such that it was certainly creating issues for us. At the end of the day, we would have to make concessions on who we visited and who we didn't and because this, you get to a point where you're at saturation. You can't take on any more work.

Q. And presumably how much time you spend at each site?

A. Obviously, it has an impact on all of those things.

Q. Would it be fair to say that you'd disagree with the suggestion then that the workload that the coal mine inspectors had was reasonable?

A. I think 80 visits in itself is a reasonable target. It's when you, all the other things that occur in the process of a year that actually might have an impact on that and we did count as a, as a performance measure, we did count numbers of visits.

Q. Could I just turn to a different document please, which is once again DOL0020020009/1, which is the front page of a blank performance agreement for health and safety inspector mines, 2010, 2011, and you'll see the third from the bottom row, dates of intended review meetings, quarterly. Did you have reviews quarterly?

WITNESS REFERRED TO DOCUMENT DOL0020020009/1

A. We, Irene tended to try and have a review around when I was in Christchurch to avoid causing me unnecessary travel. That may have meant that the reviews might have stretched out to six monthly.

Q. Irene being?

A. Sorry, my team leader.

Q. The generalist, and not an inspector?

A. No. Look, I'm sorry, I'm not sure whether Irene was an inspector or not but she was my team leader.

Q. Without going into the result of those reviews, what did the content of those reviews involve?

A. It would be helpful if some of the document was put in front of me but generally the review was based around your performance against what was deemed to be a set of performance criteria in that you'd have behaviours that an inspector might show in the field or in the way he's actually interacting with the workplace, very much based around being a modern regulator. A lot of talk about being a modern regulator, talking about influencing guidance, creating like partnerships, or creating working relationships with people, all very esoteric-type modern regulator behaviours.

1510

Q. I might be able to assist with some of the content. Ms Basher could we have page 3 of that same document? Part of the staff performance agreement, you'll see there's, "Section 1 Investigations. What do you need to achieve and by when objective. All investigations will be conducted and managed as per the investigation best practise manual and FPIV17.4." When you were an inspector, was there any assessment of the way you conducted investigations in accordance with that investigation best practise manual?

A. Not formally, although every formal investigation I completed was signed off by my team leader. So, I can, I guess can infer from that that she's looked at it on that basis and is happy that I followed that process.

Q. When you say, "every investigation you completed" is that a formal investigation?

A. A formal investigation.

Q. Resulting in an investigation report?

A. Yes.

Q. Is it right to infer from the documents filed by the Department with the Commission that you only ever did one formal investigation?

A. No, that's not right.

- Q. While with Pike River?
- A. With Pike River, that'd be correct.
- Q. And if we can see in the final section, the right-hand side, "Investigations to be completed within three months unless agreed with the service manager." Was that aspect ever reviewed with you?
- A. Where an investigation was going to take longer than three months, I reviewed that with my team leader.
- Q. Right. So in the case of Pike River where you've got an investigation which took longer than three months, that would've been subject to a review?
- A. It was subject to review. I had significant issues trying to contact the injured party.
- Q. We might talk about that soon. Third bullet point down in that bottom block, "Investigations monitored by coaching regular reviews and fire audits." After you'd completed your qualification to be an inspector, were your investigations monitored by coaching?
- A. I probably undertook some work with a fellow inspector Mr Dave Bellett through an investigation process which I then used for the process that he showed me. It was a process I used for the next two or three investigations, so, yes, once.
- Q. Were there any regular reviews of your performance in relation to Pike River?
- A. There were reviews of the numbers of meetings – number of inspections. And from time to time, I would hard copy all of the documentation that had been generated for any of the mines, we'd take them over and Irene would review those.
- Q. Right, would she review the actions that you took or didn't take in relation to Pike River?
- A. At times we would – they were discussed, yes.
- Q. So if we can just take a couple of examples, in your witness statement, paragraph 62 you refer to having requested information, including a copy of an outburst potential report for Pike River and at paragraph 64 you say, "I recall following the outburst report up at some stage with the

manager Nigel Slonker, however I never received the report.” Do you know if your file in relation to that request would’ve ever been reviewed by the Department?

A. I don’t.

1515

Q. So either there wasn’t a review or else there wasn’t a review to that level of detail which resulted in you knowing a result of it?

A. I’m not aware that there was a review that would’ve been able to talk to me about that.

Q. If we take another example, in November and December ’08 you became aware of frictional ignitions at Pike River?

A. Correct.

Q. You raised that matter with Pike River in the context of Mr Bell I think saying that there had been up to 10 ignitions. Is that correct?

A. Mr Bell called me 'cos he was concerned that he had heard that there had been 10 ignitions at Pike River.

Q. Now I don’t want to go into the detail of that at this stage 'cos I'm just looking at the issue of reviews, but at paragraph 83 of your witness statement, you say, “Kobus replied on the same day confirming there had been a few ignitions on four shifts and that I should have all that information. He did not know of any other ignitions. He further advised that shaft drilling had started on the 21st of December 2008 and was up to 25 metres.” I won't finish that paragraph but I'm correct in saying that his view that you should know about all the ignitions?

A. His view was that he had reported all the ignitions that he was aware of to me.

Q. And his view was also that he wasn’t going to look into whether there were any other ignitions that hadn't been reported?

A. I guess you could infer that from his email.

Q. Well when –

A. I think it’s also important to know, if we’re talking reviews, I discussed this matter with Mr Booyse, our senior high hazards inspector and I talked about the action that I’d taken and I also talked about the action

the mine had taken with respect to with, or changing the methodology which removed the men from the hazard. He was comfortable with the action that I had taken.

Q. So there wasn't a concern about the company's approach being that it wasn't going to look into that matter further?

A. Mr Booyse never raised that and I didn't take from Kobus' email that that's what he was inferring.

Q. We might look at that email later on. If we could go to page 7 please of that document Ms Basher? This is still the performance agreement heading "For H&S proactive projects initiatives," and you'll see the second bullet point down is analyses data trends to identify harms. Was that something that you ever did while a coal mine inspector?

A. No it wasn't.

Q. Did the Department provide you with any training in relation to that?

A. There was no training in relation to that and in reality I don't believe we had particularly good systems that would've enable us to do it. Systems record serious harm incidents which is only one part of what might've been able to be captured and analysed.

Q. What other sort of information would you have needed to usefully do that at Pike River?

A. Well you would need to be looking at all of the incidents including what we term in Australia as high potential incidents that may not have resulted in any harm but by some act of luck nobody was injured but could easily have been. So you'd be trying to get all of that data into a database so you could actually then start to look at that information. Given the time we had, it's not something that we were able to focus on.

1520

Q. When you were with the Department was there discussion about any project to analyse data trends to identify harm?

A. I don't believe there was any discussion. I did raise it at a regional meeting about the lack of accessible data but it was just something I raised. It didn't go anywhere.

- Q. Was there any discussion about whether or not the Department was collecting the right type of data?
- A. I believe when there was a discussion at the regional meeting about data collecting, that there was a discussion about the fact that the only data that we had in our database was serious harm accidents and that there was an awful lot of other information out there that should be, somehow or other we should be trying to gather.
- Q. To your knowledge, did the Department undertake any comparison between the levels of enforcement in underground coalmining and other industries?
- A. Not to my knowledge.
- Q. To your knowledge did it make any comparison in relation to the level of enforcement between the New Zealand and overseas coalmining industries?
- A. Not to my knowledge.
- Q. So when you were inspecting Pike River did you have any data about enforcement either from New Zealand or overseas, which would let you know whether your enforcement was in line with normal trends?
- A. No we didn't have any data along those lines.
- Q. How would you describe the approach that you took to enforcement with Pike River?
- A. Probably a voluntary compliance approach. I found Pike River to be reasonably or certainly at the upper end of being co-operative when issues have been raised. Bearing in mind, for just over the first 12 months that I was required to carry out inspections at Pike River, I actually had no warranted powers, so most of my actions were either going to be the result of a negotiated agreement or if I felt that there was resistance to that, then I would've had to have called Michael to use his powers.
- Q. You never took any enforcement action in relation to Pike River?
- A. No I didn't.
- Q. Did you, or what discussions did you have with Mr Firmin in relation to him using his powers while you were an inspector?

A. Nothing formal, but Michael and I tried to keep in contact. From my point of view Michael's been a mine's inspector for a large number of years and I saw him as the closest thing I had to expert advice, so when I was having issues that I was concerned about and thought, "well maybe I should be doing something different here," then I often called Michael and talked to him about it. I did have occasion to use Michael by the way at another mine to raise enforcement action that I was concerned about. It was following on from a meeting, an inspection that Michael and I had previously and I was aware that these issues had been raised before and the conditions that Michael and I observed then were unchanged and it was around electrical cables and I rang Michael and asked him to issue an enforcement notice on my behalf.

1525

Q. Your approach of voluntary compliance was based on your understanding of Pike River being a reasonably compliant employer?

A. That and the Department's policy on where voluntary compliance is achieved then we should seek voluntary compliance in the first instance.

Q. So if the information about Pike's compliance with health and safety practices differs from your understanding, then in retrospect, you might have taken a different approach?

A. It's possible that you might take a different approach if you were aware of a large number of compliance issues that hadn't been dealt with.

Q. Was the approach that you took to Pike River ever assessed or reviewed by anyone in the Department?

A. Only at our performance reviews. Nobody with a technical background ever sat down with me and discussed that performance approach. In fact, I was praised from time to time for being what they termed trying to follow the modern regulator view and work with voluntary compliance. The first major review of any work that we'd done, I guess, came after the November 19, and done by Gunningham and Neal.

Q. And did anyone with knowledge or experience of Pike River or its contractors ever review the approach that you took to Pike River and its contractors?

A. No.

Q. As I understand your evidence, you say the Department through you entered into what were called negotiated agreements with Pike River.

A. Yes, I called them negotiated agreements.

Q. You'd accept that those in general don't specify any time for compliance?

A. That's correct.

Q. Was that aspect of your performance ever reviewed?

A. It wasn't reviewed. Well, I'm sorry, I don't know whether I, my team leader reviewed it but I'm not aware that it was reviewed.

COMMISSION ADJOURNS: 3.28 PM

COMMISSION RESUMES: 3.46 PM

CROSS-EXAMINATION CONTINUES: MR WILDING

Q. I just want to turn briefly to assessment of the culture of an organisation. Had the Department given you any training in assessing the culture of a workplace?

A. No, they haven't.

Q. Ms Basher, could we please have up CAC0111/1?

WITNESS REFERRED TO DOCUMENT CAC0111/1

Q. I'll just show you the front of this document, you can see it's the Department of Labour's mining and extractives business plan for 2008/2009?

A. That's correct.

Q. If we could please have summation page 8 of that Ms Basher? You'll see the third matter down in the box under the heading "6 Outputs for 2008/09 reads, 'Extractives Culture, provision of an informal system to assess the culture related to management risks in high risk mining and quarrying operations and to promote the value of a good safety management culture.'" While you were an inspector, were you aware of any project directed towards providing such a system?

A. I was not. These were a national executive's developed, national, a national business plan for a national initiatives rather than an individual initiatives.

Q. This is directed at mining and it's the mining and extractives business plan. Were you provided with a copy of this plan?

A. We would've had a copy of the plan.

Q. Can you remember whether there was discussion with you about the provision or development of an informal system to develop or to assess the culture related management risks in mining operations?

A. I don't recall a discussion on it.

1549

Q. Would you agree that you can get a feel for the culture of an organisation by gathering information from several different sources,

one by conducting physical inspections of the mine, two by talking with workers and three by looking at company records?

A. I think all three can add to building a picture of the culture of an organisation.

Q. Did the Department ever indicate to you that in the course of your inspections it was important to gather information from all of those three sources?

A. No.

Q. I just want to turn to a quotation from the review of the Department of Labour's interactions with Pike River Coal Limited by Professor Gunningham and Dr Neal of 4 July. And they say at paragraph 21, "It is also important to draw attention to the growing evidence that more important than occupational health and safety management systems, is workplace safety culture. At Pike River Coal for example, it might be of some concern that there was a series of incidents suggesting there may have been a gap between the company's paper systems and actual practices underground." I have just a couple of questions. One, do you agree that safety culture is important?

A. I do believe safety culture is important.

Q. But it's not a matter that the Department sought for you to focus on while you were an inspector?

A. It wasn't a matter that was at the forefront of our work, no. In saying that Mr Wilding, I did attempt to, in my own way, to try and get a picture of safety culture on all of my visits by wherever possible trying to separate myself from my escorts and trying to talk to the men. It was very informal but you know, it's about all we had.

Q. We may come back to this issue. During the course of your inspections did you form any view that there may have been a gap between Pike River Coal Limited's paper systems and the actual practices underground?

A. I hadn't formed that view.

1552

- Q. Did you form that view in relation to the contractors working at Pike River?
- A. It's a little hard to answer the question in total as far as contractors are concerned, because there were a lot of contractors coming and going. For those that were there generally on a more permanent basis, the McConnell Dowell's for example, tended to have very good – seemed to have good systems.
- Q. I might touch on some of these aspects later. I just want to turn now briefly to auditing. What do you understand the concept of auditing to mean?
- A. The concept of auditing to me is to take almost like a blank paper approach where you actually start from the systems. Go through the systems, look at, look firstly at whatever risk assessments, what hazards have been identified, then look at the controls and then the next step is to look at the implementation of the controls, which would include some formal process whereby you go in and test that the controls are actually in operation and functioning.
- Q. Gunningham and Neal at paragraph 15 say, and I won't quote the whole paragraph, "The inspectors did not conduct general safety systems audits. They were not required to do so by their work plans." I take it that's correct, that you didn't conduct general systems audits?
- A. That's correct.
- Q. And that you weren't required to do so?
- A. They weren't required to do so.
- Q. Nor trained to do so?
- A. Nor trained to do so. And in fact, we had no specific tools to help us do that either.
- Q. Have you had any experience in conducting an audit of an underground coal mine or one of the systems?
- A. I haven't, not of the coal mine systems, no. Not – my inspections tended to follow what I had observed and learnt from when I was a mine manager from probably the old regime where the inspectors focus tended to be looking at the things that were going on underground.

1555

Q. If you just say whether you agree then with this comment in Professor Gunningham's and Dr Neal's report at paragraph 306. Again, I won't read the whole paragraph, "Their starting point was certainly not an audit or other assessment of the company's health and safety management systems. They did not, for example, concern themselves specifically with whether the mine's occupation health and safety management system met legal requirements, complied with recognised practices or were subject to periodic review"?

A. That's generally correct.

Q. And so, put simply as a result of your inspections, you weren't in a position to say whether Pike River or its contractors complied with the Health and Safety in Employment Act and Regulations?

A. With respect to their documentation?

Q. Well, at all. What you did wasn't going to give you enough information to be able to say whether Pike River complied with the Health and Safety Act and its regulations?

A. It would identify if Pike River were dealing with hazards. It certainly didn't look at whether their systems complied. One of the things that – it's a very difficult question to answer Mr Wilding. There were occasions in small operations where there may well be a total lack of documentation, in which that you would, you would deal with that issue with them. With Pike we had considerable documentation. We, we were aware that you had a hazard identification, you had quite a lot of reasonably sophisticated processes that appeared to be happening and I guess that was taken by myself and – as being an indication that they actually had systems in place that were in line with what was required to manage the mine.

Q. You took comfort from the fact of there being systems set out in documentation?

A. Correct.

1558

Q. Without them checking whether those systems were being put into practice?

A. I didn't go through their systems with any detail. The only time that we may have, myself and from time to time Michael might've, might've been for a specific standard operating procedure or a specific risk assessment that we had a need to review.

Q. Had you had any training prior to becoming an inspector in the conduct of audits?

A. No.

Q. Ms Basher could we please have up the perhaps CL00010013059 pages 4 and 5?

WITNESS REFERRED TO DOCUMENT CL00010013059

Q. This is part of what's entitled the "*Health and Safety in Employment (Prescribed Matters) Regulations 2003*" and I'll just paraphrase but regulation 6, qualifications for appointment as health and safety inspector, one for the purpose of section 29(1) of the Act which relates to the appointment of health and safety inspectors, there are prescribed, examination so approved in the following areas of knowledge and if we turn over to the next page, VI, audit inspection and investigation for the purpose of ascertaining the extent of compliance with legislation. Did you have any examination before you became an inspector as to your level of knowledge of auditing?

A. No I didn't.

Q. Do you accept that systems audits are important when inspecting high hazard industries, having regard to your now Australian experience?

A. I think they should form part of an inspection system.

Q. Well I suggest they are actually a very important part of an inspection system?

A. They are. I would accept that.

Q. Now you were referred earlier I think to your monthly reports. I presume your monthly reports wouldn't have included any references to auditing?

A. I may have used the word "audit" in my monthly reports from time to time but it really was, if it was it was meaning an inspection.

- Q. Could I just turn to the issue of the assessment tools that you had to assist you as an inspector? Ms Basher could we please have CAC0111/15 or /16?

WITNESS REFERRED TO DOCUMENT CAC0111/16

- Q. This is a document which forms part of the mining and extractives business plan 2008/09 to which we referred?

A. Correct.

- Q. And you'll see its entitled "indication of inherent risk form." We had evidence about this in Phase One. Have you seen this document?

A. I've seen these documents.

- Q. Was this the only document that you had as an inspector to help you assess the risk associated with the extractives industries you were visiting?

A. It was and it was used as a tool to prioritise the number of inspections that you might undertake at a particular ranked operation.

1603

- Q. Was it ever used in relation to Pike River?

A. Not separately, no.

- Q. I take it no matter whether it was used or not, the result would've been the same, that the targeted inspections for Pike River would've been once every three months

A. That's correct, that was the minimum requirement.

- Q. You will see that numbered 8 is, "Management, best practice mostly effective, not always successful, poor performers, unlawful." Did the Department discuss with you how you'd go about assessing the practices of management?

A. No they didn't.

- Q. Just turning perhaps more generally now to the mining and some of the systems in mining. I'm just going to give you a bit of a list of systems and ask if you agree whether a deficiency in those systems would have potential to cause serious harm. I take it you'd agree that a deficiency in strata control would?

A. A deficiency?

- Q. Yes, inadequacy in strata control?
- A. Inadequate strata control could cause serious harm.
- Q. And inadequate ventilation?
- A. Inadequate ventilation could cause serious harm.
- Q. And also inadequate methane drainage?
- A. Inadequate methane drainage could possibly cause serious harm.
- Q. And also insufficient stone dusting?
- A. It could, dependent on where that was and whether the place was naturally wet.
- Q. Faulty electrical system?
- A. Yes.
- Q. Inadequate emergency systems?
- A. It could.
- Q. Improperly maintained equipment?
- A. Yes it could.
- Q. If I could just perhaps explore the issue of equipment and the risks lack of maintenance might produce. If we could have Ms Basher please DOL30000400009/1.

WITNESS REFERRED TO DOCUMENT DOL3000040009/1

- Q. You'll see that this is an email of 1 October 2008 from Mr Walrond to people which include you about the centre of that big list, Mr Kobus Louw and Mr Firmin.
- A. Correct.
- Q. And it's headed, "Subject safety bulletin 86." And if you can go please to pages 4 and 5 Ms Basher. This is part of a safety bulletin published by the Queensland Mines Inspectorate 30 September 2008, dealing with fires on mine sites. I take it the Department would receive these sorts of bulletins from time to time would it?
- A. Yes John Moran was the – he used to receive them and distribute them.
- Q. And they'd be sent out to the inspectors and from that list we've seen, mine operators?
- A. Yeah there's a lot more than mine operators on there. There are union representatives as well.

Q. You'd agree that any underground fire or source of ignition in a mine is extremely dangerous?

A. I would agree.

Q. If we can look at the left-hand page numbered 4, you can see it says, "It is clear that coal mines and mobile equipment account for the vast majority of the fires," and then underneath that, "A closer examination of the 161 fires that occurred on mobile equipment shows 92 in the engine bay and 69 elsewhere on the equipment." Just from that alone, it would seem important to keep up maintenance on mobile equipment. Is that a fair comment?

A. It's a fair comment.

1608

Q. And if we look over the next page, you'll see that it says, "28 fires reported as having an electrical source included alternator, starter motor jammed, overheated cables, cable shorted due to burnt insulation. Then 24 fires from a myriad of causes including steering hose blown, frictional heat and miscellaneous causes, a remaining 17 from wheel bearings." Would you agree therefore that it's very important to ensure that equipment which is used down a mine is properly serviced and maintained?

A. Yes.

Q. And clearly given that it's been sent out by the Department, that it's an important matter for the inspectors to look at?

A. Yes.

Q. If I could ask please Ms Basher for DOL –

A. Can I just add –

Q. Sorry?

A. Can I just add that these bulletins are about providing information to a whole lot of people including industry and ourselves. I'm not – I don't have training on mechanical equipment. One of the things that I do note in our – in my position in Australia is that within my office I have mechanical inspectors that are part of our inspection group and it's their role to ensure and undertake audits and follow-up on all of these sorts of

issues, because they have those specific expertise that enables them to be able to identify where there are issues that we would not normally look at.

Q. So did you consider that you had the expertise to assess whether vehicles were, or any plant which might be used underground was properly maintained and serviced?

A. I could see from the point of view of the visible signs, for example, if there were cables on light that were bared, or if there was dirty rags under the bonnet or those physical signs that any of us can see in our own vehicles or in any machine, we can look at those and we can assess them, or if they're particularly smoky, but I don't profess to be able to go through, for example a maintenance schedule and identify whether that maintenance schedule is sufficient to provide a safe machine underground.

Q. One of the things you might have to rely on then would be comments contained in company records about whether there were problems with the maintenance of the machinery?

A. That's correct.

Q. If I could ask please Ms Basher for DOL3000100013/1?

WITNESS REFERRED TO DOCUMENT DOL3000010013/1

Q. You'll see this is a workplace services practise note, health and safety numbered 2010/003, issue date: August 2010, subject: safe use of machinery. Now do you see that?

A. I do see it.

1613

Q. Had you seen that before when you were an inspector?

A. Possibly. I don't recall it, Mr Wilding, as a, as a document but –

Q. How are these sorts of practice notes drawn to the attention of the inspectors?

A. Generally, they can come out as an email saying there is a practice note, is how we generally identify, and then it's left to the inspector to find his way to the practice note and read it.

- Q. So in the course of your time as an inspector, did you receive any training about updates to the policies and procedures in which you were initially trained?
- A. No, no.
- Q. You'll see it says at the bottom under the heading, "Selection and Enforcement Tool," "When failures relating to the use of machinery are observed during a workplace assessment or investigations, inspectors are expected to take immediate action to prevent the unsafe use from continuing." Were you aware that was a requirement from August 2010?
- A. If I considered a piece of machinery was unsafe and it was likely to cause harm to a person, I would likely take action anyway. I wasn't aware this was there since August 2010. I can comment maybe. I went to a series of quarry visits. On that visit I wrote five improvement notices and a prohibition. The prohibition was on a piece of machinery that didn't belong in a quarry but did belong in the local museum because it was so, it was basically really dangerous. So, I was, I just issued a prohibition notice and that machine had to be removed off site.
- Q. When was this?
- A. This was part of the visits through the Nelson quarries. I'd have to look in here to find the exact date but –
- Q. So is this paragraph that I read out reflective of the general approach you would have taken since being an inspector?
- A. If I considered a piece of plant was so dangerous that it was going to cause somebody serious harm then I would take, generally take enforcement action. I would.
- Q. Can you look at page 2? Enforcement Tool, "Negotiated agreements should only be used for very minor failures. Care must be taken to avoid inadvertently sending a message that machinery related failures are not considered as important by the Department," Were you aware at least from August 2008, that that was the Department's stance?
- A. This is July 2010?
- Q. Sorry, no August 2010, my mistake.

- A. No, I didn't. I wasn't aware of this document.
- Q. Do you know where that was? Its stance before August 2010?
- A. I'm sorry, I don't.
- Q. Just turning to some other issues, being experienced staff. Do you share in the view which has been expressed to this Commission that it's difficult to attract skilled and experienced miners to New Zealand?
- A. I agree that that is a difficulty in mining in general.
- 1618
- Q. And I presume that when you started inspecting Pike River you would've been aware that that might've been the case with Pike River?
- A. I was aware that all of the mines on the West Coast were struggling to attract people.
- Q. In a mine steering group minute of 10 April 2008 DOL0020020019/2, the third bullet point down, you'll see it says, "Illegal for new certificates to be issued on old numbers. Work required with NZQA. Kevin believes that tickets are too easy to get." Is that reference to "Kevin" a reference to you?
- A. I presume so.
- Q. Well is the concern set out there, "Kevin believes that tickets are too easy to get" one of your concerns?
- A. I've had a concern from, for some time, that the process for gaining a certificate of competency is somewhat flawed and the reason I feel that is that as a person goes through a certificate of competency for their deputies or underviewer's ticket or for that matter their manager's ticket, they undertake a series of unit standards. So you might have 21 unit standards which make up all the unit standards that you have for your certificate. So in some cases we were seeing our situation where the person doing the training then did the assessment, then signed off that the person was competent in that particular unit standard and then when they amassed all of the unit standards, there was no further requirement to prove your competency. Which meant there was no final examination over how much of the 21 unit standards you actually still understand and how you actually apply them in a mining sense. Under the regime that I

came through, the what people call “the old regime” there was always a final exam, a final oral exam after you passed all your written examination and that oral examination was done by a board of examiners who at that stage consisted of four inspectors and you went and you sat in front of the board of examiners for anywhere between an hour and a half and three hours and were examined on the competency that you had attained. So there was a separate process that identified the final competencies in saying yes you can be a deputy or you can be an interviewer or you can be a mine manager and that part of the phase disappeared with the establishment of the extractive training industry organisation and the process that was put in place for those tickets and I always thought that the two things should be separated. That on one hand you're getting a qualification which is all your unit standards. On the other hand someone's going to issue a certificate of competence to manage a mine and I thought you could almost separate those two functions and have a separate assessment process for the competency as opposed to did I pass all the exams or not. So that's what the reference is to.

- Q. That was going to be my question. So the short point is your concern was that the system as is, while resulting in a certificate of competence doesn't assure competence?
- A. That's correct.
- Q. Was that a concern that was shared by others within the Department to your knowledge?
- A. I think Johan Booyse understood this and I know that there are a number of people within industry that shared a similar view, that were not necessarily in the Department but people that I dealt with in industry in general.

1623

- Q. Could I please ask Ms Basher for DOL30000 –
- A. Can I ask, is the date on that correct? I mean I started work on the 7th of April 2008, I think it would've taken more than three days for me to be that outspoken.

Q. We can go to DOL00200200191 and this is the first page of it which you will see is dated the 10th of April but...

WITNESS REFERRED TO DOCUMENT DOL0020020019/1

A. Maybe it's right.

Q. Thank you. Ms Basher, could we please go to DOL3000030122/1

WITNESS REFERRED TO DOCUMENT DOL3000030122/1

Q. If I could just ask you to read the second, third and fourth paragraphs to yourself. Two questions, first can you just explain the concern that you have identified in the second paragraph? It might be helpful if I read it into the record.

A. No it's right. I actually think I've actually got something wrong in that email, I think it was an open book test rather than a closed book test and the two day course would normally have been a four day course. One of the concerns I had is that EXITO were issuing these certificates on behalf of a Secretary of Labour and we hadn't been doing anything to look at them.

Q. Well your concern is, "There is a well known variation in standards between different assessors and I am aware of a company that subjected their employees to a closed book test after a two day course that they attended and were deemed competent and that they had a high failure rate."

A. Sorry, yes. So what, yeah what actually happened in this particular instance is the company tested them when they came back. They did their own test and they found that they had a high failure rate.

Q. This company wasn't Pike River?

A. No it wasn't.

Q. In short, from your perspective then, there were people who were receiving these certificates who simply weren't at a sufficient standard?

A. I was concerned that that potential existed.

Q. And certificates for what?

A. These were, I think these were, they weren't deputy certificates, they were – I'm trying to remember the instance. They were something to do

with an underground mine. I don't think they were as far as deputy's tickets.

1628

Q. And you'll see that the date of that email from you to Mr Booyse expressing that concern is 28 November 2008 and you've said in the last paragraph, "I put this to you today as this has come up at two sites during my last two days of visits. The industry is concerned re the existing process of qualifications and I have long believed that we should consider as a group how we deal with this." Within two days of that email as I understand it, you'd visited Pike River on the 26th of November?

A. Correct.

Q. So was this an issue that came up at Pike River?

A. It's an issue that Mr Whittall has raised with me in the past, about the fact that when he employs somebody that's got a deputy certificate, he undertakes his own assessments prior to and carries on training prior to allowing him to operate at Pike.

Q. Did you ever enquire into the quality of that additional training which Pike River said that it undertook?

A. No, I didn't.

Q. Your position essentially was to be satisfied that Pike River had said that it was going to undertake training?

A. Look, that is their responsibility under the Act.

Q. While you were with the Department, had the Department taken steps to address this competency issue?

A. I'm not sure whether we got as far as addressing the competency issue, but Johan Booyse was working on the EXITO board and doing some work with Kevin Walker, the CEO of EXITO, to look at those processes. We never undertook an audit or had a look or review of certificates that were being undertaken, they were being granted. I thought we should have.

Q. Slightly different topic and we don't need this document, but I'll refer to it for the transcript Ms Basher, DOL3000080014/1 and that's a reference

to email communication of 10 March 2009 between you and Mr Firmin in relation to the age restriction for people to go underground.

WITNESS REFERRED TO DOCUMENT DOL3000080014/1

Q. And as I understand it, there is no express age restriction for people going underground and your view is that it should be a minimum of 18 years of age?

A. I had a view, probably based on my experience in the past, that 18 would be a minimum age.

Q. Why?

A. It was my view. I didn't believe that for, certainly for working as a miner in a coalface, I thought that you needed a little bit more maturity than a 15 year old, just because it's a piece of machinery and you can operate it. I think you need to know a little bit more about, and be a little less of a risk-taker than a 15 year old might be, and bearing in mind that some people start apprenticeships at 15 and may have had to go underground as part of their apprenticeship, but as, if we are talking about face-workers or people who are working underground, I think – I just felt there should be a restriction.

Q. Did you have concerns about the ages of the workers at Pike River?

A. I can't say I was aware of the ages in general. I didn't do a review that way. There were a number of young people in the mine. I didn't observe what I would've thought was, in my visits anyway, people that was as young as 15 or 16.

Q. If I can now begin to turn to your visits to Pike River, before you started having sole responsibility for inspecting Pike River, did you receive a briefing or information about its health and safety practices, systems, performance?

A. Not as such, no. There was a, like a series of handover visits between Michael and myself but it's not a formal process.

1633

Q. What did you understand as a result of those handover visits and presumably conversations?

- A. Well, I understood that Pike had been a company that was striving for best practice and that, you know, generally they were co-operative and most definitely, and that the people that I'd be dealing with were reasonably competent.
- Q. Was it explained to you who Mr Firmin had dealt with?
- A. Well, I went on the visit and basically I was dealing with Kobus Louw so we didn't talk about all of the individuals that Mike had dealt with in the past.
- Q. Had you had any information about whether there had been any potential or actual breaches of health and safety legislation?
- A. No.
- Q. Now, as I understand it, when you'd visit, you would take a methanometer with you?
- A. I always carried a methanometer or a multi-gas detector.
- Q. And the methanometer would be able to measure what?
- A. Sorry, generally, have I said methanometer?
- Q. Yes.
- A. I should have said a multi-gas detector.
- Q. Right.
- A. So I could measure carbon monoxide, carbon dioxide, methane and oxygen.
- Q. Did you take an anemometer with you or any method of measuring air flow?
- A. Not initially. Later on when I started doing tunnel inspections in the North Island I felt it necessary and felt that I needed to have something that I could measure the airflow in the tunnels. There were some, what I thought were some significant issues that I identified when I went round the tunnels in my first visits and applied for and got approval to buy myself a small Kestrel.
- Q. And a Kestrel being a small convenient device for measuring wind flow?
- A. It does. It measures air speed.
- Q. You took note of your visits. Are they taken during the visit or subsequent to the visit?

- A. It probably varied. I tended to try and commit most of my notes to my Insite files and so my Insite file's the most complete set of notes and I tried to generate those as immediate to the inspection as I possibly could.
- Q. Would you agree that your handwritten and Insite notes don't record information such as air flow or methane readings or even the particular parts of the underground mine that you would inspect?
- A. That would be fair. The reason was that I knew, I only recorded what I believed were issues, rather than – so if I went to a workface and I found there was 0.1% methane, I didn't make a record that it was 0.1 methane. If I went to an area where the methane was looking, was getting higher or I thought it was becoming an issue, that's when I recorded it.
- Q. While you were an inspector, was there ever a review of the extent of the information that was recorded in Insite or your handwritten notes?
- A. Not that I'm aware of.
- Q. If I could turn please to a schedule of visits by Professor Gunningham and Dr Neal, or at least contained in their review, page 141 for the record, DOL0100010001/14?

WITNESS REFERRED TO DOCUMENT DOL0100010001/141

1638

- Q. I'd just like to go through these generally in places to get a flavour for them. Your first visit to the mine is on 27 May 2008 and that's with Mr Firmin?
- A. Correct.
- Q. And I take it that was accompanying him around to see how he would conduct an inspection?
- A. I guess that was part of it, yes.
- Q. And the mine was still in stone at that stage?
- A. It was.
- Q. You went underground?
- A. We did.
- Q. And you didn't make any notes of that visit?

A. I didn't. I might add that one of the reasons I didn't commit any notes to Insite was that I didn't have a computer. I was using my own computer from home up until about July.

Q. The next visit recorded here by you as being on the 22nd of July, it says site inspection by Kevin Poynter, investigation regarding gas ignition, peer review by Michael Firmin. In your witness statement at paragraph 36 you refer to a visit on the 15th of July 2008 and I just wonder whether that date of the 22nd should be the 15th?

A. It should be the 15th.

Q. And what did the peer review by Mr Firmin involve?

A. Michael would've reviewed the Insite notes and the outcome.

Q. He didn't accompany you on that visit?

A. No.

Q. And the next visit is recorded as being 16 October 2008?

A. Correct.

Q. And that was an underground visit?

A. It was an underground visit.

Q. Then the visit 26 November 2008 site inspection by Kevin Poynter and Richard Davenport, electrical safety. Did that involve going underground?

A. It did.

1641

Q. I think you haven't made a record of that visit, is that right?

A. There should be a record of it.

Q. Well there may well be but perhaps if we take you to it, DOL300070074/3.

WITNESS REFERRED TO DOCUMENT DOL300070074/3

Q. Is that the Insite record of your visit?

A. That looks like it's the Insite.

Q. I'll perhaps rephrase my question more fully. Your record of that visit doesn't refer to you conducting an underground inspection?

A. No it doesn't.

- Q. The purpose of that visit was for there to be an electrical safety inspection?
- A. Correct.
- Q. So did you conduct the type of underground inspection that you have described in paragraphs 13 to 17 of your witness statement of 22 June this year, which involved looking at roof ribs, bolting patterns, gas levels, gas records?
- A. No I didn't.
- Q. So we wouldn't regard that as your usual underground inspection?
- A. No.
- Q. Is that the only contact you had with Electrical Safety Service?
- A. We conducted five visits that week, but since that date there's been no contact.
- Q. It was the only contact you had in relation to Pike River?
- A. Yes.
- Q. The next visit is recorded as being 3 December 2008, "Site visit by Kevin Poynter and John Booyse and Richard Steele, familiarity visit." Who's Mr Steele?
- A. Richard Steele was Johan's boss. It actually, the visit formed a bit of a dual visit, while Johan hadn't been to the mine and Richard Steele didn't understand mining at all, it was also a chance for Johan to have a look at where the ignitions occurred, so as part of the familiarisation we went round and I showed Johan the area.
- Q. Did you take notes of that visit?
- A. No I didn't.
- Q. Would it be fair to assume that it didn't involve the usual type of coal mine inspection looking at all the roof ribs, bolting patterns, gas levels, those sorts of things?
- A. Not, no.
- Q. So we would regard that as an underground inspection?
- A. No I wouldn't have regarded it as an underground inspection.
- Q. And so for example on that date you wouldn't have asked workers about health and safety issues?

- A. No.
- Q. No, nor inspected any records that the company might have?
- A. Not on that day, no.
- Q. The next visit in the schedule is shown as being on 12 February 2009 and this was the visit you've referred to in paragraph 104 of your witness statement in response to the ventilation shaft collapse, is that right?
- A. Correct.
- Q. That didn't involve going underground although you did go down part of the vent shaft from the top, is that correct?
- A. That's correct.
- Q. That was a major workplace incident, would it be fair to describe it as that?
- A. The vent shaft collapse?
- Q. Yes.
- A. Yes it was.
- 1646
- Q. Did you on that occasion or subsequently ascertain from the workers, their views of why it happened?
- A. No, I didn't conduct a formal investigation on why it happened.
- Q. Did you ask any workers about that?
- A. No, I didn't.
- Q. So you wouldn't be able to say whether that posed any health and safety risks for the workers underground?
- A. I wouldn't be able to say categorically that that was the case. When I visited on the 12th of February, the bottom of the shaft had completely collapsed and filled up, so, as far – at that point, as far as risk to other people under there, under, around the shaft, it had closed itself off.
- Q. But you'd accept there might've been risk as the shaft was collapsing or building up to the collapse?
- A. Yes, there could've been.
- Q. Why didn't you investigate that?
- A. I can't answer that.

Q. If we could have please Ms Basher, DOL300070089/3?

WITNESS REFERRED TO DOCUMENT DOL300070089/3

Q. And can you just confirm that this is part of your Insite record of that visit?

A. It is.

Q. You'll see in the first paragraph, fifth line down, you make the comment, "The shaft appears to be well supported with no major hazards observed." What was the basis of the view you expressed there?

A. When I went down in the Kibble, one of the things I was doing was observing the bolting and the meshing that had been undertaken on the top part of the shaft. I also note the jointing that had been previously been injected with sanitation grout, prior to the shaft being driven, so what I saw down to where the failure was, was some reasonable standard of support.

Q. Did you request any documentation, for example, geotech documentation in relation to that?

A. No, I did not.

Q. I take it from your earlier inspections you would've been aware that that ventilation shaft was the proposed second means of egress?

A. I was aware that that was going to be the second means of egress for a period of time.

Q. I'm going to come back to that topic later, but it would've been immediately apparent to you that that collapse had significant implications for that second means of egress?

A. I didn't specifically consider that at the time, but with the benefit of hindsight, yes, the collapse had a significant impact.

Q. Your next visit in that schedule of Professor Gunningham and Dr Neal was 3 June 2009, "Site visit by Kevin Poynter – after eye irritation incident." And you were responding to an incident where someone got, I think, some chemical in his eye, is that correct?

A. That's correct.

Q. There doesn't appear to be reference in the Insite record to you going underground. Did you go underground on that?

A. No, I did not.

Q. No. So that wasn't a mine inspection either?

A. No, it wasn't.

1651

Q. And the next visit of 16 July 2009, "Site visit by Kevin Poynter with Minister Kate Wilkinson and Team Leader Irene Campbell, familiarity visit." Did you go underground then?

A. We all went underground. We drove in and went to a face, pretty much then exited the mine.

Q. It's fair to say its purpose wasn't an inspection?

A. It wasn't, no, it wasn't.

Q. And it wouldn't have involved seeking information for example, from workers?

A. It did, no, it didn't, sorry. Other than the Minister talking to some workers.

Q. So the next visit is 9 October 2009 site inspection by Kevin Poynter, extra ventilation installed, gas accumulation observed and you did go underground then?

A. Correct.

Q. Sorry?

A. Just let me check that.

Q. I think it's probably about 155 of your witness statement. "On 9 October I visited the mine." Paragraph 155.

A. That is a visit that I went underground.

Q. And so that was your first underground inspection visit for 2009?

A. That is correct.

Q. And we can see that the next visit you have is referred as being 2010, so that was the only underground inspection visit in 2009?

A. That is correct.

Q. Was that a matter that was ever discussed within the Department?

A. No it wasn't. It wasn't discussed with me.

Q. Do you know whether that was a matter that the Department was aware of?

A. It would've been readily available via my monthly reports and the Insite programme.

Q. Readily available for example, to your team leader?

A. Correct.

1654

Q. Who else sees the monthly reports?

A. I don't know who sees the operational report, other than my team leader. I understand that she probably takes information from that and passes it on.

Q. And if we look at paragraph 155 of your witness statement –

A. Can I add that it's – we're focussed on Pike River and rightfully so, but as an inspector there are a lot of other things that I would've done between January 2009 and that visit in October and whilst I haven't conducted an audit in the three monthly period, it, there were an awful lot of other things going on that required some attention from myself, notwithstanding I was still doing examinations.

Q. And although this isn't meant be any sort of a conversation between us, could I just note that we can see from the record that you were doing matters at Pike River. The point is that they weren't underground inspections.

A. They weren't underground inspections.

Q. Just if we look at paragraph 155 of your witness statement, which is DOL7770040003/28, you'll see you've said there, "I tested for gas with my multi-gas detector as is my usual practice. I detected some layering of gas near the floor at heading 5C where in-seam drilling was taking place. I requested extra ventilation be put in place, which was completed before I left the site. I made notes of this visit on Insite. You haven't recorded the methane level. Can you recall it at all?

A. It alarmed on my multi-gas detector and my alarm was set at 1% and so once it alarmed I checked it and I think it might have been 1.1%. What was happening was there was some gas emanating from the floor and the brattice lead that had been installed to ventilate the face was not capturing enough air and pushing it through the face, so you were

getting this small accumulation. Once you got off, about a metre off the ground the methane accumulation immediately started to drop off, so it was getting enough air down to sweep the floor to make sure that that gas was being dealt with.

1657

Q. Is it implicit, on the fact that you picked it up, that it hadn't been picked up by Pike River?

A. I guess so, but in saying that, the deputy or whoever's in charge of those workfaces may have been inspected, found things to be okay and moved on and not been aware that the situation was occurred. In doing that, he might've damaged or moved the brattice. I can't conclusively say that, 'cos I picked it up, it meant that they weren't doing their checks.

Q. Did you conduct any enquiries in relation to that issue?

A. No I didn't.

Q. And you didn't –

A. It's not unusual for us when we're going around to find little issues that we fix straight away. I didn't see it at that time as being indicative of anything systematically wrong with what they were doing.

Q. You didn't seek to view any records in relation to ventilation or ventilation issues?

A. No I didn't.

Q. It's not a matter that you would've considered issuing some sort of warning in relation to then?

A. I didn't consider it.

Q. Were you aware of whether at that stage Pike River Coal Limited had a ventilation officer or engineer?

A. My understanding of the role of ventilation engineer was offsite and that the ventilation planning and simulation work was being done by consultancy.

Q. So you were aware at that time that Pike River didn't have an onsite ventilation engineer?

A. That would be correct. In normal circumstances if a ventilation engineer wasn't available, it would be likely that the mine manager would have to

assume that role and there's no requirement under New Zealand law for a ventilation engineer to be part of the management structure. It's certainly desirable in a mine where you've got gas issues and under Queensland law there is a specific requirement to have it appointed a ventilation officer which I think is a very good law.

1700

Q. Was the lack of a ventilation officer onsite a matter you ever pursued with Pike River?

A. No it wasn't. More particularly so after the arrival of Doug White. I did have a discussion about who was undertaking the role of ventilation officer on the site and I understood it was Doug.

THE COMMISSION ADDRESSES COUNSEL

COMMISSION ADJOURNS: 5.03 PM

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