



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

**UNDER**

**THE COMMISSIONS OF INQUIRY ACT 1908**

**IN THE MATTER OF**

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

Before:

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

Commissioner D R Henry

Commissioner S L Bell

Commissioner for Mine Safety and Health, Queensland

Appearances:

K Beaton, S Mount and J Wilding as Counsel Assisting

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

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

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

C Stevens and A Holloway for Solid Energy New Zealand

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

G Nicholson and S Stead for McConnell Dowell Constructors

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

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

J Haigh QC and B Smith for Douglas White

J Rapley for Neville Rockhouse

T Stephens and N Blomfield for New Zealand Oil and Gas

---

**TRANSCRIPT OF PHASE THREE HEARING  
HELD ON 6 DECEMBER 2011 AT GREYMOUTH**

---

---

Level 14, Prime Property Tower, 86-90 Lambton Quay, Wellington  
P O Box 5846, Lambton Quay, Wellington 6145  
Email: [pikeriver@royalcommission.govt.nz](mailto:pikeriver@royalcommission.govt.nz)  
Freephone (NZ only) 0800 080 092

**COMMISSION RESUMES ON TUESDAY 6 DECEMBER 2011 AT 10.01 AM****MS MILLS CALLS****ALBERT ALLAN HOULDEN (SWORN)**

- 5 Q. Good morning Mr Houlden, I would like to take you through your brief.  
Do you have a copy in front of you?
- A. Yes.
- Q. Your full name is Albert Allan Houlden and you worked as a leading  
hand with McConnell Dowell at Pike River Mine from 5 October 2009  
10 until the end of April 2010?
- A. Yes.
- Q. You now work for Solid Energy at Spring Creek Mine as a mine services  
deputy?
- A. Yes.
- 15 Q. Please could you start reading at paragraph 2?
- A. "I have had 37 years mining experience with about 20 years in coal. I  
left school at 16 in 1974 and I've been in the coal industry on and off  
ever since then. I went from school to Grimethorpe Colliery and worked  
for the National Coal Board until 1979. I then went contracting to the  
20 National Coal Board with Amalgamated Construction Company, AMCO.  
I did rill and fire in stone drivage and stayed with AMCO until 1983.  
When I left AMCO I went back to the National Coal Board to my own pit  
in Grimethorpe and worked there for approximately nine years. I then  
worked in Sheffield Coal Field until I was transferred up to Selby when  
25 we started developing sinking shafts and developing the Selby complex.  
I was in Selby into the 90s."
- Q. While you were with AMCO at Selby, you also did brief contracts in coal  
mines in Sardinia and Norway?
- A. Yes.
- 30 1004
- A. Yes.
- Q. You've also worked in various mineral mines in Ireland, Scotland and  
Northern England and in Stone Tunnel in Hong Kong?

A. Yes.

Q. Could you read again at paragraph 8?

5 A. "I went to Papua New Guinea working for Redpath a Canadian company doing drill and firing stone driveage when I left Pike River and I'd just come back to New Zealand before the explosion at Pike. I have held the position of site agent shift foreman, general foreman in various contracting companies. That's all I've ever done, mining and tunnelling. One of my biggest concerns at Pike was the inexperience of many of the workers. Contractors who had little or no previous inexperience of

10 working underground were working in the mine with very little induction training and were hardly supervised. Many of the miners were classed as experienced when they had only been mining for a very short time."

Q. Please can you tell the Commission about your training and experience in the UK?

15 A. The training in the UK were very gradual and you started your training from when you signed on at your colliery. You would do so many days in a bathhouse, electric shop, ventilation just 'til you got a feel surroundings on surface, you would then be put on to stockyard where you would do 20 days attached to one of old miners and what he would

20 do, he would take you through every aspect of stacking materials, being aware of moving tubs, entrapment zones, basically any hazards which you are going to encounter underground. They started making you aware of them on surface.

1007

25 Q. And then you started your underground training?

A. Yes, once they were happy with you they would then let you move on to next stage which was six weeks at Barnsley Main, which were basically classroom work. Once you'd completed that classroom work you were then took underground in supervision to a training gallery where it had

30 all been secured for us, it were a out of date seam that had stopped producing, but what it did do, it gradually got you used to environment so that you weren't put in a situation, a stressful situation or a dangerous situation, you were eased into it and yet again, we were on

- one on one supervision with old miners. They would take you through basic safety. Your lamp, that were your first thing. Check your lamp, are your bulbs working? When you get underground your lamp's everything you've got to see by. Your self-rescuer, before you leave the lamp room you check it, is there any damage? Has anybody tampered with it? When you got into a training gallery one of the old tricks what they used to do will make you sit in the total darkness and make you listen. And then they would say, "Put your hand up to your face. Tell me whether you can see." You can't see, it's total darkness. And that were the point they were stressing to us, that's how important your lamp is. If you don't inspect that lamp, and you get underground and there's an incident you're never going to find your way out. And this importance was stress also with self-rescuers. If there's an incident and you need that rescuer, it's got to be in good working order and on your belt.
- 5
- 10
- 15 Q. While they trusted you underground you say you were, "Put on the button." Can you explain that?
- A. Yeah, basically that were your first task which were running a conveyor. It were a real boring job. All you did were just sit there all day, just watching this conveyor but it were just part of the process to get you used to the environment you were in and what you were going to come up against. There were no, no set time that you would be on that job. It could be up to three months. It could be less than a month, if your aptitude, what Pete took from old guy that were in charge of you. If he said you were worthy then you would be moved on from a button to supplies, which were haulage. Then again you'd be signed to one man for 20 days. And for that 20 days you never left his side.
- 20
- 25

### **THE COMMISSION ADDRESSES WITNESS**

**COMMISSION ADJOURNS: 10.00 AM**

30

**COMMISSION RESUMES: 10.22 AM**

**THE COMMISSION ADDRESSES MS MILLS**

**CROSS-EXAMINATION CONTINUES: MS MILLS**

5 Q. Thank you Mr Houlden, can you start reading again at paragraph 29?

A. "So from the start up in the yard to the end of your training, if you pushed on, you could do it in two and a half to three years but you would still not be seen as an experienced miner. I have been at it for 37 years and every mine is different. You'll never know everything about a mine – this is one lesson that was pushed into us. It's not a factory, it's never the same two days on and you will never trust it. That's why I've survived 37 years. The British industry was one of the safest in the world. A lot of lessons could've been learnt from England by Australia but in New Zealand, you couldn't learn that much from the UK because geological conditions are that much different from what we had back home. But what you could learn was the painstaking way you'll train, observe and "pass" men into mining according to their skills and aptitude."

10

15

Q. Thank you. Can you just tell the Commission the ratio of inexperienced/experienced workers in the UK mines, in your experience?

20

A. For an outbye it would be one to one, you would stay with him until you passed out but on your Longwall training there would be four trainees allowed per unit and there were 25 men per unit. But you still went one to one.

25

Q. You then brought out to New Zealand by Solid Energy in 2007 and you started working in Spring Creek for two and a half years?

A. Yes.

Q. Can you say what induction you underwent at Spring Creek please?

30

A. I went under a rating induction with Dave Stewart and Tane Johnson and underground mine visit and then ongoing training from there, i.e. gas tickets, vehicle licences, experience at face.

1025

Q. How much ongoing training was there?

A. It were very intense at Spring Creek. You seem to be on a different course every month.

5 Q. Although you were a very experienced miner, you still underwent full training at Spring Creek, why was that?

A. To be perfectly honest with you, I'd never worked in conditions like them and it were a complete new learning curve for me, so I had to stand back and go through it back as a trainee miner for me first 12 months.

10 Q. And Spring Creek was aware of that because you'd come from a different jurisdiction?

A. Yes.

Q. And bearing in mind that you were a miner at Spring Creek and a contractor at Pike, can you describe your induction at Pike River?

15 A. My induction were approximately two hours with videos involving - it were minimal really.

Q. And was it adequate?

A. Well somebody with my experience yes, but for a young fellow coming into industry I wouldn't have thought so.

20 Q. Please could you read again at paragraph 34?

A. "I transferred over to Pike River with McConnell Dowell sometime in mid-2009 because I was keen to go back into tunnelling. The two biggest problems I found at Pike were the ventilation and the number of inexperienced underground. Due to the steep grades you can't use an overlap system like we had in the UK. An overlap system is by far safer than just using suction all the time. With suction once you get to a point that you start breaking two and three driveages off one fan, then you're running to minimum suction all the time. When you put an air mover in, which pushes some air up to the face, in effect you are only recirculating. We had gassy seams in the UK but they were not such a  
25  
30

problem because we had better ventilation. With a three shaft system you had your air intake shaft and two up-cast shafts which were your skipping shafts where the coal went out. What volume was coming

down was being taken away. We still had a ventilation department and a ventilation officer. I found it hard over Pike to understand why they did not have one.”

5 Q. You said earlier that one of your biggest concerns at Pike was the inexperienced workers. Why do you say that?

A. Because it's such an hostile environment in any mine and you can give people toolbox jobs or some form of education but it's not same as one-on-one education until you know that they're competent.

Q. What kind of supervision was there for the new men at Pike?

10 A. With McConnell Dowell or with Pike?

Q. With the miners?

A. I had very little to do with Pike miners.

Q. Did you advise Pike management of your concern about the level of experience at the mine?

15 A. No I did not.

Q. Did you have any concerns about McConnell Dowell's level of experience at the mine?

A. No.

20 Q. You referred to some incidences in your brief. Could you take us through those by reading at paragraph 42.

A. “One day I'm in drilling and it was only by chance, with two panthers going that I happened to see my miniwarn flashing as I could not hear the alarm. I went to have a look at it and it was off the scale. I stopped everything and took the boys out. We'd only got 0.4% at the start of the shift and two and a half hours into the shift it's off the scale, so obviously there is something not right. I checked two or three times to make sure that my detector wasn't shot and then I went and got the district official and came and got the same readings. He was a deputy, he was a young man. Because we were constantly rotating we never had a permanent team.”

25

30

Q. What do you mean by “no permanent team?”

A. Due to shift pattern in McConnell Dowell different to shift pattern with Pike River staff, we never actually had same officials all the time. We would only run into them so many rosters.

Q. Can you read again at paragraph 43?

5 A. "He sent me off round one way and he went the other to check the district and see if we could find the problem. He came back and said Valley Longwall had pressure on the rods so they had opened a borehole valve to release the pressure. It was actually pumping pure methane and water into the atmosphere. As we were on the rise it was  
10 coming straight to us. Once he shut that off and he degassed it we had no problem. I just asked him, 'Is it a regular practice for people just to do what they think is right for their perspective and not to inform you or us what they are doing?' In case it affects us. He said he didn't know they were going to do it so that was just another instance of poor  
15 communication at the mine and how stretched their deputies were."

1030

Q. How in your experience would that information have been communicated to other miners?

A. Before anybody interferes with any ventilation or anything that can affect  
20 ventilation you have to inform the district official who will then assess situation and then he would either inform us (inaudible 10:31:05) or he would stop them until he had got clarification from surface.

Q. Please read again paragraph 45?

A. "Another time while we were up at the face our ventilation was just shut  
25 off and all the air was directed to the continuous miner. Nobody told us, it just happened. I couldn't get my head around why they weren't informing the company or me personally on shift why they weren't saying, "You better warn your boys we're going to adjust ventilation because we haven't got enough for the CM," or "We're going to shut the  
30 fan down for maintenance or whatever." It was if it was carte blanche and they could do what they wanted. Many times I'd come out and I'd have a splitting headache and feel real sick because of the CO from the machines, because yet again there had been a problem with ventilation.



It wasn't like working in a planned operation. It was as if everybody was their own little independent unit, but when you're working in such close proximity to firing you just can't mess around with our ventilation or gas."

5 Q. There was another incident you described, can you read at paragraph 50 please?

A. "One time we just couldn't breathe in the heading we were in so I brought the lads and the machines out and then went back down to find out what was wrong. The continuous miner wasn't working and there was a young man just sat there at that heading and the fan was off. I  
10 asked, 'How long has the fan been off? Have you turned it off? Have you informed the official that it's been turned off?' So he says, 'I don't know, but I'll start it for you if you want.' I said, 'No, you're not starting anything, just leave it alone until I get an official down here.' And when I went and got a deputy I then helped the deputy degas both headings  
15 and then we got the fan running again. I don't know if there were incident reports, I used to report my concerns to whichever official was there. I do not recall any responses."

Q. How did you report your concerns?

A. By taking them physically to where problem were. If a fan were off, like  
20 one day a butterfly had been turned off, physically taking him and showing him and ask him, "Why has this been done? Has anybody informed you why it's been done?" And 90% of time they weren't aware because they were that fully stretched.

Q. How was feedback provided at Pike in relation to incidents normally?

25 A. Through morning meetings, toolbox talks, Doug White set a scheme in place whereas every morning they would have all miners and contractors in and any previous incidents from previous day would be discussed. And like I said toolbox talks which were a bit more direct because you could physically sit your team down and talk to them with  
30 what had been issued to us.

Q. Please read again, paragraph 53?

A. "One of the main issues which I brought up with the men was transportation and explosives. Everywhere I'd worked before explosives

had always been transported in separate cars with a flashing light to warn people. In the UK we had designated times when explosives would be transported and they were in a concrete safe on an underground railway cart that had a red flashing light and wherever that was travelling all the roadways were kept clear. It would come through down to where there would be a Mines Official waiting. He would then offload it and log it into an underground magazine. Lock it all up in a concrete safe set into the ribside with a proper steel door. When I raised this issue about detonators and the powder being brought in on the SMVs they just said they had always done it like that. After travelling two or three times on the same vehicle as the explosives and the detonators I started putting the detonators in the front cab and the powder in the back of the cab so that we got a distance between them.”

1035

15 Q. Was something done about your concerns?

A. Yes, I raised it with Iain Simmons and Les Tredinnick for McConnell Dowell and Les got us some lock up detonator boxes so that we could keep us detonators and powder separate.

20 Q. In your brief you say you saw a difference when Doug White started shortly before you left in April 2010. Can you say what the difference was?

25 A. He put a lot more physical presence underground. You didn't tend to see a lot of higher management until Doug came. And then there seemed to be constant inspections. He actually did a full audit on explosives, which that were revealed a few things. He were very proactive standards, when development working. Bolting standards. General tidiness. Everything we did but one of the main things he did introduce, even though ordering stone driveages it didn't make everybody's stone loose, which I found, I found really refreshing.

30 Q. What was happening with the stone dusting before?

A. It were minimal.

Q. Please could you read again at paragraph 62?

- A. “There was a culture problem in the mine. They had been stood down far too long just waiting for the mine to get into production. When they eventually got into production the machines they got were inadequate so yet again more downtime. You had lads who were used to earning a lot of money for doing very little. Then obviously from what I was told when this bonus system came in it went from no interest at all to all of a sudden we can earn all this money 100 miles an hour. They’ve gone to 100 miles an hour but their education was still no better and that’s where for me it all fell down. They’ve gone from dawdling about, standing about, I’ll be glad when it’s home time so come on let’s get this done. I don’t think they could cope with a production speed. I worked under production bonuses all my life because we were schooled in the old days you worked safely but quickly. But you would still have your eyes on everything and everybody. Your ears would still be working and if yours weren’t your mates’ were. That’s the difference you found up there. It was a crying shame because there was a lot of good boys in there.”
- 5
- 10
- 15
- Q. You say in your brief that, “Onsite management did try to enforce a proper safety culture.” What did you mean by that?
- 20
- A. Going back to what I’ve just said about Doug White – the start, there were prestart meetings which were a direct information to that shift as it came on and any, any incidents or hazards which need to be raised were raised. There were always toolbox, toolbox talks being issued and basically they did try but what you’ve got to appreciate is you can give people information but if they’re not fully trained they don’t appreciate information they’re being given.
- 25
- Q. Can you read again from 66?
- A. “There was one day when I went home and I said to my wife, “I’m taking that job I’ve been offered, because that mine is going to go.” I put my notice in not long after and I left and went to Papua New Guinea.
- 30
- Q. Why did you say that?
- A. I just didn’t feel safe.
- Q. You finish at 76?

A. "When I came back from New Guinea I could've gone back. My job was still there at Pike. But my wife said 'I don't want you go to back, so I listened to her and went to work for Solid Energy instead."

1040

5

**THE COMMISSION ADDRESSES COUNSEL – APPLICATIONS FOR CROSS-EXAMINATION OF WITNESS – ALL GRANTED**

**CROSS-EXAMINATION: MR HAMPTON**

10 Q. Mr Houlden, just that last paragraph that you read out in your brief when you took the advice of your wife and left, what were the particular reasons that made you think that your words, "Not feeling safe," what, were there particular reasons?

15 A. My health was suffering due to accumulations of CO and that were one issue. My wife had witnessed it first and after my third shift. I could hardly speak. Also it weren't one particular issue at Pike, it were the fact that you were surrounded by so many inexperienced people.

Q. Inexperience you've mentioned quite a lot of times in your brief and again in your oral evidence today. I that was one of your primary concerns I take it?

20 A. Yes it was.

Q. You've told us about your training in the UK, do I take it from looking at your brief that you last worked in the UK in coal what, in the mid-90s would that be?

A. Yes, yes.

25 Q. As at the mid-90s, what was the training regime for trainee miners in the UK? Was it still the same as the system you've described as being your time?

A. Not quite as stringent, no but you still went one on one.

Q. Still one on one?

30 A. Yes for so many days.

Q. And over what period of time would training take before you became a miner rather than a trainee?

A. One hundred and forty days.

Q. And to become then an experienced miner, I know we're talking in generalities, but from going from being a miner to an experienced miner how long would that take?

5 A. With every aspect in mining anything up to five years.

Q. So those time frames were still holding good as at mid-90s?

A. Yes.

Q. I don't know whether you heard any of the evidence yesterday Mr Houlden, but Mr Couchman told us something of trainees at Pike at  
10 least the first lot of trainees he put through a three month course, and them being then working at the face almost straight away by the sound of it. Would that be of concern to you?

A. Yes.

Q. Why?

15 A. Because with three months underground they don't appreciate surroundings, they don't appreciate what's happening around them. They need more time, they need easing into it. They need to know what's happening out there, they need to know what's happening round about them before they get to the face. The face is a very busy place  
20 and it's hard for them to appreciate everything that's going off round them.

Q. In the UK how long rough enough before a trainee miner would get to work at the face?

25 A. You would be on outbye work for approximately from being 16, two, two and a half years and then you weren't allowed on a face until you were 18, but you'd still got to have a minimum of 18 months to two years underground before you were allowed to progress without training.

Q. You mentioned in your evidence about ventilation and I think it's at about paragraph 36/37. Perhaps to 37, where you outline the lack of  
30 ventilation department ventilation officer, "I found it hard over at Pike to understand why they didn't have one." You're relating that to not having a ventilation department or a ventilation officer or both?

A. Both.

1045

Q. In your experience in coal mining, have you ever experienced a coal mine where there hasn't been a ventilation officer?

A. No.

5 Q. What about in other forms of mining, the stuff that you've since, and I think there's about seven other countries you've listed since you left England?

A. Yeah.

Q. Even in hard rock mining, a ventilation officer?

10 A. What you would have is a, your site manager would have his Grade A tunnel manager's ticket, which has already got his ventilation education in that.

Q. Well just then staying with coal for your experience in coal, were you aware that Pike had in mind, and this is talking ventilation still, had in mind that the ventilation system once properly installed would be through an underground ventilation fan, the main system was going to be underground. Did you understand that was going to be the situation?

15

A. That was not implemented when I were at Pike River.

Q. No it wasn't implemented but you knew that was coming?

20 A. Yes.

Q. Have you ever worked in a coal mine where the main ventilation system has been underground?

A. No.

Q. Do you have any concerns about means of egress out of Pike?

25 A. Well the only single mean of egress were the shaft. Personally I never went up it so I can't comment on it.

Q. The ventilation shaft?

A. Yeah.

30 Q. Have you worked in a coal mine in production when there has only been, effectively, only one means of egress?

A. No.

Q. We've heard something of standards of maintenance underground at Pike in terms of maintenance of roadways, removal of debris and

rubbish and so on. Do you have any comment, or in filling in potholes, those sorts of things, do you have any comment about your observations about standards of maintenance underground in terms of the roadways and so on?

5 A. No not really.

Q. Well just one, I think just one final topic Mr Houlden. Your experience in working in coal in the UK in terms of health and safety involvement, what degree of involvement of employees in health and safety issues in underground coalmining in the UK?

10 A. What you had were each seam had a safety committee and on that safety committee you would have one union official, one member of management, two miners, one mechanical, one electrical. So every aspect of what that seam were doing were discussed and then once these meetings had been held what you would get then is feedback  
15 from union to all membership, if they thought there were any issues that needed to be raised.

Q. And the union involvement in that respect was of vital importance wasn't it?

A. Yes.

20 Q. Mines inspectorate in the UK, that is the government mines inspector, another – are you familiar with the three legged stool expression about mine safety at all?

A. No.

1050

25 Q. We'll just deal with mines inspectorate in the UK, the Government mines inspectorate. A vigorous body?

A. Yes. When a mines inspector came on site at UK it were like, to put it simply, a God had come on site. Everybody were on their toes, everything were right and manager knew if it weren't right, the man had  
30 got the same power as police and he could arrest him.

Q. Sorry, did you say it was like a "God" had come on site?

A. Yes.

Q. No disrespect to you I just wasn't sure what the word you'd used. How regularly would mine inspectors come around?

5 A. It varied. Depending on size at mine, obviously mine were originally there were 2500 men so they were pretty regular visits because we had six different seams working out of one shaft.

Q. Would there be announced and unannounced visits by the inspectorate?

A. Yes.

Q. Your view as to the necessity for unannounced visits is what?

10 A. Important. That's when you know that it's been done properly and not just because he's coming to visit.

Q. Can you tell us anything about on mines inspectors' visits to UK collieries, the involvement of union officials?

15 A. There would be a union official, a management official would all go round with him and then any issues that were raised by inspector were to confer standby union and management.

**CROSS-EXAMINATION: MS SCHMIDT-McCLEAVE**

20 Q. Good morning Mr Houlden I represent certain officers and directors of the company and I just want to ask you a couple of questions to clarify a couple of things in your brief. So you worked underground at the Pike Mine for approximately six months, correct?

A. Approximately nine months.

Q. Nine months, right. And that was as a leading hand for McConnell Dowell?

25 A. Yes.

Q. So you were never part of the management team at Pike?

A. No.

Q. In fact in that time – or at any time you've never been a Pike employee, have you?

30 A. No.

Q. And your employer McConnell Dowell was a contractor to the company Pike?



A. Yes.

Q. And you've stated in your evidence that you finished working for McConnell Dowell at the Pike Mine at the end of April 2010?

A. Yes.

5 Q. So that was approximately six/seven months before the explosion in November, correct?

A. That's right.

Q. You didn't go back underground at the Pike Mine during that seven month period?

10 A. No.

Q. And you didn't visit the Pike Mine during that seven month period, did you?

A. No.

**CROSS-EXAMINATION: MR NICHOLSON**

15 Q. Good morning Mr Houlden. You were asked by Ms Mills about the induction you had when you came to Pike River, in your answer were you talking about the Pike River induction that you received or the one that you received from McConnell Dowell?

A. No that was Pike River induction.

20 Q. Because you received a separate induction from McConnell Dowell as well didn't you?

A. Yes.

Q. Do I take it from the fact that you've previously been at Spring Creek, had you already passed the 7146 unit standard when you were working  
25 down there?

A. Yes.

Q. Now you were also asked some questions about the officials in the mine, that's the deputies and the underviewers, they were all Pike personnel weren't they?

30 A. Yes.

Q. Did McConnell Dowell have any deputies or underviewers?

A. No.

Q. And Ms Mills asked you a question about the differing shift patterns, do I take it from your answer, were you concerned that Pike wasn't getting enough traction or enough understanding of the needs of the various contractors because it was rotating the deputies rather than keeping them with crews?

5

1055

A. The point I were trying to make were the – because you haven't got a constant official you don't get a one to one basis, so even though the visit is two or three times a shift, they weren't really involved that much with us and that's where more responsibility were put on such as myself as a leader you know.

10

Q. And it was those officials who were in charge of determining the ventilation arrangements in the mine weren't they?

A. Yes.

15

Q. And so you and the crews were the contractors, could only be reactive and respond to the ventilation that you were given?

A. Yes.

Q. You talked about some issues with carbon monoxide and said you got some headaches working underground. The McConnell Dowell crews had their own men with gas tickets and gas detectors?

20

A. Yes.

Q. In addition to the Pike officials didn't they?

A. Yes.

Q. And were they checking for methane and carbon monoxide?

25

A. Yes, it were done on a daily basis.

Q. So when you received high CO ratings, what did you do?

A. We would pull out.

Q. And did you raise any concerns about carbon monoxide with Pike?

A. No I did not.

30

Q. And finally, in paragraph 58 of your brief which Ms Mills didn't ask you to read out, the final sentence says, "As much as I liked working for McConnell Dowell I hated working at Pike."

A. Yes.

Q. Do I take it from that you thought McConnell Dowell was a good operator but the Pike wasn't so good?

A. Yes.

**QUESTIONS FROM COMMISSIONER HENRY:**

5 Q. Mr Houlden, you mentioned I think at paragraph 44 of your brief that the deputies at Pike were stretched?

A. Yes.

Q. Could you just expand on that?

10 A. Due to inexperience at workforce, what I did observe were that your Pike officials were trying to be a tutor, a working man as well as being an official and this is where it just got too much for them. They couldn't do everything so people that were working outbye, them didn't get as many visits as what they would've done had the official just been doing what he were paid to do.

15 Q. And you also mentioned about reporting incidents and you've given us some incidents in your brief. You reported them to the appropriate Pike official?

A. Yes.

Q. Did you report them also to McConnell Dowell?

20 A. No I did not. Once I'd passed it on to the immediate supervisor, by me, I then left it alone.

Q. Did you follow up as to what had happened to your complaint or your suggestion?

25 A. Once the situation had been resolved on shift, i.e. starting fan, do your gassing or putting regulator back as it should've been, I never followed it up no more.

Q. And finally just for me as a layperson on this you, you mentioned the young fella sitting with the fan switched off offering to switch it back on again.

30 A. Yeah.

Q. What is the danger in that?

A. Well obviously we was not knowing how long fan had been off. If we got an accumulation of methane at face and you just suddenly turn fan back on and put a plug of gas through that fan, you are initially, well, you are basically putting yourself in position of an explosion.

5 Q. Through a spark or...?

A. Through a spark of friction like ignition or whatever.

**QUESTIONS FROM COMMISSIONER BELL:**

10 Q. Mr Houlden, when you'd left Pike did you tell anyone why you were going? Did you tell anyone at Pike or your supervisor at McConnell Dowell why you were leaving?

A. No I did not.

Q. Can you tell me why you didn't do that? If you were so concerned that the place was going to, "Go up," to use your words.

A. Yeah.

15 Q. Why wouldn't you have passed that message onto the people there?

A. I did not feel in my position that it were for me to address all like that.

20 Q. I mean my understanding about coalmining the camaraderie that pervades coalmining is one of the reasons that people survive, because they look after each other and you've sort of told us a number of occasions where that didn't appear to be the case at Pike. Would you say that camaraderie as such or the sort of things that bind miners together wasn't really existing at Pike?

1100

25 A. No it weren't. What you got were a completely different culture based to what we were used to in UK. We were born and bred into mining and brought up with it, so your progression from school to mines were just a continuation of friendships, and then it just got stronger. The more you work with people the longer you spend round them, the stronger your bonds come. And I don't think people at Pike got that chance because  
30 they hadn't got upbringing and initial education what they needed.

Q. We've seen evidence that the number of different nationalities at Pike may have been a factor in why there's bonding didn't take place, would that be a thing that could be a reason?

5 A. It could be a reason because of different cultures. I don't think that were the primary reason.

Q. So what do you think was the primary reason?

10 A. Basically they were all from different walks of life, woodmen, this, that and all that, and when they came into industry they treated just same as what the, whether they'd been at bush or where they've worked before and I don't think they have that bonding like a miner has whose done it all his life.

**QUESTIONS FROM THE COMMISSION - NIL**

**RE-EXAMINATION: MS MILLS – NIL**

15 **WITNESS EXCUSED**

**MS SHORTALL CALLS****JOHN ALAN STUART DOW (SWORN)**

Q. Your name is John Alan Stuart Dow?

A. That's correct.

5 Q. And you were a director Mr Dow of Pike River from February 2007 until recently?

A. That's correct.

Q. And chairman of Pike River from May 2007 until recently, is that right?

A. That's also correct.

10 Q. Now have you prepared and filed a statement of evidence for the purpose of Phase Three of this enquiry?

A. I have.

Q. And is that statement marked, DAO.037.00001?

A. Yes.

15 Q. And do you confirm Mr Dow that that statement is true and correct?

A. I do.

Q. Now with the leave of the Commission Mr Dow I'm going to lead your evidence today and we're going to cover nine topics, so I'll just outline those. The first will be your qualifications, experience and your return to  
20 New Zealand from abroad. The second will be how you came to be a Pike director. The third topic will cover during your tenure the makeup of the Pike board, the functioning of the board and the focus of the board, particularly around the time you joined and the IPO. The fourth topic I will question you about involves your dealings with management.

25 The fifth topic will be your visits to Pikes mine site and the raising of any concerns with you. The sixth topic will involve me putting to you some of the criticisms of Pike that have arisen in this enquiry including operational challenges and the hydro-bonus. The seventh topic will be the health safety and environment committee of the board which you  
30 were member. The eighth topic will be your advisory contract with the company. And then in the ninth topic I will put to you some questions raised by the New Zealand Society of Risk Management and connection with the approach taken by the board during your tenure to consider and

manage risk. Do you understand that that is the format in which I'll lead your evidence Mr Dow?

A. Yes.

1105

5 Q. So let us start with your qualifications, experience and return to New Zealand. You have a qualification in geology, is that right?

A. Yes.

Q. And can you describe to the Commission what that qualification is please?

10 A. Yes, I have a BSc honours in geology from Canterbury University.

Q. And you have 43 years experience in the mining industry?

A. Yes.

Q. And prior to your retirement in 2005 you had spent approximately 34 years working outside New Zealand in Antarctica, Australia, South East Asia, the United States and Latin America, is that right?

15

A. That's correct yes.

Q. And much of your international career was spent working for Newmont Corporation which is one of the world's largest gold producers, right?

A. Yes, Newmont Mining Corporation. That's right.

20 Q. And you Mr Dow spent 13 years working for Newmont as a greenfields explorer and exploration manager in Indonesia?

A. Yes.

Q. And you spent five years as a senior executive at Newmont's headquarters in Denver Colorado, right?

25 A. Yes, that's correct.

Q. In fact you were part of the senior management team for Newmont's global operations, right?

A. Yes I was part of their executive committee.

Q. And you developed gold mines in countries like Peru too, didn't you?

30 A. Yes.

Q. And at the time of your 2005 retirement you were the chairman and managing director of Newmont's Australian subsidiary based in Adelaide, right?

A. That's right yes.

Q. And as such you ran a company with a staff of around 3000 people and a further 3000 contract employees, is that right?

A. Yep.

5 Q. And approximately 10 operating gold and base metal mine sites, right?

A. Yes in Australia and New Zealand.

Q. And you were also a director of the Minerals Council of Australia?

A. Mhm.

Q. Sorry could you give me a verbal answer Mr Dow?

10 A. Yes.

Q. And can you please describe the nature of that council to the Commission?

A. The Minerals Council of Australia was Australia's premier mining industry representative body. It was comprised of the 19 largest mining companies in Australia. It had an advocacy role for the minerals industry in Australia. It also encouraged mining companies to follow international best practice in the areas of mine safety and environmental affairs and community affairs. And it was, the council itself, was attended by the chief executives of all those companies. The reason  
15 why it was effective was because the CEO's all came.

Q. Now when you retired back to New Zealand in 2005, what did you do?

A. I established a mining industry consultancy, called DowGold Consultants.

Q. Did you also take out some directorships?

25 A. Yes. One of the things I wanted to do when I came back to New Zealand was work part-time. I retired when I was 59 so I wasn't ready to give up work. I'd had extensive international experience in gold and base metals, both the operating level and also at the governance level and it seemed like a sensible thing to use my experience as a  
30 non-executive director in other companies that might be looking for somebody with my background.

Q. And did you also have an involvement with the Australian Institute of Mining and Metallurgy?



A. Yes I was elected to two three year terms as a director of the Australian Institute of Mining and Metallurgy.

Q. And did you have an involvement with Straterra?

5 A. Yes following on my experience with the Minerals Council in Australia it was clear to me and a number of other senior leaders in the New Zealand industry that we lacked that kind of similar effective advocacy voice and I along with a number of senior people in other mining companies here put together and decided that we needed something like that in New Zealand and Straterra was the outcome.

10 Q. Did you have an involvement with the codes centre of excellence?

A. Yes after I retired the University of Tasmania asked me to chair the External Advisory Board and the Codes Centre of Excellence at the University of Tasmania and I still hold that role.

Q. And have you also had some involvement with the Vision Waihi Trust?

15 A. Yes, I'm a trustee of the Vision Waihi Trust as well.

1110

Q. What was your objective, Mr Dow, in returning to New Zealand and getting involved with these efforts?

20 A. Well I'd been offshore for 34 years, it was time to come home, so that was why we came back to New Zealand and, as I said, and at 59 I was too young to give up working so I wanted to do what I felt I could do where I had some expertise and experience and it seemed that the New Zealand industry had opportunities for my experience. I was  
25 approached by a number of companies in Australia to join their boards as well and I did in fact take a non-executive position at Troy Resources which is a West Australian based company, and eventually became chairman of that company too, but my objective really was to put something back into the industry. I'd seen a number of my colleagues  
30 retire and just drop out of sight. There's a lot of opportunities for people that have done the sort of things that I had done to share that experience with other people and provide some leadership and guidance in other companies as a non-executive director, that was what was motivating me.

Q. And so how busy did you become with these activities post-retirement?

A. Well I was only intending to work part-time, but as one thing led to another I ended up coming back to being nearly full-time employed.

5 Q. Let me turn to the second topic I'd like to cover with you, Mr Dow, which is your involvement with Pike and how you came to be a director. How did you first learn of Pike?

A. I was approached at the end of 2006 by Andrew McDouall who was a principal of McDouall Stuart Stockbrokers in Wellington who were organising the IPO of Pike and they were looking for new non-executive independent directors of Pike and I was approached and asked if I would consider it.

10

Q. And what happened next?

A. I was interested obviously because it was in New Zealand. I'd spent most of my career offshore and this was an opportunity coming up in New Zealand. I thought the least I could do would be to deal with it, make a few enquiries, to do a little bit of due diligence, why was the company looking for independent directors. I spoke with two senior people in New Zealand Oil and Gas, two directors of New Zealand Oil and Gas who were also directors of Pike. I called Peter Whittall and introduced myself and eventually went down to the, Atarau mine site to meet with him and to have a site visit. I made some other enquiries as to why Pike was looking for directors, what was going on, what the state of play was, the quality of the resource, to get a sense of whether this was an opportunity, what I could add something, add some value.

15

20

25 Q. And were Tony Radford and Ray Meyer the two common NZOG and Pike directors that you're referring to?

A. Yes, yes they were. I also talked to Gordon Ward who was a general manager at NZOG at the time and was the Pike project leader.

30 Q. What was the state of Pike's development at the time that you were making these enquiries before becoming a director?

A. It was very early in the excavation of the access tunnel. I think the access tunnel might have been in two or three hundred metres only.

There'd been some site surface facilities established but the access tunnel was just starting.

Q. And do you recall who was working on the access tunnel?

5 A. Yes, McConnell Dowell was the contractor in charge of digging that access tunnel.

Q. Did you have any understanding at this time before you became a director about the mine's ultimate design?

10 A. Not at that stage. I was aware that it would eventually be mined as a hydromining operation although I didn't know much about hydromining at that point. My concern really was to see whether there was anything that would prevent me from taking the role or which would, might dissuade me from it and the conclusion I reached was that I couldn't see anything that would dissuade me from taking the role. I was excited by the possibility that there was this high quality metallurgical coking coal  
15 deposit that was about to be developed and I had worked significantly offshore and some of my ongoing commitments were still offshore so I was looking for something a little bit closer to home and of course the mine site is a relatively easy drive from where I live in Nelson. I was impressed particularly by the calibre of a fellow who was running the show on site, that was Peter Whittall, and I was reassured in my  
20 discussions with NZOG that they had the matter of mine development and the financing of it under control. I was curious as to why they were looking for new non-executive directors but I satisfied myself on that question and eventually some weeks later accepted the position as non-  
25 executive director.

1115

Q. And you understood at the time in late 2006 when you were first approached that Pike was a subsidiary of NZOG, right?

A. Yes, absolutely yeah.

30 Q. Now you joined the Pike board as an independent non-executive director on the 22<sup>nd</sup> of February 2007, right?

A. That's right.

Q. And who else was on the board at that time?

A. Well Tony Radford and Professor Ray Meyer. Ray was the acting chair. I believe Dipak Agarwalla was also on the board and –

Q. Was the other director Mr Ward at that time?

A. Yes I believe it was, that's right.

5 Q. And Mr Radford, do you recall was the longest serving director having become a director of Pike in January 1992?

A. Yes, Pike had been an asset of New Zealand Oil and Gas for a long time. It was established as I understood it as a separate company wholly owned by NZOG in the early 90s and because Mr Radford had  
10 been I believe the Chief Executive of NZOG, he also took the chair at Pike when that company was first established.

Q. At the time you joined the Pike board, did you have an understanding as to Mr Radford's industry involvement?

A. I knew him by reputation, I had never met him before. In my immediate  
15 previous job at Newmont in Adelaide, one of the 10 mines that I referred to earlier was the Martha Mine at Waihi and a company that Mr Radford was an executive of had been a minority shareholder and we at Newmont had attempted to buy that stake so I became aware of Mr Radford if you like vicariously through that purchase process. I'd  
20 never met him before but he had a good reputation as being a shrewd and clever businessman.

Q. And what about Mr Meyer's expertise? Did you have an understanding of that at the time that you joined the board in February 2007?

A. Yes of course I asked the question about you know, who these guys  
25 were and what they'd been doing. Professor Meyer had a distinguished career in engineering education. He'd had a wide range of experiences, both in New Zealand and offshore. He'd been prominent in the engineering department at Auckland University and was a director of a number of other companies, so he had considerable governance  
30 experience and I came to realise a certain wisdom that went with it.

Q. And what about Mr Agarwalla's involvement in the industry? Did you have an understanding of that at the time you joined the Pike board in February '07?

A. I didn't know very much about it. I understood that he comes from a prominent Indian family that had been involved in coke making for quite a period of time, but that was all I knew.

5 Q. And what was your understanding of Mr Ward's involvement on the Pike board at the time you joined in February 2007?

A. Yeah well Gordon Ward was very much the main man. Gordon had been the project executive for New Zealand Oil and Gas for a number of years, from the late 90s as I recall. He had been the architect of the project. He had supervised and led the various pre-feasibility studies  
10 that had been done and then the more comprehensive feasibility that was done in 2005. I understood that he'd also championed the various permitting processes, the seven years that Pike took to get environmental permits from DOC and various other operating permits for the company. It was made very clear that this was very much  
15 Gordon's baby and he was very much the main guy. As a general manager in charge of it at NZOG and my understanding when I came on was that he would be promoted to Chief Executive once the Pike's subsidiary was separated off after the IPO.

Q. Now did Stuart Nattrass also join the Pike board on the same as you?

20 A. Yes he did.

Q. And what was your understanding of Mr Nattrass' background?

A. Well of course I had talked to Stuart as part of my own due diligence because he'd been invited to join the board at the same time I had. I asked him what he'd been doing with his career and he having  
25 extensive career in international banking and he was a finance and capital market's expert. He'd been working in the currency markets as I understood. I met with him, understood that he would be bringing considerable financial strength and especially experience in the capital markets to Pike's board. That was reassuring for me too to know that  
30 somebody with Stu's background was also kind of planning coming on the board.

1120

Q. Did you have a view of Pike's board overall makeup and expertise by late February 2007?

A. Yes.

Q. What was that view?

5 A. The board was comprised of people with substantial industry and governance experience. The, at the immediate time that I joined and during the period leading up to that, Graeme Duncan who had been a director of Pike, was a very experienced coalmining engineer and had been largely as I understood it responsible for overseeing much of the  
10 technical side of the feasibility study, the preparation for the IPO. The rest of the board had diverse governance and business experience.

Q. Now was the IPO the focus of the board at the time you joined in February 2007?

15 A. It was one of the things that the board was doing. Clearly the excavation of the access tunnel was important. Clearly the development of access into the coal resource was an important part of eventually becoming a coalmine but financing that activity was very much the focus of the board's activity at that point.

20 Q. And you were appointed chairman in May 2007 just prior to the IPO, right?

A. Yes I was.

Q. And the number of Pike directors grew to seven in July 2007 when Arun Jagatramka joined the board, is that right?

A. Yes, Arun Jagatramka, yes.

25 Q. And what was his involvement in the industry?

A. Well he was the Chief Executive of an Indian coal and coke company called Gujarat NRE. Gujarat had bought a cornerstone stake in Pike and Arun had joined Pike's board as a consequence of that transaction. It was similar to the stake that Saurashtra Fuels had bought sometime  
30 earlier and Dipak Agarwalla was represented on Pike's board for the same reason.

Q. Did there come a time Mr Dow when Mr Jagatramka appointed alternates to the board?

A. Yes that happened in Gujarat's case in the latter part of 2009 as I recall when Sanjay Loyalka was appointed as Mr Jagatramka's alternate and then I think it was in August or September 2010 when Surendra Sinha was appointed as an alternate to Mr Agarwalla.

5 Q. And did any other changes to the board occur before the company went into receivership in December of 2010?

1123

A. Yes the only change in that period was when Mr Ward left the board in October 2010.

10 Q. And had Mr Meyer announced his retirement as a director before the date of the company's receivership?

A. Yes he had. He'd indicated to me in the middle of 2010 that it was his intention to retire at the annual meeting that year and so the board was looking for other candidates to replace both Mr Ward and  
15 Professor Meyer.

Q. And what sorts of candidates was the board looking for?

A. Well I was conscious that we needed to get somebody with a bit more coalmining experience on the board and we were looking at people with a coalmining background.

20 Q. Now during your tenure as a Pike director, the board had a corporate governance manual which contained a copy of the board's charter and also among other things, included charters for the board's sub-committees, do you recall that?

A. Yes.

25 Q. And just for the sake of completeness, you've attached a copy of that manual to your brief at JD1, haven't you?

A. Yes.

Q. And I'm not going to go into that document, but I just want to ask you some broader questions. There were sub-committees established at  
30 the board level for audit, remuneration, due diligence and health, safety and environment, right?

A. That's right.

Q. And at the time you joined Pike's board in February 2007 you replaced Mr Duncan on the health, safety and environment sub-committee with Professor Meyer, right?

A. Yes.

5 Q. And we'll come back to talk about that committee in more detail later, but let's just stay on some of the functioning of the board. During your tenure as a Pike director, how frequently did the board meet?

A. Regular scheduled board meetings happened every month, usually in the last week of the month. There were a number of other meetings that  
10 were called that were not scheduled as part of the monthly meeting for various other activities that were going on, particularly capital raisings.

Q. And how were those meetings held?

A. Usually they were done telephonically. Most of the regular meetings of the board were held in person to the extent that we could, but meeting  
15 every month it was quite acceptable for every now and then those meetings to be held telephonically. Special meetings, largely were called with relatively shorter notice and without an annual calendar in advance and so they were often held over the phone, but we did meet in person in Wellington on a number of occasions as well.

20 Q. How did the frequency of Pike board meetings compare with your experience with other boards?

A. Pretty normal for companies to meet on a monthly basis. Pike was quite normal in that regard.

Q. And you mentioned in person meetings in Wellington, were board  
25 meetings held in person in any other locations?

1126

A. Yes they were. Directors were stretched over quite a area of  
geography. Mr Radford lived in Sydney, two Indian directors lived in  
India, or they travelled extensively. Professor Meyer was in Auckland.  
30 So we would, we would arrange for regular meetings of the board at the Atarau mine site, that was important. We had regular meetings in Wellington face to face. At least and sometimes twice a year we would



meet in Australia to make it easier on the travelling for directors that lived far away, and other meetings held on the phone in between.

Q. Were materials circulated in advance of board meetings?

5 A. Yeah, Pike had a good process like that. Good discipline in preparing board papers, getting them out four or five days in advance, comprehensive papers, plenty of time for directors to take in the agenda and read the supporting papers ahead of the meetings.

Q. So if I could ask Ms Basher to pull up the document at DAO.007.05754.

**WITNESS REFERRED TO DOCUMENT DAO.007.05754**

10 Q. Is the document on the screen Mr Dow an example of an agenda circulated in advance of a Pike board meeting?

A. Yes it is.

Q. Who would prepare the agendas for board meetings?

15 A. Mr Ward as chief executive would usually prepare them. Sometimes his assistant would draft an outline but he would finalise them and add or subtract items. He was the preparer of board agendas, yes.

Q. And did the format of the board meetings typically follow the same order as is reflected in the agenda that's currently on the screen?

20 A. Yes, and I should say that sometimes Gordon would send me a draft of the agenda and say, "Here's the agenda for next month's meeting. Anything you want to add," especially, so, but yes this was a pretty much a standard format.

25 Q. And as reflected on the document that we are viewing Mr Dow there's a reference to next board meetings and next committee meetings at the bottom of the document?

A. Yeah, yeah. That's right.

Q. Do you see that?

A. That was normal too, yes.

30 Q. Now was there an operations report that was included as part of the materials circulated in advance of meetings?

A. Yes, a very substantial part of the board papers comprised a summary of operations activities from the mine site. That was prepared by site people and provided an opportunity for the board to understand in more

detail what was happening and what progress had been made since the previous board meeting.

Q. So if I could ask Ms Basher to bring up the document at DAO.009.08037?

5 1129

**WITNESS REFERRED TO DOCUMENT DAO.009.08037**

Q. And my question to you Mr Dow is whether this document is an example of an operation's report that was circulated as part of the board materials in advance of meetings during your tenure?

10 A. That is the first page of the executive summary of a document that sometimes ran 20 or 30 pages, but that is the first page, so that's the executive summary page, yes.

Q. Did you have any comment about the structure of the operation's reports?

15 A. It's become international best practice for mining companies when considering operations to put health and safety as the first item on the agenda. Pike did that, it's common in many other companies and Pike structured it's board meetings and its operation's reports in that way and you'll see safety is item 1.1.

20 Q. And if I could ask Ms Basher to bring up the second page of this operation's report which is dated the 19<sup>th</sup> of April 2010, is that right Mr Dow?

A. Yes.

25 Q. If we just come to the second page, do you see heading number 2 there? "Safety."

A. Yes.

Q. And so that is the section of this report that immediately follows the executive summary right?

A. That's correct, yes.

30 **COMMISSION ADJOURNS: 11.30 AM**

**COMMISSION RESUMES: 11.48 AM**

**EXAMINATION CONTINUES: MS SHORTALL**

- 5 Q. Just before the break Mr Dow we were looking at an example of an operations report and this one is dated the 19<sup>th</sup> of April 2010, it's a 26 page report so I'm just going to ask you generally about a couple of pages. We're at page 2, the safety section, and if we could bring up alongside that if possible Ms Basher page 3 please. And if we just focus on these two pages of the operations report Mr Dow, is the structure and format in which there are separate sections for site inductions and then an analysis of accident and incidents consistent with the way in which safety information was presented in all of the operations reports during the course of your tenure?
- 10
- A. Yes it is.
- 15 Q. And this information, I think you described earlier, was put together by site management. Do you have an understanding as to who in site management was involved in preparation of the material included in the safety part of the operations report sent to the board?
- A. Yes I imagine it was prepared by Neville Rockhouse.
- 20 Q. Now the graphs that are shown on page 3, which is the second page on the screen here, what was the purpose of receiving information in this graph or diagrammatic format?
- A. Well the board needed to know firstly what was happening at site. The graphs represent total incidents and medical treatment injuries. These are lag metrics that the board was using to understand what was happening on site and also to record relative improvements in performance. As you can see from the graph at the top on page 3, there's about a 12 month period look back at the site performance with regard to total incidents and then the histogram showing the same period for medical treatment injuries.
- 25
- 30 Q. Now if I could just turn you to the next page if we could bring it up Ms Basher, it's 4 of this 26 page report, I just want to have you look at the other safety related page and there is a sub-heading here at page 4,

“Safety related matters,” and a subsection for, “Significant incident,” and then another for, “The new hazard identification system,” and in fact here it’s the I Am Safe initiative as to which there has already been evidence before the Commission. My question to you Mr Dow is just whether the safety related matters section of the operations report, did that change in the reports? Was there some degree of fluidity around it?

1151

5  
10  
15  
A. The – no I think it’s fair to say that the board was interested in relative performance as well as absolute performance and reporting the same things every month gave the board a sense of whether or not improvements were being reflected on site. Obviously new initiatives like “I am safe” were important new initiatives to roll out. You know, that was one of a number of lead indicators for safety performance. But you can see there's quite a significant amount of the report focuses on the safety aspects of it and the board was getting quite a lot of good information.

20  
Q. And without going into the detail, do you recall that the operations reports also included sections on environment, production, the coal prep plant, in seam drilling, equipment, human resources, coal marketing and sales?

A. Yes. All of that and also a consents register as well. Quite a lot of graphs and tables attached as well as the prose.

25  
Q. And the report that we've been looking at and discussing the April 19, 2010 report, runs 26 pages. Is the length of that report generally consistent with the length of other operations reports that you receive?

A. Yeah, that would be pretty typical, yes.

30  
Q. Now how were the operations reports presented to the board at board meetings?

A. Well the written reports were circulated as part of board papers ahead of the meeting and then for an in person meeting the operations report would be presented orally usually by Mr Whittall. He would go through

each of those sections one by one, take the board through often in quite a lot of detail. There was an opportunity for directors to query both Mr Ward as CEO and Mr Whittall as general manager of mines, to ask questions about any aspects of the operations report that they'd received as part of their board package a few days before. It was never taken as read and it was always done as the first item on the agenda after the minutes of the previous meeting.

5 Q. And were minutes taken of all of the Pike board meetings?

A. Yes.

10 Q. Let me show you a document? If we could have it Ms Basher at DAO.019.01192.

**WITNESS REFERRED TO DOCUMENT DAO.019.01192**

15 Q. And my question to you Mr Dow is whether you recognise this document as a set of minutes for a Pike board meeting held on the 24<sup>th</sup> of September 2010?

A. Yes I do.

Q. And without taking you to it, do you recall that you signed minutes as chairman of the Pike board?

20 A. Yes, I signed all the minutes or all the minutes where I was the chairman, present as chairman.

Q. And without going in any detail through the minutes that we have here for the 24<sup>th</sup> of September, is the structure and I understand you're just looking at the first page, but is the structure of this set of board minutes consistent with the format of minutes taking of other board meetings during the time that you were a director at Pike?

25 A. Yes it is.

1154

Q. Were the minutes a verbatim record of matters discussed?

30 A. No of course not. The minute of meetings were high level summaries of business transacted. They were accurate summaries of the business that had been discussed, but a lot of the interplay between directors, not all the questions asked or the answers given are recorded verbatim in the minutes but they are a really good high level summary – Pike was

lucky to have a very good company secretary and he was a very good minute taker and I find the minutes good reflections of what was done and said and agreed to.

5 Q. Now for this meeting on the 24<sup>th</sup> of September 2010 Mr Ward has given his apologies and not attended, right?

A. Yes.

Q. But did Mr Ward typically attend all board meetings until when he left the company in early October 2010?

A. Yes he did.

10 Q. And did Mr Whittall accompany Mr Ward to those meetings?

A. Mostly he did, yes.

Q. And did you have a recollection of Mr White every attending board meetings?

15 A. Mr White would've attended board meetings that were held at the Atarau mine site, so that would've been meetings onsite during 2010.

Q. And can you generally describe to the commission the role of Mr Ward, Mr Whittall and to the extent that he attended, Mr White at board meetings?

20 A. Well as I said earlier, Mr Ward was the Chief Executive of Pike River Coal for the entire period that the company was a separate project up until October last year. As CEO he would present items that the board needed to hear from management about. He did most of the talking on the aspects other than operations. He would introduce Mr Whittall to give his operation's report and Mr Whittall would provide me as I said  
25 earlier the oral summary and presentation of operation reports and in 2010 when Mr White was also attending board meetings, he also presented to the board on matters that we'd asked him to.

30 Q. Now if I could just turn back to the IPO which you mentioned earlier was one of the focuses of the board, at the time that you became a director in February of 2007. As part of preparing for the IPO, did you develop and understanding about the work undertaken by the company regarding the geology of the area in which the mine would be developed?

1157

A. Yes I did.

Q. Let me take you to a document at DAO.005.04679?

**WITNESS REFERS TO DOCUMENT DAO.005.04679**

5 Q. And do you recognise this document Mr Dow as a copy of the prospectus that formed the basis for the IPO?

A. Yes I do. That's the cover.

Q. And do you recall that the document was signed by you as a director of Pike?

10 A. Yes.

Q. And do you recall that BDA prepared an independent technical review at the request of the directors for purposes of the IPO?

A. Yes.

Q. Did you have an understanding at the time as to what BDA was?

15 A. Yes, yes.

Q. Can you describe that?

A. Yes, BDA is Behre Dolbear Australia, it's a major international mining consultancy. I had exposure to them through their head office in Denver, Colorado when I was there as well and they are a major global consulting organisation with offices all around the world and their Australian subsidiary was the preparer of technical reports for the Pike IPO. And we were very pleased to have them they've got a very high international reputation.

20 Q. You confirmed earlier that as part of preparing for the IPO you developed an understanding about the work undertaken by the company regarding the geology of the mine area. Is that understanding consistent with your recollection of the BDA report?

25 A. Yes.

Q. Did you have an understanding separate and apart from the BDA report?

30 A. Not really, no.

Q. If I could take you just briefly to several parts of the report. Ms Basher it's at page 125 of the prospectus.

**WITNESS REFERRED TO DOCUMENT**

Q. And do you see in front of you now Mr Dow what appears to be the first page of the BDA report included as part of the IPO prospectus?

A. Yes.

5 Q. And this is dated the 17<sup>th</sup> of May 2007, right?

A. Yes.

Q. So around the time that you're the chairman of Pike?

A. Yes.

1200

10 Q. Now the summary that we're looking at, I just like to draw your attention to two of the bullet points on this page, this is the second bullet point that start there. Maybe Ms Basher if we could just flesh it out, the one beginning, "Four cars contained." And there's a reference in the BDA report there Mr Dow and I'm reading from the document, "Forecast  
15 contained within the feasibility study and associated documents and presented in the offer document are based on adequate geological and geotechnical data taking account o the expected mining conditions. The assumptions used in estimating production tonnages, coal yields, operating costs and capital costs are regarded as appropriate and reasonable and within accepted orders of accuracy for studies of this  
20 nature." Do you see that Mr Dow?

A. I do.

Q. And is that statement and a summary of BDA's report consistent with your recollection of information provided to the board by BDA back at  
25 the time of the IPO?

A. Yes it is.

Q. Did you do anything beyond receiving this report from BDA to gain any comfort about that type of conclusion drawn by BDA?

A. Not separately, but I was aware for example that the resources and  
30 reserves had been calculated independently and that had been reviewed by BDA. They had been prepared by somebody who was a competent person under the JORC Code and I was familiar with the JORC Code 'cos I at one stage was on the JORC committee so I was



comfortable or comforted by the fact that competent people had prepared both the wider assessment of the feasibility study but also that the forecasts of reserves and resources and the subsequent production that might come from them had been prepared by people with competence in the field and upon whom we could rely.

5

Q. If I could just turn you to the second to last bullet point on the same page, if we could bring that one up please Ms Basher too, thank you. There's a reference here, another of BDA's conclusions I'm reading from the document, "The proposed mining equipment and methods while not widely employed internationally are used in other mines in New Zealand and are considered suited to the mine plans and layouts and generally support the production forecast." Do you see that Mr Dow?

10

A. Yes.

15

Q. And did you have a view as a Pike director back in May 2007 around that conclusion by BDA?

A. I think that the question the board had was the question of hydromining and where it was done before. We knew that it was being done at Spring Creek and other smaller mines in New Zealand and experts had provided their opinions to us that Pike was suitable, in fact not only suitable, but particularly suited to hydromining as a mining technique and so the board was generally satisfied that not only with the resources and reserves are competently calculated and the mine plan, but also that the proposed mining method was appropriate to the circumstances.

20

25

Q. If I could just ask Ms Basher to bring up the next page of this report which we're still in the summary section. At the top of the summary section of BDA's report, if I could just ask for that first bullet point to be pulled out. Mr Dow, there BDA concludes and I'm reading from the document again, "Pike River plans to put in place appropriate occupational health and safety programmes as well as the various management plans required under statutory provisions for subsidence, ventilation, gas, spontaneous combustion and environmental management. Management and mitigation plans for each of these

30

aspects have been given due consideration to ensure that the inherent risks and issues in each are well managed and are subject to appropriate monitoring measures.” Do you see that Mr Dow?

A. Yes.

5 Q. And can you explain to the Commission what the board’s understanding of that conclusion by BDA in May 2007 was?

A. Well what BDA are saying here is as I read it, that they had been reassured or the studies, the due diligence that they’d done, that they were satisfied that Pike was appropriately prepared to give effect to the various safety management plans, environmental management plans and various other monitoring of risks and events at the mine to make sure that we were compliant with both our obligations to the Department of Conservation, for example, with regard to surface subsidence, that the Health and Safety Act was being appropriately complied with and other aspects of our environmental permits were being complied with.

10 Q. And I’ve just got a couple of other questions on this document Mr Dow before we move on. Do you recall the BDA did a technical risk assessment as part of their work at the request of the board?

20 A. Yes I’m aware of that. I believe so, yes.

1205

Q. If we could just turn and perhaps bring up alongside each other pages 139 and 140 of the prospectus. And if we start on the page on the left-hand side Mr Dow, do you see a heading there, “Technical risk summary.”

25 A. Yes.

Q. And I’m not going to read this into the record or ask you detailed questions about it, but I’d just like you to confirm that the section that you’ve seen in front of you here in the BDA report around the technical risk summary is the work that the board relied upon back at the time of the IPO in connection with its assessment of technical risks?

30 A. Yes it is.

Q. And you understood that BDA had allocated a rating system to certain components of the Pike River, is that right?

A. Yes, yes.

Q. And those are reflected in the table at 5.1 of the BDA report, right?

5 A. Yes.

Q. Now just one more question on this document. If we can go to page 147 of the prospectus. Do you see the summary there Mr Dow of the technical reports reviewed by BDA for purposes of its assessment?

A. Yes.

10 Q. And is that summary consistent with your understanding as a Pike director of the technical reporting work done by that time to understand the geology of the mine?

A. Yes.

15 Q. Did you have any understanding as to subsequent work that was done to understand the geology of Pike's mine?

A. Yes there were several additional drill holes drilled from the surface as the access tunnel was approaching the Hawera Fault. To understand better, the detailed geology near to the Hawera Fault and also so that we could understand better the detailed geology in the area of pit bottom where a considerable amount of underground infrastructure was going to be located, so yes there were some additional surface boreholes drilled near the area of the Hawera Fault.

20

Q. Now given your training as a geologist albeit some time ago, did you form a view as to the company's efforts to understand the mine's geology?

25

A. Yes. It was clear early on from my early evaluation that what Pike was planning to do was to engage in a significant programme of in-seam drilling. The argument being that drilling parallel holes to the seam would enable us to fine tune the mine plan, to understand where structures were that might offset the coal seam and of course that was going to provide us with a significant amount of additional geological and geotechnical information that would make the fine tuning of the mine plan and the location of underground infrastructure easier.

30

Q. If we can just come back to the IPO prospectus for a moment. Do you recall that it includes a chairman's letter in which you made some comment about the total cost of the development?

A. Yes.

5 Q. So if we could just come Ms Basher to that letter which is at page 12 of the prospectus itself.

**WITNESS REFERRED TO CHAIRMAN'S LETTER**

Q. And do you recognise the document on the screen Mr Dow as the chairman's letter from the prospectus dated the 22<sup>nd</sup> of May 2007?

10 A. I do.

Q. And if I could just ask Ms Basher to please draw out the third paragraph of that letter. You'll see there Mr Dow that it's written, I'm reading from the document, "The total cost of the Pike River Coal Mine development including working capital is \$207 million." What was that figure based on in your letter?

15

A. It was based on an assessment of the construction costs of surface and underground infrastructure, on the remaining time to complete the access tunnel, on the provision of other facilities such as the rail load out at Ikamatua, cost involved in transporting coal to market and for working capital during the ramp up to full production until the mine was in a steady state of operations.

20

1210

Q. Now in the same letter. Ms Basher if we could come down to the fifth paragraph please. I'd just ask if that could be pulled out. There is a reference here in paragraph 5 to the mine plan currently assuming a production level of approximately 17.6 million tonnes. Do you see that Mr Dow?

25

A. Yes.

Q. And do you recall what those development predictions were based upon?

30

A. Well the 17.6 million tonnes is the total amount of coal that would be expected to be mined over an 18 year period. The in ground resource of 58.5 million tonnes is the total calculation of the total geological

resource, but because of the mining permit and a conservative mine plan that the company had adopted only 17.6 million tonnes of the 58 were actually planned to be extracted.

5 Q. If we could leave that document. I'd like to turn to your dealings with management at Pike, and my first question is at the time you joined Pike as a director in February 2007 with whom in senior management did you have the most dealings?

10 A. Gordon Ward as CEO was by far the most common point of contact. Not only was Gordon the chief executive but he was also a director of the company, and I would have contact with him at least every week, sometimes every day, in some cases several times a day. After that my next most common contact would have been with Peter Whittall who was in charge on site, and then I had contact with other members of the management team mostly when I visited the site. Neville Rockhouse,  
15 the geological folks, Ivan Liddell who is the environmental manager, but by far the most contact was with Gordon Ward.

Q. And was that the case right up until the time that Mr Ward left the company in around October 2010?

20 A. Yes. I should say that also with the financial folk in Wellington, the chief financial officer. You know, Pike did a number of capital raisings and the financial staff in Wellington were also important points of contact.

Q. Now Mr Ward was based in the Wellington office, is that right?

A. Yes he was.

25 Q. And based on your dealings with Mr Ward did you have an understanding as to his interactions with the management team based in Greymouth?

30 A. Mmm, absolutely. The site management had weekly operations meetings on a Wednesday I believe, and Gordon travelled down from Wellington to Greymouth every week or nearly every week. He came down and spent the day on site and attended the management meetings. So he was regularly on site.

Q. Prior to his appointment as CEO how frequently did you deal with Mr Whittall?

A. Oh, I would say several times a month rather than a week. I don't recall the details exactly but it was a lot less than my contact with Mr Ward. It would depend. If we were, if we were presenting to shareholders, if we were presenting to investors, then Gordon was always a part of the team and Peter would come to most of those meetings, but it was a lot less than my contact with Mr Ward.

5

Q. Up until January 2010 when he was relocated to the company's Wellington offices, what was your understanding of Mr Whittall's role at Pike?

10 A. You mean before he went to Wellington?

Q. Yes.

A. Yes. He was in charge on site. His position as general manager, mines meant that he was the boss on site. Everybody on site reported through him.

15 Q. And when Mr Whittall was moved to Wellington in January of 2010, do you recall whether that role changed?

A. It changed gradually. He was still commuting back to the mine site two or three days a week for a while. We had engaged Mr White and the plan always was for Mr White to become the site manager. Mr White didn't have his tickets at that stage and Mick Lerch was engaged to be the statutory manager and during that transition period Peter Whittall would travel back to the mine site two or three days a week, but then as Mr Lerch came on board and Mr White became fully certificated and become the statutory manager, Peter Whittall became more a Wellington-based executive, more involved with other aspects of the company's business and would in due course have moved on to other activities, Pike River coal.

20

25

1215

30 Q. Was the board's plan always for Mr Whittall to step out of the day-to-day mine operations?

A. Yes.

Q. And why was that?

A. The, Peter had been living in Greymouth for quite an extensive period, I think for personal reasons he wanted to move his family back to capital city, somewhere where his kids could go to high school and university. The plan always was for Peter to transition off-site and for him to be replaced by somebody else. That person was Doug White.

5

Q. Did the board have a view as to Mr White's appointment at Pike?

A. Yes.

Q. Can you describe that to the Commission?

A. Yes we were very pleased to have Mr White join the company. He was a very experienced coalminer. He had worked as a miner. He had run his own consultancy business. He'd been the deputy chief inspector of mines in Queensland. He wanted to come and live in Greymouth with his family and be, come out of the inspectorate and back into operations. I remember very clearly at the time the board was delighted to have somebody with Mr White's seniority expertise and experience to come to Pike. And he was a fine acquisition.

10

15

Q. Now during your tenure as a Pike director did you have a view as to Neville Rockhouse's role with the company?

A. Yes, indeed and Neville was very similarly highly regarded. When I first met him I was impressed by his qualifications. His experience and Neville has a master's degree in health and safety. As I recall he was an ACC qualified assessor. He'd had considerable experience as I understood it in the mining industry and he was one of the first full-time employees that Pike had taken on. It was important that Pike had engaged a full-time health and safety person. Neville was that guy and I was very impressed with his background and his experience and he was a senior and competent person for us.

20

25

Q. How frequently did you have dealings with Mr Rockhouse?

A. Mostly at meetings of the health and safety committee in an official capacity. The Pike board regularly visited the mine site. Almost without exception we had additional social functions in conjunction with board visits to which all senior managers were invited. So I would see Neville in the office at health and safety meetings. Sometimes in the office for

30

other less formal meetings and on a number of occasions in an informal setting usually over dinner or drinks before or after board meetings at the mine site.

5 Q. What was your view of the quality of senior Pike management during your tenure as a director?

A. I was quite impressed with the people that I met. The recruitment of good people in this industry has always been a challenge and I was impressed by and large with the people that Pike had been able to recruit.

10 Q. There has been some criticism before this Royal Commission about the turnover of senior management at the company, do you have any comment in that regard?

15 A. Yes, it wasn't just restricted to Pike. The mining industry for the last several years has been in boom conditions. The price of both thermal and metallurgical coal has been very strongly rising. As a consequence of that there are a number of new mines being opened or old mines being opened as a consequence of the high price. There has been a scramble for staff both in New Zealand and in Australia. Salaries have gone through the roof. There have been a lot of people moving around  
20 from company to company to improve their remuneration and their status, and I think it would be very typical of companies in the coalmining scene not just Pike, not just in New Zealand, but all around Australia, New South Wales and Queensland particularly, where there has been an enormous demand for people and probably not enough  
25 people to fill the jobs available. So Pike experienced the same pressures that other people did. We were able to recruit people to come and we attracted a number of very experienced South African coalminers because the conditions that Pike offered were a big improvement on what they'd experienced at home. We attracted a  
30 number of New Zealanders back from Australia and a number of Australians to come to Pike, because as much as any of them the quality of life, it certainly wasn't because of the salaries, because salaries in Australia were significantly higher. But the experience that



Pike had with staff, staff turnover and the pressure on staff was by no means unique to Pike.

1220

5 Q. Now let's turn to your visit to Pike's mine site and in the interests of time I'm not going to show you all of these documents Mr Dow, but according to board minutes there were four board meetings onsite in 2010 on the 29<sup>th</sup> of January 2010, the 25<sup>th</sup> of March 2010, the 25<sup>th</sup> of August 2010 and the 15<sup>th</sup> of November 2010. Is that consistent with your recollection sir?

10 A. Yes.

Q. And did the board also do a visit with some senior managers to the Ikamatua rail load-out facility in January 2010?

A. Yes, yes they did. Yes.

15 Q. And to the Lyttelton Harbour loading facilities on the occasion of the first coal shipment in February 2010?

A. Yes, that's right.

Q. And do your recall also visiting the mine on the 12<sup>th</sup> to the 13<sup>th</sup> of August 2010?

A. Yes.

20 Q. And also I think you did a visit with NZOG people around the 29<sup>th</sup> of March 2010, do you recall that?

A. That's right a number of senior NZOG executives came on a site visit and I accompanied them.

25 Q. And again according to board minutes, just in the interests of time I'm not showing you all of these documents, there were two board meetings onsite in 2009 on the 25<sup>th</sup> of March 2009 and the 23<sup>rd</sup> of November 2009 is that consistent with your recollection?

A. Yes it is.

30 Q. And you also visited the site another time in 2009 to conduct a meeting of the health, safety and environment sub-committee of the board, right?

A. Yep.

Q. That was on the 5<sup>th</sup> of October 2009?

A. I believe that was the date, yes.

Q. And do you recall whether you stayed onsite the following day on the 6<sup>th</sup> of October 2009 to do an operations review with Mr Meyer?

A. Yes, I did, yes.

5 Q. And now again, according to meeting minutes, you were onsite on the 26<sup>th</sup> of March 2009 to conduct a further meeting of the health, safety and environment sub-committee of the board, right?

A. Yes.

Q. And in November 2008 you were onsite with the Pike board at the official opening of the mine, is that right?

10 A. Yes it is, yes.

Q. And again according to company documents, there also was a board meeting, an AGM held onsite at that time, is that right?

A. Yes.

15 Q. And you had been onsite in April 2008 with some Australian investors, right?

A. Yes, I recall that, yes.

Q. And for a board meeting on the 24<sup>th</sup> of April 2008, right?

A. Yes.

20 Q. And for a health, safety and environment committee meeting on the 11<sup>th</sup> of September 2008?

A. I believe that was the date, yes.

25 Q. And just a final snapshot here Mr Dow, so we don't need to go through all the documents, again according to meeting minutes you were onsite on the 26<sup>th</sup> of July 2007 and the 24<sup>th</sup> of October 2007 for board meetings. Is that consistent with your recollection?

A. Yes, that's consistent.

Q. And you also visited the site on the 31<sup>st</sup> of May 2007 for a meeting of the health, safety and environment committee. Is that right?

A. That's correct, yes.

30 Q. Now during these site visits, did you tend to go underground?

A. On most occasions yes. Not all, not every time, but most times.

Q. Do you have any general recollection about those underground visits?

- 5 A. The recollections are general. Usually we would go underground to see some particular aspect of the development. This was part of either the board or the health and safety committee familiarising themselves with the physical aspects of what was going on. So, for example, if there was something new or special it was appropriate to go underground to do that to see where the Hawera Fault was, to see where the various aspects of underground infrastructure were to be located was important. I remember visiting the hydro-monitor shortly after it was installed. The visits were to make sure that board members were familiar with what was happening.
- 10 Q. And there was a board meeting and AGM held onsite on the 15<sup>th</sup> of November 2010, do you recall that?
- A. Yes I do.
- Q. And you were present for that were you?
- 15 A. I was.
- Q. Do you recall going underground that day?
- A. No I didn't go underground that day. We'd saved the underground visits for shareholders who had come for the annual meeting.
- Q. When was the last time you went underground prior to the 20 19 November 2010 explosion?
- A. I believe it was in the latter part of August to visit the new hydro-monitor installations, might've been the 24<sup>th</sup> or 25<sup>th</sup>, about then.
- Q. Did directors have an opportunity to meet with senior management around the onsite board meetings?
- 25 1225
- A. Yes of course. Part of the reason for going to site was to make sure that not only were directors personally familiar with the physical side of things, but also to meet the staff, to look the senior managers in the eye, to have personal contact with the general manager of mines, with operations people, with Neville Rockhouse, with Ivan Liddell. It's a pretty important part of the directors doing their job not only to understand what was being happened as reported to them but to satisfy themselves as to what was going on, what was being done, and as
- 30

much as anything else to gauge the calibre of the people that were running the show for the company.

A. And were there social events organised in connection with the board meetings on site?

5 A. Yes, almost without fail.

Q. Can you just describe those interactions briefly for the Commission?

A. Yes, the point of the exercise was to provide opportunities for the senior management team to meet informally with the board. Part of the evaluation of individual and personal competency is done in a formal way but it's also done in an informal way. We would invariably organise a dinner for management and the board either the night before the board meeting or sometimes the evening after the board meeting. Directors would all be present and there would be 10 or 12 other members of the senior management team, all of Peter Whittall's direct reports and Peter would come. Gordon Ward would be there and sometimes the CFO from Wellington if the CFO was coming to the board meeting as well, which they usually did.

10

15

Q. Were these dinners formal or informal events?

A. No, no, they were quite informal. This is the West Coast. You don't do a lot of formal things. They were opportunities. Everybody seated around a single table. If there was messages that needed to be passed or comments to be made about where we were going with certain things like progress with the IPO or something like that, that the site staff would have an interest in, then there might be five or 10 minutes of me or Gordon or Peter perhaps making small speeches to the staff, but by and large they were informal opportunities for people to engage between the board of directors and the senior management team.

20

25

Q. And so to the best of your recollection there would have been a number of dinners with the management team in 2010, is that right?

30 A. Yes, four or five I think.

Q. And at least two with the management team in 2009, is that right?

A. Yes, consistent with the frequency of board meetings.

Q. So at least one in 2008 and two in 2007?

A. Yes I think that's right.

Q. Now while you were on site did you have any availability for management or other company employees to pull you aside and raise any concerns?

5 A. Yes. Quite often when the board was actually at the site for the board meeting itself there was a barbecue on the deck between the management office and the training rooms and quite often the barbecue would be held and so not just senior management would be there but office staff, workers, we even had miners turn up just come off shift or  
10 come out of the mine for whatever reason, turn up in their high vis gear to have a sausage with the board. They usually fairly informal. There wasn't a lot said, maybe comments on things that were happening to the company, you know, outside the mine site but by and large they were just social opportunities for staff to see who the directors were, to come  
15 up and have a chat. Very informal but yes those opportunities occurred on a number of occasions.

Q. Now during any of your site visits to Pike or the informal dinners or discussions that you've described, do you recall anyone in management or in fact any other company employee raising any safety concerns with  
20 you?

A. No, not once.

Q. And your phone and email contact details are publicly available, right?

A. It's in the book and it's on the website, it's in all the documents, yes.

Q. And do you recall any company employee or manager ever contacting  
25 you and raising any safety concern?

A. Not a specific safety issue, no.

Q. Can you describe to the Commission your view as to your relationship with Neville Rockhouse?

A. Yes. My relationship with Neville has always been friendly, professional  
30 and respectful. I've always thought that Pike was lucky to have somebody of Neville's seniority and experience and background and training. I thought that then and I still think that now.

Q. And are you –

A. And I think it was mutually shared. I mean Neville has testified himself to the fact that we had a good working relationship and a good personal relationship.

1230

5 Q. So you're generally familiar with the evidence that Mr Rockhouse has provided to the Commission?

A. I've read summaries of it, I haven't read it all in detail, no.

10 Q. And so you're aware that Mr Rockhouse has raised concerns about being under resourced in the safety department in the company, do you know that?

A. I did read that, yes.

Q. Do you have any comment in that regard?

15 A. Well I was surprised given that if it was such an issue that he didn't comment on it, so I was surprised to see that. Neville's a senior person and would've thought that if the issues of resources were bothering him to that extent that would have been easy enough to make the point. I wouldn't have expected him to make it with me directly because he didn't report to me, but I saw him often enough for if had been an ongoing issue for Neville I would've expected that he would've said something, but so I suppose the short answer is that I was surprised when I read his brief of evidence.

20 Q. Now Mr Rockhouse has also given evidence in written form to this Commission that Mr Whittall was in effect the filter between the board and management. Did you have any comment in response to that?

25 A. Well it would be not uncommon for the site manager to decide what was communicated and what wasn't communicated. But it's also the site manager's responsibility to make sure if there were issues of concern to his people, that they were either addressed if they could be addressed on site or referred to the board if they were issues that the board needed to be made aware of. So it wouldn't be uncommon for Mr Whittall to determine which of his site issues were board issues or  
30 which were things that he could deal with himself.

Q. Now Mr Rockhouse has given evidence to this Commission in writing that essentially describes Mr Whittall as having an autocratic management style. Based on your observations of Mr Whittall with management and employees, did you have any comment in that regard?

5

A. No I wouldn't have described it as autocratic at all. Peter is a very capable and competent person. He's a forthright speaker as I'm sure most people in this Court would appreciate, but I wouldn't have described it as autocratic, no.

10

Are you aware that Adrian Couchman gave evidence yesterday that Mr Rockhouse had resigned twice before the November 19 2010 explosion but had been talked out of it, apparently. Are you familiar with that evidence?

A. I'm familiar with the evidence. I was surprised to hear it.

15

Q. You'd never heard that before yesterday?

A. No.

Q. Did Mr Rockhouse ever propose to you that the board should use lead not lag indicators in connection with health and safety reporting?

20

A. He didn't propose it directly to the board, no. The board obviously was aware of the different ways to measure safety performance and of course the health and safety committee was aware of lead and lag indicators as a measure of performance, but Mr Rockhouse did not raise that directly with me or with the board, not to my recollection.

25

Q. Are you aware that Mr Rockhouse has also raised concerns with the Commission about the second means of egress from the mine and matters like a refuge station? Are you familiar with that evidence?

A. Yes.

Q. Did you have any comment in that regard?

30

A. The time management team was aware of the plans for egress and they were aware of the ventilation shaft as being a potential secondary egress and they were aware or should've been aware that the fresh air base was also an alternative place to go in the event of an emergency. The management team would've clearly been aware of that because

they were meeting on a weekly basis to talk about it. I was not aware that Mr Rockhouse had any particular concerns at the time. I read bits of his evidence that suggested that he did have concerns but they were never shared with me.

5 Q. Did you have any reason to believe that Mr Rockhouse was stifled in any way from raising concerns with you?

A. No, not at all, not at all. In fact there were lots of opportunities both formal and informal if Neville had had concerns, he had plenty of chances to raise them and I'm frankly surprised that they weren't, given  
10 his evidence.

Q. Now you mentioned earlier that you were involved with Straterra. Do you recall that?

A. Yes.

Q. In fact you were the inaugural chairman of Straterra, right?

15 A. I was persuaded to take that role, yes.

1235

Q. And did you have dealings with Don Elder as part of your Straterra involvement?

A. I did, Don Elder and I were instrumental in getting Straterra established.

20 Q. How frequently did you deal with Mr Elder?

A. Well over a period of three or four years intermittently in the first two years and then when Straterra was formed we were both directors of it. I was the chair. And Straterra was meeting very six to eight weeks through 2010 so I would see Dr Elder at Straterra board meetings.

25 Q. And are you familiar Mr Dow, in fact I believe you may have even been president during Mr Elder's evidence in Phase One and his criticisms of Pike?

A. Yes I sat in this very Court on day one and heard Dr Elder's commentary.

30 Q. Did Mr Elder, or Dr Elder ever raise any of those criticisms with you?

A. Never once, and that was disappointing for me, to sit in this Court and hear somebody with whom I have had a strong professional relationship



with, and sit and say the things that he said and never once mentioned his concerns when he had plenty of opportunities to do it.

Q. Prior to the explosion on the 19<sup>th</sup> of November 2010, to the best of your recollection did anyone ever raise concerns with you about Pike?

5 A. Yes, and I think Dave Steward referred to it in his testimony the other day. I was at a, Australasian Institute of Mining and Metallurgy) conference in Queenstown in August 2009 and I was approached by Les McCracken who at that stage was Pike's contracts manager.

Q. So you knew Mr McCracken?

10 A. I knew Mr McCracken, he was a professional colleague.

Q. Can you describe your conversation with Mr McCracken please?

A. He'd said to me earlier, "Can we get together and have a chat, there's something I want to talk to you about?" And so on the day when we got together we got together for breakfast, it was, I think it was the last day  
15 of that conference in Queenstown. We got together privately for breakfast and he expressed some concerns to me about the level of training that was going on underground. He expressed some concerns about the mix, the cultural mix of staff that had been recruited. He was concerned that we weren't perhaps dealing appropriately with those  
20 issues. I believe he might have mentioned the question of morale on site. And thought because he was observing these things that it would be helpful for me to know.

Q. Given your background, had you had any experience yourself in dealing with management teams or employee groups made up of people from  
25 diverse backgrounds?

A. Yes, most of my international career was in other countries, often third world countries, where understanding the interrelationships between ex pat executives and local people was a critical part of the process, doesn't mean it couldn't be done. In many cases I was able to do that.  
30 So I did understand that when Les McCracken made that comment that with the staff from South Africa, a number from Australia, a number from New Zealand and not a lot of New Zealand expertise underground at the

time, and that he probably had a point. And I certainly listened. Les is a very confident person and I was concerned to hear of his concerns.

Q. What did you do following your conversation with Mr McCracken?

5 A. Well Dave Stewart was also at that same conference and I thought I would test Les McCracken's observations and so I arranged to meet with Dave Stewart. I said to him that these concerns had been put to me by Mr McCracken and because Dave had worked at Pike previously I was curious as to whether or not he would validate those concerns and he did. So then I arranged to meet with him more extensively later that  
10 day, which I think happened in Christchurch Airport when we were both on our way home and I talked to him at length about the issue and Dave's commentary reflected very much what Les McCracken had said. I asked him what his recommendation would be to deal with it. He said, "Well what you really need is somebody who is entirely familiar with the  
15 New Zealand Regulations and particularly with underground conditions in New Zealand to join the team and provide some of that onsite mentoring and training." We asked, we talked about who that might be. He said, "Well Les could do it." And I'd previously asked Les the same question, is that something he would be interested in doing. He was  
20 busy with other contracts at the time and so wasn't able to totally commit and so we talked about other people that might be available to come and join the Pike team to provide that support role. And then on further questioning I asked Dave Stewart himself he would be prepared to do it or available. His comment was that he was finishing up a  
25 contract with Solid Energy and that it would take him until October that year, but that after that he could be available. And so I said well let me go away and think about that and talk some more and I'll get back to you. So I took that comment back to Gordon Ward as chief executive, I took it back to Peter Whittall and said that these matters had been  
30 raised and I said to them both that I felt that Pike needed to take on the advice of both of these guys, because they're both senior and competent people and then engage one of them if we could or somebody with similar experience to deal with the matter.

1240

Q. If I could take you Mr Dow to an email exchange which is at STE0003/3 and /4. Are you aware Mr Dow that Mr Stewart has given some evidence to the Commission about your conversation with him?

5 A. Yes.

Q. So these are some emails that Mr Stewart's made available to the Commission. I just wanted to take you to these. If we start at, actually on page 4, there is an email on Sunday the 30<sup>th</sup>, it's on the right-hand side of the page Mr Dow, Sunday the 30<sup>th</sup> of August from Dave Stewart to you and I just have one quick question on this. There's a reference in  
10 the fifth paragraph where Mr Stewart says, "If you appointed Les, say," and my question to you is, do you understand that reference to be to Les McCracken?

A. I believe so, yes.

15 Q. And we've just talked about that, but in your response to Mr Stewart's email, I won't go through that because Mr Stewart has given evidence on it, so we come back to page 3 and if I could just ask Ms Basher to pull up the bottom part of that email which is your response to Mr Stewart on the 31<sup>st</sup> of August and there you write to Mr Stewart,  
20 "Thank you for these comments..." being the email that you're responding to, "... and for your candid observations in Christchurch last Friday. They will be very helpful." What do you recall about those candid observations, if anything beyond what you've just described to the Commission?

25 A. No I don't think there was anything else in addition to what I've already said. You know, this was the first time somebody external to the company had come to me and said, you know, this is something you should have a look at. So I appreciated the initiative being taken, it's quite an effort for somebody to come and make that observation, to come and tap you on the shoulder and say, you know, there's some  
30 things happening inside your company that you might like to know about. So I appreciated his candour.

Q. And in the same email you wrote to Mr Stewart that your meeting with Gordon Ward today to discuss our operational challenges and will get back to you. Do you see that language in your email?

A. Yes.

5 Q. What was your understanding of Pike's operational challenges at this time?

A. Well I think the – I was referring to the issues that both Les McCracken and Dave Stewart, Les had raised and Dave had confirmed, and getting together with Gordon was saying, "Well you're the CEO I've had this  
10 feedback, there are clearly some operational issues that we need to deal with," and this was a way for me to say to Dave, "Thank you for the input and I'm on it."

Q. What if anything do you recall of your conversation with Mr Ward?

A. I don't remember the details. I think I would've said something like, "I've  
15 had this feedback from people who I respect and admire. They've made some comments about how things were going onsite. We need to do something about it."

Q. Now other than this occasion involving Mr McCracken approaching you, did anyone else either external or internal to the company ever raise  
20 safety or other concerns with you about Pike?

A. Not once.

Q. During your tenure on the board, how did Pike respond from your perspective to the operational challenges it faced?

1245

25 A. I think probably it's fair to say that we considered that we'd recruited a very senior executive team, that Gordon was a very capable and hardworking executive, that Peter Whittall was a widely experienced coalminer both in operations and in development, that Neville was a first class health and safety manager and that other people that we engaged  
30 were all competent to do their job, and so the board would expect that these challenges would be picked up and dealt with appropriately at site. I think the board was reassured by the fact that the management team on site had regular weekly site meetings where all the

management team attended. I think the board was reassured by the fact that the company's CEO came down from Wellington every week and attended them, so good people were in charge of dealing with those challenges. The board would be made aware of them through the  
5 monthly operations reports but that there was plenty of talent on site and plenty of experience to manage the operational challenges as they arose.

Q. And actually up until the time that he departed the company Mr Ward was in fact a member of the board, is that right?

10 A. Yes.

Q. Now what about external assistance with operational challenges, do you have any recollection of that?

A. Yes. I recall that Oki Nishioka was engaged to assist with the special aspects of hydromining. As I recall, Oki had been a consultant to Pike  
15 since 2004 or 2005 when the hydromining concept was mooted as the main way of mining once the mine was fully developed. Oki came to site from time to time. He was in contact with the site management and he had particular expertise in that area and assisted us with the design of the hydro gear so that was important. We had other people that were  
20 experts in gas drainage. We had other people that were experts in all kinds of other fields, with the surveying, and the issue of measuring the levels of surface subsidence was something that was going to be done under contract. Lots of specialised technical issues that were  
25 appropriately done by people for whom that was their full-time job rather than site staff for whom it might be a first time. Perfectly normal in this industry to engage expert consultants.

Q. There has been some criticism before this Royal Commission that Pike developed a reputation of overpromising and under-delivering. Are you familiar with that criticism?

30 A. I am.

Q. What would be your response from a board perspective to that sort of criticism?

A. I would have to agree.

Q. Now the company did need to raise capital on a number of occasions didn't it?

A. Mmm, yes.

5 Q. And there has been some criticism in this Royal Commission about the frequency with which the company needed to go back to the market to raise capital. What's your view from a board perspective on that criticism?

10 A. Well, it would depend on what the point of the criticism was. If observation was made that Pike had to go to the capital markets four times, then I would acknowledge that the company went to the market four times. Is that twice more than we needed to? Yes, probably, but I would be asking why that was considered to be a point of comment or what would be the point of making the question. Certainly I'm aware of it. I'm aware the comment's been made. I want to know in what context  
15 that was somehow considered to be important other than perhaps a little unusual. But as I've said, we did have issues with overpromising and under-delivering and that meant that from time to time the company had to go to the market for additional development capital.

Q. Do you have a view as to why the company had that issue?

20 A. Yes. I think that the challenge really came for Mr Ward as the CEO to balance the realities of the development schedule, to develop the realities of the time it would take, and therefore how much capital would be required before the mine was in steady state operations and generating its own revenue. I think the challenge he had was to be  
25 possibly always on the optimistic end of a range of likely outcomes.

Q. Do you have an understanding as to the company's financial position at the time of the 19 November 2010 explosion?

A. Yes.

1250

30 Q. And can you describe that to the Commission please?

A. Yes. From the 18<sup>th</sup> of November, the day before the explosion and in fact on the morning of the 19<sup>th</sup> I was in Wellington attending meetings with the finance due diligence committee and with a major international

investment bank because Pike was in the final stages of approving a \$70 million capital raise. It was going to comprise a \$25 million share purchase plan to shareholders and a \$45 million placement to institutional investors, both sums fully underwritten by our investment bank. At the time we had a relatively small amount of money in the kitty and we had received a temporary bridging loan from New Zealand Oil and Gas but the company was five days away from raising \$70 million all fully underwritten, which would've carried Pike through, well through into the third quarter of 2011 when by that stage we expected to be in full steady state hydromining.

5  
10  
Q. What do you say in response to any criticism that development costs had increased from an estimated \$29.5 million in May 1995 to \$350 million by mid-2010?

A. That a question with lots of parts to it. Firstly I believe the mine that was scoped and costed back in the 1990s was a different size and scope of the mine that eventually was built in 2009/2010, so you can't really compare the numbers as apples to apples comparisons, because there was significant changes of scope. Over that 12 year period there was also escalation in the capital costs and labour costs and a lot of other costs such that you look at the \$28 million quote you first mentioned and then look at the whatever it was, \$350 odd million final cost and you're really not comparing the same operation at all. But in a 12 year period there'd been enormous escalations in the cost of almost all construction materials and the cost of building itself and the costs of goods and services and labour.

20  
25  
Q. There has also been some criticism before this Royal Commission that production may have been prioritised at Pike ahead of safety. Did you have any comment in that regard?

A. No I'm not aware of any circumstances in which that would've been the case. Senior management on site always had a safety first approach. I'm not aware of any circumstance in which production was prioritised over safety. And I would be surprised if it was.

30  
1253

Q. During your time on the board, do you recall the board ever denying senior management funding for a health and safety matter?

A. Never once.

5 Q. Now there has also been some criticism in this Royal Commission about the number of inexperienced miners working at Pike. Do you have any comment in that regard?

10 A. The board was certainly aware that in a tight labour market there just simply weren't the number of enough experienced miners to go around. I suspect that Solid Energy had the same issue, I suspect that other mining companies in Australia would have had the same issues. You know, and Pike certainly had that challenge. Our response to that challenge was to recruit suitable local people and to give them appropriate training. Now maybe not as much training as Mr Houlden testified earlier, but certainly appropriate training for the tasks that they were going to be undertaking. But, the question of green – you know, cleanskin miners I think is an issue for all coalminers at the moment.

15 Q. I'd like to turn to the hydro bonuses and perhaps just ask you several questions on this before the lunch adjournment. Before joining Pike had you had experience with bonuses in the mining industry?

20 A. Yes absolutely, it's very normal.

Q. And are you familiar with the hydro bonus scheme that was put into place by Pike in July of 2010?

A. Yes.

Q. Let's bring up DAO.013.04348.

25 **WITNESS REFERRED TO DOCUMENT DAO.013.04348**

Q. Do you recognise this document Mr Dow as an information paper dated the 27<sup>th</sup> of June 2010 provided to the board by Mr Ward and it's copied, to among others, Mr Whittall and Mr White regarding the hydromining production bonus?

30 A. Yes.

1256

Q. Why did you understand, before we come to the document, why did you understand the bonus was being proposed?



- 5 A. We were struggling with a lot of issues underground and the board was of a view that if we could deal with some of those issues by the offering of a bonus, that we might at the same time solve some of the particular challenges that we were observing. Most of the issues related to productivity or efficiency. Making sure your vehicle was fuelled before you went into the mine at the beginning of shift. Making sure that you looked after your equipment because equipment damage was one of the reasons why progress was not always as good as we wanted it. And just showing up for work was a challenge, you know we had an absenteeism problem as well. So part of the hydro-bonus was the idea was to focus the workforce attention on some of these issues and to provide them with an incentive to achieve a certain amount of driveage and a relatively modest amount of coal production in a certain time and a certain, the bonuses that are in this memo be paid.
- 10
- 15 Q. Did you have any understanding around the time of receiving this proposal from Mr Ward in June of 2010 as to what was causing or contributing to the absenteeism problem at Pike?
- A. Not really, no.
- 20 Q. Now did you understand that the hydro-bonus proposal had been discussed amongst senior management?
- A. Yes.
- Q. Did you have any understanding at so whether company management had discussed the hydro-bonus proposal with the union?
- A. I believe so, yes.
- 25 Q. And on the second page of Mr Ward's memorandum we don't actually need to go to it I don't think, it's proposed by Mr Ward that an offer letter be sent to employees by Pike's chairman, do you recall that?
- A. Yes.
- 30 Q. And did the board agree with the proposals set forth in Mr Ward's information paper?
- A. Yes, there was a considerable discussion on the issue, but in the end the board was in agreement that that was what should be done, yes. And that I should sign the letter as chairman.

3934

**COMMISSION ADJOURNS: 12.58 PM**

**COMMISSION RESUMES: 2.00 PM****EXAMINATION CONTINUES: MS SHORTALL**

5 Q. Now Mr Dow, just before the lunch adjournment we were talking about the hydro-bonus that was brought in at Pike. Did the board consider the potential impact of the hydro-bonus on health and safety at the mine?

A. Not specifically. I think the company, the board would have considered that any initiatives being put in place would be in addition to other things that were being done. There would be no reason why there'd be any relaxation in health and safety attention, no not at all.

10 Q. What do you say in response to criticism that the hydro-bonus scheme impacted health and safety at the mine?

A. I don't have any reason to believe that was the case.

15 Q. Now regular meetings of the health, safety and environment committee of the board began in 2008 as the company's operations moved to the mine site, right?

A. That's right.

Q. Where were those meetings held?

A. Well the first meeting actually was held in 2007, but all meetings of the health and safety committee were held at the mine site.

20 Q. And what do you recall about that 2007 meeting?

A. Well the 2007 meeting was a preparatory meeting that the committee had to visit various regulatory authorities in Greymouth. The intention was to understand the state of relationships that the company had with the Department of Conservation, with the Grey District Council, with the West Coast Regional Council. We were concerned to make sure that there were, relationships were clear, that the channels of communication were open, that the various regulatory agencies were comfortable with their, the content and the quality of their relationships with Pike executives, and so the point of that trip really was to independently establish that the reporting requirements, that the statutory requirements that these departments and regulators would

25

30

have were being properly adhered to by Pike staff and that we did, able to do that independently.

Q. Who participated in this "trip," to use your words?

5 A. Professor Meyer and myself as members of the health and safety committee.

Q. Were you accompanied by any members of Pike management do you recall?

10 A. I think Ivan Liddell would have come with us because a significant part of that exploratory meeting related to the Department of Conservation and other environmental reporting on the West Coast. I don't believe there were any other people in attendance.

Q. To the best of your recollection, was this 2007 meeting or trip minuted in any way?

15 A. Not specifically. It would have been reported back to the board. It was more of an exploratory trip so that the members of the health, safety and environment committee could understand the current state of play.

1403

20 Q. So if we just move into 2008 when meetings of the health and safety environment committee get underway, where were those meetings physically located?

A. They were all held at the Atarau mine site.

Q. And who attended the meetings?

A. Professor Meyer, myself, Peter Whittall, Neville Rockhouse and Ivan Liddell in all instances.

25 Q. How long did the meetings typically last?

A. Oh sometimes they lasted all day but certainly from mid-morning 'til mid to late afternoon.

Q. And what was the purpose of the meetings of the health safety and environment committee of the board?

30 A. It was a sub-committee of the board that was charged with ensuring that the company had appropriate health and safety management plans in place. That risks have been appropriately analysed and that standard operation procedures and job safety evaluations were done, that we

were complying with our statutory obligation to both the Department of Conservation of and also on the health and safety compliance. The purpose of the meeting was to drill down if you like in depth and to have the site managers, in this case Neville Rockhouse and Ivan Liddell, basically present to the health and safety committee on the various initiatives they had to make sure that Pike was safe and compliant.

5

Q. And what did the two members of the board's sub-committee, yourself and Professor Meyer do in the course of these meetings to use some of your words, "Assess," whether matters had been adequately addressed?

10

A. Well we required there to be a presentation from each of the two managers on site at which they would explain what steps they were taking, when new equipment came on site or new activities were being undertaken, there was the need to develop job safety evaluations and if necessary to formulate standard operating procedures. That's a normal thing that site management would do. The health and safety committee was there to understand that those sort of things were being done. We also asked whether there had been any exceedences in the case of the environmental activities or any failures to comply in the case of health and safety and then the question was, had they been reported, had they been dealt with, where we're not only dealing with the issues when they came up, but the made sure that the appropriate regulatory authorities had been contacted and reported if that was required.

15

20

Q. Do you recall Mr Dow that the committee charter for the health safety and environment committee provided for half-yearly meetings?

25

A. Yes.

Q. And according to minutes, meetings were held on the following dates, the 11<sup>th</sup> of September 2008, the 26<sup>th</sup> of March 2009, the 5<sup>th</sup> of October 2009 and the 15<sup>th</sup> of November 2010. Is that consistent with your recollection?

30

A. Yes.

1406

Q. Why was there a longer than normal interval between the 5 October 2009 and 15 November 2010 meeting?

5 A. I think what was happening then was that the board meetings themselves were becoming significantly more engaged in both health and safety and environmental issues. The health and safety committee was after all a subcommittee of the board and as the board became more actively involved in those matters at every board meeting it wasn't quite so necessary to separate out a subset of the board to evaluate some of those other issues separately.

10 Q. But Mr Rockhouse and Mr Liddell didn't attend the board meetings did they?

A. They didn't come to board meetings no.

Q. So to the extent that the board was considering health and safety and environment matters were those individuals weren't physically present.

15 What do you say to any potential criticism in that respect?

A. What I would say is that the board had an health and safety and environment committee and so did the management team in the mine site and that then met every week and Gordon Ward as the CEO would come from Wellington to Greymouth and participate as a member of the management team and so the board had its Chief Executive, who was also a director of the company attending those weekly management meetings. And on the odd occasion when he wasn't there he would be sent minutes of the meetings so he was very much a part of the onsite management team, so the board had very close contact with those issues separately from the board meetings.

20  
25 Q. Now let's talk about each of the health and safety and environment meetings for which there are minutes that took place during your tenure and I'd like to start Ms Basher if we could have the document at DAO.020.00017 please?

30 **WITNESS REFERRED TO DOCUMENT DAO.020.00017**

Q. Mr Dow do you recognise this document as a set of minutes with the health and safety and environment committee meeting held on the 11<sup>th</sup> of September 2008?

A. Yes.

Q. And do you recall that you signed these minutes as the chairman of Pike's board?

A. Yes.

5 Q. Did you prepare these minutes Mr Dow?

A. I did, yes.

Q. Did the minutes record all of the detail of what was discussed during this committee meeting?

10 A. Well you can see they don't have quite the polish that company secretary had but yes they are a high level summary, an accurate summary of business transacted.

Q. And where was this meeting held?

A. This meeting was held at the mine site.

1409

15 Q. And who attended?

A. Myself, Professor Meyer, Peter Whittall, Neville Rockhouse, Ivan Liddell and at this meeting Kobus Louw.

Q. Now do you recall that Mr Louw was the mine manager at the mine site as of the date of this meeting?

20 A. Yes he was.

Q. And do you have any recollection as to why he attended in part?

A. Well this was the, as I recall, the first formal meeting of the committee since I had joined the board. I don't remember exactly why he was there as well but it was entirely appropriate that he was.

25 Q. Why do you say that?

A. Well he was the mine manager.

30 Q. And to the extent that the meeting lasted at least in part of the day, I'd like to draw your attention to the first full paragraph under the "Safety" heading and there's a reference there, I'm reading from the document, "A review of management safety responsibilities, organisational structures and safety KPIs." Do you see that heading there?

A. Yes.

- Q. And then there is a reference to Mr Rockhouse tabling the company's draft safety management plan dated 9/9/07 which showed roles and safety responsibilities for all staff. Do you have any recollections, sitting here today, as to any detail from that document?
- 5 A. I don't remember the details, no.
- Q. Do you recall generally the manner in which Mr Rockhouse presented that document to the committee?
- A. I remember that it was a professional summary of the roles and responsibilities and it was a professional presentation.
- 10 Q. Do you recall who had prepared that draft safety management plan?
- A. Oh, I don't recall for sure. I'm just assuming that Neville had prepared it himself.
- Q. And if we could just –
- A. That was part of his job responsibilities to prepare safety management plans.
- 15 Q. If we could come Ms Basher please to the next page of these meeting minutes. And if I could just ask you to please highlight the first two full paragraphs. And do you see a reference there in the minutes Mr Dow, to the corporate safety management system ultimately governing all aspects of safety management and operation on site?
- 20 A. Yes.
- Q. Do you have any comment in that respect with, in terms of how the corporate safety management system was ultimately used at Pike up until the time that the company went into receivership?
- 25 A. Well I don't know for sure how it was done, but my expectation was that having developed a comprehensive safety management plan and having determined that it would be the way in which all aspects of safety management on site would be governed, that that would be the plan that would be used.
- 30 Q. Do you have an understanding as to who was responsible for this corporate safety management system ultimately governing all aspects of safety management and operation on site?



A. Yes, Mr Rockhouse as health and safety manager. It was his primary responsibility.

5 Q. Now the minutes also reflect, and it's in the second paragraph it's highlighted on the screen at page 2 of the minutes that the committee had noted a training deficiency, and to the extent it helps you orientate yourself you could read the two paragraphs fully, then I'll ask you what you recall of that?

10 A. My understanding of the issue was that there were a number of early hires to the company who had come on before the safety management plans had been fully developed and who had not done in fact their proper site induction. I think I recall at the time that I asked if there were any outstanding issues and the question was well yes there are some people that have been hired on earlier before the safety management plan had been adopted and those people had not completed their site induction.

15 Q. Do you have any reason to believe that this training deficiency wasn't addressed?

20 A. No. The committee noted that it was something that needed to be attended to and that it should be, you know, addressed as soon as possible. I had no reason to think that it wouldn't have been done.

1414

25 Q. Now if I could bring you to the fourth page of these minutes please and there is a section in the middle of that page headed, "Safety training during the transition to coal." If I could just ask Ms Basher to have that highlighted please? And there's a reference there to the committees and reading from the document Mr Dow, "Principal concern was on the procedures for methane monitoring during tunnelling and development of pit bottom facilities." Do you see that there?

A. Yes.

30 Q. And is that consistent with your recollection as to at least one of the committee's principal concerns at the time of the September 2008 meeting?

A. Yes.

Q. And if you need to use the document to refresh your recollection, can you explain to the Commission what information was provided to the committee in response to that concern?

5 A. Well the minutes clearly show that Mr Rockhouse provided a summary of how methane would be monitored and managed, the kind of procedures that would be put in place, the kind of detectors that would be used, the kind of issues that would give the health and safety committee some comfort that a critical aspect of underground coalmining safety was being attended to.

10 Q. And if I could just draw your attention to the last sentence of the meeting minutes, could you just read that for me please?

A. The bit that says, "He considers the procedures implemented by Pike River Coal Limited represent global best practice."

15 Q. And is that consistent with your recollection of the discussion in September of 2008 Mr Dow?

A. Yes, Neville and I had a number of conversations about the importance of best practice.

Q. What do you recall generally about those discussions?

20 A. That he was very much in support of the objective, that he recognised that was a strong interest that I had in making sure that Pike availed itself of best practice and I was reassured that Neville particularly was supportive of that kind of approach to mine safety.

25 Q. Given that Mr Rockhouse provided the committee with this information in September 2008 about the company's procedures for detecting and monitoring methane levels during all aspects of the tunnelling cycle, those are the words of the minutes, did you understand that he was very involved with this part of the project?

A. Yes.

30 Q. Did there ever come a time when you believed that wasn't the case Mr Dow?

A. No never.

Q. Now if I could just ask you to come to the last page of these meeting minutes, if you bring those up Ms Basher please and there's a

conclusion section there and if could just ask to have that highlighted please? And the last couple of sentences there read Mr Dow, and I'm reading from the minutes, "As site activities move from construction to mining operations there will be a shift in responsibilities from the contractors to PRCL staff and management will need to adapt existing procedures to reflect this change. It is the observation of this committee that management is clearly aware of what is required to be done in these areas." Do you see that there?

5

A. Yes.

10

Q. Now I understand that this is over three years ago now but do you have any recollection as to what it was that the committee had based this observation upon?

A. Not specifically. I would be reliant on the minutes to indicate what was talked about, what was presented and what assurances were given, but the minutes look reasonably comprehensive to me.

15

Q. What was the stage of development at the mine as of the 11<sup>th</sup> of September 2008?

A. As I recall the access tunnel was approaching the Hawera Fault and I think the breakthrough to coal happened a few weeks after that and I think that was in October 2008 and so as the company moved from being basically a tunnel and stone to an access drive into the coal it was appropriate and as we moved from ordinary construction equipment to flameproof equipment and as control of the site passed from McConnell Dowell back to directly to Pike, that was the point at which this first meeting was being had in preparation for those activities. That's my recollection of the timing.

20

25

Q. Now putting aside the visit that you've described in May of 2007, do you have any understanding as to why there hadn't been a minuted meeting between February 2007 and 11 September 2008 when these minutes that we're looking at reflect a meeting occurred?

30

1419

A. Well, as I said, there was a meeting in May that was an orientation meeting for the members of the committee. But for the period from

2007 until September 2008 control of the site was in the hands of main tunnel contractor, McConnell Dowell, and while Pike had oversight on it, the mine manager and the folks in charge of Operation Underground were with the contractor not with Pike. And so the health and safety committee was looking to establish some policies and procedures and some regular meetings as Pike's own staff came to be taking responsibility.

5

Q. And is that what's reflected in this conclusion part of the minutes?

10

A. Yes that's the point of the conclusion that we in fact were getting to the point where Pike were going from being a tunnel and stone to a coal mine.

Q. Was there an opportunity for Mr Rockhouse and others to raise concerns with you during the 11 September 2008 committee meeting?

15

A. Yes of course, which was an extensive meeting of the committee and as you can see from the minutes. A lot of issues were canvassed during that. I think if there'd been any issues at all that would have been the perfect time to raise them.

Q. Do you recall whether any concerns were raised with you?

20

A. There were no concerns raised. There were issues about whether or not 20 members of the management team had completed their site induction. That was the only outstanding issue that I was aware of when it was minuted earlier on. In terms of did we have the right people, did we have enough resources, were we able to do this? No, this was a very positive meeting which capable people presented the safety management plans and showed the standing operating procedures in the work that had been done to make the transition to coal.

25

Q. Do you recall whether after the meeting ended just as part of more informal discussions any concerns were raised with you by Mr Rockhouse or anyone else?

30

A. No. I don't recall exactly, but I do not recall if anyone had raised any particular issue.

Q. Now let me show you document DAO.020.00001.

**WITNESS REFERRED TO DOCUMENT DAO.020.00001**

Q. Do you recognise this document Mr Dow as a set of minutes for the health and safety environment committee meeting held on the 26<sup>th</sup> of March 2009?

5 A. Yes I do.

Q. And again do you recall that you signed these minutes as chairman of the board?

A. The chairman of the committee?

Q. Oh sorry, excuse me, chairman of the committee?

10 A. Yes.

Q. And did you prepare these minutes as well?

A. I did, I believe I did.

Q. Where was this meeting held?

A. Also held at the Atarau mine site.

15 Q. And who attended?

A. Myself, Professor Meyer, Peter Whittall, Neville Rockhouse and Ivan Liddell.

Q. Now if we could just bring your attention on that first page to the section entitled, "Matters arising," I'd just ask Ms Basher to pull those three sub-points out. Just in the interests of time Mr Dow, if you could just take a quick look at those and I'll put a couple of questions to you?

20 A. Yes.

Q. Do you recall generally the matters that arising at the meeting?

A. Yes, the matter of the 20 odd staff that had been recruited before the safety management plan was developed was still not done and I made comment, I remember making comment at the time that I didn't think that was appropriate that Mr Whittall advised that he, there were other people still to come, to be hired on and he was waiting in the hall there to do it. And yes that was outstanding, and similarly there was some safety KPI's for various members of staff that were outstanding.

30

Q. What's your recollection of the safety KPI's matter?

A. These were, KPI's against which the staff members would be, have their personal performance evaluated.

Q. Do you recall any specifics of the safety KPI's?

A. I don't, do not, no.

Q. And what about the reference in these minutes from the  
5 26<sup>th</sup> of March 2009 to independent third-party audits, what do you recall  
about that matter?

A. Yeah, I remember that quite clearly because it was me that asked on a  
number of occasions about the plans for engaging independent audits  
by third-parties. My experience in other parts of the mining industry had  
10 shown the value of it and my question to both Ivan Liddell and the  
environmental side and to Neville on the safety and health side was  
when were they planning to get those done. There was  
acknowledgement that they were important, that value would come from  
having somebody independently do it. I guess the issue always is at the  
15 early stages of development of a mine like Pike, when there safety  
management systems are still in the process of being bedded down  
whether you get full value out of a third-party audit. And I remember  
management commenting that it was their view that yes absolutely there  
would be value in doing it, but that it might make more sense to do it  
20 when the systems and processes had settled down a bit. And so that's  
what the point of that matter was, that management was still basically  
considering the benefit of it.

Q. Do you understand whether independent third party audits were  
occurring by the time of the 19 November 2010 explosion?

1425

25 A. I don't think there were a lot of third party audits being done. There was  
some work done by Dave Stewart that I referred to before lunch. I know  
there was some or I believe there was some auditing work done by  
Doug White himself and I think we heard some testimony to that effect  
this morning, but I do not believe there were independent third party  
30 audits being done at that point.

Q. Do you have any understanding as to why that was the case?

A. Not really, no.

Q. If I could just turn you to the safety update section. Ms Basher if we could come back to the minutes and pull up the bottom section under "Safety update". This is a report being provided by Mr Rockhouse, is that right?

5 A. Yes.

Q. And he's reporting on the progress he's made with his health and safety department and making several comments. Do you see that there?

A. Yes.

10 Q. And in the last point, number four, there's a reference and I'm reading from the document. "He has developed a new programme to collate and analyse incident data but noted that he still needed to measure incident frequency rates and set appropriate standards." Do you see that?

A. Yes.

15 Q. Did you have the view at the time, in March 2009, about the need to collate and analyse incident data?

A. Absolutely, yeah.

Q. And what was that view?

20 A. Well it's really important to understand whether or not your safety and health programmes are working. The measurement of lag indicators is a measure of how well the lead indicators and the level of safety training is working on the mine site. One of the ways to find out if a site is improving its health and safety performance or not improving its health and safety performance is to measure a set of, or to take a measure of a  
25 number of indicators that measure the efficiency of the programmes and one of the ways the industry has traditionally done that is to measure things like loss time injury frequency rates or medical treatment injuries as, if you like, prima facie evidence of incidents or events that have occurred. The company also measured property damage, it also  
30 measured near misses, it measured high potential events, things like that that you could independently if you like, take the pulse of the efficiency of the training programmes. So it was important that we do that and I was pleased that Neville was taking that initiative.

Q. Do you recall in connection with Mr Rockhouse reporting on him having developed the programme to collate and analyse incident data, whether there was a discussion about using lag over lead indicators or vice versa?

5 A. I don't recall that there was a discussion about whether we should use one or the other. The industry tends to use lag indicators to measure itself. There are a number of lead indicators of course, that can be used as well although they are not recorded quite so frequently, the argument being that you prepare your workforce to go to work safely and then you  
10 measure the impact of the programmes by whether or not they were in fact safe or not.

Q. Do you recall whether it was the committee that decided what type of indicators to use, or Mr Rockhouse?

15 A. No the committee wouldn't have decided that and Neville was an experienced and seasoned safety professional. He would know the kind of metrics that were available. I believe we talked about using lag indicators but there wasn't any direction from the committee to do that. I believe later on we asked to see that information provided in a more formal way and, but these minutes in fact show that Neville was working  
20 towards that outcome anyway.

Q. As of March 29, 2009, is that right?

A. Yes.

25 Q. Now in addition to matters that were discussed during the health and safety meeting as reflected in the minutes, do you recall any other concerns or issues being raised with the committee about safety at the mine?

30 A. No. If they were raised they'd be in the minutes, and I don't recall anything else that's not in the minutes, and you know, these meetings were very collegial. They were, there was clear recognition on the part of each of the two site senior managers, Ivan and Neville, that these were important aspects of Pike's business. The board took them seriously, I took them seriously and so that this was important work that these guys were doing and that they were reporting to the committee.



My recollection of the tone and the climate and the general collegial nature of these meetings was that if either Neville or Ivan had had a concern, of any sort no matter how small, they would've raised it.

1430

5 Q. Now just before we leave these minutes and the first point here Mr Rockhouse's comment is that he's working on a development of contractor safety management plans, do you see that?

A. Yes.

10 Q. Do you recall as part of this 26 March 2009 committee meeting that there was discussion about the suitability and extent of contractor safety management?

15 A. I don't remember the detail other than what I'm prompted to remember from the minutes, perhaps just other than to say that a number of the contractors were relatively small companies. I know that Pike was requiring its contractors to being in compliance with the company's own health and safety standards and sometimes with smaller contractors that's an issue for them, especially if they're not always used to working underground, but beyond that, beyond what's prompted by just reading the minutes now I don't recall anything else.

20 Q. Let me bring you to another set of minutes at DAO.020.00004?

**WITNESS REFERRED TO DOCUMENT DAO.020.00004**

Q. Do you recognise these minutes Mr Dow as being for a meeting of the health safety and environment committee on the 5<sup>th</sup> of October 2009?

A. Yes.

25 Q. And where was this meeting held?

A. It was held at the Atarau mine site.

Q. And who attended?

A. Professor Meyer, myself –

**THE COMMISSION ADDRESSES MS SHORTALL – MATTER OF RECORD**

30 **CROSS-EXAMINATION CONTINUES: MS SHORTALL**

Q. Are these minutes that you signed as chair of the health safety and environment committee?

A. Yes they are.

Q. And did you prepare them Mr Dow?

A. Yes I believe I did.

5 Q. So let me just bring you to the matters arising section. If I just ask Ms Basher to highlight that please and there's a reference there again to "Third party audits are still the goal." Do you see that?

A. Yes.

Q. Do you recall what efforts were being made by the committee to encourage the third party audits at this time?

10 A. Well the matter came up every time the committee met because it was an important aspect of independent understanding of how we were doing. The progress that had been made since the previous meeting and the one that we're looking at here now, these are both the safety and the environmental departments have set up their systems in anticipation of third party audits, which means that they were getting  
15 ready to do it. They had systems, documentation and things like that, that somebody coming in from the outside who was experienced in doing these kind of audits would be able to pick up the data, the standard operating procedures and management plan and do an audit,  
20 but as you can it's still not happening at that point.

Q. And if we could just come back to the front page, right at the bottom there is a section headed, "Safety audits," and just to orientate ourselves before we go on to the next page Mr Dow, do you see there that Mr Whittall is reporting on several new initiatives?

25 A. Yes.

Q. So if we come to the next page of the minutes please Ms Basher. At the top there if I could just ask that the numbers 2 through eight be highlighted please? And do you see there Mr Dow that there is a reference in the third point to the importance of closing the reporting  
30 loop with staff who initiate safety reports?

A. Yes.

Q. And so that's a matter that's been discussed by the health safety and environment committee in October 2009, did you have any recollection

as to the nature and extent of that discussion or expectations of the committee?

A. No, except that the whole point of having reports on safety incidents is that they just don't get reported, there's no point in doing just that. Remedial action has to be taken, there has to be follow-up afterwards and that the person that raised the issue in the first place needs to know that the original report was acted on. This was a reference to the committee that this was happening.

Q. There's also reference here to a mine evacuation drill been conducted annually. Did you have any recollection of discussion at the committee meeting about that matter?

A. I don't have a lot of detail except I do recall that the question of what would happen in the event of an incident that required evacuation was an important issue for the committee to understand. The report from Mr Whittall here was that they were being done annually and the next one was just about due.

1435

Q. And then the last two points here refer to secondary egress and the ventilation shaft and in particular the fact that the ladder has been installed but is not yet fully operational. Beyond what's set forth in the minutes, do you have any further recollection of what was discussed in that regard with the committee on the 5<sup>th</sup> of October 2009?

A. Not additional details than what's in the minutes, no.

Q. And again there were opportunities at this meeting for Mr Rockhouse and others to raise any concerns with you?

A. Yeah, there was, and I think that if I could just perhaps add to my earlier comment about the third party audits and obviously that would've been desirable to be done but quite clearly there are regular audits happening internally which are dealing with some of these issues as well.

30

## **THE COMMISSION ADDRESSES MS SHORTALL**

**CROSS-EXAMINATION CONTINUES: MS SHORTALL**

A. I should point out, if I can, that these minutes before they were signed off were circulated to all participants to make sure that they were comfortable and agreed with the statements that were made.

5 Q. Now let's move forward to the 15<sup>th</sup> of November 2010 and I could ask Ms Basher to bring up minutes at DAO.015.02544 please?

**WITNESS REFERRED TO DOCUMENT DAO.015.02544**

Q. Mr Dow do you recognise this document as a set of meeting minutes for a board meeting held on the 15<sup>th</sup> of November 2010?

10 A. Yes.

Q. So just four days before the explosion, right?

A. Yes.

Q. And this meeting again is on site?

A. Yes.

15 Q. And was part of this meeting intended to also be a health safety and environment committee meeting?

A. Yes, it was.

Q. Why?

20 A. As I said earlier on the board meetings up to this point had extensively considered the issues of health safety and environment but we were just about to, or we had just got started on hydromining and the question of the management and monitoring of gas was a particular issue of concern to the board and so we specifically scheduled a part of this meeting seeing as it was onsite, to have a presentation from my  
25 manager Doug White on the steps that the company was taking to ensure that we were measuring, monitoring and managing methane underground.

Q. And was Mr Rockhouse invited to attend the health and safety part of the 15 November meeting?

30 A. I'm not sure if he was invited or not. Mr White was invited to make the presentation and it would've been my expectation that he could've invited any of his staff that he wished seeing if they were all on site and available, the invitation was to Mr White not to either Mr Liddell or to

Mr Rockhouse in this circumstance. But that wouldn't be to say that Mr White wouldn't have suggested they come or had the opportunity to invite them.

Q. You just don't know one way or the other?

5 A. I don't know whether he did or not.

Q. If we could come to the third page of these meeting minutes. There's a section headed, "Health safety and environment." And is this the component of the meeting minutes that record the part of the meeting that you consider to be a health safety and environment committee meeting?

10

A. Yes.

Q. Do you recall whether Mr Whittall was present for this part of the meeting?

A. I don't believe he was.

15

Q. Now what do you recall about the health and safety discussion during the meeting held on the 15<sup>th</sup> of November?

A. Well the focus was very largely on the management of methane underground. The minutes are refreshing my memory but you can see that most of the minutes relate to that matter. There were other issues relating to wellness and work attendance and things like that, and I raised the issue of committee affairs as I regularly did at these sections of these meetings but most of it was around the management of methane underground.

20

1440

25

Q. And do you recall as reflected in the minutes, that Mr White described that the new underground fan was operational?

A. I don't recall it. I would rely on the minutes to remind me.

Q. So would it be fair to say, Mr Dow, that beyond what's written in the minutes, you don't have any independent recollection of further detail discussed on the 15<sup>th</sup> of November?

30

A. No, not at that meeting no.

Q. Well I'll leave the document as it speaks for itself, but can I just ask you whether Mr White, to the best of your recollection, raised any concerns

about safety or methane management with the board during the meeting?

A. No quite the contrary. In fact I remember him being quite comfortable that he and his team were across the issues.

5 Q. What did he say to you that led you to believe that he was quite comfortable?

A. Well he, I recall and the minutes, I think the minutes say somewhere that Mr White described the methane as more of a nuisance rather than something that was, you know, a problem for, that was giving him any great, you know, concern. And I don't know whether that was in the  
10 minutes or somewhere else, but that's my recollection.

Q. And I think if you just turn your attention to the third paragraph in that section and the last sentence there. Is that consistent to help refresh your recollection?

15 A. Yes. Those are the words, yep.

Q. What about following the meeting, did Mr White raise any concerns with you or to the best of your understanding, any of the other directors about safety matters?

A. No, not at all and we were all at site because the annual meeting of the  
20 company followed after the board meeting. There was quite a lot of opportunity for social interaction between the board and all members of the management team. No, the board meeting was finished and nobody raised any issues.

Q. And to the best of your recollection was Mr White at the dinner attended  
25 by the board and management the evening before on the 14<sup>th</sup> of November?

A. I believe he was, yes.

Q. And he didn't raise any concerns with you at that meeting?

A. No.

30 Q. At that dinner. Did you have any reason as of the time of the 15 November 2010 board meeting that Mr White might have been considering leaving the company?

A. No I had no idea whatsoever.

Q. Now if we just turn to the last page of the meeting minutes here for the 15 November 2010 meeting. Do you see a reference there to the meeting schedule for 2011?

A. Yes.

5 Q. And what do you recall, if anything, about that meeting schedule for 2011?

A. Not a lot of detail, but this was a time of the year when the board would consider the schedule of meetings for the following year for meeting, regular meetings of the board, for meetings of the audit committee around statutory and financial reporting, meetings of the health and safety and other standing committees. Management had prepared a schedule, draft schedule for the following year and directors were given it to consider the degree to which it conflicted with other things that they might have in their schedule, but this was a prospective look as we always did for the schedule of meetings for the following year.

10

15

Q. If I could just ask the following document to be pulled up. It's DAO.007.29085. We don't have it? Sir, I can do this without the document itself. Do you recall, Mr Dow, that there had actually been a draft schedule circulated to the directors that included provision for board meetings on site during 2011?

20

A. Yes, I think that was the document that is referred to in those minutes.

Q. And in considering that draft meeting schedule, had you turned your mind to health, safety and environment meetings for 2011?

A. Not specifically at that point, except that obviously that would have been part of finalising the board calendar when the time came.

25

1445

Q. And why do you say that?

A. Why do I say what?

Q. When you say that order being part of finalising the calendar?

30 A. Because the calendar included not only proposed dates for board meetings but also proposed dates for sub-committee meetings of the board.

Q. Now if we turn to June of 2010 and you being engaged by the board provided advisory services to the company, do you recall that?

A. Yes.

Q. And that was separate and apart from your role as a director wasn't it?

5 A. It was.

Q. Why did this occur?

A. The board had for some time been concerned that a number of aspects of the CEO's performance. I made reference earlier on to the matter of over promising and under delivering. The board was concerned that the  
10 CEO was possibly struggling to recognise the impact of failing to deal with these issues on the company's perception in the market, on our progress at the mine site and the question was then so what as a board are we going to do about it. There was a suggestion that we engage an external consultant to assist the company, and particularly to assist  
15 Mr Ward as CEO, but ultimately the board decided that given that it would take some time for a consultant to get up to speed on the issues that it might be something that would be better handled internally. Mr Radford approached me and asked me would I be prepared to take on additional work for the company. I was a little bit hesitant about  
20 doing that, but after further discussion it was clear that I had the executive experience and probably an appreciation of the issues from the board's perspective and I was persuaded to take on a short consulting assignment for Pike to see if we couldn't deal with some of those issues that were a concern to the other directors.

25 Q. What type of work did you do in providing advisory services?

A. Well I think you could classify it as business coaching, executive mentoring. It wasn't an operational role. It was more about helping Mr Ward to understand the issues that the board was concerned about. The issue of his performance that we were concerned about. It was  
30 also about I think independently understanding the issues that were, Mr Ward was struggling with, and so that required me to independently understand what was happening on site to be in a position in order to mentor somebody or assist them you have to know kind of what the



challenges are that they are facing and rather than just taking what the board had been told at face value I was engaged in better understanding, you know what the specific challenges were. So that involved independent trips to the mine site. It involved me determining myself what the particular issues were that he was challenged by and then to work through with Mr Ward ways in which we could improve his understanding of these issues and provide better, more timely and perhaps more accurate forecast of performance to the board. And that included both in operations and finance management.

5

10 Q. And as part of this work did you obtain at least in your view a better understanding of the specific challenges Mr Ward was facing.

A. Yes, I think I did, yes.

Q. And can you briefly describe to the Commission your understanding of those challenges?

15

A. Yeah, I think part of the problem was that in any given scenario there are a range of outcomes. Mr Ward would visit the site. He would ask his team onsite about the, for example the forecast performance of certain items of equipment. Now to get a realistic sense of how you might forecast the performance of certain items of equipment you have to look at what they've been able to achieve. You have to look at the frequency of maintenance, the number of times they broke down. The adequacy of the equipment for the task. A whole range of things that lead you to say well on the balance of probability this is the kind of rate of advance or the production level should get out of this particular piece of equipment. Now my understanding was that Mr Ward was being provided with a wider range of alternative outcomes but was electing at the more optimistic end of performance in factoring that performance into his predictions of overall company performance and so it became clear to me that he had a view of the ability of the company to do some things and to achieve certain levels of production, a tunnel advance, roadway development that was at the more optimistic end of the schedule and when asked were these rates of advance feasible or possible, the answer on site was, "Yes of course but everything will

20

25

30

have to right to achieve them,” and up until that point that had not been the case for some of these bits of equipment and so I think the problem was, was it being over optimistic and a bit unrealistic about using site estimates in forecasting company performance. It became pretty clear to me that he wasn’t perhaps taking into account the experience of people on site, saying yeah well if everything goes well this is what we can achieve but so far it hasn’t gone that well, so perhaps you don’t want to use such an optimistic view of things and I for the life of me couldn’t really understand why it was so important to Mr Ward to keep assuming or factoring in performance at the more optimistic end of the likely range of outcomes.

1450

Q. Was your advisory role or mentoring role likely to have continued in 2011 if the 19 November explosion had not occurred?

15 A. No I don’t think so, in fact the role was almost complete by then.

Q. And why was that?

A. Well it was suggested to me this task might take six months. The reality of it is that there’d be quite a comprehensive performance review of Mr Ward’s own performance in June 2010. I went away on vacation for a while and when I came back I had a follow-up performance review with him because there were a number of issues that had come out of that performance review that were in my view unsatisfactory and it became clear to me that we weren’t making a lot of progress in getting Mr Ward to see that issues that were of concern to the board in June and then July and then August, weren’t being attended to in any kind of realistic fashion. Mr Ward subsequently left the employment at Pike River Coal and the main part of my reason for being in this advisory role went with it, so if you look at the amount of time I spent on this task, August and September would’ve been the two months of most input from me, a little bit of work in October by then, the task was done.

30

Q. I’d just like to turn to the final topic that I have for you Mr Dow and that’s related to some questions that have been raised by New Zealand Society of Risk Management. My first question for you is whether

during the course of your tenure as a Pike director did the company develop and deploy a framework for considering and managing risk?

A. The short answer is yes but in fact a considerable amount of that work was done before I became a director.

5 Q. And what was your understanding at the time you became a director, of the framework that had been established?

A. There had been a comprehensive assessment. All of the risks likely to be encountered by the new Pike River development project during the feasibility study and in fact I think it was probably before the feasibility study, a review of technical, commercial, health and safety environmental risks, a very comprehensive review that was done. There was a review of operating technical and commercial risks done for the IPO before 2007. That was done by BDA. BDA had another review of commercial, technical and operating risks that was included in a subsequent capital raising activity. On top of that as part of Pike's various insurance policies, we had quite comprehensive risk reviews from the London Insurance market, the people that were providing our business interruption insurance policy and various sub-underwriters sent their own people, their staff to site to conduct their own reviews. There was an independent review of the degree to which Pike's standard operating procedures and management plans complied with both the health and safety regulations and the environmental regulations and then on top of all of that there was the development as we discussed earlier, of safety management plans and environmental management plans that were accompanied by extensive written standard operating procedures and associated with those a large number of job safety environment analyses. So it was a comprehensive review of all of the risks that the company faced.

1455

30 Q. Did the risk management framework result in risk being described and considered against defined risk criteria?

A. Yes I believe that, I believe it was. The process of evaluating risk involves understanding the various components of risk, the

understanding of steps that would be taken and mitigate those risks and then what I understand you end up with is a residual risk which there is then a judgement made as to the acceptability of that residual risk. So, yes the answer to your question is yes there was.

5 Q. Were there defined processes in place to identify hazards and eliminate the consequent risks in your view?

A. Yes. The process of developing the safety management plan for example requires first the understanding of the full spectrum of risks that might be encountered and Pike developed a standard matrix of risks  
10 that were then plugged into the matrix depending on their severity, ranging from severe to minor, and the other axis of the matrix is a understanding of the likelihood that these risk events would occur, and so from that risk matrix which is a comprehensive understanding of all of the risks likely to be encountered on a site like Pike, you can then set  
15 down and say, all right how does the safety management plan deal with those risks and what standard operating procedures need to be developed to understand and manage and mitigate the risks, so yeah again a long answer, the short answer yes.

Q. Now did the risk identification and evaluation processes consider risks  
20 at the commercial level?

A. Absolutely.

Q. Just briefly touch on that? It's one of the questions that's been put by the institute?

A. Yes. The two issues that the institute wanted to know was the  
25 adequacy of the company's capital base and the obligations for the company to deliver product to customers. The question of the adequacy of capital to build the mine and operate was a primary function of the finance committee which presided over four separate capital raisings, and the question of the ability of the company to deliver and to contracts  
30 that it had entered into was a relatively more straight forward risk to manage because Pike's sales contracts did not require us to deliver coal to any particular frequency. We delivered coal when coal was produced. We didn't have an obligation or a shortfall to customers in

the event that coal could not be produced, so that was a relatively lower risk.

Q. What about at the health and safety level, how did the risk identification and evaluation process consider risks at that level?

5 A. Well, I've described already that the development of the safety management plan is the primary document and it's from that document that you determine after you've identified all the risks in the risk matrix that you develop standing operating procedures that inform the safety management plan.

10 Q. And would you give the same answer to a question about the identification and evaluation of risks at the technical level?

A. Mmm.

Q. Yes?

A. Yes, sorry.

15 Q. And same answer with respect to the level of compliance with regulatory and consent obligations, is that right?

A. The compliance with consent obligations was a specific part of the health and safety committee's charter and you will see if you look at the board papers for each of the monthly meetings at every one of those, a consent register and a compliance, statement of compliance was included in the board papers each month and if I could add a function of the health and safety committee itself, specifically dealt with areas where the company had not been compliant, and whether or not the non-compliance had been reported to the various regulatory authorities.

25 1500

Q. Just two final questions that have been put by the institute Mr Dow to the best of your knowledge were risks assessed against any form of risk criteria?

A. You'd have to be more specific.

30 Q. Is it difficult to answer that question when it's framed so broadly?

A. Yes.

Q. During your tenure was sufficient information provided to the board to enable directors to make informed decisions in your view?

A. I believe so, yes.

**THE COMMISSION ADDRESSES COUNSEL – APPLICATIONS FOR  
CROSS-EXAMINATION OF WITNESS – ALL GRANTED**

**5 CROSS-EXAMINATION: MR MOUNT**

Q. Good afternoon Mr Dow, perhaps we can start with the context of your appointment as a director. You've told us already that the time you began in February 2007 Pike was still a subsidiary of New Zealand Oil and Gas?

10 A. Yes.

Q. The focus at that time was very much on the IPO, or stock market float, is that right?

A. Yes I think that's fair.

15 Q. In December of 2006 two independent directors had resigned from the board.

A. I understand that, yes, yes.

Q. And at that the same time a third director Mr Duncan who had been involved with the company for some time also resigned?

A. I understand that to be the case.

20 Q. The two directors who resigned were Mr Dennis Wood and Mr James Ogden, did you know about their background as independent directors?

A. No.

1505

25 Q. The resignation of three directors at the same time is obviously a significant event in the life of a company?

A. Absolutely.

Q. Did you take steps to find out why those three directors had resigned at the same time?

30 A. Yes, when I was asked if I would consider joining Pike's board, I asked about the circumstances in which a vacancy had arisen and of course I was told pretty quickly of the matter that you just referred to that all three directors had effectively resigned on the same day, so yes I was aware

that that had happened. You might imagine that I was a bit curious about why that would be the case and why whether there was any particular circumstance that I should be concerned about in being asked to consider stepping in. I didn't speak to either Mr Ward or Mr Ogden directly. I made my own enquiries as to what I thought had caused them to do what they did and you know, that's an important question to answer before you throw yourself into whatever might have caused their resignation in the first place.

5

Q. Did you speak to Mr Duncan?

10

A. No.

Q. What enquiries did you make to find out the reasons for the departure of the three directors?

A. I spoke to Tony Radford who was the chairman of New Zealand Oil and Gas. I spoke to Professor Meyer who was the acting chairman of Pike.

15

I believe I spoke also to Gordon Ward who was on the Pike board and as I testified earlier was the Chief Executive of the company. I wanted to understand from the company's perspective what had been the circumstances which had caused them to leave.

Q. What did you understand were those reasons?

20

A. My understanding was that the two independent directors had been brought on to the Pike board to assist and to govern the company through its initial public offering. I discovered or determined that New Zealand Oil and Gas' circumstances were such that they said that they required to go to the public capital markets themselves first and then it

25

wouldn't be appropriate for their majority owned subsidiary Pike River Coal to be going to the public markets before the parent company had refreshed its capital needs. My understanding was that the timing of the IPO had been delayed, in fact it had been delayed more than once and it was my conclusion that the two independent directors that had resigned had resigned because of the constant thwarting if you like of Pike's plans to go public by steps that needed to be taken first by the parent company. I also formed the view that it was entirely reasonable for the parent company to satisfy its own capital

30

needs before going out to float off a majority owned subsidiary and I must say the conclusion I reached at the time was that I was surprised that such an issue had led to the departure of two independent directors because I didn't think from what I could determine, the scale of their frustration warranted such a drastic action.

5

Q. Why didn't you take the step of contacting any of the three directors who had left?

A. I satisfied myself as to the reasons for their departure. I didn't need to talk to them directly. I didn't feel in the circumstances, I think if there had been other issues of perhaps a more serious nature, there was some concern about personality clashes within the Pike River board, but that sort of thing happens all the time. I certainly didn't think that was a reason for independent directors to resign and I came to the conclusion that in fact the reasons for their departure were relatively trivial in the overall scheme of the way boards operate and the way directors interact with each other.

10

15

1510

Q. We've had some correspondence filed with the Commission relating to this issue. There is a letter from Mr Wood, the previous chair, DAO.034.00001. Perhaps put document on the screen.

20

**WITNESS REFERRED TO DOCUMENT DAO.034.00001**

Q. This is an email dated 7 December 2006 to the other directors of the company. Did you see this correspondence at any stage?

A. No.

25

Q. If you look at the first sentence of the fourth paragraph. It states that the decision related to governance issues, the relationship with NZOG and the unsatisfactory potential financial exposure for the directors of Pike. Were those all issues that you talked to the other directors about prior to your decision to join the company?

30

A. The, I'm not quite sure what the reference, just looking at the reference to governance issues is. That's such a broad term that you'd need to be more specific. The relationship with NZOG suggests that the independent directors of Pike were having issues with the parent



company, but again that's a pretty broad generalisation. The unsatisfactory potential financial exposure for the directors of Pike could well have been relating to the exposure the directors would have to their fiduciary responsibilities not to trade insolvently. That was not any issue that ever arose in my own due diligence. My understanding was that Pike was, as a nearly wholly owned, I think it was a 75% owned NZOG subsidiary at the time, that the question of insolvency with Pike was not the issue. It was not something that was brought to me in my own due diligence. You know, these are kind of personal issues that people have and this may very well have been Dennis Wood's personal view. I don't see a lot of things in that process that would not have been readily reasonably resolved unless there was some impossible breakdown in the personal relationships, and I don't, I'm not saying that that was the case because I just don't know.

15 Q. Of course, you only had the perspective of the Pike directors that you spoke to, you didn't have the perspective of anyone else, is that right?

A. Yeah, that's right, yes.

Q. If we look at Mr Ogden's letter, DAO.034.00003, did you see this letter at any stage?

20 **WITNESS REFERRED TO DOCUMENT DAO.034.00003**

A. No.

Q. You will see at the beginning of the second paragraph, Mr Ogden writing that his resignation has arisen because of the usurping of the authority of the Pike board by the major shareholder New Zealand Oil and Gas. Again, is that a factor that you had understood was a reason for Mr Ogden's departure?

25 A. It was conveyed in as many words. The reason why I thought the issues were relatively, and I don't mean to trivialise them, but these are issues that grown men resolve in an amicable fashion. This sounds to me like there was more of a personality issue that, you know, Pike was 30 75% owned by New Zealand Oil and Gas. That was an entitlement in that on the part of NZOG to manage its affairs the way it saw fit, and if the subsidiary, Pike River Coal, had independent directors who were

uncomfortable with that process, then the way to deal with it is to deal with their discomfort and when you look at these things there's nothing really substantial in either of the reasons Mr Wood or Mr Ogden to do this. I mean clearly they had personal reasons. I mean I didn't speak to either of them about it, and this is the first time I've seen these letters. But the reasons given strike me as being more for personal reasons. That's fine those are good reasons. But look at it from my perspective, were these reasons that would prevent me from dealing reasonably with the NZOG board? I think the fact that my relationships with them were harmonious from the start suggested that NZOG wasn't being unreasonable. That could be of course that in January 2007 they'd completed a capital raising and they could turn their attention back to the Pike IPO. But I'm surmising about those things.

1515

15 Q. Given Mr Duncan's long association with the Pike project, was it not possible he might have shed some light on these issues for you in a constructive way?

A. They could have been.

Q. Is there a reason you didn't contact him?

20 A. No, I think I came to appreciate Mr Duncan's long history with the project after the fact.

Q. If we can look at the document DAO.013.00122?

**WITNESS REFERRED TO DOCUMENT**

25 Q. This appears to be as set of draft questions and answers around the time of your appointment. Is this a document that you have seen previously?

A. I'm not sure of the context Mr Mount. I don't recognise the document.

Q. Take a moment to look it if you like to familiarise yourself with it.

A. Who is it addressed to and who's meant to be using it?

30 Q. Well it's a document that has been filed by Pike River headed, "Pike River Coal Limited," and it appears to be a set of draft questions and answers that might be put to you around the time of your

appointment as a director. But you're saying you haven't seen this previously?

5 A. I don't recognise it. I'm not saying I wouldn't have seen it four years ago, but I don't, no I can't say I recognise it. In fact as I look at it, I'm pretty I have never seen it before.

10 Q. In paragraph 2 one of the statements is that, "My discussions with people in the industry and associated with the project satisfied me that Pike River Coal is making good progress towards its target of producing premium grade coke and coal by the end of this year." Appreciating that you have no recollection of the document, is that nonetheless the position as it was in 2007?

15 A. Yes. As I say I satisfied myself that the reasons for the three directors departing were not of sufficient substance that would give me cause for concern about joining the board. And having joined the board and having got to meet the other directors involved, I think it would be fair to say that having done that I become even less sure, or even less perhaps, what's the word, I was struggling to understand why they had resigned.

20 Q. Paragraph 4 of this document uses a phrase that I think you used a moment ago, when it says, "As a professional director I have undertaken my own due diligence on the company." Is that correct you did carry out a form of due diligence on the company?

A. Yes.

Q. What did that consist to?

25 A. Well as I'm saying, I spoke to the other directors, that remained on the board. Had extensive conversations with Andrew McDouall who was from McDouall Stuart, was a broking firm that was charged with managing the IPO. I did share some comments with Stuart Nattrass because he was doing his own independent due diligence and at no stage did I, was I alerted to anything that I would've, that would've  
30 caused a red flag or caused me to wonder whether this was the right thing to do. I went to the mine site spoke to Peter Whittall, looked

people in the eye, spoke to Gordon Ward. I mean this is about judging the calibre of the people that were involved and I was quite comfortable.

1520

5 Q. By that stage the project had experienced some delays already, are you able to recall whether the road to the portal had been delayed by quite some time?

10 A. Yeah there was a significant landslide that occurred where the mine site is now and where the portal is, that had wiped out the access road and caused a significant delay in the construction and extra costs and so I was aware of that. I was also aware that the tunnelling was going slower than expected, yeah.

Q. You mentioned a moment ago that the delays with the IPO, in fact several delays. Can you recall just how delayed the IPO had been by that stage?

15 A. No not before I joined the board, well that's a prospective question, I didn't spend a lot of time on that, I hadn't long been back in New Zealand. I didn't know much about other mines other than the fact that Solid Energy was the main player that Spring Creek Mine was running, no those weren't key issues at the time. Most companies when you join the board have got all kinds of issues that you can deal with when you get there. You know, the due diligence is about fatal flaws.

20 Q. At Phase One Dr Elder told us about a keynote address that he gave to a conference for the Australian Institute of Mining and Metallurgy which of course you've been involved in, that institute?

25 A. Mhm.

30 Q. I think the keynote address was November 2005 and that address referred to the experience at Spring Creek involving multiple failures by that mine to reach its start up date. A delay of around two years before it reached its production state and a cost well over twice the budgeted amount for the mine. Had you been aware of the experience at Spring Creek?

A. No.

Q. By the time you were approached the final mine plan had been signed off by the previous board?

A. Yeah.

5 Q. And it's document DAO.012.03499. Did you see that document before commencing as a director of the company?

A. Which document are we referring to?

Q. We've just had a little bit of a problem with the screens. It's the final mine plan which was signed off by the board in 2005?

A. No I don't believe I saw it before I joined up, no.

10

**THE COMMISSION ADDRESSES MR MOUNT – TECHNICAL ISSUE WITH COMPUTER**

**COMMISSION ADJOURNS: 3.24 PM**

**COMMISSION RESUMES: 3.41 PM**

**CROSS-EXAMINATION CONTINUES: MR MOUNT**

Q. We now have on screen the final mine plan.

**WITNESS REFERRED TO MINE PLAN**

5 Q. You'll see that it was a report jointly prepared by Mr Whittall and Mr Ward and dated 13 July 2005.

A. Yes.

10 Q. If we turn to page 4 you will see that the report began by setting out a series of recommendations to board of Pike River from Mr Whittall and Mr Ward?

A. Yes.

Q. You've told us that you visited the mine site prior to accepting the position on the Pike board and you spoke with Mr Whittall, is that right?

A. Yes.

15 Q. Do you not recall having been shown a copy of this document as a convenient summary if you like of what the project was at that stage?

A. No, I was, I had a general discussion with Mr Whittall about the nature of the project. I received from Andrew McDouall an information memorandum of some sort, I'm not sure exactly the details of it now, 20 which summarised the project as it was being prepared for IPO and so while I didn't see this particular document I got a summary of what was proposed to be done at Pike and then a proposal through Mr McDouall as to how it would be financed.

25 Q. Presumably, reasonably shortly after receiving appointment to the board, you will have seen this document?

A. That and other documents, yes.

30 Q. If we move to page 8 of the document, which is a section entitled "Project background," half way down the page just under the table, there's a reference to a recovery of approximately 14.9 million tonnes of saleable coal.

A. I see that yes.

Q. Did you take steps to form your own view of the appropriateness of the estimate of the size of the resource?

5 A. I understood that a consulting report had been prepared that had calculated the resources and reserves, and that from that a smaller subset of the total had been calculated as what would be mineable, yes.

Q. We've had evidence in this Commission from Mr Nishioka that Mitsui Mining's estimate of the saleable coal from Pike was closer to five or six million tonnes. Had you been aware of Mitsui Mining's estimate of the size of the saleable resource?

10 A. No, it's the Pike estimate, not a Mitsui estimate.

1545

15 Q. More generally at this early phase of your involvement had you been aware that Mitsui Mining with the support of the Japanese Government had investigated the Pike resource, in fact going to the extent of sending a drilling team to drill exploration holes but had elected not to pursue the project?

A. I was aware that there had been some earlier drilling by Mitsui. I didn't know why they weren't still there.

20 Q. Still on the document on the screen, at the top of the page the estimate at this stage in 2005 was that the mine would be developed for a total initial capital of 96 million with further capital of 28.4 million required for the introduction of hydro-monitor operations. That estimate obviously had increased by the time of the IPO but was it your understanding in the initial stages that the IPO funding would be sufficient to complete the development of the mine?

25 A. No, it was my understanding that there would be three phases of financing required to complete the construction of the mine. There would be a first phase introduced by the principal stakeholders, NZOG and the two Indian customers, that the IPO would be the provision of the second approximately equal tranche funding and that the balance of funds would come from borrowed capital.

30 Q. We'll come back to the precise makeup of the financial arrangements shortly if that's okay. While we're on this page, at the very bottom of the

page there is reference to the estimate of one million to 1.4 million tonnes per annum then produced by Pike. Were you aware at the early stages of your involvement of how that level of production would benchmark against other West Coast underground mines?

5 A. Yes I was aware that would make it bigger than other existing mines.

Q. Are you aware of the evidence from Solid Energy in this Commission that Spring Creek has never produced more than 430,000 tonnes in a year?

A. Yes.

10 Q. Is that something you were aware of at the time?

A. Broadly aware, yes.

Q. So on that basis, the output predicted for Pike was two to three times greater than its nearest comparative?

A. Yes.

15 Q. Did that raise any particular considerations for you given the likely scope of the project?

A. No.

Q. If we go back to the document with draft questions and answers, DAO.013.00122

20 **WITNESS REFERRED TO DOCUMENT DAO.013.00122**

Q. The sixth question related to the composition of the Pike River Coal board and the suggested answer to the question was that the board had a balance of mining and corporate expertise and would be representative of shareholder interests. At the time you joined were you  
25 happy with the composition of the board?

A. Yes.

Q. What level of experience was there on the board in underground West Coast coalmining?

1550

30 A. At the time the IPO, the company was digging an access tunnel. The specific ex-mining coalmining expertise on the board, there was no specific coalmining expertise on the board, but there was a widespread



of competent directors with governance and corporate and mine construction experience.

5 Q. Was it your view that it would be important for the company to have adequate experience in underground West Coast coalmining and in particular hydromining?

A. Yes.

Q. What steps did the board take to make sure it had that expertise?

A. Are you referring specifically to hydromining experience?

Q. Yes.

10 A. Well, there was a significant amount of coalmining experience amongst the management team and employees with specific hydromining experience from Solid Energy were recruited to come and work for Pike.

Q. Did the board hold a view that it would be desirable to recruit senior managers with experience in hydromining on the West Coast?

15 A. Yes, to the extent that you could get them and to the extent we did, we did.

Q. What attempts did you make to achieve that?

A. Are you asking me as a director or as the board or as the management team?

20 Q. I'm asking you as a director but also if you are aware of any information to that answer please tell us?

A. Well it obviously was important with hydromining that we had people that were competent and skilled at doing it and so the board was keen to see that the site management team recruited people with appropriate  
25 experience.

Q. Were any particular efforts made to achieve that?

A. Site management team was charged with doing that, that was their job to make sure that as hydromining approached right experience was recruited.

30 Q. At Phase One of this Commission's inquiry, there were a number of comments made about the adequacy of the geological information available to Pike River. Was that an issue that featured in the board's thinking from the time that you joined?

A. The board was satisfied that competent people under the JORC Code with experience and understanding of West Coast coalmining geology, had calculated the resources and reserves that went into the company's IPO and that a sufficient level of pre-mining geological enquiry had been undertaken to enable those competent people to reach that conclusion.

5

Q. I want to turn now to ask you some more questions about the company's approach to risk. Annexed to your statement and referred to earlier is a document called *The Corporate Governance Disclosure Statement* on behalf of the company?

10 A. Mhm.

Q. DAO.037.00003. Perhaps if we just put that on the screen.

**WITNESS REFERRED TO DOCUMENT DAO.037.00003**

Q. This is a document filed annually, is that correct?

15 A. Yes, with both the Australian and the New Zealand stock exchanges, yes.

Q. And indeed other similar documents can be found. Indeed, for the record I'll just read in that there's a 2009 version, NZX1724. So I take it the document on the screen, the 2010 document, was approved by the board?

20 A. Yes.

1555

Q. If we turn to page 6 of the document?

**WITNESS REFERRED TO DOCUMENT PAGE 6**

25 Q. The heading at the top of the page, "Principal Recognising Managed Risk," and then under the heading, paragraph 7.1, the second sentence says, "Pike River has developed a framework for risk management and internal compliance and control systems which cover organisational financial and operational aspects of the company's activities." The first aspect of this that I want to ask you about is whether there was a process during your time on the board that looked at risk across the entire operation of the company, including not only mining risks but also other risks faced by the company.

30

A. Yes.

Q. Who was responsible for that exercise?

5 A. The company's approach to risk is recognised in the three standing committees and the fourth ad hoc committee that had been set up to manage those aspects of the company's corporate risk. The financial risk through the audit committee. The health and safety and environment risk through that committee. The risks of being able to recruit and retain appropriate staff through the remuneration committee and financial risks and capital adequacy risks through the finance committee which was the fourth and ad hoc committee. In addition to that the company had a site-wide safety management plan that I referred to earlier which is underpinned by a series of standard operating procedures which is how you give life to your safety management plan and it was a similar environmental management plan with the same kind of structure underneath it. Those were the ways in which the company internally dealt with those risks and then there were external reviews of the risk each year when the company sought to renew its various levels of insurances and again as I testified earlier on there was very comprehensive third party reviews of those risks by insurance brokers and assessors.

20 Q. The reference in the corporate governance disclosure statement to a framework for risk management developed by the company was that framework recorded anywhere in a particular document?

A. Well I suspect the reference here is to the matrix of risk severity and frequency or likelihood.

25 Q. And you've told us that matrix we'll see the examples of matrices of this sort shortly. That's the matrix that essentially looks at severity and likelihood?

A. Yes, that's one of the ways of evaluating all the risks and then you build those issues into the management plan.

30 Q. So was there any document at Pike that collected in one place a framework for the assessment of risk across the organisation?

A. You mean a single document for all the risks? I suspect not.

Q. Equally was there a document that recorded the principles that the company would use in managing risk?

A. There would have been. It would have been at site.

Q. Was that document reviewed by the board?

5 A. The process of evaluating risk is a process and what you end up with is with a series of outcomes and that is the safety management plan and the environmental management plan that's the document around which those risks are assessed and then managed on it and reported on.

10 Q. What I think I asked a moment ago was whether there was any document reflecting the principles that the company would adopt in managing risk?

1600

A. I'm not quite sure exactly where you're going.

15 Q. Do I take it you're not aware of whether there was or was not a document of that sort?

A. There are a variety of documents that deal with a variety of risks and there's a variety of ways of evaluating a risk against certain risk criteria and accepting those risks. I'm not quite sure what else you're asking?

20 Q. Well the term, "Risk framework," might in some contexts suggest a document recording principles and processes by which the company would manage risk across the organisation. What I'm asking is whether there was any such document or any such framework at Pike?

25 A. There was a process for identifying and a process for assessing and then the development of a management plan to deal with the risks identified.

Q. Was that process itself recorded anywhere in a document setting out the way in which risk would be approached?

30 A. I don't recall a document does what you're asking for, I'm not quite sure I know what you're asking for that's different to the answers I've already given.

Q. In the next paragraph of the document on the screen at the moment, the second sentence reads, "The Pike River board has overall responsibility for the establishment and oversight of the company's risk

management framework.” It then goes on to say, “Pike River’s risk management policies are established to identify and analyse the risks faced by the company to set appropriate risk limited,” I think it should be risk limits, “And controls and to monitor risks and appearance to limits.”

5 A. I see those words, yes.

Q. The reference to Pike River’s risk management policies, are you able to help us with where those policies were recorded?

A. Well those will be the safety management plan and the environmental management plan.

10 Q. What was the process by which they were developed?

A. Are you talking about for example the safety management plan?

Q. (no audible answer 16:03:01)

A. This is a responsibility of the health and safety manager. It involves identifying first the kind of activities that are likely to be carried out on site and evaluation of the risks attended thereto and then the development of standard operating procedures to manage and mitigate. The safety management plan is a site wide plan that considers all of the issues relating to health and safety around the company’s onsite business and the standard operating procedures flow from first identifying what those risks are and then doing things like job safety environment analysis on each of those activities. So for example, a new piece of equipment would come to site. You would ask yourself what are the likely risks involved in operating this piece of equipment, so there would be additions to the safety management plan when new equipment or new procedures were being starting, the starting up of hydro for example would be in that category.

15

20

25

Q. Did the board review the safety management plan?

A. The health safety and environment committee did, yes.

Q. Did the board?

30 A. The board itself delegated its responsibilities in that area in two ways, in three ways. They delegated a subset of the board in health safety and environment committee to deal with it. The Chief Executive attended regular weekly management meetings onsite and there were

opportunities for the board to ask questions either through the Chief Executive or the health and safety sub-committee as to the progress with developing the safety management plan and the reports of the health and safety committee were provide, minutes were provided to all those other directors.

5

1605

Q. Was there any process by which the safety management plan was subject to regular review?

A. My understanding was that it was subject to a regular two year review for its adequacy.

10

Q. How did that process of review take place?

A. It happened on site, it was a site review?

Q. By who?

A. By site management responsible. It would have been the site manager and health and safety manager.

15

Q. Did either the health, safety and environment committee or the board itself have a role in reviewing that plan?

A. Not directly. It's a site responsibility. What would have happened was after there had been a review or a change or an update, that would be reported, more likely reported at weekly management meetings rather than wait for the six monthly reviews of health and safety committee.

20

Q. The sentence just above the heading, "7.2" reads, "Each Pike River annual report includes details on the company's risk oversight and management of material business risks."

25

A. Mhm., yes.

Q. Did that happen?

A. I believe so, yes.

Q. I think the 2010 annual report was split into two documents, is that right? Financial review and the annual review?

30

A. That was becoming the practice amongst companies in New Zealand, yes.

Q. If we look at the financial review first, which is NZX2299.

**WITNESS REFERRED TO DOCUMENT NZX2299 – FINANCIAL REVIEW**

Q. On page 27 there is reference half way down the page to financial risk management.

A. No, I've got page 25 here, yes.

5 Q. Perhaps if we zoom in on the bottom half of the page. I'll give you a moment just to fresh your memory on that section of the financial report.

A. Okay.

10 Q. We can see reference there to a number of financial risks, currency, interest rates, commodity risk, credit and so on. If we look now at the annual review, NZX2272. To your knowledge as chair, is there any reference in that document to risk oversight in other areas of the company's operation?

A. You have to refresh my memory. I don't recall specifically.

Q. Well I do have a copy of the document here.

**WITNESS REFERRED TO DOCUMENT NZX2272 – ANNUAL REVIEW**

15 A. Thank you. Yes.

1610

Q. Are you able to help us with whether the annual report refers to other operational risks at Pike River?

20 A. The annual report is in two documents as you recall. One of them is a financial report and the other one is more an operations report. This is an operations report you've given me.

25 Q. Yes we've seen that the financial review looked at a number of financial risks, credit, currency, so on and so forth. What I'm now asking is whether the annual review also dealt with any of the other risks faced at Pike River?

30 A. Well just looking at page 11 I can see under health and safety the reports says, "In February the company introduced scenario-based training exercises which reflect emergency situations such could occur in any underground mining operation," so there's a reference to those kind of work-related risks. But this document was not intended to be a comprehensive summary of risk evaluation. That was in the other document you showed me that's got the financial information and the notes to the accounts.

Q. If we go back to DAO.037.00003.

**WITNESS REFERRED TO DOCUMENT DAO.037.0003**

5 Q. At page 6 the statement in that document was that, "Each Pike River annual report includes details on the company's risk oversight and management of material business risks." Do I take it that aside from the passage you've just referred to, and aside from the section dealing with financial risks, there were no other details in the annual report dealing with mining operational risks?

10 A. The two documents are issues together. One is a summary, a narrative summary of the company's business affairs, a shorter document. This one you showed me. And the other document is a summary of financial and other report, statutory obligatory reporting. I'm struggling to see where you're coming from here.

15 Q. I think the answer to the question might be, "No." There is no other with exception of the annual report dealing with mining or operational risks beyond the material that you've already referred to, is that right?

A. Well if that's what your review of the documents says, then it must be right.

20 Q. If you look on the screen just above the heading 7.3, "Strategic and operational risks are reviewed at least annually as part of the annual business planning forecasting and budgeting process." Can you help us with what operational risks means there?

25 A. Well that is an activity for site management for a start. Summary of the budgets and the business plans and the risks would eventually come to the board but the annual reviews was a site-based activity as I understand it.

Q. The matters you would consider to fall within operational risks?

30 A. Achievement of objectives, the achievement of production, the completion of mine development, all of those things that would otherwise threaten the viability of the company.

Q. What was the board involvement in review of those matters?

A. The review of the budget after it had been by sight, it was a, one of the board meetings in the middle of the year, usually June I believe,



5 sometimes May, when Mr Ward and Mr Whittall would bring the budget for the ensuing year for the board for approval. At that point there would be a review of the strategic assumptions and review of the operating assumptions and the underlying assumption that went into the makeup of the budget.

1615

Q. As part of that annual review did the board call for an analysis by management of each of the risks across the operation that could affect the year ahead?

10 A. Not of all the risks because as I said before, the allocation of risk was in to a number of different areas. At budget time and at annual review of the operating and financial risks, that was a much more high level review. No, the board did not engage in a complete soup to nuts review of all operating risks across the site that was appropriate.

15 Q. If I can refer you now to another document DAO.005.04284?

**WITNESS REFERRED TO DOCUMENT DAO.005.04284**

20 Q. This is a document entitled, "Risk survey underground CPP and service operations and final report July 2010," by Hawcroft Consulting International. Have you seen that report previously?

A. No I was aware of it but I haven't seen it before but I did refer to it earlier on when I talked about the site wide review risks as part of the company's business interruption insurance.

25 Q. If we turn to page 94 I'll just ask you to read the two, not out loud but just read to yourself the first two paragraphs under the heading, "Risk management."

A. Yes.

30 Q. Are you able to confirm that the first paragraph is correct when it says, "That a whole of site risk assessment was carried out facilitated by external consultants but dealing only with environmental impact."

A. As I said I haven't seen this report before so I'm reading those words and take them for what they say.

Q. To your knowledge is that correct?

A. Yes, no reason why not. I was aware that Hawcroft did this comprehensive review every year as part of the renewal of the business interruption insurance, so this would be totally consistent with their annual review.

5 Q. The second paragraph says a broad brush risk assessment of the operation has not been conducted and to date only a limited number of formal risk assessments have been conducted. Pike agreed in 2009 to conduct the post-hydro starter broad brush risk assessment.” And then it goes on to say, “It’s still Pike’s intention to conduct such a risk  
10 assessment following successfully starting up hydro-operations. So were you aware that this was the case, that there had not been a broad brush risk assessment apart from looking at environmental issues?

A. Not at this level of detail, no.

15 Q. If we turn to page 31 under the heading, “4.13 management systems,” there's a reference number and then the word, “High,” relating to risk management and the report again notes that a broad brush risk assessment has not been conducted and goes on to say, “To ensure risks are identified and assessed management should conduct a broad brush risk assessment of the operation.” From this a risk register can be  
20 developed and core hazards determined,” and so on. You will see that the 2009 response from the mine was that this would be completed in 2009/10 but the update in 2010 was that formal risk assessments were yet to be conducted for fire detection and protection, windblast, gas and ventilation and hydromining. Were you aware that these matters had  
25 been pointed out by Hawcroft in July 2010?

1620

A. No, this is a level of detail that is appropriately dealt with by people at site.

30 Q. You'll see the reference to the word “High” just under the heading “4.13”. If we turn to page 22 you will see that there are three levels of importance, critical, high, and advisory. At “high” means conditions that should be acted on in the next three months. Given that this was a matter that had been allocated a High rating, is it not something that you

would expected to be drawn to your attention on the health, safety and environment committee?

A. Not necessarily. There are very competent people on site dealing with these issues. The board had every confidence.

5 Q. Now we'll just return to page 31 and in fairness I want to simply note the response of the mine in 2010, and I'll give you a moment just to read the mine's response.

A. Which piece are you referring me to?

10 Q. It's half way down the page, "Mine's response 2010. Risk register in place and being populated with existing risks, vault system implementation in progress." And the last sentence of that paragraph, "Formal risk assessments are planned to be conducted for fire detection and protection, wind blast, gas ventilation and hydromining." Then it goes on to make a point about scheduling and notes that "management does not agree with the downgrading of the risk to High?"

15 A. I see that.

Q. As chairman of the board and a member of the health, safety and environment committee, if you had been aware of this at the time would you have been comfortable with that response?

20 A. That's a hypothetical question. The management of health and safety on site has been delegated to the health and safety manager and to the site manager. If there are issues coming out of the activities which are out of compliance or are anomalous or require the attention of the audits, it's the responsibility of the site management to bring that to the committee's attention when they come on site to ask the questions.

25 Now, as I said before I haven't seen this document and I didn't and I wouldn't ordinarily. If site management considered these to be issues of importance I would have expected them to have been drawn to the board's attention.

30

#### **THE COMMISSION ADDRESSES MR MOUNT – PUT QUESTION AGAIN**

**CROSS-EXAMINATION CONTINUES: MR MOUNT**

Q. The question Mr Dow was whether, if these matters had been drawn to your attention at the time, you would have considered the mine's response satisfactory?

5 A. I would have asked why they considered they didn't agree with the downgrade, I would have asked why the outstanding risk assessments that were still planned had not been done, and I would have asked why, if they hadn't been done, whether they were urgent or whether there was a reason they could afford to be put off, but these issues were not  
10 drawn to the committee's attention.

Q. Do you consider it acceptable that these matters were not drawn to the committee's attention?

A. Well it's difficult just looking at it to know what the significance of them would be. Very senior and experienced people are interfacing with the  
15 assessors from Hawcroft and have views of their owners to the importance of these issues. I can't judge from this report the severity or the significance of the issue. I think the fact that our business interruption insurance provider had these questions would have required at least an answer, but it's difficult for me looking at this to know what  
20 the severity or the impact of not doing them now as opposed to doing them later when management was going to, difficult for me to know that. On the face of it, it would ask the question, "What is the impact of not having done it now and when and when it's planned to be done?"

1625

25 Q. This topic is dealt with Mr Rockhouse's written statement. I wonder if we can look at ROCK002, pages 30 and 31?

**WITNESS REFERRED TO DOCUMENT ROCK002**

Q. If you look at paragraphs 98 and 99, again I'll give you a moment to read those two paragraphs?

30 A. Which brief am I referring to, is this the one that's just been filed?

Q. This is Mr Rockhouse's Phase Three brief dated the 13<sup>th</sup> of November.

A. 98 and 99 did you say?

Q. That's right.

A. Okay.

Q. And you'll see that Mr Rockhouse's statement says that he had for a long time attempted to have another broad brush risk assessment carried out by an independent person or company to cover the mine's development from the time that it actually struck coal. And Mr Rockhouse clear was aware that this had been recommended by an insurance audit. He says in paragraph 99, "He raised the issue in several managers' meetings only to be told that it would be taken offline and discussed later, and to the best of his knowledge nothing had been completed on this topic as at 19 November."

A. I see that, yes.

Q. I take it you were not aware of Mr Rockhouse's views?

A. Absolutely not. This is the first time I've seen his concern on this issue. And all I would say is that if Mr Rockhouse was sufficiently concerned about these issues and sufficiently frustrated as he testifies here, he had plenty of opportunities to point it to my attention, plenty of opportunities to bring to my attention. And given the statement that he's made here frankly I'm really surprised that he did not.

Q. There are a number of other matters that are raised in the Hawcroft report that I just want to refer to you. Perhaps if we begin on page 17 with the risk assessment matrix used by Hawcroft?

**WITNESS REFERRED TO DOCUMENT PAGE 17**

Q. It's a little hard to see the boxes that are shaded red on the original but can you confirm that it's a matrix along the lines that you described earlier with likelihood along one axis and consequence along the other?

A. Yeah this is just standard inch, risk rating matrix.

Q. And the risk ratings go from 1 to 5, 1 being poor. And the definition of poor is unacceptable standard, immediate corrective action required to eliminate or reduce the risk by the introduction of control measures?

A. See that.

1630

Q. And 2 is below average, low standard, corrective action required and so on? If we turn to page 18, the next page of the report we will see that

Pike was given risk ratings of one or two for three matters in 2010. If we look at page 18 of the document, strata control in the monitor panel was given two, which was poor, I'm sorry, two was below average and methane was given a two likewise and housekeeping given a one.

5 Perhaps if we deal with first the question of whether you either in your capacity of a health and safety and environment committee member or as a board member, were made aware of those risk ratings in 2010?

A. I was not.

Q. Would you have expected to be aware of that?

10 A. Not necessarily, these are operational issues onsite. I would've been expected to have been made aware if there were serious issues but this is a normal part of site operation management, good people onsite doing these things.

Q. If we turn to page 24 there's more detail on the strata control risk. And we can see under the heading, "4.5," that this again was rated as high and it was noted that, "A detailed risk assessment at the time of the survey had not been conducted and a hydromining management plan had not been developed and that management should conduct a risk assessment into hydromining process and develop a hydromining management plan." You'll then see the mine's response in 2010 stating that, "The development of a hydromining management plan would be undertaken prior to the commencement of the first extraction panel and ultimately that the management did not agree with the ranking of two."

15

20

A. Yeah I see that yeah.

25 Q. Were you aware on the health safety and environment committee what steps had been taken to develop a hydromining management plan?

A. Not in detail, no but obviously that was a new activity that was coming and equally clearly, that would be part and it would be new standard operating procedures developed and hydromining would be added to the safety management plan. I wasn't aware of the details but certainly

30 the process.

Q. Did the committee or the board take any steps to make sure that there was an appropriate plan in place before the commencement of hydromining?

5 A. No I don't think the – you keep referring to the board but the reality of life is that these are site operational issues. The development of the appropriate plan precedes the approval to start mining and you'll see that report also talks about an authority to mine system. You can't start the process until those risk assessments are done and an authority to mine is issues. Those are site decisions.

10 Q. The next risk that is discussed in the external report is methane at the bottom of the page. Again that has been rated as high. Was that drawn to your attention at all?

A. From this report?

Q. Yes.

15 A. No.

Q. And if we move to page 25 we'll see that again there was a management response on the issue of methane and I'll give you a moment just to look at that.

A. Yes.

20 1635

Q. You will see that the mine's response included a statement that documentation of the technical analysis and technical reports on gas management, gas drainage, risk assessments and procedures are in place or being implemented in advance of first hydro extraction?

25 A. Yes I see that and that's what I would expect.

Q. Did the health, safety and environment committee see it as part of its role to make sure that processes of that type were in place before hydro extraction?

30 A. Not before hydro extraction, but remember the chief executive, Mr Ward, is attending weekly meetings of the management team and so the board is in his presence aware of those activities and, of course, the board meeting on the 15<sup>th</sup> of November very specifically asked Mr White

to explain to the board how he was managing mitigating and monitoring methane in the hydro areas.

5 Q. If we turn to the next section, page 26, section 4.10, "Mining Risks," we see that wind blast has been given a High risk rating and it stated that the risk of wind blast is yet to be assessed at the mine and that management should expedite a risk assessment for wind blast to provide adequate time for mine planning and/or introduction of a wind blast management plan. Again, is that a matter that you were aware on the health and safety committee?

10 A. Are you referring to the possibility of it or the steps being taken to deal with it?

Q. Well perhaps we'll begin with whether you were aware of any potential issue relating to wind blast?

A. Not, not in detail no.

15 Q. Were you aware that the external reviewers had allocated it a High risk rating?

A. No. As I said before, this is a document that's been prepared by insurance people with the input of site management. This is not something that ordinarily would come to the board for its comment or review. Might come to the chief executive in his executive capacity but not to the board.

20 Q. And not to the health, safety and environment committee?

A. No.

25 Q. Across the page, page 27, "Underground fire," half way down the page, has been allocated a High risk rating, and you'll see the 2010 update states, "A number of deficiencies remain in relation to fire protection systems at Pike River Coal." Again, was this a matter drawn to the attention of the committee at all or to you?

A. No.

30 Q. And the last matter from this report, page 32. You'll see a third of the way down the page that an advisory risk has been allocated to the issue of emergency response. Again, I take it that the comments of the



external reviewer on emergency response were not drawn to your attention on the health and safety committee?

5 A. Not specifically from the external reviewer, but the matter of emergency scenarios and evacuation of the mine were matters of general discussion, yes.

10 Q. I want to ask you now, a last matter about the general approach of the board to risk management. We heard again in Phase One that at least one other mining company there is extensive use of external training in risk management issues at the University of Queensland. Is that something that was offered to either Pike board members or senior management?

A. I don't believe so.

Q. Was it considered?

A. I don't believe so.

15 1640

20 Q. Turn now then to the functioning of the health, safety and environment committee? If we go back to the corporate governance disclosure statement, DAO.037.00003, on page 6, under the heading 7.2 under that bold paragraph, so perhaps if we zoom in on that bottom half of the page.

**WITNESS REFERRED TO DOCUMENT DAO.037.00003**

25 Q. The paragraph, it begins, "Management is responsible for designing implementing and reporting on the adequacy of the company's risk management system." You'll see that the document says, "The board requires that management reports do it on the monthly basis as to whether material business risks are being effectively managed. And to the audit committee and the health safety and environment committee on the company's key risks in those areas as appropriate." Do I take it then that the health safety and environment committee was the  
30 mechanism used by the board to oversee the company's risks in that area?

A. In those areas, yes.

Q. Was there a process by which the health safety and environment committee reported back to the full board beyond the preparation of minutes?

5 A. The minutes were the primary way in which the board was reported to. And there would be opportunities for oral commentary at board meetings as well.

Q. If we can look now at the health safety and environment and committee charter, that's DAO.037.00002 at page 29.

**WITNESS REFERRED TO DOCUMENT DAO.037.00002**

10 Q. You'll see in the second paragraph that, "The primary responsibility for implementation of health safety and so on rests with executive management, however the board has ultimate responsibility in these areas." Can you help us with the relationship between primary responsibility on management and ultimate responsibility on the board?

15 A. Yeah, it's a practical issue. The board is ultimately responsible for all aspects of the company's business, but delegates all of the day-to-day functions to executive management so the reality of it is that the management team does the work. Management team is responsible for developing identification of the risks for developing the safety management plans that go with the management and mitigation of those risks and for all aspects of the implementation of the policy. Board's responsibility then is to make sure that those things happen, but the responsibility of making them happen rests with executive management. It's a clear separation of church and state. The executive management team is employed full-time to manage the principal risks faced by the company. The board's role is an oversight role. I'm sure that management does that.

20

25

Q. You said a moment ago that, "The board's responsibility is to make sure that these things happen," is that right?

30 A. The board has responsibility for it. But the executive management is in charge of getting it done. That's the same then in all companies, the separation of the roles and responsibilities of directors from the roles and responsibilities of executive management.

Q. In your view does that imply a degree of responsibility on the board to audit or verify that the appropriate steps are being taken by management?

5 A. It involves asking, it involves, yes it involves some of those things. It does involve doing it, and a number of the issues and a number of the risks that are being identified are things that aren't normally within the professional experience of directors who come from a wide variety of backgrounds. The principal identification of risk, the assessment of it, and the management of it, is the purview of the executive management  
10 team.

1645

Q. Is it part of the board's function to verify or check that the appropriate steps are being taken by the management team?

A. Yes I would expect them to do that.

15 Q. Does that mean that in your view it is not appropriate simply to trust that everything is as it should be rather than the board has some responsibility to verify that the appropriate steps are being taken?

A. Yes and that was the purpose of having health and safety committee meetings onsite with Mr Rockhouse and Mr Liddell present to report on  
20 those phases of their responsibility.

Q. If we look at the bottom half of the page on screen at the moment, the health and safety committee charter records the fact explicitly that the committee had the ability to obtain independent advice if thought necessary to adequately perform its role. Was that ever done?

25 A. It has the capacity to, it was not ever, no it wasn't done. I don't know that the circumstances arose in which either the board or the health and safety environment committee felt the need to invoke those separate independent powers. I think the third party audits that I referred to earlier would've been part of that process and as I say, the committee  
30 recommended that be done and eventually would have been done but as we know, it wasn't done.

Q. The next statement is that the committee has the authority to conduct or authorise investigations. Was that ever done?

5 A. No again it's a question of providing the committee with the capacity to do it in the event that it felt maybe it wasn't getting the full story, it wasn't getting full and frank disclosure. That's a provision in case. I don't think the health and safety sub-committee of Pike's board ever had a question about the competency or the diligence of Mr Rockhouse and Mr Liddell, ever.

10 Q. Further down the page there is a requirement that the committee meet with Pike River and site management twice a year in order to review the status of the operations and be updated on site practices, compliance and new initiatives. Was that done?

A. Yes that was the purpose of those meetings that was exactly the purpose of those meetings.

15 Q. As part of that process did you consider that it was desirable to speak directly to any others involved in the health and safety process beyond the people who came to the meeting?

20 A. I did not no. I was comfortable that both of the department heads that were regularly present at those meetings were right across their responsibility, were competent and capable professionals and I had no reason to seek input from other people separately. I think from time to time we did meet other people in those departments but it wasn't because the committee wasn't happy or satisfied with what it was getting from the heads of those departments.

25 Q. Did the committee ask to see documentation or other material underlying the reports given by managers at the committee meetings?

25 1650

30 A. The board was provided every month with a consents register and that was a helpful document to understand where that process was going. No, the opportunity was for the health and safety manager and for the environment manager to come and report progress in their departments. If the committee had been unhappy or not satisfied with what had been made available, then there would have been opportunities to ask for further details, but these were full and frank, very open, very professionally collegial meetings. There wasn't any reason to think that

other documents needed to be obtained that weren't being provided voluntarily.

Q. They were oral reports, I take it?

5 A. No. In the case of the safety management plan and the environmental management plan large amounts of documentation was shown and available to the committee to review. They were oral reports in a sense that that's what, that's the style of the meetings, but there was a lot of backup documentation.

10 Q. Was there ever a process where the committee asked for and required follow-up material after a committee meeting?

15 A. I don't recall details other than what might have been listed in the minutes as things that management was going to do. No. So I don't recall anything that was specifically asked to be done say within the next or two after that meeting. There may have been, I don't recall that to be the case.

Q. Now the last matter on this page. There was a requirement to appoint a secretary. Who was the secretary of the committee?

A. There were only two of us on the committee, and I took it on myself to record the minutes.

20 Q. Did the committee keep separate files or other documentation in a convenient location?

A. Not separate documentation, no.

25 Q. If we turn over the page to page 30 of the charter. There was a requirement for the secretary to call meetings, prepare agendas and for the committee to report to the board on activities, including recommendations. Do I take it that level of formality was not followed by the committee?

1653

30 A. No, it was followed by the committee. The agendas for the meetings were sent out. They were circulated to all intending participants. The request was to indicate if there were other matters that needed to be placed on the agenda for this committee. The minutes of previous meetings were circulated to participants in normal meeting fashion.

5 People were invited to be there, the chief executive and general manager of mines where meetings were held onsite and after the meetings were over minutes were prepared and circulated to participants and to directors and there would've been an oral report at the next board meeting. So all of those things, they may not have been quite as formally done as the charter suggests, but the essence of it was followed.

10 Q. If we turn to the objectives and responsibilities, the first was to assess the effectiveness of management in this area. What processes did you use to assess effectiveness?

15 A. Well a big part of the way directors assess the effectiveness of senior executives is to watch them in action. To watch the way they prepare and present to directors when they come onsite. You can learn a lot about somebody's confidence by doing that. I think in the case of the health and safety side of the business, Mr Rockhouse was always well prepared. He had voluminous documentation on standard operating procedures in the safety management plan. He presented effectively and enthusiastically. It was very clear to me and I think you would find that Professor Meyer would say the same thing, that Pike was lucky to have somebody as widely experienced and competent as Mr Rockhouse. So the evaluation isn't done, if you like, in a formal way so much as by saying after every meeting am I comfortable that the right guy is in the chair and I think we came away from all those meetings thinking that Pike was very fortunate to have Mr Rockhouse as health and safety manager.

25 Q. We'll come back to the next matter a little later because it deals essentially with the information that was received by the committee or the matrix that was then used. But, the third one is to consider and review the adequacy of the health and safety management systems. What process did you use to consider and review those systems?

30 A. Well the presentation of progress with developing the safety management plan. The development of standard operating procedures,

the primary way that anybody would say has this company developed appropriate plans and are they working.

1656

5 Q. You'll see that the paragraph refers to appropriate levels of consultation. What consultation did you do as part of reviewing the adequacy of the health and safety management systems?

10 A. I think consultation refers to consulting with the executives responsible for them, and as I've already said, there were regular meetings held extensive and wide-ranging and the executives responsible were present at those meetings.

Q. The next one relates to identification of risks as part of the company's overall risk management system. I think we've already covered that.

A. Yes I think so.

15 Q. I take it there wasn't an overall risk framework that the health and safety plugged into as such?

A. No, the – you made earlier reference to the broad based risk assessment that was done in 2005 and I made reference to that earlier in my testimony which was a site-wide task, and that was coming up to be done again after hydro was up and running.

20 Q. Just pausing there. Of course, that one related to environmental matters not to health and safety?

A. Yes. Oh no the original broad based risk assessment applied to everything.

25 Q. We can come back to that matter in due course, but go on with your answer if you like?

30 A. No, what I'm saying is that the activities of the health and safety committee were a component of the company's broader appreciation in management of risk. The health and safety committee didn't deal with financial risk, it didn't deal with audit and fraud, it didn't deal with remuneration and compensation. It dealt with that component of the company's wider spectrum of risks that were in the areas of health, safety and environment.

1658

Q. Did the committee ever review particular risk assessment documents?

A. We were shown at meetings onsite documents around standard operating procedures. More as examples of the process as anything.

Q. Risk assessments?

5 A. I don't recall specific JSAs but they are the underlying activities that lead you to the standard operating procedures so it would be reasonable to assume that those things were being done.

Q. And last one in light of the time presently, monitor compliance with legal and statutory obligations. How did the committee do that?

10 A. The committee considered issues relating to in the case of environment exceedences and out of compliance activities and whether or not those exceedences had been appropriately reported to the statutory authorities and similarly in the health and safety area. The reliance was on the managers at the meetings to present a summary of areas where  
15 the company's activities had not been in compliance.

**THE COMMISSION ADDRESSES COUNSEL – EARLY START TIME  
9.30 AM**

**COMMISSION ADJOURNS: 5.00 PM**



## INDEX

<b>ALBERT ALLAN HOULDEN (SWORN)</b> .....	<b>3870</b>
CROSS-EXAMINATION: MR HAMPTON .....	3880
CROSS-EXAMINATION: MS SCHMIDT-McCLEAVE .....	3884
CROSS-EXAMINATION: MR NICHOLSON .....	3885
QUESTIONS FROM COMMISSIONER HENRY: .....	3887
QUESTIONS FROM COMMISSIONER BELL: .....	3888
QUESTIONS FROM THE COMMISSION - NIL .....	3889
RE-EXAMINATION: MS MILLS – NIL .....	3889
<b>JOHN ALAN STUART DOW (SWORN)</b> .....	<b>3890</b>
CROSS-EXAMINATION: MR MOUNT .....	3962