



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
J Haigh QC, B Boyd and B Smith for Douglas White
J Rapley for Neville Rockhouse
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, A Rawlings, A Glenie, D MacKenzie, A Gordon for certain
managers, directors and officers of Pike River Coal Limited (in
receivership)
C Stevens and A Holloway for Solid Energy New Zealand
R Buchanan for Fire Service Commission and West Coast Rural Fire
Authority
K McDonald QC, C Mander, 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
B Latimour for Coal Services Pty Ltd
N Hampton QC and R Anderson for Amalgamated Engineering, Printing
and Manufacturing Union Inc

**TRANSCRIPT OF PHASE TWO HEARING
HELD ON 23 SEPTEMBER 2011 AT GREYMOUTH**

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COMMISSION RESUMES ON FRIDAY 23 SEPTEMBER 2011 AT 9.00 AM**PETER WILLIAM WHITTALL (ON FORMER OATH)****EXAMINATION CONTINUES: MS SHORTALL**

5 Q. Mr Whittall, were you involved in efforts to contact the families immediately following the 19 November explosion?

A. When I arrived at the mine site at about, well prior to that in the initial phone calls I've had at Wellington I'd been speaking with the human resources manager and so one of the questions I'd already put to him
10 earlier in the evening was what was the compilation of the men underground and whether we are firming up the number because I'd had a number, variously 33 and 35, and when I left Wellington the most up-to-date number I'd had was I think it was 28 and I'd asked him what was being done to contact the families, the contractors, and we'd had
15 that discussion and he assured me that they were going through their next of kin lists, et cetera which is part of the emergency response plans, so I didn't have any further discussion on that until I arrived on site.

Q. Can you tell us about that discussion when you arrived on site?

20 A. Sure. I spoke with three, had three meetings sort of after 2.40. The first was with Doug White to update me on the operations. The second was with Tony Kokshoorn to – we talked about what had happened in the immediate aftermath as far as where families were meeting in town and what had happened at Karoro Learning Centre and I think efforts to get
25 things up at Moonlight Hall, et cetera. He was able to inform me what had happened throughout the evening. We talked about the need for a meeting as soon as possible, so I probably had a good, I don't know 45 minutes discussion with Tony on a whole range of issues 'til about well after sort of 3.30, and then I was aware Dick Knapp was still on site
30 and I also became aware through Doug that not a lot of progress had been made on communications with the families. So I spoke with Doug White, sorry, Dick Knapp in my office about that time and he explained that they were still compiling lists and still going through

records and I was “disappointed” would be an understatement to believe that nothing really much had happened by that time in the morning.

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5 A. I was aware it was already 3.30, but I instructed Mr Knapp and the rest of his team that were still there to not leave site until all efforts had been made with all of the lists they had to contact all families, and it was quite a difficult conversation with him, because it was something they had been working on, but had been somehow had a hiatus in the process where there was some, I think, a lack of – because there was no
10 confirmation of absolutely who was in there, we had the list, by that stage was 29 and firm, and it never changed after that, but because it was only a list of people who were thought to be underground, they were very reticent for some reason, to actually make a false phone call and say, “Hey, we think your husband or son, or brother’s underground”,
15 when it wasn’t, which I, to this day don’t understand or agree with. I wouldn’t have done it myself that way, but that’s the way the thought processes were running and you can understand what we heard, there’s been a lot of emotion on site and a lot of decisions get made in real time that in reflection probably weren’t the right decision, so that, to the best
20 of my knowledge through the next several hours was done by a very tired and very distressed HR and I’ve heard now from the families that some of those calls were quite sharp and short, and I can understand that that’s possibly because the people didn’t want to engage, and they were quite emotionally distraught themselves, but that’s certainly no
25 excuse for what wasn’t communicated to the families.

Q. What was your role in the search, rescue and recovery effort post-explosion?

30 A. I didn’t have a direct role in the search and rescue onsite, the role of that obviously sat with the incident management team and the incident controller onsite, which I understood was Doug and Steve alternately. Although I understood the police had control of the site. A lot of what I’ve learnt has changed since that time. So, my role was as chief executive was to set myself up in town. I formed an office, if you like, in the Coleraine, and conducted all my affairs from there, so my role as

chief executive, which I hadn't been in very long and my natural position would've been to go up to the site and run the incident management team, but I had a very competent and capable pair in Steve and Doug to do that role, so I was very conscious of what my role was, or my new role was a chief executive, which was to deal with our board of directors and others. So my main focus from my office in town was really family liaison and that sort of consumed my day and fitting in amongst that was, especially later in the period were corporate issues, but I had John Dow in town as well who dealt with most of the issues with board et cetera, so that could focus on, literally, communications, which I became a communications officer effectively, so, for the period.

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Q. And did you hold twice-daily management meetings from the Coleraine around this time?

A. Yeah, we got into a bit of a pattern pretty quickly. On the Saturday when I'd gone back into town, had the first meeting on the Saturday morning and then Saturday we had another meeting on the Saturday afternoon and then got into a bit of a pattern on the Sunday whereby I'd have a variously 6.00 am or 6.30 am briefing from the mine site to just update me on what they were doing. It wasn't really a meeting with them, it was a briefing from them because they were in charge and they were doing the job. So they would tell me what had happened overnight. And then we'd go from there to the police station and have a meeting with the police and discuss what I'd learnt, but they had their own briefing notes anyway. It was more an alignment discussion to make sure that the messages were consistent. And then we'd go straight from there to the family meetings and then usually sometime after that was a scheduled media briefing and then start the cycle again if there was a couple of hours in the middle of the day that I'd get up to the minute site probably I think five or six times in the first seven days.

Q. And I just want to stay on these management meetings for a moment Mr Whittall. Who generally attended those?

A. I did, at all of them. Usually John Dow as well, he was in town, so he was at nearly all of those meetings. The family liaison team that I'd put

together internally, so John Robinson had been appointed on the Saturday into that role and Adrian Couchman, Denise Weir came along a little bit later, initially Dick Knapp was in that position as well but that changed to Denise Weir later on. One of the BRG people that we talked about yesterday would sit on them when we got to the media part of it later on the discussion. But effectively the meeting agenda was an update from the mine site and then just updates from the family liaison group and then a discussion on the family liaison issues of the day and what was going to be happening with the families, what the messaging was out of the night's briefing, and then the same thing with during the day when we had the afternoon meeting. The evening meeting actually followed all the others so we did that as a last thing in the day. So my family briefings in the afternoon were followed usually by my own site visits, from information I'd gathered during the day, or by intelligence from the police force et cetera.

Q. Do you recall, just in terms of attendance at the management meetings, that anyone from the site attended, did Mr White or Mr Ellis attend?

A. Rarely, because the briefing in the morning was usually by Steve, who'd just got, he'd usually get to work about 6 o'clock and the briefing was usually at about 6.15 or 6.30 and he'd just done a handover with Doug who'd go home.

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A. There was occasions where Doug came into town and went to the meeting, but because we were going off to the, think it was usually a 6.30 till 7.30 sort of meeting he was probably just coming home and going to bed by the time we'd finished that meeting, so, not typically, but as I said, their job was to provide a phone conference hook-up and give us an update rather than actually participate in the rest of the meeting, they'd usually sign-off once they'd given us a site update.

Q. Now you mentioned the family liaison team, in particular Mr Couchman, Mr Robinson and Ms Weir, can you describe generally what their role was?

A. Yes, we didn't, obviously like we talked about yesterday with the incident management team it's a fairly dynamic exercise, there was

never envisaged a need for such a team, well, never envisaged to need such a team pre-setup, you know, in such a small organisation as we had. Although I think I would change my view on that now, I chose John Robertson for the role purely out of the fact that I knew him so well. I knew he was empathetic, he was competent, he was intelligent and he knew the business very well. He'd be able to answer a lot of questions and he was a very nice guy, so he didn't have any training in the area but I just thought of all the staff I had onsite and the workforce which I knew well and went by personality and asked him to do the job, I briefed him on it and he said he would do it, by all accounts, and certainly from my point of view, he did an excellent job, he was the right man for the right job.

Q. And what sort of job did you understand he was engaged in doing?

A. His role was to be the frontline person. He wasn't a counsellor, he was a communicator, if you like. He was there as access resource to the families, not just the families of the 29 men underground, but all the families because we had a lot of men who weren't able to go to work, they didn't know what was going to happen with their jobs, we needed someone to act as a pivot between Air New Zealand, our own workforce, the other service providers, making sure we had names and addresses correct, infilling a lot of the information. There was a bit of a – the police basically asked us to gather a lot of that information which they then took which was good, so a lot of that information on, not only the original next of kin, but the extended families as we've heard from some of the families, some of those relationships are quite complex and diverse so it took a long time to get all of the streams of each family together. That was the sort of role that John undertook. We also had distribution of gifts that were coming in, food, money, things like that so it was quite a busy place down at the office in Tainui Street.

Q. In addition to the co-ordination of those sorts of donations, was the family liaison team involved in trying to assist with staff who were receiving redundancy notices?

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A. We did the redundancies - well the redundancies didn't occur until after the receivership and the receivers issued those notices, but we did it from the Tainui Street office and I went down with the receiver and basically handed the notices out with those because he didn't know anyone and it was quite impersonal, so I went down with him to do that. So we used the same offices for that. So there was a drop-in centre for not only the families of the 29 men underground but also the broader Pike family.

Q. Did you understand that Denise Weir's role was separate and apart from what Mr Robinson was doing? Was it part of the same how it worked?

A. It was part of the same team. John's a hands-on guy and he was the one I expected would be the interface. Adrian Couchman was brought in to, as a high level co-ordinating role to do more broad co-ordination and then above that originally Dick Knapp and then Denise Weir who had been previously our first human resources manager but was working as a director of human resources in the Road and Traffic Authority in New South Wales, jumped on a plane and landed in Greymouth where she used to live, and said, "I'm here to help." So we actually put her in charge of that group. She's extremely experienced in strategic so she took over our strategic planning role, if you like, for the family liaison group.

Q. Just a couple of more questions on the management meetings, then I'll move on Mr Whittall. Did Nick Thompson also attend the management meetings?

A. I suppose he did. He was in the room.

Q. What was Mr Thompson's role?

A. Nick had done, Nick owns a company that does security services on our site so we'd used him when we've had annual general meetings and, you know, yeah basically just annual general meetings on site. Basically his company did site security. He took it upon himself to get himself to Greymouth on the Saturday and arrived in town and presented himself to – found me and said, "I'm here to help, what can I do?" and he basically became my driver and executive assistant I think he'd like to think of himself. Basically took me everywhere and saved

me the hassle of where I needed to be at what time. He kept an eye on the clock and made sure if I had appointments I was there on time and made sure he shuffled me out of the room if I had another appointment coming up, et cetera, things like that, so he was invaluable. It was
 5 fantastic. I didn't have to give that a lot of thought. I was running from pillar to post on sort of half-hourly and hourly increments, so he kept track of me.

Q. Do you understand, Mr Whittall, that Mr Thompson has written an article since the incident and he may have also spoken publicly, describing
 10 himself as your point man or shadow man during the period immediately following the explosion. Are you aware of that?

A. Yes I have read the article.

Q. And is the way that he's described his role consistent with your understanding at the time?

15 A. He wrote the article. I didn't edit it or see him until after it was published. I've described how he acted for me. He may or may not have viewed his role slightly differently to that but I don't really have a comment on that.

Q. Let's turn specifically to point six in the list that I gave yesterday which
 20 was communications with the families, and I'd like to focus some questions around this because it's obviously one of the particular questions for this phase of the inquiry. When did you first meet with some of the families?

A. On the Saturday morning. I think it was the 7 o'clock meeting at the
 25 Red Cross hall next to our Tainui Street offices.

Q. And can you describe your recollection of that first meeting and how you felt?

A. It was fairly overwhelming. I think a number of the families have
 30 described they were packed in like sardines. I knew that office was fairly small because I'd worked in the office adjacent to it and that's where Sports West Coast used to be in there, with three people. And I expected there to be 20 or 30 people in there, really, when I walked in. I didn't really know and I ended up walking into a mass of pressed bodies lining every part of the room and on top of each other and on each

other's laps. A lot of faces I knew, a lot of faces I didn't know. A lot of faces I knew, but I had no idea how they were related to the incident. You know, through family connections, et cetera. I've since - slightly better understood since then. So it was quite overwhelming. I didn't know anything. That was the hard part. All I knew was there had been an explosion and Daniel and Russell had walked out, but apart from that we didn't really have a lot more information so I was going in fairly unprepared to be able to give a lot more information than they knew already about the actual incident, but again I think I said yesterday I've had, I'd had a bit of experience in the previous year or so with shareholders and I realised that a lot of people just don't understand the environment that underground workers work in, so my expectation was to try and share my understanding of what might've happened to give people an understanding of the terms that we were using and where people, not so much where might be because I didn't know at that stage anymore at all, but just to give, to be a resource really. The police were in charge. They were there in their uniforms and I just sort of came along to be the face of the company and to assure the people we were doing everything we could and answer any questions I could.

20 0917

Q. Had you ever before been involved in meeting with families dealing with a potential tragedy?

A. Oh, no, nothing like that, nothing at all like that.

25 Q. Prior to this first meeting, did the police or anyone else give you any guidance on how to handle that first discussion?

A. No, not - certainly not then or really since, but, no certainly not then.

Q. And there was a second family briefing on the 20th, what do you recall about that meeting?

30 A. I think for after the first meeting, it was so crowded and the groups were only going to get bigger as people started to travel in, there was an understanding that the room was too small and the council offered their rooms across, the council rooms across the road as a bigger room and so, I believe it was the second meeting was over there in the afternoon. By that stage I'd engaged John Robinson and talked to him through

what I realised already was going to be a huge need for that role, and so I brought him along to that meeting to introduce people on that afternoon, and again, we didn't have a lot more information. I hadn't really had any sleep either, and I think everyone was getting very tired and strung out. There was a lot of anxiety in the room, all over and there were some more vocal than others. I think some people were, as they've described already, were really very numb, not really knowing or understanding what was going on and it was actually quite difficult, because a little bit of information is difficult sometimes, so people had small understanding of what could've happened and therefore there was quite pointed questions requiring pointed answers to issues that we just didn't know the answers to, so probably from that – the very first meeting was quite subdued, the one in the morning, there was just a lot of, "What's happened? What's happened?" But from then on it got a lot more questioning and I just saw my role as to answer all those questions that I could.

Q. Do you recall looking back in the time that you were communicating with the families following the explosion that you tried to answer all the questions put to you?

A. I would hope that that's how people recall it. I certainly remember standing at every meeting until we exhausted every question, I don't, unless there may have been an occasion where I had to leave for something, I recall standing there until we exhausted, and I certainly recall getting the same questions, sometimes at every meeting and answering the same questions to sometimes the same people, but it was, they weren't the answers that people wanted to hear sometimes and that's okay. I believe I was patient and understanding that they needed those questions answered and that was certainly my intention to be, so I think I answered just about every question that was ever put to me. I certainly don't recall ever saying I wouldn't answer a question. Maybe I didn't know the answer and I had to get back to them, but I don't recall ever not being, or not wanting to answer a question, anyway.

Q. Now, following the second family briefing on the 20th, do you recall the police making clear to you that you should meet with them before the family briefings?

A. That's correct.

5 Q. And what did you understand was the purpose of these pre-briefing meetings?

A. It was made clear to me they wanted to know what I was going to say and they wanted to know what I knew, so that they could not have an inconsistent messaging and that I wouldn't have an inconsistent
10 messaging with what they were wanting to say.

Q. From the 20th through the 24th of November, how frequently did you brief the families?

A. Twice a day.

Q. And were these briefings always held in the same location?

15 A. No, the group got bigger expedientially, as more family members came into town and so it was moved from the council chambers to the only other large venue in town which was the Civic Centre, which was the basketball courts basically and hall, and it was a big loud place. It wasn't very friendly and it wasn't very personal, but it was the only, we
20 got, the group grew to nearly 500 people. It was quite a large mass and there was really nowhere else to go and the council were not able to provide any alternatives. I don't know where there would be any alternatives in Greymouth for that, but it was certainly not conducive to a warm and loving environment.

25 0922

Q. And what was your approach generally to the family briefings?

A. Well as I said, the morning family briefing came after our morning meeting so I suppose it was the same both, it's just I had the information from a slightly different source. My intention at each of the family
30 briefings, and when I sat down with Superintendent Knowles before the briefings to go over what was said, it was usually agreed that I would speak to the factual bits of where the drills were up to, what the gas readings were, what that meant, what was actually happening on site from a technical voice, that was the term that was used over and over,

you just stick to the technical stuff, and the police would deal with the operational stuff, which was what was happening on site and the rescue and eventually the recovery efforts. So that was what I would stand up to say and then the questions would be open to whatever. So if they

5 were operational questions I would usually defer to Gary because I wasn't in charge, and if they were technical questions then he would defer to me and let me explain, things like gas and ventilation and things like that to the best of my ability.

Q. And was your approach to be honest and truthful at these briefings?

10 A. I had really no motivation to be anything but. I understand that that's in hindsight not how some things were perceived and I'd like to speak to that as well. But certainly from the day I got on site, well even before I got on site, I've never had any intention other than to be fully truthful and honest. I'm sitting here under oath now, which I take very importantly,

15 and every question I've answered today is exactly the same as what I've answered before. To the best of my ability it's exactly what I know and understand.

Q. Now to the extent you were answering questions and providing information to the families during briefings, what was your information

20 based on?

A. In the morning briefings it was based exclusively on the phone call from the mine site, and it was nearly always Steven Ellis. So I'd get an update from Steve for 15/20 minutes, take some notes and things like gas readings and where the drill holes were up to and things like that.

25 And so I'd also get a briefing if anything had changed overnight from the family liaison team, because our evening meeting was usually about 7.30, 8 o'clock and if anything had changed overnight from them, so I compiled information. But typically my information flow to the families was almost exclusively from the briefing I got from the mine site in the morning.

30 And then the family meeting in the afternoon, it was a composite of any phone calls I'd had during the day. As I said, most days I was getting up to the mine site, if only for an hour or two, so that I could get first-hand what I could see. I wasn't party to any of the myriad of meetings that we've heard about from a lot of other people over the

last couple of weeks, the last three weeks, and I wasn't part of the incident management team and didn't attend any of the incident management team meetings. But I'd go up to site and just talk to people and meet with, or not meet so much, it's just talk to people and find out what I could.

Q. As of the 19th of November Mr Whittall what was your understanding of the fresh air base at the mine?

A. The fresh air base to my understanding was the area that's been spoken of at the bottom of the Slimline shaft, that it had caches self-rescuers, fire-fighting equipment, a roller door that was under for review, I've since learned that they were looking to extend the fresh air base deeper, but I wasn't aware of that at the time. That's about it.

Q. And what was that understanding based on, your understanding of the fresh air base, what was that based on?

A. It was based on the intention to build one originally, so that came out of –

Q. Sorry, your knowledge of the fresh air base, how did you obtain that knowledge?

A. It was described to me, explained to me, through management meetings or Doug, I'm not sure where I learned the knowledge but I learned the knowledge.

Q. And were you aware that the changeover station and the drift had been decommissioned as of the 19th of November?

A. I was aware, and since then I've thought about it and whether I actually went there since it was decommissioned. I do have a memory in my brain somewhere of walking into that changeover station as being empty and not having the rescuers in it anymore, but any other detail like no phones and compressed air connections I wouldn't have had any reason to check the phone that was hanging on the rib. As far as I know it was actually still hanging on the rib the last time I walked down the drift but whether it was connected or not I wouldn't know, but I was aware there was a general news flash went out earlier in the year about the changeover station being moved. I have no reason to believe it didn't get decommissioned.

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Q. And what was your understanding as of the 19th of November, of the number and location of self-rescuers underground?

A. I didn't have any specific knowledge of that.

5 Q. But you understood there was a cache at the bottom of the Slimline shaft, is that right?

A. Yes, I did. I wouldn't have known how many were in it, I assumed an adequate number for the maximum number of people that could be underground, that's how you'd normally do it, plus extras.

10 Q. Mr Whittall, have you read the statements submitted by some family members to the Commission?

A. I've read all of the statements by the family members, yes.

Q. And do you have a reaction to those?

15 A. I won't use an often termed used word in this Court but to say I was fairly devastated would be an understatement, and for some reasons, which I've yet to talk about, I read them in quite disbelief, I had many – I've read every brief that's been submitted to this Royal Commission and I usually read them through reasonably quickly and make notes as I go. When I started reading the family ones, it took me about a week and a half to get through them, I could only do a couple a day. I found
20 them extremely upsetting. The reason I was upset was not with the families, I was upset that I thought that anyone could believe that I'd let them down in any way or not, given them absolute truth all the way through, and I did, I turned up to every meeting with the intention of
25 giving a full and accurate disclosure of everything, the fact that anyone believed otherwise was quite gut-wrenching when I read them and I really struggled with that.

Q. Now, there has been some criticism in those statements that you gave false hope to the families. What do you say to that?

30 A. I would certainly say that I shared my hope. I've been in the industry all my life and I certainly understand what men are capable of and how resourceful they are, sometimes for the all night good, underground, but I had a hope in myself so I shared that hope, unfortunately for all of us it was unfulfilled. Unfortunately, much more gravely for 29 families than

for myself, but at no stage – I've gone over it in my mind so many times since I read those descriptions and I still can't find a reason why anyone would think I would give false hope, I can't find a motivation, a logical one or even a compassionate one why I would give false hope. I certainly never intended to. If anyone had their tragic suffering made worse by thinking that I was give false hope or the fact that I could've given a different story to what I genuinely believed myself, then I'm absolutely sorry that anyone else ever felt that. I can't believe that I would give false hope. I have genuine hope and I have listened to Steve Ellis and I have listened to Doug White and I've listened to others and I've even listened to the families that said logically, they thought the men were dead but they still held out hope for a miracle. Well, I definitely shared that and I still do today. I've listened to all the evidence and I've gone over it in my brain for 10 months, everyday and every night and I still have not changed my opinion that I genuinely believed there was an opportunity for some men, at least, to have survived and to come back to us.

Q. And why did you hold that, as you've described, genuine belief following the 19 November explosion?

A. I'd never had an explosion in a mine that I'd worked at, sorry, actively worked at, but I had managed quite a number of mines and I'd also been a student of mining history, if you like, as you are when you spend a long time in the industry and study a lot. I'd been the manager of Appin Colliery in 1999, which celebrated, remembered, probably a better word, its 20th anniversary of a tragic explosion there that killed 14 men and that was in one panel and the rest of the shift walked out alive. I was the manager of Dendrobium and I was required by the inspectorate to take over the lease of the Mount Kembla Mine and the Mount Kembla Mine blew up in 1901 and killed 81 men and boys and by taking over that lease I inherited the mine plans for that mine and interestingly, my surveyor at that mine was Callum McNaughton who was our surveyor at Pike as well, and Callum and I share the experience of rolling out these linen plans which were 100 years old. We were there for the 100th anniversary, and it showed where all the bodies were,

on those plans, but it also showed the route that all the survivors took out of the mine that killed 81 men, but a lot of men still walked out of that mine and there's a lot of stories and examples throughout mining history where explosions have occurred in discreet sections of the mine and men have still survived, and as I said, miners are resourceful guys and they're tough and they're strong and they're hardy, and I fully believed that if anyone could survive they would've and I had, until I was proved otherwise, that was what I had to believe.

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10 Q. Did you invite Trevor Watts of Mines Rescue to brief the families?

A. I did, probably not until the Wednesday I believe. I'm checking back on my notes and my brief reflects that. It had come up several times. I think Gary Knowles said that he'd also spoken to Trevor and I came out of the family meetings on the Wednesday morning and rang Steve Ellis onsite and asked if Trevor was up there and would he convey my request for that to occur, and then I later spoke with Trevor onsite as well and also with Dave Stewart of the rescue service.

Q. And we've heard evidence about Mr Watts not briefing the families so I don't want to go into that with you, but I just want to confirm that you were seeing Mr Watts frequently in the period following the 19th of November?

A. I wouldn't say frequently, no. Not by pre-arrangement. I had met in town with him. We'd both come into brief Gary Knowles for a meeting and he didn't turn up, so I sort of had a short meeting then and then Trevor went off about his work and I had seen him up onsite, but no we weren't meeting regularly and he wasn't reporting to me on anything in particular.

Q. Did anyone from New Zealand Mines Rescue Service, including Mr Watts, ever convey to you before the 24th of November that they believed all of the men had died immediately following the explosion?

A. No.

Q. Did anyone at all say this to you before the 24th of November 2010?

A. No.

Q. That includes everyone that you were dealing with, police, other agencies, people on site, no one said those words to you?

A. No one even intimated those words to me.

5 Q. Now there has been some criticism that you should have told the families about a fire burning in the mine. What do you say to that?

A. Well, I'd empathise with Bernie Monk. His comments yesterday that he learnt more about this rescue and recovery operation sitting in this Commission than he did at any of the time following the disaster because I feel quite the same. I listened to Assistant Commissioner
10 Nicholls and Superintendent Knowles speak of these briefing notes for the first time, sitting in the back of this room. I met with Gary Knowles twice a day and at no stage did I ever get told anything about any briefings coming from site. John Dow sat in those same meetings and I've discussed it with him since and my PA, Katrina Bayliss was there
15 with me all the time taking notes. None of us had ever heard any discussion of a fire underground. I've listened to Steve Ellis and Doug White and Darren Brady give evidence and they're actually very consistent with my recollection, which was there was some discussions about remnant gases from the first explosion, there was a potential for a methane burn underground which is like a pilot flame-type thing akin I
20 suppose in my mind to having the hob on your stove burning in your house. It's not like a fire in the house but there's potentially something consuming the methane, and that's the extent of it, but even that was inconclusive. The fact, and I've read the families' briefings that some
25 felt that they believed or been told that there was a fiery inferno or a raging fire or a fire underground. That was never communicated to me by anyone from site, by the police, by the fire service, by the rescue service, by anyone I spoke to, up until I sat in this Court and heard it for the first time.

30 Q. Now, it has also been suggested in the evidence of others that you were overly optimistic about the prospect of survival. What do you say to that?

A. In hindsight, I was certainly unfulfilled optimism, as I said, unfulfilled hope. I'm optimistic by nature, and Steve Ellis described myself as an

“optimistic realist,” I think was his term. I'm not sure that anyone would progress in the mining industry or stay in the mining industry if they weren't in some way optimistic. It's an industry that requires - you're dealing with difficult issues, nature and high hazard environments. You wouldn't work there if you weren't an optimistic person, and I am definitely an optimistic person. But I have also spent my whole career in the industry. I've studied and gain a large number of qualifications. I'm not naive in my knowledge of mining.

0937

10 A. I believe I understand it very well and I apply not my emotions, but my brain as well to the conundrum of what had happened in the mine. I still to this day don't know what happened in the mine. But I had no reason to believe, categorically, that all the men were dead. That didn't actually occur to me. I've just, from the moment that I was told there was an explosion until the second explosion, I had diminishing hope, and that was conveyed as well through meetings on the, probably the Sunday I think was the earliest we started about, talking about a bit more grave situation. Certainly, the Monday and Tuesday and even discussed that with Gary Knowles that some of the language needed to be changed to make sure that the message was being made more clear that it was becoming a less and less likely scenario, but until the second explosion, I don't think I was overly optimistic, but I certainly was optimistic.

Q. Was it difficult for you to change the language?

25 A. Well, Gary, Superintendent Knowles, came into one of the briefing meetings and said, we've decided we need to start using words like “grave” and things like that because that will be conveying the right message and I said, “Okay”. I said, “Well, you can use words like that. It doesn't really sit well with me, but I understand what your messaging is.” And they were in charge, very much so, and so I modified it. I suppose it was personally very difficult because I didn't want to let go of that hope myself.

Q. Now it's been suggested that there were delays in showing certain CCTV footage to the families. What do you say to that?

A. Again, I can, I'll absolutely apologise if the families believe that anything was being withheld from them by me. I can certainly see that they may still hold that view of others, but I'd like to reassure everyone that that certainly was never my intent. I became aware, and again I take my oath very seriously here, I became aware that there was even, that there even was CCTV footage, talking to Russell Smith on Sunday afternoon. I wasn't aware there was a camera on the portal. I don't know how long it'd been there, and certainly not something that ever occurred to me, and when I was at Russell's house, talking to him, him and his wife Jo, and they said that, he said, "Oh, you should have a look at the footage." And so I left his house and rang the mine site and Steve Ellis confirmed there was footage and he was surprised I didn't know about it, because he said, "All the police and rescue service and fire and everyone else has seen it, why haven't you?" And I said, "I have no idea, because no one told me." So I rang Doug White that evening and asked him to procure a copy for me overnight and to deliver it to me the next morning in town on a memory stick. I then raised the issue with Superintendent Knowles that there was video footage. He told me he didn't know about it either, which I found again surprising given that all the police and all the incident management team and everyone reported through him, but he assured me he hadn't seen it, which I had no reason to disbelieve at all, and so I arranged for a laptop to come to our afternoon briefing and show him that footage. It was decided at that meeting by Superintendent Knowles that it was too distressing to show the families and that it wouldn't be shown to them. So it wasn't. There was no facility to show them that afternoon anyway, because we were going straight from that office to the briefing and I had no way of showing them. The next day I reiterated my request directly. I had a briefing with the police to show the families that, plus a whole bunch of other photos that I'd accumulated and asked them would they please set up a data show for that afternoon. The video that I showed that afternoon was the memory stick that was given to me by Doug White. I had – I don't even have the technical capability of editing a video like that. Doug had told me that the footage went from 3:44:33,

I think, to 3:45:22. I recall showing the video and they often talked about little tab of brattice hanging down. In my recollection and I appreciate it's only my recollection and it obviously differs from some of the families, I remember talking about the brattice bit hanging down, and
 5 I remember pointing out that it was flapping one way and then the other. I remember watching with the families, the explosion and then I recall showing them the brattice tape going back into somewhat horizontal with the ventilation going back into the mine. So my memory, that's the whole explosion. If it wasn't, I don't recall that, but either way, it was
 10 only what was given to me on the memory stick, so again if the families have formed a view that anything was shown to them in any edited form, that's not the case that I'm aware of and if it was it certainly wasn't with any intent on my behalf, and I can't imagine why Doug or anyone else would want to edit anything like that.

15 0942

A. The video that was eventually shown, to my knowledge, was off the same memory stick. So the one that was 50-odd seconds long was the same file that was supposedly edited to less than that but unless we go back and cross-reference all those files I don't know the answer to that.

20 So I'm not going to argue it, I just don't recall that being the case.

Q. Now there's also been evidence put before the Commission about CAL scan images of an open self-rescuer or fire-fighting box at the base of the Slimline shaft, do you recall when you first became aware of that CAL scan imagery?

25 A. From my point of view the CAL scan was quite a difficult source of information because it didn't belong to us, it had been commissioned through the police and Solid Energy. John Taylor was very aware, or self-conscious, that he didn't have a right to give that data to anyone. So Doug White used to get to see it when John would bring the files to
 30 the mine site for orientating. Because he didn't have a way of orientating the data he would come along and sort of show Doug and say, "Is this up, is this down, can you recognise anything in this so I can sort of orientate this mass of dots." Doug made me aware, I believe I've gone back over this again in my files to see if it was written down, it

wasn't, but I believe somewhere around the Wednesday evening, or maybe the Thursday, he made me aware. After that I asked him to show me, the thing, I didn't have any software that could show that data, that's quite specific software, so he made like a printout on the printer and you could've been showing me an elephant, I wouldn't have recognised an open box off just a printout on a piece of paper. He sort of tried to explain, "Here's the box, and here's the lid," but I couldn't see anything. It was very well enhanced and it was just off a colour printer.

Q. And there's been some criticism from certain families that the imagery should've been shown to them earlier. Do you have any comment in that regard?

A. Well I reiterate what I said before, I have absolutely no reason to want to withhold anything from any of those families, nothing. They could've seen the video of the footage of the portal the day it happened, or any of the CAL scan imagery. There's been a lot of imagery since then that interestingly has never been shown to me, I've never seen any of the enhanced images, the pit bottom, Slimline, PAH47, police have never made that available to me. I've never seen any of it.

Q. Let's come to the final topic that I wanted to address with you Mr Whittall, and that's the briefing to the families following the second explosion on the 24th of November. Now you were present at the mine site at the time of the second explosion weren't you?

A. I was.

Q. And why were you at the mine site then?

A. I'd received a call, and I believe it was from Barbara Dunn, it could've been from Gary himself, I don't recall, it was one of those two. About 20 past 12 I was at the Cafe 124 in town between meetings and I was told that I needed to get up to the mine site because the rescue teams were kitted up ready to go in and they needed me to sign off on a risk assessment, was how it was put to me.

Q. Did you believe you could sign off on a risk assessment?

A. No. But I was a little bit dubious because the last time I'd been asked to come into the police station to sign a risk assessment I was met by a lawyer who wanted me to sign a waiver for the police on their actions on

site, which I didn't sign, it wasn't anything to do with the risk assessments. So when he said to come up to the mine site to sign a risk assessment, or Barbara, I wasn't sure who, my main interest was the fact that they were actually kitted up ready to go in, which was
 5 extremely exciting and the news we'd all been waiting for. So I had a family meeting at 4.30 so I took a helicopter up to the mine site immediately. I had no capability of signing a risk assessment, I hadn't been involved in any of them, and I certainly wouldn't have signed one, but I still wanted to be up to the site if that's what was going to happen.
 10 So I arrived up on site. By the time I got there I went down on to the deck. The rescue teams were all about and I was told, I don't know by who, that the rescue teams had been stood down because there was some anomaly, now whether they were ever, I've heard Trevor's evidence to say they were never kitted up ready to go, and I had no
 15 reason to disbelieve that, I was only going on what I was told on the phone. So when I got up there I was told that the teams had been stood down because there was some anomalous gas readings underground and that they couldn't progress with it.

0947

20 A. So I said, "Okay well another false alarm and false hope," but I'd nothing particular to do, there was IMT meetings running and as you've heard from Mr Ellis and others, there was a lot of men onsite doing a lot of different meetings, so I went and talked to, I think, that was when I talked to Trevor and also talked to some of his teams and, sort of,
 25 commiserated with them, the fact that they were still sitting around, days and days later, some of them were my own staff. I think Craig Bisphan was up there and a couple of other guys who were part of those rescue crews sitting around, just waiting and waiting, so I went up to the control room with the intention of looking at the video footage for the first time,
 30 other than just on the memory stick, because I could look at it in real-time and actually give me an opportunity to look at either side of it and see if there was anything else to see as I was about the last person to ever get around to seeing this footage, so I was in the control room, I don't recall who with, actually, but I was reviewing the video footage in

historical mode, so the control officer was taking me through it and we looked at a couple of other things, we looked at the pit bottom video imaging. There was a camera in the pit bottom and stone where the coal transfer point was and that also gave me some level of comfort in my hope, I suppose, because it was right through exactly the same period as the first explosion and showed absolutely nothing, you know, there was a shovel leaning up in its rib, didn't move, it was around the corner from where Daniel had been and it wasn't the actual explosion but it was just part of the historical mode. They showed that to me for the first time and while we were there we got a phone call to the control room from, I think, a helicopter pilot or someone from traffic control to say that they'd seen smoke coming from the shaft and because we were in historical mode, we weren't watching real-time we were watching the screen but it was just recording in the background, so we went back five minutes where they said it was about five minutes ago and we watched the video from there and saw the second explosion occur. We hadn't heard it or anything in the control room and no one else had reported it.

Q. And what was your reaction to seeing that footage of the second explosion?

A. Oh, I think, as is been reported in many places, it was quite numbing, it was like a, I don't know, it was like the dashing of our hopes, if you like. We just stood there and watched it over and over again and discussed it with the guys in the room and it was, I think, it was just then obvious that, that we'd had hope that was diminishing from 29 men down to, maybe, one or two, it was then obvious that there probably wasn't going to be anyone. If they were holed up somewhere or if they were injured, if they were in the mine and they were absolutely desperately waiting for someone to rescue them, then they couldn't have survived a second blast like that and it was quite devastating. Actually, it wasn't quite devastating, it was devastating.

Q. What was your view as to telling the families having seen that footage?

A. Well, it was, by this stage, it was, what, quarter to three and I had a 4.30 meeting with the families. I didn't know that they would know about it at all so I went down to the room with Steve Ellis and we just discussed

what the ramifications of the second explosion would be. He started showing me some calculations he'd been doing from the Black Bible that Trevor and others had described from the rescue service, the Paul McKenzie Would Book about blast sizes and his views on survivability et cetera, from the first explosion and this was all sort of newly emerging information and there was just a general agreement that we just couldn't hope anymore that that second explosion would've dashed that and I spoke to Superintendent Knowles onsite, conveyed that same, I think he came up to the control room and watched the second explosion as well and we discussed the fact that the families would need to be told at the 4.30 meeting and then he left because he was travelling by car.

Q. Did you offer him a ride in your helicopter? That came up.

A. I heard his interchange the other day, it was quite amusing that Gary had told me on a number of occasions he doesn't like helicopters and the helicopter I had up there had plenty of room if he'd chosen to do so. But no, I think that was a light quip of his. But, no he left so by the time I'd finished with Steve Ellis, Superintendent Knowles had left the site and the helicopter that I'd come up in was available again and so I commandeered it, it was only mesh seats in the back it had been stripped out for use for transporting equipment up to the shaft and myself and Nick and Katrina, just the three of us in the back of the big helicopter, so there was certainly more than enough room for anyone else to have travelled back with us.

25 0952

Q. Now you were heading back to town for this 4.30 briefing at which the news of the explosion was going to need to be made available to the families. Were you offered or did you request any support or guidance from the police or others about how to deal with that meeting?

30 A. No. I just sat in a very, very noisy helicopter churning it over in my mind. I wanted to get back in time. I didn't want them to hear it from anyone else.

Q. Why did you want to give the news?

A. A sense of responsibility I suppose. I'd been communicating with them at every meeting. I thought this is the worst thing that they're ever going to hear and I didn't want some media person or some public relations person from the police doing it, I wanted it to come from me. I thought I owed that to them. I wasn't going to hide out up at mine site and say I was too busy. I'd been at every meeting. To them there was no reason for me to change my intention or my pattern or my integrity, if you like, of fronting all of those meetings.

Q. And Mr Whittall, Superintendent Knowles described a brief discussion with you in the carpark before you went into the meeting that afternoon on the 24th of November?

A. That's right.

Q. Do you recall that brief discussion?

A. I do, yeah. The helicopter ride was from about 10 past four to about 25 past I suppose, and the family meeting was due to start at 4.30. So he came straight from the airport to the briefing. We didn't have a pre-briefing that day, there wasn't time. No one arranged one and I wasn't asked to come back into town, but I'm not sure where Gary had gone to. That's not being critical. I just don't know where he went to. I assume he went into town to make his own reports to his own superiors, and when I got to the carpark he and Barbara Dunn and I don't know who else, I've forgotten now, were standing in the, just outside the entrance, and the families were all arriving and walking around us, and –

Q. And what was that like for you sir, to be standing there?

A. It was horrendous.

Q. Why do you say that?

A. Because I knew, because I knew the second explosion had occurred and I knew that they didn't know.

Q. And so you walked into the briefing and you came up to the podium. Do you recall that, walking through the families up to the podium?

A. I do.

Q. And what's your recollection of what happened next?

A. I felt nauseous, I felt sick, I didn't know what to say. I felt a bit overwhelmed and intimidated I suppose. I knew the families. I walked

in the room and there was 500 people there and God knows how many police, 60, 70, something like that, there was a huge number. So it felt like that anyway. There probably wasn't that many. Lots of uniforms standing around the walls, lots of people looking at me. I agree with the families that there was a range of emotions in the room. I think I looked at the, a lot of the support people and they were just devastated as well, so they've obviously been briefed or they seemed to me to have been briefed. I had no idea that the families had been sent a specific text. I thought they were just coming along for a normal meeting and I thought that they would think they were coming along for a normal meeting. I had no idea that anyone was telling them that there could be good news. I've heard all that during the, having read the briefings. So I assumed that they were all quite, turning up for a normal meeting, and it was about the right size, but I was, I suppose I was well supported. I had John Dow in there with me. I had Gerry Brownlee was there and Gary Knowles was there as well, so it was just a very difficult thing to do. I'd said I wanted to do it. I don't regret that Gary let me do it, but I think it was appropriate for me to offer. It was probably appropriate for him to accept. He recognised that I'd wanted to front every meeting before that, so he didn't see any reason to do it differently. I suppose I do differ in my recollection and I have gone back to other people that were there and collective memories change things and also time changes things, but I can only say what I believed was said and what I've verified with some of my other colleagues and friends, but.

25 0957

Q. What is your recollection of what you said to the families?

A. Well, anyone who knows me and you've probably seen evidence of it in this Commission as well as I tend to think reasonably chronologically and even if you ask me a question, I'll go back three steps and then bring you up to that point. It's just one of my failings in communication I suppose, but, so on this occasion I was well aware that we'd been talking just about every meeting about why the rescue service weren't going underground. So, I just wanted the families to understand that it was a good thing that the rescue teams hadn't gone underground, so I

started by saying that I'd been called up to the mine site because I was being told that the Mines Rescue Service were kitted up and ready to underground, that's how I started. I thought that would just be a normal thing to say, that that's why I was called up to site, because I had no understanding that they would expect anything to be coming out of that, and all of a sudden several people cheered and clapped and then it was like a ripple effect through the room. Everyone started to think that that was fantastic, it was massive and I had no idea why people were cheering at that because I thought I'd said that that's why I was called up to the site, in the past tense, but obviously the subtlety of past tense in a room of 500 people, when everyone's hanging on, what I now realise was probably waiting for good news, was just the wrong thing to say. I don't know how I could've said it differently, but gosh, there must be a 1000 ways of delivering that message that would've been more effective than that.

Q. Do you regret the way that you delivered the message on the 24th, Mr Whittall?

A. Oh, yeah, only for about 10 months.

Q. Just one final question Mr Whittall, do you have any regrets, more generally in terms of your communications with the families?

A. I suppose my general regret and – regrets probably a good word, and my general regret is that anyone could've –

Q. Just take your time, sir.

A. I suppose my regret is that anyone could at any stage believe that I had anything other than the best intentions to tell the truth at all stages and to give the families all the support I could possibly do.

THE COMMISSION ADDRESSES WITNESS – FIVE MINUTE BREAK

COMMISSION ADJOURNS: 10.02 AM

COMMISSION RESUMES: 10.08 AM**CROSS-EXAMINATION: MR HAIGH**

Q. I just want to ask you about your paragraph 127, which has already been alluded to by Ms Shortall. And you'll recall this was in the early afternoon of the 24th of November where Mr Knowles asked you to accompany him to the mine because the Mines Rescue staff were preparing to go underground and they needed a sign-off on the risk assessment?

A. Yes Mr Haigh, as I also said just previously, I wouldn't be certain if it was Superintendent Knowles or whether it was Barbara Dunn, but yes one of those two rang me and did ask me to attend. It was about 12.30 or something when I received that call.

Q. Did you tell them that you had no authority to sign any risk assessment?

A. That's actually why I believe it may have been Barbara Dunn because had Gary Knowles rung me to ask me I probably would've argued that exact point with him and that's what's made me think possibly if it was Barbara there wasn't much point me arguing that. But as I said, either way I knew I wasn't going to be signing a risk assessment but I wanted to get up to the mine site anyway so it was a moot point.

Q. So they may not have known, but that was clearly your intention, that is you wouldn't sign off any risk assessment?

A. I'd be surprised to understand why they wouldn't know that. That's why I think it may have been Barbara Dunn in hindsight because she may not have known but Superintendent Knowles would be very much aware that I'd never signed anything on the site. I wasn't part of the IMT and I wasn't then in any position of authority so I don't know why they would think I was going to sign it.

Q. Well the only person who could sign off on behalf of Pike in relation to the re-entry to the mine would've been either Doug White or his deputy when he wasn't there, Steven Ellis, correct?

1011

A. No I would've thought that Doug White could've signed off on it as a statutory manager. I'm not sure, unless he actually put some instrument in place where he delegated that authority to Steve and delegated him as the acting mine manager, whether Steve, even Steve would have had that authority, but quite possibly, I'm not aware of how they set up that delegated authority, but yes, certainly only one or two of those two people could've signed it.

5

Q. Well, Mr White said that on that early afternoon he was rung to come up and signoff, rung by Mr Ellis to signoff on the re-entry, or possible re-entry into the mine?

10

A. Right, that would be consistent then...

Q. I should also should also record Mr Ellis says he doesn't recall that, but that would be consistent with his obligation as statutory manager?

A. Doug's, yes.

15

Q. And as you've said you wouldn't be able to do that?

A. No, I have a mine managers ticket, and I've previously held that position but I wasn't appointed as the mine manager and even if I was able to appoint myself, as the company appointing me as the mine manager, I would not take that responsibility given that I hadn't been involved in any of the risk assessments or any of the discussions leading up to it.

20

Q. No. Now, I want to ask you now about issues raised by Ms Shortall about what was said by Neville Rockhouse in evidence about the refuge chamber and the Alimak raise. Just trying to get some timing in place. Did you hear Neville Rockhouse's evidence?

25

A. Yes I did.

Q. Had you read his brief beforehand?

A. I had.

Q. And his supplementary brief emphasised to a great degree the fact that he was concerned about the use of the Alimak raise as a second egress from quite sometime back before the 19th of November?

30

A. I read that brief.

Q. And it's a lengthy brief, so I won't try and analyse it but it seems that if we go back to July 2009, what he says is that he heard you on the John Campbell programme describe the Alimak raise as one of the, I

think, three maybe, but that may be an error in his typing, one of the egress points in the event of a problem in the mine.

A. I may have described it in this way, may be where he gets the three from, is one of the three response points to an emergency in the mine, whether that was walking out of the main tunnel, climbing up the Alimak raise or going to the fresh air base would be the three responses to an emergency underground.

Q. Right, I understand that. And he gives long detailed evidence about how he expressed his concerns from that point on because you had described, he said when you were being interviewed, that the health and safety inspector approved the use of the Alimak raise. Had you said that on the television programme, can you recall?

A. I didn't go back and re-watch the programme after Mr Rockhouse's statement, so.

1014

Q. No, all right. In any event, he seemed in terms of the ongoing unfolding events, he was continued to be concerned about the Alimak raise as a second egress point, would you agree with that?

A. I read his brief, yes.

Q. And moving forward from a lot of his concerns, he related the incident in October or early November 2009 when the test was run of climbing the Alimak raise to determine its suitability as a second egress and you recall that's the one that you were committed elsewhere on corporate issues?

A. Mmm, I do.

Q. That was October or early November 2009, he said, would you agree with that timing?

A. Roughly, yes.

Q. And of course, Doug White wasn't employed until January 2010?

A. Correct.

Q. So, what was your role, can you recall, as at October/November 2009?

A. Yes, I was carrying three roles. I was the general manager of mines. I was the operations manager and I was the statutory mine manager.

Q. Right, fairly heavy load?

A. Yes, I had some good people around me, but not enough.

Q. Well, he effectively said that the endeavour to climb the Alimak raise was thwarted by what he described as the immense difficulties as you would've heard, two people tried to climb it and they couldn't make it and the other wouldn't even try?

5

A. Oh, I thought I heard that two people did climb it and then chose not to climb up the rest of the main shaft, but I didn't hear that they tried to climb it and didn't.

Q. Well, I may be playing with words, so that when you get up the shaft, 100 metres or so –

10

A. No, 50.

Q. Fifty. It goes along parallel and then the second part –

A. Roughly, it's about – we built the Alimak raise about 12 metres I suppose to the side of the original main shaft, so you go up the Alimak raise adjacent to the collapsed old shaft, and then there's about a 10 metre crossover that goes up on a slight grade into the base of the main shaft and then from there there's another, what would be a 54 metre climb or something up a stage ladderway up the rest of the shaft.

15

20 Q. Right, well, you're right. He says that two of them, Nick Gribble and Adrian Couchman got 50 metres up vertically and then they came back down –

A. They discussed whether they – I think their main intent of it was to climb the Alimak, so once they got to the bottom of the main shaft which had the staged ladderway in it, they didn't see the need to climb up another 50-odd metres just to say they'd climbed up the 50 metres, so they didn't, I understand.

25

1017

Q. I don't think you can paint this as being anything other than a feeling at the end by all of those present that this was not ever going to be a suitable second egress. Now was that conveyed to you?

30

A. Definitely, I understand that it was never going to be the long term solution as our main second egress and it was never intended to be, and part of the outcome of that was the risk assessment process and

the establishment of the fresh air bases, et cetera that eventually occurred.

Q. Well then Mr Rockhouse goes on to describe his, effectively his continued battle to try and get an acceptance that this wasn't going to remain the second egress and he refers to trying to provide you with a risk assessment and the sign-off and that you weren't prepared to sign it off or didn't sign it off. This is paragraph 78 of his brief. Can you recall that?

A. No I don't. No, I did – most of the rest of what Neville had in his statement I understood and maybe there's variations of nuances of what was said, but in that particular case I don't recall being presented with a risk assessment to sign off, I just don't recall.

Q. Because that's what he says. He says that, "The final risk assessment report was completed and concluded the Alimak raise is not suitable as a second means of egress in the mine in an irrespirable atmosphere. The report was circulated for comment but still required Mr Whittall's approval and sign-off. He failed to do that."

A. Do you recall when he said that that was circulated?

Q. Well he doesn't specify a time, but it does seem to be before Doug White joined?

A. That's why I'm confused about it, Mr Haigh, because my understanding was that the risk assessments and that process was established in January 2010. Part of the intention of that was that I knew we'd already made offers to a new mine manager and a new operations manager, Mr Lerch and Mr White, and that those guys formed part of that risk assessment team and that I had specifically said that I would opt out of being a key member of that team and leave it to two fresh sets of eyes that have come in from other jurisdictions in New South Wales and Queensland that were actually going to have to take statutory ownership of the process. I don't recall that risk assessment process occurring in 2009.

Q. Well that's what he seems to be saying, but we may have to clear it up before Phase Three, but –

A. Certainly.

Q. - even if it was to be signed off by someone else as a statutory manager, as the general manager if that is the case, and that's not according to Mr Rockhouse, you would surely have still been concerned about these concerns expressed by your health and safety inspector and others about the Alimak raise?

5 1020

A. Yes, you're right. Even if I wasn't going to be signing off on it and accepting it, in my role in any corporate capacity the same as if, Gordon Ward is the chief executive he was also party to these discussions at management meetings as well so in the hierarchy of the company certainly if it was deemed unacceptable and there was no alternative and no alternate strategy then that would've been of great concern.

Q. Let's talk about then from when Mr White joined the company. From that point on did you have any involvement in an alternative to the Alimak rise?

A. Not to my knowledge, other than from understanding that from a mine planning point of view that two things were happening. One, that the fresh air base was being established, or had been established, I can't remember when it was established. And secondly, that the mine plans included a number of options, I think six in all, to establish a second means of egress to the west of our current workings. And the chosen one was option 6 I think, recall, which was two driveages out to the surface in a valley immediately west of where we were currently working.

Q. Well now let me turn very briefly to the refuge chamber. Again, the timings not entirely clear but it does appear from Mr Rockhouse's evidence that he came to you with what he calls a proposal, which you say was just brochures, prior to Doug White joining the company in January 2010. Now is that your recollection?

A. I've really struggled, I've actually thought of this because it's been in the brief, and I can't put it within six months. I really, I just cannot, I remember it as a passing incident, I can visualise it in my mind the conversation in my room, but I couldn't even pin it within six months?

Q. So there's no point my pressing you on your recollection as to timing because you simply can't recall?

A. No. I seriously just do not recall.

5 Q. And you reject his suggestion that this was a proposal more than just a few brochures and he spoke about costs and so-forth, you say that didn't happen?

10 A. That there was no proposal, the brochure itself to my knowledge was from, and this is stretching my memory now, was from a Western Australian company or something that made these, it may have been, or some Australian company. It may have had a cost in it, possibly did, I'm not saying it wouldn't. It certainly wasn't a proposal to my knowledge, it was nothing that would come from Mr Rockhouse's work of his own analysis or recommendation, to my knowledge it was a download.

Q. But it was still a suggestion?

15 A. Certainly.

Q. Worthwhile suggestion as an alternative until the –

A. Correct, I've got lots of suggestions about a lot of things.

Q. Could you just wait a moment?

A. Sorry Mr Haigh.

20 Q. Until the Alimak raise issue was resolved?

25 A. For it to be a legitimate, I agree it was a suggestion. For it to be a legitimate suggestion it would have to look at its pros and cons. I had been, to my knowledge, the refuge chamber that was proposed wasn't, I don't recall if it was specifically for coalmining or hard rock mining, it had no risk analysis with it, I don't know whether it would've possibly increased the hazard underground rather than decreased it. There was no analysis as to whether this was the right thing for us to do. With all deference to Mr Rockhouse he had virtually no knowledge of refuge chambers, their background. I did ask him had he done any review of
30 the hazards underground of these things, and he hadn't. For someone to walk in and just give me a piece of paper and say, "We should buy one of these, that's what we should do," I don't run a business that way. I wouldn't even as a statutory manager make that decision, it would require a lot more work than that.

Q. Well you and he differ as to what happened?

A. Yes.

Q. So I think we'll leave it there.

A. Thank you Mr Haigh.

5 CROSS-EXAMINATION: MR DAVIDSON

Q. I'll just clarify a little bit of the evidence that you've given both here and earlier regarding the experience you had as a mine manager. And in looking at your history, you got your mine manager's ticket in 1996 as I understand it?

10 A. Yes.

Q. And you began the Dendrobium project in the year 2000.

A. Correct.

1025

15 Q. In those four years where were you mine manager, just give us an indication of where you were?

A. I was relief manager at Appin Colliery for half a year or so and then I was a mine manager at Tower Colliery where I'd been previously undermanager in charge.

20 Q. So there was about four years there and then you went into the Dendrobium project development through until it hit coal in 2003?

A. Correct. Well it wasn't until it hit coal it was actually one, two tunnels driven in coal and rock in the early development phase, probably about the same size as what Pike is now.

Q. And then you joined Pike in 2005, of course, it wasn't a coal mine then?

25 A. No.

Q. And it became a coal mine in terms of mine management in 2008?

A. Late 2008, correct.

Q. So a lot of your history has been in the development phase of two major projects?

30 A. Well over in the 30 years, in the last 10 years, yes.

Q. And this is the TARP or trigger action response plan for discover of fire. While this is coming.

A. Yes sir.

Q. I'll refer to the document. This is the Pike River document and it's signed off by Gary Haddow and Kobus Louw?

A. Yes.

5 Q. In December 2008 and in the page which I'm looking for, but it may be difficult to bring up, I'm going to take you to it, there was reference to level 2 trigger, this is a Pike document.

A. Yes.

10 Q. Which says, "Review incident and ensure correct RAP is being followed." Now, could we just go through the document. I want to go through the page which I think is 8. For the record it's 11234-5 and this says, under level 2 trigger, "Review incident ensure correct RAP is being followed. Notify the Dendrobium project director of incident." Well, it looks like a direct crib from the Dendrobium project doesn't it?

15 A. I think you'll find that a lot of Pike documents have come out of BHP or Rio Tinto and I would like to think that they've all been appropriately crossed over but this obviously hasn't.

Q. Yes, well, were you part of the team, as it were, or responsible for the fact that the Dendrobium material has been used at Pike River?

20 A. Well, actually I encouraged any new employer I got to bring whatever safety gear, stuff they could so in the case of Dendrobium, then yes I brought those plans with me from a safety point of view and put them on our server.

25 Q. Now, Mr Whittall, what I'm concerned to do in the next hour and a bit, or so, is not to look to apportion blame anywhere, as we're directed we must not, but to determine what you knew of the events at Pike River on the 19th. What you knew of the underground condition beforehand and afterwards, and then how you conveyed the information, in particular to the families, but also to the media.

A. I understand.

30 Q. And you would've understood from the outset, that what you conveyed to the media would inevitably get to the families in one way or another?

A. Yes, absolutely, especially since my intention was to give it to the families before I gave it to the media.

1030

Q. Now, the sequence of events from your perspective begins at 4.45 pm on the 19th?

A. Correct.

5 Q. When you get a call from Rob Ridl that Daniel Rockhouse had called at 4.15 from B1 at pit bottom. Now that's of interest to the Commission because the sequence of events document which the police have assembled and recorded – and this is at page 6 of the document, I'm not going to ask you to look t it – it's been estimated that Daniel called in at 5.15. Now if you sat through the hearings, you'll know that it's been
10 put to a number of witnesses and it can't be right, because he left the portal at 5.26?

A. And I agree. I found that confusing when I heard that evidence as well.

Q. So, it's important in timing if that's when Daniel called, Daniel had called at 4.45, is this an exact time?

15 A. Well the time that he called can't be exact. The time that I took my note to say that I'd received the phone call at 4.45, is exact, because it was written in real time, so the fact that I wrote down 4.15 at 4.45, I can't be sure of the 4.15, but it certainly wasn't any time after 4.45.

20 Q. So at the very time you received the information from Mr Ridl, Daniel would in fact have been walking out of the mine?

A. I would imagine so.

Q. Yes, well he came out at 5.26 and you spoke to him by an exact note a 4.45?

A. Correct, I spoke to Mr Ridl at 4.45.

25 Q. Yes. You knew Mr Strydom had gone in at 4.07?

A. From that same phone call.

Q. And was out at 4.25?

A. I knew he went in at 4.07. I'd have to refer to my notes to know whether I knew he was out at 4.25 or not.

30 Q. Well, if you spoke to Mr Ridl at 4.45, then presumably you would've been told that he'd come out as well?

A. I knew he'd come out, yes.

Q. And did you know then that an explosion was reported to have occurred from that phone call?

A. That was the first thing that Rob told me, was that an explosion occurred.

Q. In your paragraph 10, you say, seemingly one of the first things you do is you call John Dow to inform him, I presume, Mr Whittall?

5 A. That's after speaking with Rob?

Q. Yes.

A. Yes.

Q. And you make a comment there about perhaps a prior call from him about an electricity outage. Now you know your brief in this regard.

10 A. Yes.

Q. Your brief is indicating that when you prepared it, "I may have received an earlier brief call from John asking about a possible power outage at the mine, but I do not recall that call now."

A. Yes.

15 Q. Now, if you didn't recall it when you made this brief, why are you referring to an earlier brief call from John Dow about a possible power outage at the mine?

A. Because John told me he believed he'd called me about it, and I said, "Given the events of the afternoon, I don't recall that." So if I got a call earlier in the midst of other activities, it wouldn't have been to do with an explosion, it would've been possibly a letting me know what was going on at the mine, so we've had a power outage, but I don't recall.

20

Q. Well, Mr Whittall, I'm just, as a curiosity, it's an open question, why would Mr Dow as the chairman be calling you in this position you hold now as chief executive about a power outage at the mine?

25

A. Because he'd received a call from a journalist asking him about it, and he didn't know why he'd be receiving the call. I think it was from the Christchurch press journalist, Alan Wood, I think, by name.

Q. So you reconstructed this from the discussion you had with Mr Dow after the event?

30

A. I did, that's all.

Q. Now you swing into action as it were by getting someone to take all your calls, and that's, I think, an IT person?

A. Yes, just on my mobile.

Q. And that is to have calls transferred from the mine site to your mobile?

A. No. No, that's not right.

Q. Just your calls?

5 A. No, I was just trying to deal with my own desk phone and my mobile, so he took my mobile away and just received and noted those calls. It was only a personal process. At that stage I believed that the mine site was dealing with all its own phone calls I would imagine. That's part of the incident management process.

1035

10 Q. Yes, but we have in your paragraph 12 this piece, "The mine site diverted all its calls to the Wellington office," not your phone alone. But everything was transferred to you?

15 A. That was by default we found that out because my secretary in Wellington started receiving calls from people outside the mine, assuming that they were ringing the mine site, and we learned by default that the control room in mine site had diverted one of their phone numbers to Wellington.

Q. So what did you do about that?

20 A. I assumed that they had done so because – sorry, I may well have confirmed that the next time I got a phone call from someone from the mine site, but assuming they'd done that because they were busy, I instructed the secretary at the site – at the office, who wasn't trained in emergency systems at all, to take the calls and give what information she could which was limited. All we knew at that time was we'd had a
25 call from the mine site.

Q. Anyway, moving on. By 5.15 am you knew clearly that two men had walked out.

A. Two men, 5.15 pm.

30 Q. 5.15 pm. You knew two men had walked out. Mr Strydom had gone in because of a power outage and the loss of communications.

A. Correct.

Q. You knew he had seen a man on the ground but not know the distance where the man was lying on the ground in the drift, right?

A. Correct. Yes, this is my number 13, yes.

Q. I'm just trying to tally up your knowledge here, Mr Whittall.

A. Yes.

Q. You knew when Mr Knapp told you, that Daniel had been at the A1 heading when the explosion had occurred?

5 A. Correct, that's what I was told.

Q. And you also knew that the doors near the vent shaft had been destroyed and –

10 A. No. No I didn't know that and I still don't know that. I'm not sure who knows or how they know that. Since we haven't got down there, but what I – no, I didn't know that at all. Does it say that in my brief?

Q. Well let's have a look at your paragraph 16.

15 A. See, Dick told me that it was assumed that the doors near the vent shaft had been destroyed as air was coming through the shaft, but I could draw you a number of scenarios on the diagram at pit bottom that would show why air would go up the shaft if the doors weren't destroyed.

Q. Well, just pause. I'm not asking that. You were told by Mr Knapp that it was assumed and he was at the mine site?

A. He was a human resources manager.

20 Q. Yes. That the doors had been destroyed. So he would've had information relevant to that passed to him from those at the site, and those included obviously Mr Doug White?

A. Yeah, I assume that's where he's getting his knowledge from.

Q. And thus accumulating your knowledge at this time, this was seen as a real possibility at least by those at the site?

25 A. Yes.

Q. And in the meantime, alongside all this there's a whole lot of other actions taking place, with the police appointment of Superintendent Knowles as incident controller?

A. So I understand now.

30 Q. Yes. You didn't know this at the time, but things were happening. Sergeant Cross was in control at the site, you didn't know that of course at the time?

A. I knew nothing about the site activities except that Doug was on site and in charge.

Q. Yes. That's really the point I want to get to, that you have in this space after the explosion at 3.44, you have swung into action, as it were, in Wellington dealing with things there?

A. Correct.

5 Q. But things are being carried on at the site which are not part of, in any way part of your direction or knowledge?

A. No. I was receiving information. I was giving no instructions or initiating any activity, not really anyway.

10 Q. Now, your assumption of the role in dealing with the media was said by you to be because you're the only Wellington person with mine knowledge. That was the reason you took over all media contact?

A. And also the fact that I had a public relations manager who had gone on maternity leave the day before and was not available to me, so I had no one else that would have been in any way or capacity. She would have been more than capable of fulfilling that role.

Q. It's not a criticism, Mr Whittall. You assumed the role and you said you had no media training at all to handle what was going to be a deluge of enquiries?

A. Correct.

20 Q. You must have known right at that moment that everything you said was going to be measured publicly and by the families if you were going to be the spokesperson for the company?

A. Correct. I don't think I actually thought that logic through, but I certainly assumed that by acting as a spokesman for the company I needed to make sure that what I was giving was to the best of my knowledge factual.

Q. And that was going to have to be the case from that moment on wasn't it? That you had to get your facts right?

A. That's the way I run my life, yes.

30 Q. Sorry, what did you say then?

A. It's the way I do things

1040

Q. The way you run your life?

A. Well it's the way I intend to carry on, to be factual.

Q. Now to be factual you must've recognised the need to arm yourself with good facts?

A. Correct.

5 Q. And to do that you were going to have to get to the source, which in this case was going to be, in the first place, the mine site?

A. Correct.

Q. Were you aware that the police confirmed the CIMS activation early in the afternoon?

10 A. I'd never heard of that model until I sat in this Commission. And at that stage I had other than the fact that the mine was being attended by the police I had no idea that the police were in any way in charge of anything.

Q. Now this is important?

A. Yes sir.

15 Q. What you were dealing with then was Air New Zealand, you contacted the Prime Minister's office?

A. Correct.

Q. And you flew to Christchurch and got to Greymouth or to the mine site at 2.40 am?

20 A. Correct.

Q. So we're 11 hours on after the first explosion?

A. Correct.

Q. Do you remember Mr Dow making any comments to the media at this time?

25 A. I don't recall him making any. I know I made a couple of interviews in the foyer and then the two 7 o'clock reports on the street and then after that I don't recall making any media at all. So I don't recall Mr Dow doing anything, no, he may have.

30 Q. Now you went on television in the 7 o'clock programme on the 19th didn't you?

A. That's correct.

Q. And I think you said that there were 27 men underground and no evidence of any fatalities at this stage?

A. Sorry, could you repeat that last part?

Q. You said there were 27 men thought to be underground and no evidence of any fatalities at that stage?

A. That's correct.

5 Q. Subsequently, and I'm taking this from the media search Mr Whittall so if we get into difficulties with the accuracy we can do so, but at 9.00 pm you're saying there were two routes out of the mine, "The rescue operation was different to Chile as Pike has steep terrain and shafts run horizontally into the hill, not vertically into the ground." Now the media obviously were interested in the Chilean equivalent expressed weren't they?

10 A. Yes, that was put to me straightaway.

Q. Yes. From the same media sources, at 9.30 pm Mr Dow told TVNZ that you were flying to Greymouth to, "Be with his people." And the point I want to come to is that at 11.00 pm that night Mr Dow is recorded as saying this, I'm just going to paraphrase but this is the heart of it, "All the miners were equipped with self-rescuers, trained to use in pitch dark and have lamps. Gas build-up is the principal hazard, that men know where additional air is stored." Now that's his statement, not yours, but were you aware that any statement like that was going to be made?

20 A. No.

Q. Were you aware that it was made?

A. I didn't really watch the media at all in those first few days and I don't really recall that particular statement being made, no sir.

25 Q. Did you discuss with Mr Dow the 19th, how you would handle the public statements on behalf of the company?

30 A. There was most likely, well not most likely, there certainly was discussion in our Wellington office as to what was the right message in that afternoon and it was assumed, I don't think actually, John and I divided it, we're both equally confident and competent to deal with the facts as far as I'm concerned. John's an experienced chairman and managing director of companies so if he chose to speak to the media as the chairman then I would certainly have deferred to his request to do so, or desire to do so.

Q. Well each of you are competent to make statements if you know the facts aren't you?

A. Correct.

5 Q. And so I've just asked you your view now of a statement made that night with, "The men know where the additional air is stored." What do you take from that statement?

1045

10 A. John may've been referring to the additional self-rescuers, he may've meant that they would know where the additional self-rescuers were stored.

Q. Right, so you think he's talking about self-rescuers?

A. I would think so.

15 Q. Right. Now, let's have a look then at what you understood was the position in terms of the ability to address an explosion underground at this time. And I'm talking now at the time you get to Greymouth.

A. Are you talking about addressing the explosion from outside the mine?

Q. Yes, how you would understand what was going on.

A. Oh yes.

Q. Where you get your information from and how you convey it?

20 A. Yes.

Q. So, first of all, let's have a look at the, what you understood was the situation underground. Firstly, did you understand or think that Pike River's emergency response management plan would be kicking into gear?

25 A. I assumed it would've been kicking into gear from pretty much when Daniel rang up and said, "There's been an explosion."

Q. And so did anyone tell you that that was what was happening and how far it had gone?

30 A. I don't recall, sir, whether I specifically asked during any of my conversations with Mr Knapp, "Is anyone implementing the emergency response management plan." I understood that it was because that incident controller, I believe I was told that Doug was the incident controller but other than that, I didn't make that direct enquiry. It was part of everyone's training and I knew I had competent managers onsite,

I wouldn't, even occur to me they wouldn't have initiated it. The fact that the emergency response system was initiated as far as the police coming onsite, I was told that while I was still in Wellington, showed me very clearly that that actually had occurred.

5 Q. Well, let me just take you to, when you last came to this witness box and Mr Raymond asked you some questions about this, I just want to take you to them.

A. Yes sir.

Q. You were asked about the plan, the response plan.

10 A. Mhm.

Q. And he took you at paragraph 30 of the transcript which is, I don't want it up at this stage, TRN0001974, to a passage or a part of the emergency evacuation of all persons from the underground mine at Pike River Coal, risk assessments final document, and put this to you at line 33, "If
15 there's an underground explosion there's an imperative requirement to achieve escape or refuge within the operating life of a self-rescuer and to offer immediate assistance to the workforce on a safe way out of the mine," and you were asked if that was correct and you said you understood the statement. Your understanding was, I take it Mr Whittall
20 from the answer you gave then and afterwards, that men were told to exit the mine, to leave the mine?

A. Correct, if they were able to leave the mine they should leave the mine.

Q. So, we've got that point clear, so you would've expected that whatever was going on underground, the men would've been working to the principle of getting out?
25

A. A self-escape.

Q. Getting out?

A. Correct.

Q. And to the other element of that statement to achieve escape or find
30 refuge within the operating life of a self-rescuer you would take to be, put your self-rescuer on and get somewhere which is a refuge?

A. Correct. Get somewhere or create somewhere that's a refuge, yes.

Q. Yes. And then, the syntax is a bit odd, but, "To offer immediate assistance to the workforce on a safe way out of the mine." You're

talking about the company, people offering assistance to get out of the mine.

A. Yes, so the control officer essentially ringing phone numbers and telling them what had occurred. Because what happens, Mr Davidson, is that
 5 in an explosion it doesn't necessarily mean that it's affected all parts of the mine and sometimes in a large mine you would need to actually ring people and tell them that an explosion may have occurred.

Q. All right, well, we don't have to worry about that here do we?

A. I would imagine in Pike, they would all know if an explosion occurred.

10 Q. Yes. Now, the next point that was put to you, relevant to what you must've been thinking at the time, was that people will know, this is under the same risk assessment and evacuation plan.

A. Yes.

Q. "They will know that they should be moving away from danger and
 15 heading towards the second means of egress." Now, taking it from the document which you acknowledged, right. Now, you were aware that the drift had been used already by two men to get out.

A. From seven, 800 metres outbye yes.

1050

20 Q. Well the phone call came from about 1900 metres, didn't it, from Daniel Rockhouse?

A. That's actually – I can't disagree with that. I thought it was actually a bit less than that, but yes, I'll take your word for it.

Q. Well, let's not quibble.

25 A. No.

Q. But two-thirds of the way down to the drift, a man has walked out and picked up another man on the way –

A. Yes.

Q. And therefore there was some degree of respiration available, which we
 30 know, and it aided significantly by access to a line and the valves –

A. While the smoke was clearing, yes.

Q. So, this would've been part of your thinking as to the underground condition when you came to the mine that night?

A. Correct, by the time I got to the mine that night, I understood that the drift was in fresh air.

Q. Yes. Now, a second point that would be apparent to you is that as you have said yourself, this is a very small mine.

5 A. Correct.

Q. And men would know it intimately. They'd know exactly where they were?

A. Most would, yes.

10 Q. And it's only 700 metres odd from basically the air around the vent shaft up to the furthest heading?

A. Seven to 900 metres, yes.

Q. And therefore, in the ordinary course of events, so a walk with a respirator could be accomplished in that time, between those points?

A. Assuming that there was no barrier to that walk, yes.

15 Q. You also knew that no one had come out up the Alimak raise and up the ladder?

A. Correct, there was no one had come to the surface.

20 Q. And you'd also have known from what has been put to you extensively already, that the prospect of any man getting up that escapeway, call it what we will for these purposes, up that ladder in an emergency situation would have been zero?

A. I don't agree with that. You're putting to me a statement I don't agree with.

25 Q. Well, I'm putting it to you, what's your basis to say that you believed at that time that a man would've been able to take access in an emergency situation and get up the ladder in the Alimak raise? Why do you say that?

30 A. I'm not even sure what the question is in relation to Mr Davidson, because we were just talking about their ability to self-escape and no one did come up the ladder.

Q. Yes. Now I'm asking you to consider the circumstances which you brought to account in your head, because you were going to be making statements to people and you were the chief executive as to what the underground prospects of men being saved or saving themselves were.

I'm putting to you that – I'll put it this way. When I read your evidence I can find no reference to your contemplation that any man would've gone up the Alimak raise, climbed the ladder?

A. They didn't do.

5 Q. We know that.

A. But my evidence would also show there was no contemplation that they walked out of the tunnel, because they didn't. Only two men did.

Q. No, come back to my question.

A. I'm sorry, I'm not clear on what your question is.

10 Q. All right. Well, I'll take you carefully through it. First point you knew was that men had managed to walk out from well down the drift shortly after the explosion?

A. Correct.

Q. That meant there had to be a degree of re-ventilation in the drift?

15 A. Correct.

Q. That suggested immediately that if any other men had survived, they would take the same course, which is really the answer you've just given me? They'd walk down the drift –

A. I would think so. That would be the most logical place to walk out, yes.

20 Q. But if there was any impediment to that walk out, so they had to find another way out of the mine, there was only one other way out of the mine theoretically –

A. Correct.

Q. And that was up the Alimak raise, up the ladder?

25 A. That's correct.

Q. Now, we're not going to revisit all this with you now, but it doesn't appear in your brief, nor have I heard anything else you've said to indicate you were thinking, "Well, if they don't get down that drift because there's some reason for that, that they could get up, or might get up that ladder?"

30

A. Well, would you like me to state that for you now? I believe that if those men were underground that they would've either walked out of the drift or climbed up that ladder. They did neither, but they could have.

Q. All right, we'll just come back to the second part of that. Are you going to tell this Commission now that you believed, as you factored in all the information coming to you, that men, after that explosion, had a prospect, a real prospect of self-rescuing by going up that ladder?

5 A. I don't know where the explosion was and therefore I have no idea what the status of the mine underground was.

Q. Just answer the question.

A. No, that's my answer. I don't know where the explosion was.

1055

10 Q. I realise that, but answer my question.

A. Well your question is did they have a real prospect of climbing up the shaft. If the explosion was at the bottom of the shaft, then no they wouldn't have.

Q. All right, let's say –

15 A. The same as if the explosion was in the tunnel and dumped the tunnel, they couldn't have walked out that.

Q. Of course not. But you know what I'm asking, Mr Whittall?

A. No I don't.

20 Q. If a man had made his way in an emergency situation to the base of the Alimak raise or that area?

A. Yes.

Q. Are you telling this Commission that your evidence is that a man could then have climbed that ladder and got out?

25 A. Assuming that the ladder had not been damaged in the blast and that there was no impediment to that, then yes.

Q. And what is the basis for your saying that, given the evidence we've had, for example, from Mr Couchman, who did the exercise not in an emergency situation such as this. What's your evidence for that?

30 A. My evidence is that the – I've also heard the evidence of and had worked there for a number of times with Mr Ellis, Mr White, and Mr Poynter, all of whom had reviewed the ladderway, and as the managers of the mine were satisfied that it was a satisfactory egress route.

Q. Well really? Are you saying that Mines Rescue thought that was a satisfactory egress route?

A. Did I just say Mines Rescue?

Q. No I'm asking you. Do you think they did?

5 A. No, I understand that from the report that we'd received from Mines Rescue that they didn't see it as an adequate primary second egress and that work needed to be done to provide a secondary solution which, to my understanding, was the fresh air base and also the other additional activities such as the harnesses that Neville had put in place and the catenary wire to prevent there being an issue during the climb, et cetera, so there were a number of activities that were undertaken by Mr Rockhouse and others.

Q. Just pause.

A. Yes, Mr Davidson.

15 Q. When you left the Court that day after you last appeared here.

A. In Phase One?

Q. Yes. You gave an interview to John Campbell. Remember that?

A. Is this the one that Mr Rockhouse referred to?

Q. No, this is the one that you gave. You said it is the one he refers to?

20 A. Yes.

Q. Well you remember it. I think you gave it more or less out here didn't you, out the back of the room?

A. Somewhere yes.

Q. And you were asked a question by John Campbell which was, "Peter, does that mean there is only one means of egress?" and then you went into the three scenarios that you discussed in the evidence during the day?

A. Correct.

Q. And then you said, as to the, they go to the fresh air base "or they could if they needed to, exit by the shaft." And you said this, "One of my understandings is that this would understood to be an interim measure. It was deemed satisfactory by the statutory manager and by the safety management on site and by the mines inspectorate and by the rescue service involved." That's what you said and reported to have said.

30

Where was that deemed satisfactory by those parties? Where was it deemed satisfactory by the mines inspectorate?

A. The mine was opened and operating. My understanding from Mr White is that we'd had the mines inspector up to the site, and that's come out in evidence in this Commission as well.

Q. Correct.

A. My understanding was that the mine was operating. It wasn't under a prohibition notice. Men were going to work, the safety manager was going to work, the workforce was going to work.

10 Q. So answer the question. How was it deemed satisfactory for the mines inspectorate –

A. Because the mine was –

Q. Just let me finish.

A. I thought you had Mr Davidson.

15 Q. How was it deemed satisfactory by the mines inspectorate?

A. My understanding from Mr White was that Mr Poynter had conducted an inspection on site with him.

Q. Yes, all right. Now that's the mines inspectorate.

A. That's, what you asked, yes.

20 Q. And then by the rescue service involved. How was that deemed satisfactory?

A. My understanding was that the review by the Mines Rescue Service was some time like October 2009, and this was more than a year later in which we'd conducted, we'd had brigadesmen on site, we'd had rescue on site. If I'd believed that they didn't think it was right, I'm sure they would have raised it to my attention.

Q. So the way you're putting it is that because no one said anything to you, therefore they must have thought it was okay?

30 A. In essence yes, I don't recall getting a report on it, the same as I don't have reports on a lot of things at the mine site. But by omission, if it had not been deemed to be not all right then I assumed it was. I was not involved in the day to day assessment of those issues.

Q. But Mr Whittall, I'm sorry. When you gave your evidence and this is from the transcript at 0001988. It was put to you a document which is

the MRS005, page 3, paragraph 4, this is line 27, where it was described that in a fire situation, using the vent shaft in the Alimak as a means of egress would be virtually impossible, virtually impossible. And you said, "Yes, I've read this report before." So a few hours later you're saying it's deemed satisfactory by the rescue service?

5

1100

A. No, this was a report, and to my knowledge, you have the date, sometime in late 2009, is that correct?

Q. MRS005, we can bring it up.

10

A. Well it wasn't a recent one.

Q. Can you answer the question?

A. The question was from me, was it a late 2009 report?

Q. August 2009?

A. August 2009.

15

Q. Yes.

A. At that time we had the mine manager Nigel Slonker on site and he was dealing with the issue with Mr Rockhouse. My understanding that these issues were raised by the rescue service and that things were put in place, such as the establishment of a fresh air base, other activities within the shaft itself had been dealt with.

20

Q. This is not the point Mr Whittall, please come back to it. I've asked you about the usability, the utility of that ladder and your statement to John Campbell that it was deemed satisfactory by the rescue service involved. This ladder never was deemed satisfactory. Mr Watts yesterday said he was gobsmacked to find that Mr Poynter had given it any kind of a nod of affirmation?

25

A. Well Mr Davidson, I concede that if the rescue service has not given it a clean bill of health in a subsequent period from August 2009 until the 19th of November 2010. I'll also make the point that by saying that some 14 months later that they weren't aware that nothing had been done about it then I would question the fact that we continued to operate with rescue service people underground and with brigadesmen working underground if there was an absolute deeming that it was an unsafe mine, or that it was an unsafe egress route.

30

Q. You've turned the question round Mr Whittall?

A. I have.

5 Q. I don't need to go on with this. All I have asked you originally is this question, as to whether you believed, or factored into your thinking, that men would be able to climb the ladder in the Alimak raise in the event of an emergency situation. And is your evidence that you thought they would?

A. Yes it is.

10 Q. You did. And where then is that mentioned in the evidence that you have given about what you've said to the families or to anybody else?

A. This is where we differ Mr Davidson. I don't understand the relevance of me saying it or otherwise because the fact that they didn't climb out of the shaft I don't understand that I factored into a conversation with the families to say that they could've walked out or climbed out, because
15 they didn't. The issue we were dealing with in conversation and communication with the families whether it was a reality of the fact that the men were actually underground.

Q. Well can I just come to this. Your thinking was if a man has survived he can get down the drift. That was what you're thinking?

20 A. My thinking by this stage was, sorry later in the several days, was that the men if they hadn't walked out by this stage they were waiting for us to come in and get them. So the anxiety was over the ability of the rescue service to get underground or not, I think like everyone else given up the likelihood that these men were going to walk out unaided
25 after several days they would've done so fairly immediately if they were going to get out unaided.

Q. And that's the fact, isn't it, that if they had not been injured, and they had access to air they were able to walk out because there was no distance involved on this exercise?

30 A. Yes, so long as they had, so the scenario that, I drew diagrams and tried to think of ways of trying to communicate this to a number of different forums, including the families, but the only thing I could think, especially as time went on Mr Davidson, was that the only likelihood I could think that men had survived is if they had used their time available

to them with their rescuers to build some sort of barricade which required compressed air, access to it, and that they were holed up in the mine, which means they may not have been able to walk out because they may not have been able to leave their barricaded area.

5 Q. So this is the heart of your evidence really isn't it, that you had this theory that the men could be holed up somewhere, protected from noxious gases, with fresh air and able to survive there for a period potential of days?

10 A. There's two areas that I initially talked to, one was in the upper reaches of the mine that that could be the case given that we had compressed air running into each of the panels.

Q. Yes.

A. The other area which I've not spent a lot of time since the event looking to, is the southern area of the mine, which was up-sloping

15 1105

A. And this also comes back to the nub of whether you said, you made the point before that I'd been told the doors had been destroyed, if in fact the doors hadn't been destroyed, but the stopping further inbye had, then there would've been sufficient sweeping air around the first couple
20 of corners to provide a reasonably fresh air in the southern area as well without the need for barricading.

Q. Now, did you ever discuss that with any of the families, did you explain that to them what you've just told this Commission?

A. Yes.

25 Q. Fresh air running round the pit bottom south area?

A. No, not running round the south area, no, running around the corner at pit bottom which is, instead of taking the first cut-through - I don't have plan up, if that would help the Commission?

WITNESS REFERRED TO EXHIBIT 9 – MAP OF MINE

30 A. Actually recall, Mr Davidson, sitting down with a number of the families. I carried a mine plan with me all the time and tried to draw lots of scenarios.

Q. Let's just bring this up.

A. The double doors that you're referring to earlier, Mr Davidson, are these ones here into cut-through and if the assumption is that these doors were to have been destroyed then the air would've short-circuited around this corner. Because this plan doesn't show the contours of the map but in general, this would be a contour line here, in other words, this would be all uphill and this would be downhill from these points here and this is further downhill, so if the air was sweeping around this corner then it was potential that the gas building up in the mine would've built up in all of these roadways and created a front of gas that had a fringe somewhere across here. Any gas being emanated from these roadways, being lighter than air, would've come up these roads, through buoyancy and been swept around this corner. If these doors had, in fact, not been blown out by the first explosion, but indeed this stopping here next to the fan housing had, then the air could've equally come up around this corner and back in that way to the shaft which would've meant an even larger area sweeping fresh air around this corner. My initial thoughts, and I knew that some men had been working in here and I did give this description to some of the family members in the early stages, was that there was possibly men down here that had been severely injured and were sitting in relatively fresh air, stale, but not necessarily filled with gas.

Q. All right, well, in that case let's go to what you were shown in a clip as saying in the morning of the 20th. This is the one that was shown on the 20th of November in the morning with regard to it being quite conceivable. It's 8.30 am. It's reported as that time.

VIDEO CLIP DATED 20 NOVEMBER 2010 PLAYED

Q. You recall making that statement Mr Whittall?

A. I do now, yes.

1110

30 Q. Now, that's the statement that you made early on the morning of the 20th, the day after the explosion and you would understand the impact that that statement had on family members, because it immediately painted an image of the men, in your mind "conceivably" that's the word

you use, “men sitting around the end of an open pipe, waiting for someone to come in?”

A. Mmm.

5 Q. So where would the end of this open pipe be in your mind when you said that?

A. It could be a number of the inbye roadways all had compressed airlines running into them, so they could've been sitting around, if they weren't able to get out, I don't know why they couldn't get out. I hadn't bent my mind to where a fall may have been or where the explosion may have been, so the open pipe – by way of saying “open”, it doesn't mean it's got no end on it. It can just be an open valve, giving them compressed air into some area of the mine and precluding noxious gases from those areas.

10

Q. So what is this, if this is not an area of the kind you've just described with reference to the exhibit where there is some ventilation going on?

15

A. It would be the further reaches of the mine where most of the workforce, were actually working.

Q. Yes, or where they were known to be working that day?

A. Correct.

20 Q. Some of the men, and we don't know where they were at the time of explosion with precision.

A. No, we know from probably Daniel's the most recent discussion of that.

Q. So let's get this clear. When you make this statement, you're contemplating people in the upper reaches, we're talking about up to or past the workings, past the go, right, in that area –

25

A. Not, yep, in the other parts of the mine we've looked at videos of where the drill rig was and where the ABM20 was, et cetera, yes.

Q. So we're talking about in the, well beyond the fresh air base, the base of the Slimline shaft?

30 A. Yes.

Q. Yes?

A. Yes. And I also had in my mind of the men in the south, but it may be, I can't remember what time that interview was done, and I may not have bent my mind to that issue at that stage.

Q. So what you're talking about is a number of men, not all 29, presumably?

5 A. Oh, I think that was becoming a realisation as time went on. When the incident first occurred, given that I hadn't seen any of the video footage of the explosion and had no one telling me, as I've given evidence this morning, that everyone's died, or anything like that, I could only go on what was being given to and my own view, my own hope that no one had died.

10 Q. And that's all I'm exploring, talking about your hope. I'm talking about the message you're conveying.

A. Yes.

Q. And you're saying here that in your thinking, and you knew nothing about the portal footage at all, as I understand it?

A. No, not at all.

15 Q. I'll come to that in a moment. You were thinking well, they haven't walked out of this mine, therefore there must be a reason they can't walk out and if they are in there, for whatever that reason is, you're thinking, "Well they could be sitting around the end of a pipe in an oxygenated atmosphere."

20 A. In one or multiple locations, yes.

Q. And how would they be protected from the environment there, if in fact it's not a ventilated area, except by a pipe? What's the refuge that they could exist in?

25 A. Oh, the only way they could do it would be by brattice screen, which we've heard from Mr Watts is an old method, but works if you've got an air source on the other side of it. So you'd need to build a screen. Brattice is readily available in the mine.

Q. But how are they going to build a brattice screen if they've just been through an explosion of this kind?

30 A. Well, as I said before, and as we've seen evidence at the drill site video footage that was taken later, there's no evidence to say that the explosion – given that I didn't know where it was or how big it was, there was no evidence to say that it was a massive conflagration that went

right throughout the mine and destroyed everything. It could've been occurred in one discreet area –

Q. Just pause here.

A. Yes, sir.

5 Q. In that answer you're indicating that when you made that statement you were effectively saying to yourself, "I don't know what this explosion really was, size of it or where it was."

A. Correct, absolute.

10 Q. And yet the portal video footage had shown the venting of the explosion over 52 seconds, hadn't it?

A. I had no knowledge of that at the time.

Q. And how – can you explain this to the Commission and therefore to the families, you didn't actually even know there was a camera at the portal for a couple of days later?

15 A. No, I don't know when, I didn't know that, when it'd been installed. It's a functional, operational thing, that I wouldn't have driven past it, looking up and seeing, "Oh look there's a camera."

Q. Haven't you ever been in the control room and seen pictures on the screens there?

20 A. I've been in the control room on numerous occasions, usually to go and talk to the control officer about something, I've not – he's got a number of screens and I knew he had a video at the pit bottom stone. I wasn't aware he had one at the portal. If he did, it didn't occur to me. I didn't even think of it. You can imagine Mr Davidson if there was an explosion
25 underground and my first thought wasn't that it would come out the portal, it didn't even occur to me that that would've been an event.

1115

Q. And yet other people knew all this.

30 **OBJECTION: MS SHORTALL (11:15:17) – LET WITNESS FINISH ANSWER**

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

Q. You'd finished, hadn't you?

A. Satisfactorily, yes.

Q. What you're telling us now is that you had no knowledge of the portal footage, you didn't even know there was a camera there at this point?

A. That's correct, until Russell Smith told me on Sunday afternoon.

5 Q. Yes, on the 21st Russell Smith tells you?

A. Correct.

Q. And you take it up with Doug White and say you're very disappointed that you didn't know about this?

A. My first call was to Steve Ellis.

10 Q. Yes.

A. And then my next call was to Doug White.

Q. Now that information however was known to everyone else at the mine site wasn't it?

A. It would appear so now.

15 Q. Yes. And you've seen it and realised the significance of that, as Mr Watts has given in his evidence?

A. I've seen it on the Monday, yes.

Q. And it exhibits a massive explosion coming out of what is a very small mine?

20 A. It shows a blast front, it doesn't show flames or anything, but it shows that, and because it's a single tunnel, like the ripple in a pond if you like, from wherever the explosion's occurred then certainly a pressure wave has gone down the tunnel and exhausted out of it. I'm not an expert in explosions Mr Davidson and I would have no knowledge by looking at that explosion as to whether it was massive or not.

25 Q. Do you remember what you said, and I can't tell you the exact meeting, but at one of the meetings at the Civic Centre telling the families of the existence of the video footage of the first explosion?

A. Would it have been the Tuesday?

30 Q. Well I haven't got the date but I'm going to read this passage from the evidence of a family member, or a person associated with one of the family members, it's one of the best mates of one of the people down the mine, and this is a chief fire officer whose evidence I'm reading. For the record this is Mr Daley and the brief is FAM00012. And from his

paragraph 11 he says this, "I remember Mr Peter Whittall at one of the meetings at the Civic Centre saying, 'Yes we have video footage of the first explosion but I have not seen it. I cannot see the relevance. I know there's been an explosion, it's not going to tell me anything that I do not already know.'" Well you know now Mr Whittall that that explosion, as seen by those who do have expertise, is regarded as extremely telling as to the start of the explosion?

A. Yes I understand that now, yes Mr Davidson.

Q. And am I right, do you know enough about the physics of this that the force of an explosion diminishes paths every 300 metres of travel?

A. I know that by reading the rescue handbook, it's not something that I was aware of or familiar with that particular calculation before.

Q. Well even a layman can understand the significance of that in looking that venting over 52 seconds?

A. Yes. I understand the physics of it, yes Mr Davidson.

Q. See I'm raising this with you because when the families now see, and others, that you dismissed as irrelevant, you know there's been an explosion, don't need to see the video footage but we know it actually was a key component of evaluation, you are then assessing it for yourself and making statements about the seriousness, seriously missing a vital piece of information as to survivability and rescue?

A. I agree with you, because when I made that statement I hadn't seen it either.

Q. No, we know that. Remember what I'm doing Mr Whittall, and I'm asking for your help here?

A. Yes.

Q. Is to understand what you knew when you made these statements to the families and the media. And when you start making statements of the kind we've just seen on the screen about people sitting round a pipe and fresh air coming out of that pipe, and talking about bratticing, and men have been subject to explosive forces of the kind you see in that image, these things are very hard to now understand as you're having any reason to offer that kind of hope?

A. Depending on where the – was that question sir?

1120

Q. Yes.

A. So can I answer a couple of points to that question? One, I agree in hindsight that the viewing of that video footage was significant. You'll
5 also recall me giving evidence, I think yesterday, that it was at my request that it was shown to the families because I did see it was significant and it was actually me that brought that video evidence to Mr Knowles' attention because I understood he hadn't seen it either. So I was aware once I'd seen it, of its significance, which I wasn't aware
10 before. The second point I would make is that from just the normal physics of these things, despite the size of the mine, there's also an issue of barriers and resistance to explosions, and depending on where the explosion was, and this is the conversation I had with Mr Ellis after the second explosion, depending on where the explosion was the
15 straight distance isn't only a factor. If the explosion has to go around quite a number of corners and then ends up in a dead-end where there's no ability for that shockwave to go past there, then it has a completely different physiological effect on a human being than if they're standing in a different roadway. These are areas way outside of my
20 expertise. So can I just finish that answer? So one other point of note is that my information was coming from the mine site. I was a spokesperson for the company. I was not involved in the incident management team, and as I've noted earlier in my testimony, there was a vast amount of information and a vast amount of conjecture going on
25 in the site which was being reported through quite a number of channels, not one single one of which included myself in that loop. So no I wasn't aware of all of these factors and yes I was reporting to the families to the best of my knowledge, and yes I do conceive, Mr Davidson, in hindsight that it did give them a false impression of what
30 the situation was underground as it gave me a false impression of what the situation was underground.

Q. Well thank you for that concession because the false impression that you had clearly was influencing what you were prepared to say to the families and to the media at that stage?

A. I wouldn't say "prepared to say". It clearly influenced what I did say.

Q. Right, okay. Now we're not in a blame game here, but you can see now even by the acknowledgement you've just made, how the sort of statement you made at the beginning like that, set in train the thoughts in the families' heads that down here this man, Peter Whittall, with his vast knowledge of this mine, is calculating with his expertise, what that underground condition maybe like and what chance?

A. Correct, and I was doing that. And all through that period, and I still hold, that I believe there was some possibility of life by someone, as did seemingly everyone else because the evidence is that they didn't seal the mine because they couldn't ensure non-survivability.

Q. I'm not here to make a cross-examination of you as to your final views about survivability. It's what you said, which I'm concentrating on Mr Whittall.

A. Yes sir.

Q. Now, we know that on the 20th you get to see Daniel Rockhouse and Russell Smith, and you indicate these in a statement you've made that they've not been able to provide you with much information relevant to your assessment of the position underground?

A. No. Russell was only able to tell me what he was doing, and Daniel was only able to tell me what he was doing, but neither of those were able to give me a lot of insight into the post event, if you like.

Q. Did Daniel tell you that when he turned on the fresh air valve to get some air, that the pressure was nothing like what he expected?

A. He did.

Q. So that would have given you some understanding of how to put statements out to the families or otherwise regarding the fresh air in that line which these men might conceivably be sitting around?

A. Well there's two parts to that Mr Davidson. One, that I was surprised that it was low, which made me think that possibly the line was either open inbye or fractured, but I wouldn't know where. And the second one was that I was aware from following up discussions on the compressed airline with Mr Ellis, was that the compressors weren't working efficiently and that they were then serviced, and so it may have

been, and I understood at the time, it may have been that fresh air he was getting or the compressed air he was getting out of the line was greatly reduced because of some issue with the compressors which I believe was fixed that evening.

5 1125

Q. So, therefore, that would be highly relevant to any statement that's been made about access to fresh air out of the compressed airline?

A. Not necessarily, because by the time I spoke to Mr Rockhouse, on the Sunday and he told me that, then the compressed airline had already
10 been running and fixed and I didn't necessarily equate the two to the fact that I didn't analyse that a great deal further. He told me he had lower air than he expected when he opened it. My initial thoughts were that it was possibly fractured somewhere, but I learnt subsequently the next morning that the compressed airline had been serviced or fixed or
15 something overnight and was working again.

Q. Who told you that?

A. I understood that from a briefing, Mr Ellis I believe, probably on the Saturday or Saturday afternoon, or sometime. Sometime before Sunday when I spoke to Daniel anyway.

20 Q. Well that would mean, if that were the case, that the air prior to it being restored in this way would've been of the kind or volume or pressure that Daniel Rockhouse had described to you?

A. Quite possibly.

Q. Yes.

25 A. Yeah.

Q. So that too was a factor to bring into account in anything you were saying to the families?

A. By Sunday afternoon, that's correct.

Q. Two days later?

30 A. Well, that's when I spoke to Daniel.

Q. Yes, two days later?

A. Well, until I spoke to Daniel I had no idea that the gas, or the compressed airline wasn't running efficiently on that Friday afternoon.

Q. Right. Now, I want to come to what is an essential plank of these questions and that is the question of fire and a statement is made by you, and I'm just going to refer to it from the same record that I'm drawing this information from the clips that are coming from the media.

5 On the 21st of November at 8.20, you're reported as saying, "The gas samples show not yet safe to enter the mine, has been some sort of combustion, but combustion is not necessarily a fire. Samples indicate a heating. Tests indicate gases are downward trending." You say, "Drill rig's in place, hope to get there by this evening."

10 A. Sorry, Mr Davidson, can you just remind me what time and date you said that was from?

Q. From 8.20 on the 21st.

A. Sunday, thank you.

Q. Yes. Got that?

15 A. Yes, I tend to think in days rather than dates I'm sorry.

Q. Now, where did you draw the information, "There's been some combustion, but not necessarily a fire?"

A. All of my information regarding those issues were drawn from either the mine manager onsite, usually directly, so it was either Steve or Doug. I
20 had also had some occasion to discuss those issues, although probably not by the Sunday night, with Darren Brady who has also evidence here, but any evidence or any conclusions I conveyed to the families or the media, at that stage were being given to me, almost verbatim, from the mine site. I had no knowledge, no capability in forming an opinion on
25 anything to do with gases, drilling, combustion or other things.

1128

Q. Well, it's one of the three critical factors, isn't it? If there's an ignition source, if there's a fire –

A. Correct.

30 Q. And there's fuel.

A. Correct.

Q. And there's the oxygen.

A. Correct.

Q. We have an explosive situation –

A. Potentially, yes.

Q. And we had the situation really from the off, on the 19th. The gas readings were difficult to obtain, but those that were obtained, you knew indicated the risk of a further explosion, therefore the risk of entry was, the risk was there?

A. The risk, yes, yes.

Q. And what you seem to be telling the Commission today that you did not know is that there was, it was known to you – you did not know that there was a fire said to be burning in the mine.

10 A. The part that I'm still – sorry, is that a question?

Q. Yes, that you did not know that? You did not know that there was some people were saying a fire is burning in the mine?

A. That's correct. Can I qualify my answer, however?

Q. Well, just stop there, because you've answered the question.

15 A. Okay.

Q. You heard the evidence that's been given on a number of fronts by witnesses such as Mr Hughes and Mr Brady, I acknowledge.

A. Yes.

Q. Have you read the evidence of Mr Steven Bell?

20 A. I would have because I've read all of the evidence, yes.

Q. And the evidence of Mr Stuart-Black from the fire service?

A. Yes.

Q. And you can see the, in the totality, very clear evidence as they saw it of a fire burning in the mine from the 20th, the day after –

25 A. That's the evidence I've read, yes, Mr Davidson.

Q. I just want to take one piece of it and this is from Mr Hughes' evidence which is MRS0008 and he begins it by paragraph 17 of the brief. I don't need this on the screen just yet. He'd been looking at samples during the course of the morning and they became concerned that there may have been a possible fire underground. He calculated this. "All readings were above a ratio of 0.5, which indicated methane fire and that had to be put to the IMT if there's any contemplation of people going underground," so that's him saying –

30 A. Who was "him", could you remind me?

Q. Mr Hughes, Robin Hughes.

A. Hughes, yes, yes.

Q. Who you know, don't you?

A. Very well, yeah, lot of respect for Robin, yes.

5 Q. Yes. He then talks about the three elements required for an explosion. His concern in paragraph 19 about the indications of fire from the Graham's ratio calculation.

1131

10 Q. Stephen Bell joined him. He went to the mine site with Stephen Bell and was very worried about the MRS position that they were contemplating entry. He told the IMT at 3.00 pm that day of his concerns. There were a lot of laypeople there, and Steve Ellis from Pike was there, this paragraph 24. He, Mr Ellis, cast doubt on the analysis by saying, "Probably just fumes from the explosion." That's what Mr Hughes has
15 told the Commission. So he provided that information. And then the following day, the Sunday the 21st –

THE COMMISSION ADDRESSES MR DAVIDSON

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

20 Q. Mr Whittall, this evidence and that from the fire service log, which involves discussions with many parties, including police and Pike, is emphatic but there were qualifications in particular from Mr Brady, that these parties, such as Mr Bell, Mr Hughes and so on, all believed there was a fire underground, and yet, as I understand it, you did not know
25 anything about it at all?

A. To say I feel naive would be an understatement. To think that I was meeting with the incident controller twice a day and feeling like I was part of the, I don't know, incident management team if you like that was meeting with the families and expecting to front the media at these
30 conferences and to say on oath that I had absolutely no knowledge of any of those opinions, the information I was getting was from the incident management team controller which in my mind was either Steve or Doug, whoever was talking to me, and they have given

evidence that they haven't passed that information on. I have spoken to them before and since, and I can absolutely categorically say that I was not aware of those opinions. I had never met with any of those men on site. I had no meetings. I was not part of the incident management team. I did not discuss anything with Craig Smith or Robin Hughes. I never met with them on site, so I have absolutely no knowledge of that. Sorry, you asked a long question so I was giving you a long answer.

5

Q. You've given the long answer and I'm not going to take it further sir.

MR DAVIDSON ADDRESSES THE COMMISSION

10

MR HAMPTON ADDRESSES THE COMMISSION

COMMISSION ADJOURNS: 11.34 AM

COMMISSION RESUMES: 11.51 AM

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

5 Q. Mr Whittall, I'm going to bring the threads of what I've been putting to you together here in that I want you to confirm for me that in essence you are saying that you were, for whatever reason, kept out of the loop with information that may have been relevant to your assessment of the chances of men surviving underground?

10 A. Can I not give a yes or no answer to that, and I may conclude one with you, Mr Davidson, but what I tried to say was I now realise that the police and others had formed a view or had a lot of other information that they weren't conveying to me, so yes, the answer to that part is yes I do believe that I was kept out of the loop with that information. However, the information I was getting from site, from Steve and Doug, was, to my understanding, the distillation of the ebb and flow of
15 discussions within the incident management team of which detail I didn't know.

Q. Well, we've established you didn't know about the fire, we'll leave that point at this stage.

A. Yes sir.

20 Q. Now, what you then recorded as saying on the 22nd of November at 8.10 am, is this, "We hold out hope that the men have found a safe pocket in the mine and they are sheltering there and waiting for us to get to them, but obviously with every passing day, this becomes a longer shot possibility." That right on the point of the, "Conceivable they may
25 have been clustered round the end of an airline," isn't it?

A. That's right. That's about, that and the sun may have been in the south are about the only two options that would be left.

WITNESS REFERRED TO EXHIBIT 14 – PIKE RIVER COAL MINE PLAN

1154

30 Q. Bring up the workings part on the left-hand side of the image. You pointed before with the laser to the area towards the south, the bottom south?

A. Yes sir.

Q. You also refer to, the men potentially in your mind being holed up somewhere in the upper reaches of the mine, right?

A. Yes sir.

5 Q. And you've made this reference to being clustered around the end of a fresh air line?

A. Yes sir.

10 Q. And the families have given evidence in a number of respects about this, and I'm referring to family brief 33, at paragraph 26, and this is on the 21st of November. "People were asking about whether they would've had any food. Peter Whittall said there would not have been food but offered the reassurance about the availability of water and fresh air." Recall doing that?

A. Yes sir.

15 Q. Now there really was no basis to be giving any reassurance about access to fresh air by the men still underground two days later was there?

A. Only the compressed airline sir, which is fresh air.

Q. And that compressed airline, if you're pointing in your mind then to the area in the upper reaches of the mine?

20 A. Yes sir.

Q. Where is the place there that you maintain they could have found an area of respiration and oxygenation by there, whereabouts?

25 A. In any of the, this plan being that the rescue plan's slightly out of date to what it was on the specific day of the explosion, but this roadway had been down there, but that's downhill so I would've discounted that. But to my recollection this cut-through was formed and this is where the drill rig was sitting, I think, or it may have been that intersection, might've been this intersection so that probably does go up there. So any of these stubs, the compressed airline would've run up into these panels.
30 This roadway was advanced up further, it would've had a compressed airline in it. So any of these blind stubs could've had a compressed airline run into them. One stub, two stubs, three stubs, there's a number of places where men were working.

Q. And in those areas are you now telling the Commission that this was your thinking at the time, when you talked about food, water and fresh air -

A. They have water lines and compressed airlines so.

5 Q. Yes, this is where you were thinking the men might be?

A. That and possibly, and I did talk to some of the families about the possibility of some men down in the southern area, yes sir.

Q. But those are the areas. So if each of those areas, especially in the upper regions of the mine, you are talking about the men having effectively barricaded themselves in?

A. It's the only possibility I thought at that time sir, yes.

Q. And it's only the faintest possibility, isn't it?

A. Yes sir.

Q. Because the walk would've been with a self-rescuer down?

15 A. Correct.

Q. To the area the self-rescuers were and out?

A. People would self-escape, yes that's correct sir.

1157

Q. So how as the days went by, two days later, to be making this sort of statement that I just put to you, just doesn't add up Mr Whittall. It's such the faintest possibility. It depends on the men being at a line that they can access. Barricading themselves in after an explosion of this magnitude, having water, and not exercising the instructed right or obligation to self-rescue. You've got to get past all those points don't you?

A. That is correct sir, and human beings are marvellous creatures aren't we, and this does happen on occasion albeit slim hope.

Q. But if it had been put like this to the family members in the way you're now telling the Commission, their perspective of this would have been completely different as to the prospects of survival. You can see that can't you now?

30 A. I can't understand that the families needed to be told everything they could be told in as factually abased as we could. At the time I had no basis for saying that all the men were dead. It wasn't the opinion being

put to me by anyone on site. It wasn't the opinion being put to me by the police and therefore no one was putting that position to me and I did not have that position myself.

Q. Mr Whittall?

5 A. Yes sir.

Q. We've narrowed this down now. You've said you had no information of the kind that we know existed.

A. Yes.

10 Q. Which would have completely informed you about risk or the possibility of survivability. You didn't have that. Just stop there, we have that point nailed down. What you're now saying is that this was what you were contemplating. Men who have managed to structure themselves into a place in the upper reaches at the end of a fresh airline and perhaps some down pit bottom south area, they were the people who may have survived over a couple of days feeding off a fresh airline, that's what you're saying?

A. Yes sir, but -

Q. That's what you told us?

20 A. Yes sir. But you also put a proposition to me and then stopped me from correcting that.

Q. Finish it.

A. Because you said we've established that. I don't believe we have. I didn't say that the information that was being kept from me would have changed my view on the survivability. What I said was -

25 Q. I haven't asked you that Mr Whittall, I'm sorry. I want to know finally, in these two areas you've described, how you envisage the men would have provided a space which they could have stayed in and taken the advantage of this airline to keep the other gases out. How could they have done that?

30 A. The only way as I believe I had already stated but I will restate sir, is that they would had to have either in the south had clear air, uncontaminated air, or continuing to get lower in oxygen, or if they were in the upper reaches of the mine they would had to have formed some barricade with a brattice screen were the only thing that I think they

could use and have access to the compressed airline which I understood was running up until the 24th. It's a slim hope, I agree sir, but it's still a hope and I still held that hope out.

5 Q. If you had said to the families, "Based on what I know, they might have been able to brattice themselves up into this area –

A. I actually did say that sir.

Q. Did you say that?

A. Yes, I drew diagrams and talked about that.

Q. And you were talking about the upper reaches of the mine were you?

10 A. Yes sir. It's the only place it could be.

Q. And you were telling them that a brattice could have been constructed by the men after an explosion of this kind?

A. It's my understanding that I had those conversations whether they were with the group of 500 people or with individuals, I don't really recall, but I
15 certainly remember drawing the diagram often enough.

Q. You see, you've really acknowledged today that this was such a slender chance that it really was just keeping that shred of hope alive wasn't it? That's all you were doing?

A. Are you saying I was doing it intentionally and falsely sir?

20 Q. No. It's not a criticism Mr Whittall. You were taking the faint hope or prospect of someone protecting themselves in the way you've described and using that as a basis to make the statements to the families that you did about –

A. I shared with them my hopes, yes sir.

25 Q. You shared –

A. So yes that's what I was telling them what I believed, yes sir.

Q. And so another brief which I just want to refer to briefly, which is the family brief 28. "My view was that Mr Whittall told us what we wanted to hear. For example, he told us that the men would be down there
30 sucking on air and drinking dirty water. However, my view is that he knew very well no one had survived the first blast. He never once mentioned that there could be fatalities."

1202

Q. That's a person who went to meetings and is really simply saying, as were other witnesses, that you were offering this hope, this image of men around the end of an airline, with water and surviving when an objective evaluation would've been, "This is the faintest of hopes."

5 A. Sir, I can understand the position you're putting to me. I wasn't a part of a team of a larger group dealing with all of the technical aspects that others were. I was dealing with the information that was being given to me and with my own view, I struggle, and I have done since I've read some of those statements, as to what my motivation could possibly have
10 been to perpetuate that situation. I was sharing my hope, which I've, also reading the same statements from the families, that while their heads believed that the men may've gone, their hearts still wanted to hope for that miracle and I was in exactly the same position, so, at that stage though, my head still believed that there was a potential for
15 someone to have survived beyond the first blast. I'm not sure why you think I'd be motivated to give that statement if I didn't believe it?

Q. I haven't put it that you were trying to mislead, Mr Whittall, I'm simply saying you're ignoring the reality of -

A. I don't believe I was sir, I was not ignoring reality.

20 Q. Is it the case that you had discussions with Mr Knowles about the view that you were giving to the families about whether you were being overly hopeful?

A. That's correct. He did say that to me. I also realise now that Mr Knowles was in a position of, not necessarily correct, but at least
25 information regarding all sorts of things that I wasn't.

Q. Yes. He had information, but you also considered he did not in fact know, technically, what he was discussing with the families?

A. Yes, I raised that point with him several times.

Q. Yes. How did you deal with that question of your being said to be overly
30 hopeful. How did you resolve that with him?

A. Well, it was an interesting one because it's come up in this Commission where the initial PM were raised in a document and it's quite surprising now to close that loop, because I was approached by, I can't recall the exact person, although not many people would've approached me with

a similar comment, but someone senior in uniform came up to me at one of the family meetings and said, "The Prime Minister doesn't think you should be using the word heating. He doesn't see why you're not using fire." And I thought, that was an unusual comment from the Prime Minister to have any opinion on whether there was a fire or not. I've since understood that briefings were going up through those channels that there was a fire underground. That wasn't something I was aware of. When Mr Knowles said, "We think you're being overly optimistic, we need to start using words like, grave and other things," I discussed with him, well, actually I accepted, he was the senior police officer, and that I complied with his messaging and as I said earlier in my brief I didn't use the word grave, myself, it wasn't one that sat comfortably with me but I believe contrary to that statement that you read from one of the family members a moment ago, that as early as the Monday, or something, we started and I started saying that hope was diminishing and it was becoming more unlikely that we'd see all of the men out. So the messaging did change in that regard.

Q. Yes, well your brief indicates, at paragraph 88, that Mr White briefed you on recovery, inertisation and sealing on the 23rd?

A. Correct.

Q. So on that day, that's the 23rd, that's the Tuesday...

A. To put that in context, sorry, you finish your question Mr Davidson.

Q. The question is at least by then you're aware that the question of sealing was on the table?

A. No, that's not true. What actually happened was that Mr White, who obviously had been part of these incident management teams and working onsite, rang me and said, "Could you please arrange a meeting with Mr Knowles because I'm concerned that no one's planning for contingencies and we're going along with a rescue effort, which is fine, however, no one's talking about the possibilities of anything else happening in the future." So that meeting was arranged and those scenarios were put to them because to think of things like a GAG, Floxals, all would take time and he was concerned that in the eventuality that we had a loss of life, no one would've done anything else.

Q. Right, thank you. That's the parallel planning that we understand?

A. Correct. And that's how it was put to the police commissioner and to Superintendent Knowles.

5 Q. So, on the material we see from your statements to people, to the families, it seems to be the case that it was not till about the 23rd that there is any indication that we really got to start thinking of the worst here?

1207

10 A. Possibly, I'd have to go back to my brief to get the exact dates, Mr Davidson, but you have that in front of you, yes.

Q. When we read your brief, we see a lot of discussion with the families about robots, failures, gas testing and so on, but the message over the days from the 19th through to the 24th, is essentially the same. The kind of thing I've put to you that the families remember.

15 A. Yes.

Q. The kind of thing we can see in the media statements by you that essentially this is where the men will be. They'll be hungry when they come out.

A. Sure.

20 Q. And you would understand that the families take every grain of that information and absorb it and because you can't give up hope you hold on until you hear accurate factual information?

A. Correct.

25 Q. And you heard Mr Monk yesterday give evidence when his friend Dave Homson told him from the outset what in fact he should expect from that situation.

A. Yes. I do.

30 Q. And you can see therefore the importance of not just the facts, but a professional and experienced evaluation of them, in a case like this to keep the families properly informed?

A. Yes, Mr Davidson, I absolutely agree, sorry, is that a question?

Q. Yes, you agree with that?

A. Yes. And can I just finish. On two points I think it's absolutely essential I agree with you completely that the families should've been given the

outcomes of absolutely the best assessment that was being done. To my knowledge with the absolute phenomenal response we had up onsite, we had the best people available in Australasia to be carrying out those assessments and the information I was passing onto the families, was the information that was being passed to me from the site, as the collective wisdom, I believed, of all of those people onsite. I had no way to qualify or disavow anything that was given to me with my knowledge. I'm not an expert in the disasters. I'm certainly not an expert in communicating with families, and I therefore as diligently as I could, passed on the information that was given to me from the mine site, from those experts.

Q. Given that you're only getting information which you can pass on you say?

A. Yes.

Q. You're not an expert in communication in this context?

A. Certainly not, sir.

Q. Do you remember making a comment about smouldering rags underground?

A. I hadn't until someone reminded me of it the other day, but it sounds like something I would say.

Q. Do you know why you said that?

A. Appreciate if, that you weren't at a lot of these meetings Mr Davidson and there are no minutes of them, but it was very typical of me to try – and it is very typical of me to give analogies and put them into real terms that people could understand. When someone talked about a fire underground or trying to understand the gas, so is there a fire or isn't there, because it was precluding, the risk of fire was the preclusion as you quite rightly pointed out before Mr Davidson that the fire triangle required an ignition source.

1210

A. So there was always the risk to the rescue service that there was an ignition source and there's obviously conjecture as to whether there was a fire, whether there was old remnant gases coming out of the mine because the way it was conveyed to me by Mr White, Mr Ellis and

Mr Brady directly, because I had some discussions with him as well, was that the gases that were being analysed were inconclusive, they could've been from a new combustion source, they could've been remnants of an old combustion source. And so they were talking about the fact that something could be smouldering underground, it could've been some slack coal, it could've been some gas on the roof burning, it could've been some burning rags, it could've been something still happening underground to provide that ignition source. And I was trying to put in context of it not being, if you told someone their house was on fire, for example, the concept of it being burning on the ground, conflagration and all those sorts of things is different to, as I said before, the gas hob burning in the kitchen.

Q. Yes, well we know you didn't know what others were saying about there being a fire, we know that now. When the issue was raised you treated it as something that really could be not dismissed but was of no great consequence?

A. No, it was of great consequence in that it was, it could be not dismissed at all but it was of no great consequence to the potential recovery or rescue of the men because of smouldering rags on the ground or a small pilot light. One of the other things we discussed was potential that a methane drainage line had ruptured and was acting like a small pilot flame, which is not consuming people or the atmosphere but just creating some burning methane.

Q. Mr Whittall, I'm going to leave the point now with this proposition to you?

A. Yes sir.

Q. Does it not seem extraordinary to you that something which so exercised the minds of some very experienced people the crucial element of the triangle of explosive potential never got to you at all. Does that not seem extraordinary to you?

A. The likelihood, or the potential for a fire underground, or an ignition source underground, was integral from the 19th –

Q. No stop, no, that's not the answer?

A. Yes sir.

Q. What these people were saying, you've read their evidence, never got –

A. You mean Mr Hughes and others that were talking about a fire?

Q. Yes?

5 A. As I said before, quite embarrassing, if nothing else, and downright extraordinary that it never got to me, absolutely. I have no idea why that was never raised. It wasn't even raised in a family meeting where someone put their hand up and said, "We've heard there's a fire underground, what do you say to that?"

Q. This is the point Mr Whittall, that of such a big issue, on your evidence, it never gets to you?

10 A. Correct.

Q. Therefore it never gets to the families?

A. Albeit Mr Knowles stood beside me at every family meeting and it was coming to him. So it didn't get to the families via me, no, because I did not know.

15 Q. And you never heard it put to the families by anybody else?

A. No.

Q. And it must seem even to you an extraordinary thing that such a crucial factor did not get into play with the families?

20 A. I've already agreed with you wholeheartedly Mr Davidson, it was extraordinary that I should learn about it in this Commission and no time before that, extraordinary. And Mr Knowles agreed that he didn't tell me either.

Q. Did you have a secretary taking notes of all the meetings you went to?

A. Yes I did.

25 Q. All the family group meetings?

A. Pretty much, she didn't take it verbatim but she was writing down the questions that were asked et cetera.

Q. Have you made them available to the Commission?

A. Yes, as far as I know I have sir.

30 Q. They have all gone in have they?

A. Yes sir.

Q. Now I'm just coming now to two other matters. Firstly the meeting on the 24th of November after the second explosion?

A. Yes sir.

Q. Mr Knowles gave evidence that before you went into that meeting there was discussion with you, in other words preparation for what was going to be said to the families. Do you accept that?

A. You could call it that, yes sir.

5 Q. And it was because of his recognition of your need, or wish to speak to your men that he agreed you should speak first?

A. Yes sir.

Q. When you went into that meeting, and you've described or acknowledged the fact that it was a strong police presence, you were
10 conveying the worst news that could be conveyed to those families?

1215

A. Yes, sir, and something I hope I'll never ever do again.

Q. Yes. And you knew that how you conveyed that information was going to be crucial to assisting them to cope with it?

15 A. Yes, sir.

Q. In your evidence today, you have told the Commission part of your thinking process is to wind back about three spaces when you actually address an issue. Do you remember saying that this morning?

A. To put it into context sir, yes.

20 Q. And I take it that that really is the explanation you're offering the families for what happened here, that before you in fact announced the one piece of news that they had to learn –

A. Yes, sir.

Q. – was that you felt context of some sort was provided by going back into
25 the history of that day?

A. Well, not too far back sir. I started by saying I'd been called up to site and that there'd been preparation, but then, I was – if there had been no interruption to what I was going to say, then I was, my thoughts was to say that I'd been called to site because the rescue service was
30 preparing to go underground. They'd been stood down and while they were stood down, a second explosion had occurred. That was the sequence of my discussion.

Q. I'm not going to re-live the evidence that was given yesterday, but do you see now that conveying the message in that way, no matter what

you said at the beginning, with any indication of Mines Rescue potentially going in was going to be taken instantly by those families as an affirmation that something good was coming?

5 A. Oh, I have to agree with Inspector Knowles – sorry, I keep calling him inspector, Superintendent Knowles, he seemed to think that he delivered the message and therefore he's had to relive it, but I can assure you, given the response I got to what I said, there wouldn't be an hour, let alone a day that I haven't relived that meeting and if I could've gone back in time and delivered it in any way that would've caused less
10 pain and suffering from what was going to be already the worst message that anyone wanted to hear, I'd do so in a heartbeat. And I had absolutely no intention of giving any other message. I don't agree with Inspector Knowles that I started off by saying, "They are going in," and then I couldn't deliver the message. That's not what happened. I
15 have absolutely – I had absolutely no intention of giving anything, other than the correct message and at this stage I can only reiterate Mr Davidson that I apologise to all the families if anything I said on the day and the way I said it, and my inability and incapability of being a more competent speaker, caused them any pain at all.

20 Q. Well, it turned out to be as they perceived it, the most insensitive thing that could be done to them. You understand that?

A. So I have understood, sir, yes.

Q. You do understand that Mr Whittall I take it, do you?

A. I've come to understand that sir, yes. I do understand that, yes, sir.

25 Q. And you realise the scar that's left on them from that day?

OBJECTION: MS SHORTALL (12:18:14)

CROSS-EXAMINATION CONTINUES: MR DAVIDSON

Q. Now, I've got two other matters to raise with you quickly before my time concludes. The 13th of January was a day with which the families
30 describe in detail when they were told that the police were going to hand over the recovery operation, you recall that?

A. Yes, sir.

Q. And as I understand your evidence, when you knew there was going to be this announcement, there was resistance to it by Mr White and indeed by you. Now you recall this part of your evidence?

A. Could you take me to my brief, sir?

5 Q. Paragraph 250. Now this is at 3.00 pm on the 13th of January.

WITNESS REFERRED TO BRIEF OF EVIDENCE

Q. You went to a meeting at the mine with receivers. You were informed that Mr Broad was making an announcement to the families.

A. Yes, sir, I recall.

10 Q. With regard to cessation of recovery and at paragraph 251, Doug White reiterated that, "Gas levels were trending down in the mine. The strata setting was effective and video evidence from one of the boreholes showed there was minimal damage to the mine in that location."

A. Yes, sir.

15 Q. And at 252, "Doug and I informed the receivers, we'd ask the police for the names and CVs of the experts advising them on the status of the mine."

A. Yes, sir.

Q. You recall that?

20 A. Yes, sir, I do.

1220

Q. Did you go to the meeting with the families that followed?

A. We were specifically precluded from attending sir. The police told us they did not want us there.

25 Q. Did you resist the notion of or the police view of the failure of the sealing process to this point? Did you actively debate it when you heard that they were intending to do this?

A. There was no one to debate it with except at the mine site. At this stage the mine was in receivership and the receivers were the point of contact
30 by the police and I was at the mine site, as my evidence says, when we were told by the receiver, not by the commissioner, that he understood a meeting was going to occur, and we were quite incredulous. To my knowledge, Mr Rockhouse may be able to verify this, but to my knowledge Mr White spoke with Mr Rockhouse knowing that as a family

member he would have entry into the meeting that we couldn't attend, and suggested that he may as a family member, raise some of these salient points with the commissioner.

5 Q. You heard Superintendent Knowles say he contested the way this was going to be done? You heard that evidence? Going to be announced to the families?

A. I understood, correct me if I'm wrong Mr Davidson, I understood Mr Knowles' contestation was that they were going to have one meeting and then make phone calls to all these people, and the bit he objected to was the parallel phone calls to the other family members.

10 Q. Yes, and the way it was going to be done, exactly.

A. Correct. I had no idea how it was going to be done in that regard. That wasn't conveyed to us.

15 Q. Well these are your men underground and you were aware at that time that the police position was the handing over to the receivers was in the context of possible sealing of the mine. You knew that didn't you?

A. Yes sir.

Q. Did you stand up to the families and resist that? Did you say this should not happen? The evidence at the moment is that the GAG machine –

20 A. Do you understand that I was at the mine site and the meeting was in Greymouth sir?

Q. Did you stand up for the families and make this point with the receivers?

A. Yes, to the receivers I did sir.

Q. And did you tell the families yourself?

25 A. I didn't. I wasn't at that meeting sir.

Q. Did you convey your position to the families to support them that the police should maintain their position for recovery?

30 A. My understanding of the afternoon as I recall sir, is as I suggested, that we, Doug and I discussed the fact that the only way we would have of influencing their meeting was to get Neville to have this information that he could take to it because we'd been expressly precluded from attending the meeting, sir. And when the police commissioner tells us we're not allowed to attend, then I suggest that we did as we were told sir.

Q. Mr Whittall, the primary purpose of your evidence from the families' perspective is really the fact that they do feel as though they did not gain a proper understanding of the prospects of their men being rescued. You understand that don't you?

5 A. Yes sir I understand yes.

Q. And you understand that they feel even today that for you to have made assumptions, no matter how good-willed your intent with regard to rescue, should only have come to them with your being fully informed or as fully informed as you could be about the underground situation. You'd understand that?

10

A. I would understand the families would expect me to be more briefed than just about anyone else, sir. Or myself and Superintendent Knowles at least anyway.

Q. And it is entirely apparent now, is it not, that you were not so briefed?

15

A. It's starkly apparent, Mr Davidson, that I was not so briefed.

Q. Do you accept any responsibility at all for that fact?

A. Do I personally accept responsibility for the fact that I wasn't briefed, is that what you're asking me? That I should have said –

Q. Yes, that's what I'm asking.

20

A. If I didn't know what I didn't know, should I have said something anyway? We have an incident management team and we have the police in charge of it, Mr Davidson.

Q. Can you answer –

A. I was –

25

Q. Just answer the question.

A. I feel damned if I do and damned if I don't, Mr Davidson. You've put a question to me which is almost impossible to answer. I feel devastated that the families looked to me for information and that I didn't provide it. Do I feel personally like I've let them down? I think the whole process has let them down in not knowing the answers to questions that they should have known. Do I feel that by my own omission that I did not have information, no I don't. I feel that I, through working 18, 19 hours a day and having two family briefings and multiple meetings on site and going up to site, every day I availed myself to the best of my ability of

30

information by directly speaking with the police superintendent, meeting with the police commissioner, meeting with everyone I could and yet still was not told information that was evident to those people, then I didn't know what I didn't know, Mr Davidson, I deeply regret that.

5 1225

A. I would like to think that the system would be far more efficient and that if I am anyway either the chief executive of the company should be kept out of the whole process if the police want all the information and want to be the speaker, or the chief executive of the company is put in a position where they are shared that information and they are able to speak to the families with integrity and say, "This is the truth." Because when I stood up there and said, "This is the truth," it was certainly the truth as I knew it.

10

Q. Thank you Mr Whittall.

15 **CROSS-EXAMINATION: MR HAMPTON**

Q. Dendrobium Mine, Mr Whittall.

A. Yes sir.

Q. Was that where the ERMP model came from as well?

20

A. Illawarra Coal was a group of probably five or six mines at the time, and most of the emergency response management plans would've been the same, so the fact that that one came from Dendrobium it probably came from Appin before that and somewhere else before that but it would've been reviewed by each of the sites and signed off by the mine manager so, the ERMP at Pike probably had it's, obviously from Mr Davidson pointing out, the wording there would've had its origin at Dendrobium.

25

Q. Dendrobium Mine, a Greenfields mine, a new development?

A. Yes sir.

Q. Yes. And can I suggest that three things were at least in union circles talked about in relation to that mine over there and then I'll come to this mine here.

30

A. Yes sir.

Q. That there were employed a large number of cleanskins, that is inexperienced and often youthful workers in Dendrobium?

A. Not by policy sir.

Q. Not by policy. Secondly, a minimisation of union involvement?

A. Not by policy sir.

5 Q. Not by policy. Thirdly, an attitude of minimum safety requirements being met?

A. I would reject that outright sir.

Q. You would reject that outright, all right.

10 A. Certainly in the time – I can only speak for the time that I was at the mine sir, so if you have other knowledge outside of my time then I can only, I can't comment.

Q. And if I was to suggest that there are parallels with Pike, first, were there a large number of cleanskins used as personnel for Pike?

A. Not by policy sir.

Q. No, were there a large number of cleanskins used in Pike?

15 A. Yes sir, that's the nature of the modern industry, yes sir.

Q. Secondly, did you try to keep the union out of Pike?

A. No sir.

Q. No? Have you read the evidence of Mr Winter?

A. I did sir.

20 Q. Is he incorrect at what he says about attitude towards the union in his evidence?

A. Yes, yes he is sir.

Q. All right.

A. I am more than happy to discuss my attitude if you wish sir later but...

25 Q. We may at Phase Three.

A. Yes sir.

Q. Thirdly. Safety standards, minimisation of safety standards.

A. Maximisation sir.

Q. Maximisation, you say?

30 A. Yes sir.

Q. How does that fit, sir, with what you told Mr Davidson just before that, in talking about the Alimak raise shaft, as I took it that if nobody raised any objections, then you thought that it had been deemed to be all right?

A. Because I wasn't the statutory manager sir. I have a statutory manager in place and I've done that role myself and I understand the duties of that person. There's a large number of safety initiatives and safety systems at Pike River Coal.

5 Q. But was that the attitude you – this is what you said to Mr Davidson in effect wasn't it?

A. On that particular point, sir, yes.

Q. Yes.

10 A. That's not a blanket concept or anything else sir. We brought and installed what we believed to be the best systems available to us.

Q. How did that Alimak raise comply with regulation 23 of the Health and Safety in Employment Mining Underground Regulations?

OBJECTION: MS SHORTALL (12:29:55) – ISSUES FOR PHASE THREE

THE COMMISSION ADDRESSES MR HAMPTON – RELEVANCE OF QUESTION

15

1230

CROSS-EXAMINATION CONTINUES: MR HAMPTON

Q. On safety matters though, you would've seen in Mr Winter's evidence, and he was an EPMU organiser?

20 A. I understand sir.

Q. From 2006 to 2010?

A. Yes sir.

25 Q. And it's at paragraph 27 and 28 of his evidence, which is EPMU0004/10 and 11, and I'll just read it. 27, "On another occasion I received a phone call from one of the union delegates, Daniel Herk because there was no provision for a special mine vehicle, SMV, to take the men out of the mine. The concern was that one of those machines had been broken and out of operation for a period of approximately three weeks. The implication of this was that in the case of an emergency or accident the men would not be able to retreat or evacuate from the mine fast enough." 28, "I recall asking Daniel Herk 'are you concerned for your

30

safety?’ He responded by saying that he was. I then advised him that he should leave. He then led the men out of the mine. Sometime later I received a phone call from Dick Knapp,” this is the same Mr Knapp you’ve spoken about today, it is?

5 A. Yes sir.

Q. “Who was extremely angry. During the conversation Dick Knapp asked me to advise the men to return. I declined to do so and he then threatened to sue the union and told me that my job would be gone. I informed Dick Knapp that the men would return when the SMV was
10 fixed. Following the walk out the machine was fixed in just three and a half hours. Peter Whittall was the mine manager at the time.” Do you recall that incident Mr Whittall?

A. Yes I do sir. Do you have a date for that sir?

Q. I don’t have a date.

15 A. I don’t recall whether I was a mine manager at the time or not but that’s what Mr Winter attests, but regardless of whether I was or not I do recall the incident sir.

Q. Do you consider it satisfactory that maximisation of safety underground to have a SMV out of action for three weeks?

20 **OBJECTION: MS SHORTALL (12:32:49) – RELEVANCE OF QUESTION**

THE COMMISSION ADDRESSES MR HAMPTON

CROSS-EXAMINATION CONTINUES: MR HAMPTON

Q. I was using that as one instance Mr Whittall but I won’t go further with it.
Did you express a view when being interviewed subsequently by
25 Department of Labour people that you thought smoke lines were not needed in this mine?

OBJECTION: MS SHORTALL (12:34:31) – QUESTIONS FOR PHASE THREE

1235

CROSS-EXAMINATION CONTINUES: MR HAMPTON

Q. All right, just then, if I could put in your hand, and perhaps Ms Basher I could have up the emergency response plan, PIKE.19568, and I've got a hard copy for you Mr Whittall.

5 WITNESS REFERRED TO PIKE.19568

Q. Signed off by you and Mr Rockhouse, 20th February '09, correct?

A. Yes, sir, I read that.

Q. I won't necessarily put the pages up, but then from page 1, page 2 and 3 are the contents of the plan itself?

10 A. Do you want me to acknowledge that?

Q. Yes.

A. Yes, sir.

Q. And you said yesterday in your evidence about, "The plan specifically does deal with explosions." Do you remember saying that in evidence
15 yesterday, page 2692 of the notes of evidence?

A. I do recall saying that sir, yes.

Q. Well now, I'll come to 6.56, explosion and outburst at page 39, shortly, but before I get there, can I take you to, starting at /14, management of identified significant hazards. But, before I get there, perhaps
20 Ms Basher could you put up /9, sorry, I apologise for that. "1.5, identified significant hazards" and there we have some bullet points there starting with "Explosion as identified significant hazards," yes?

A. Yes, sir.

Q. Then to page 14, thank you Ms Basher. Management have identified significant hazards and from there for the next six pages, and you can
25 flick through the hardcopy you have with you.

A. Yes sir.

Q. There's a whole series and it comes to some 153 in all, plans about hazards, isn't there?

30 A. Yes, sir. I haven't added them up but I will take your word for it.

Q. I can give you the two numbers by page by page, I'm trying to be short with this.

A. That's fine sir, I trust you.

Q. Well you wouldn't if you knew how bad my math were. But in all that 153, is there one identified significant hazards plan for explosives – for an explosion, I mean?

5 A. I haven't read this document for quite a while sir, so you're putting this to me – would you like me to read all six pages, or try – just take your word that there isn't one?

Q. Well, I've combed through it and I can't find one and if that's a case, isn't that a deficiency in the plan?

A. I'd have to review it in context, sir.

10 **OBJECTION: MS SHORTALL (12:38:57) – PHASE THREE**

1240

CROSS-EXAMINATION CONTINUES: MR HAMPTON

15 Q. Just one reference if I may to the document Mr Whittall. Take you to page 39, explosion and outburst, 6.56. Have you read the content of that, Mr Whittall?

A. Yes sir I have.

Q. Am I right in thinking that that paragraph does not deal with what is to happen after the occurrence of an explosion?

20 A. Just looking at 6.5.6 and seeing where it fits into the rest of the document sir, I can't comment on where it fits, but in essence of the words it's not dealing with the aftermath of it, it's dealing with the minimisation of the risk.

25 Q. You see, we heard from Mr White earlier in this phase of evidence (page 190) and then from Mr Neville Rockhouse, at page 1404, comments that nobody had written plans on the prospect that an explosion might occur?

A. I didn't understand. Is that a question?

Q. Yes. You heard that?

30 A. I did hear that. I didn't understand Mr White's comment at that stage, given that the emergency management plan to an explosion where he's set up at IMT and to deal with that particular issue in its dynamic fashion. So to my mind, the emergency response management plan

does contemplate an explosion and it does contemplate the actions that would be taken, which is to establish an IMT because it's obviously a significant event.

5 Q. Well, am I right in thinking that you had the same view in your thinking though, Mr Whittall, that you did not believe that an explosion, a catastrophic event like this would occur in your mind?

A. I wouldn't put it that way, no Mr Hampton.

Q. How would you put it sir?

10 A. I would – you always hope for the best and plan for the worst. In these situations, hope is not a management tool as Mr White and I often discuss, so possibly the wrong choice of phrase. What I would say is that the – I would not expect rather than contemplate an explosion occurring given that good management practices should see adequate stone dusting. The fact that we're using hydro-mining it's a wet process.
15 Fans, adequate ventilation, all the normal management practices for managing risk being in place should preclude that risk of explosion the same as adequate strata control should preclude the risk of the roof falling in. So to say that it wasn't contemplated, not at all. The emergency response management plan was there for that. I had
20 managed mines that had had explosions in them. I was familiar with explosions, Moura, many others.

Q. Was there a plan for the sealing of the portal?

A. No sir.

Q. Sorry?

25 A. No sir.

THE COMMISSION ADDRESSES MS LUMMIS

1245

QUESTIONS FROM COMMISSIONER HENRY:

30 Q. Mr Whittall, I'll try to ask you this question in a neutral way so that your counsel doesn't instruct you not to answer it but of course, if she does that you have to follow that instruction.

A. I understand sir.

Q. What I've been puzzling about is this question of egress and I'm assuming, for the purpose of argument on this current question, that the ventilation shaft is a sufficient egress for the purposes of our regulations just assume that for the moment.

5 A. Yes sir.

Q. And I think I've heard you say that you were planning, and let me put it neutrally, another egress?

A. Yes sir.

10 Q. At some stage in the future and that would seem to be a good precaution to have that in relation to any possible search rescue self-escape et cetera.

A. Yes sir.

Q. What I've been puzzling about is, why did the company decide to start coalmining before you'd constructed that additional egress?

15 A. The mine had always been planned to have two egresses, sir, one was the tunnel and one was the shaft as an interim and then ultimately three egresses. But to be fair, ultimately it was only to have two egresses. The second egress up the shaft would've become redundant. Most mines I've worked at have only had two egresses. I've worked in
20 double-shaft mines where both were winding shafts and no walk-out egress and I've worked in two mines like that. It's not anomalous to have a single tunnel and a single shaft and then to build a third, as you say, is adding to that system that had been contemplated by every feasibility study that I've got back to the '80s and '90s to have that same system,
25 so the actual plan through many, many hands, through many different consultancies and through many different engineers, had always been the same which was to have a tunnel and a single shaft and then a second added tunnel at some more recent, future time.

30 Q. Looking to the future, for future approaches to these problems, do you think in hindsight, that perhaps it would've been better to construct that additional egress before you started actually mining coal?

OBJECTION: MS SHORTALL (12:48:17) MAY NEED TO INSTRUCT WITNESS

THE COMMISSION:

Q. You are entitled not to answer if the answer could incriminate you.

A. I've been well-led by my counsel to date sir, so I'll take her advice.

QUESTIONS FROM COMMISSIONER BELL:

5 Q. Now, Mr Whittall, you mentioned the other day talking about gas monitoring systems you were talking about the electronic system and the tube-bundle system?

A. Yes sir.

10 Q. And from my read of your words you seem to say that the tube-bundle system wouldn't have been much use after an explosion either?

A. That's not what I intended to say sir. What I intended to say was it was reasonably arbitrary as to whether it would be or wouldn't be. If it remained undamaged, just the same as if the real-time had remained undamaged, the real-time had its own power source on the surface, independent and could've been used except that it was damaged, had there been a tube-bundle and it had been damaged, severed, then it equally wouldn't have provided much use, albeit I do accept that it would've provided some source of gas monitoring underground at some point but we wouldn't have known where.

20 Q. Well, that's the point I make. The analysers themselves would still be intact on the surface wouldn't they?

A. They would.

Q. And they could be used, as was used at Pike to run with boreholes?

A. Correct. Although I was aware, sir, that we had one at Rapahoe, just down the road as a gas chromatograph, and that's the one we were currently using and that we were able to mobilise one the very next morning so, in the pre-planning of the mine it had never been raised by me or others that having one at Rapahoe was inadequate at that stage of the mine's development.

30 1250

Q. Mr Davidson has gone on of some length about what you should or shouldn't have known, can I just make a point here that – and I accept what you've said along the lines, but there was a lot of very experienced

people there. People like Trevor Watt. There was Seamus Devlin, Darren Brady. There was a lot of very experienced gas and rescue people, did you think it would've been worth your while talking to them rather than taking information just from one source?

5 A. I have thought of that often, sir. I also thought at the time of what the overlapping roles were and I was very conscious of my role as chief executive which was to manage the communications and manage all those other peripheral issues, peripheral not the communications with the family I'd add that as being core, but there's also a line of
10 demarcation with the incident controller where I can't usurp his authority. Should I have, in hindsight gone onsite and asked to sit down with those experts, then in hindsight sir, yes, I wish I had of now, and I've in casual conversations I've had since the date with a number of the people who were onsite such as Robin Hughes and others, has given me an insight
15 into how those incident management teams were running, which I wish I had known at the time sir, so yes, I would. But as a chief executive, in that position by title, I could've just as equally been an accountant or a lawyer and not been in a position to get any information out of meeting with those people. So, the fact that I was a mining person, I do greatly
20 regret that I didn't take a more active, or have the ability to take a more active role up there.

Q. And just finally, we've heard many times that Pike is a very small mine, sir. It's not really a comparison you could make with Appin or Moura somewhere?

25 A. No.

Q. They were large mines?

A. Yes, sir.

Q. So I mean, I'm just trying to come to grips with why you hung onto this hope that people were there, when the size of the mine, the size of the
30 explosion, which I accept you found out a few days later, really should've told someone as experienced as you, and I accept you're a very experienced mining person, that the chance of survival were very, well, nil?

A. I was in a very difficult position as well, as you can imagine, sir, that by the time I'd understood the video evidence and had also believed that there was potential for the men to be in the south or hold up somewhere to, without the evidence or without being advised that from site, for me to usurp that view and go public, which wasn't the view of the police either, and they were running the communication, for me to go out and say, "I think all the men are dead. The police don't agree with me and the people on site aren't telling me that. That's just what I believe" would've been a very difficult thing for me to do, sir. But hindsight would indicate that yes, I was obviously feeling that there was a less and less likelihood that any of those men were coming out. One of the difficulties, sir, I also encountered very early on because it happened to me, was a soon as I gave any indication and this wasn't a public forum, it was to one of the families, that I thought that it was most likely that some of the men had died probably straightaway, the immediate question was, "Which ones and where were they?" So my ability to actually tell individual families, "I think your husband's alive, but your one's dead," was an almost impossible situation sir so I chose not to put myself in that, of saying, "Well I think these ones might have died," how could I do that, I couldn't, I had no knowledge, I had no information.

1253

MS SHORTALL ADDRESSES THE COMMISSION

Q. One of them is just a pure clarification about the notes that were made by your EA Mr Whittall during the family briefings. And just to be clear, you provided those notes to your legal team for production to this Commission?

A. Yes I did.

Q. And you understand that they have been produced, but just for any reason, and I am checking this, the notes may not have yet been released to the substation database by the legal team, you understand that they will be produced don't you?

A. Yes I do, yes.

Q. And you understand that the contents of those notes is consistent with your evidence today. Is that right?

A. Yes, it's certainly not been edited by me or in any way altered by me, and yes it is consistent to my knowledge with my evidence today.

5 Q. And I just wanted to clarify very quickly two media releases that were raised with you by Mr Davidson and just provide some context. If I'm correct, your practice was to meet with the families and then to meet with the media subsequently each day. Was that right?

A. Correct, yes.

10 Q. And when the media recorded you, you were at one media briefing with different journalists from different sources there. Is that right?

A. Unless I did a particular one with one of the programmes, they yes it was usually in a room with up to 50 or 60 journalists.

15 Q. And you had no decision-making power over what parts of what you said to the media were edited out or reported?

A. I think that goes with talking to the media, yes.

20 Q. So I don't have, and just so the Commissioners know, we tried in a break to find whether there is any additional TV One video footage that supplements what was shown to you Mr Whittall, that was a clip from the 20th of November, and Mr Davidson in particular was asking you about a comment concerning the compressors and men sitting around the end of an open pipe. Do you remember that clip?

A. Yes, the video was shown, yes.

25 Q. I do however have, and I will make it available to the Commission, I don't have a clean version, but I have a NZPA report from that same day, the 20th of November, it's entitled, "Second night underground for trapped miners," and you are quoted saying the same thing that was shown in the clip to the Commission. But directly under that quote, so under where you describe that there is a large number of men,
30 presumably you've read it so there's no ambiguity, the quote you are recorded in the NZPA article as having said is, "We have kept those compressors going and we are pumping fresh air into the mine somewhere. So it is quite conceivable there is a large number of men sitting around the end of that open pipe waiting and wondering why we

are taking our time getting to them.” That language is there. That’s what you were shown today. You recall that?

1256

A. Yes.

5 Q. Then directly under that in this press article is the following, “We don’t have any knowledge of what is going on underground because we don’t have any communication.” That’s also consistent with your recollection?

A. Yes.

Q. Would more fully reflect what you said on the 20th of November?

10 A. Yes.

Q. One final point. You were also asked, Mr Davidson put to you that it was not until the 23rd that there was a need to start thinking about the worst. I think that they were his words, and you recalled that there was a discussion around the Monday or Tuesday, the 22nd or 23rd, with, between you and Mr Knowles about starting to use more grave language. Do you recall that evidence?

15

A. Yes I do.

Q. And Mr Davidson had put to you that you had not done so until the 23rd. Well I just wondered if the following may refresh your recollection, Mr Whittall. Again, an NZPA article from the 22nd of November, the day before, and you are quoted again in this article, and I’m going to read directly from the article as to what you said. “The reality is it’s been three days. The reality is we haven’t heard anything from anyone since the two guys came out of the pit. The reality is for the families now it’s becoming more and more grave with every hour that goes past.” You recall making that statement Mr Whittall?

20

25

A. Yes I do.

Q. On the 22nd of November, right?

A. Yes.

30 **WITNESS EXCUSED**

THE COMMISSION:

Well, that completes the Phase Two hearings, but as has been indicated, the Commission's inquiries in relation to aspects of Phase Two will continue, there having been references to that directly throughout the hearings that there will

5 be some written questions addressed to some of the witnesses who we've heard from and, of course, as was indicated at a previous meeting with counsel, there will be provision made for submissions in relation to this phase but it would be inappropriate to do them now while those further inquiries that I speak of are underway. The second matter we need to mention concerns the

10 future Phase Three hearings.

PHASE TWO CONCLUDES